City of Arvada
City Council Agenda
AUGUST 2, 2021
CITY COUNCIL CHAMBERS
Regular Business

Info: 720-898-7550

<u>Councilmembers:</u>
Marc Williams, Mayor
Dot Miller, Mayor Pro-Tem
Bob Fifer, At large
Nancy Ford, District 1
David Jones, District 4
John Marriott, District 3
Lauren Simpson, District 2

<u>Staff Members Usually Present:</u>
Mark Deven, City Manager
Lorie Gillis, Deputy City Manager
Rachel Morris, City Attorney
Don Wick, Director of Public Works
Sharon Israel, Director of Utilities
Ryan Stachelski, Dir. of Community & Economic Development
Bryan Archer, Director of Finance
Rob Smetana, Manager of City Planning & Development
Ben Irwin, Chief Communications Manager
Kristen Rush, City Clerk

CITY COUNCIL MEETING – CITY COUNCIL CHAMBERS
6:00 PM

1. Call to Order - 6:00 PM
2. Moment of Reflection and Pledge of Allegiance - Councilmember Fifer
3. Roll Call of Councilmembers
4. Approval of Minutes
   A. July 12, 2021 and July 19, 2021 City Council Meetings
5. Recognitions and Communications - None
6. Presentations
   A. Presentation of the 2020 External Audit and Financial Statements
7. Public Comment on Issues not Scheduled on Agenda - Three Minute Limit
8. New Business
   A. Consent Agenda
      1. R21-097 A Resolution Authorizing a Change Order No. 2 to an Existing Agreement by and

between the City of Arvada and Dewberry Engineers, Inc. to Expand the Scope of Work and Increase the Contract Amount by $10,138.00, Project No. 18-WA-11

2. R21-098 A Resolution Approving the Submission of a Second Substantial Amendment to the 2020 Annual Action Plan for the Community Development Block Grant (CDBG) Program to Allocate Additional CDBG Funds Made Available Through the Coronavirus Aid, Relief and Economic Security Act (CARES Act)

B. Resolutions

1. R21-099 A Resolution Authorizing an Amendment to the Grant Agreement Between the City of Arvada and Jefferson County for Emergency Rental Assistance to Increase the Agreement Maximum Amount Reimbursable from $499,000 to $1,499,000

2. R21-100 A Resolution Amending the City of Arvada's Investment Policy

C. Ordinances (First Reading)

1. CB21-020 An Ordinance Amending Chapter 54, Motor Vehicles and Traffic, of the Arvada City Code (Public Hearing to be set for August 16, 2021 at 6:15 p.m.)

2. CB21-026 An Ordinance Enacting and Amending Certain Provisions of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code to Prohibit Persons Under the Age of 21 From Entering Smoking Businesses, to Prohibit the Sale or Distribution of Tobacco Products to Persons Under the Age of 21, and to Prohibit Self Service Displays of Tobacco Products (Public Hearing to be set for August 16, 2021 at 6:15 p.m.)

3. CB21-027 An Ordinance Repealing and Reenacting Chapter 82, Purchasing and Contracts, of the Arvada City Code (Public Hearing to be set for August 16, 2021 at 6:15 p.m.)

4. CB21-028, An Ordinance Submitting Proposed Amendments to Sections 4.3, 4.6, 5.13 and 5.14 of the Charter for the City of Arvada to the Registered Electors at the November 2, 2021 Regular Municipal Election and Setting Ballot Titles (Public Hearing to be set for August 16, 2021 at 6:15 p.m.)

9. Other

A. Appointment to the Olde Town Arvada Business Improvement District Board

10. Public Hearings - 6:15 PM

A. CB21-025 An Ordinance Authorizing an Additional Appropriation to the Community Development Fund for Fiscal Year 2021 (Ordinance No. 4771)

11. Public Comment - Five Minute Limit

12. Reports from City Council

A. Council Committee Reports

13. Reports from City Manager

A. Review of Future Workshops and Presentations

14. Reports from City Attorney

15. Adjournment

CITY OF ARVADA

SUMMARY OF MINUTES FOR THE SPECIAL MEETING OF THE ARVADA CITY COUNCIL HELD JULY 12, 2021 AT 5:00 P.M.

1. Executive Session – Third Floor Conference Room

   Personnel Matters, Pursuant to CRS 24-6-402(4)(f) Performance Evaluation for City Attorney, City Manager and Municipal Judge

   Mayor Pro Tem Miller moved to go into Executive Session Pursuant to C.R.S. 24-6-402(4)(f) regarding performance evaluations for the City Attorney, City Manager and Municipal Judge

   The following votes were cast on the Motion:
   Those voting Yes: Williams, Marriott, Fifer, Ford, Jones, McGoff, Miller
   The Motion was Approved

2. Adjournment at 5:55 p.m.

____
Marc Williams, Mayor

SEAL:

____
Kristen R. Rush, City Clerk

SUMMARY OF MINUTES OF THE MEETING OF THE ARVADA CITY COUNCIL HELD JULY 19 2021

1. Executive Session - Third Floor Conference Room - 5:00 p.m.
   A. Legal Advice, Pursuant to C.R.S. 24-6-402(4)(b) Relating to the LDC Appeal Process

   Councilmember Simpson moved to go into Executive Session for Legal Advice, Pursuant to C.R.S. 24-6-402(4)(b) Relating to the LDC Appeal Process

   The following votes were cast on the Motion:
   Those voting Yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
   The Motion was Approved

2. Call to Order - 6:20 p.m.

   This Arvada City Council meeting was held in the City Council Chambers and remotely using webinar technology. Mayor Williams, Mayor Pro Tem Miller, Councilmember Fifer, Councilmember Ford, Councilmember Marriott, Councilmember Jones and Councilmember Simpson were present in the council chambers. Members of the public were given notice with instructions on how to participate with public comment.

3. Moment of Reflection and Pledge of Allegiance

4. Roll Call of Councilmembers

   Those Present: Mayor Marc Williams, Mayor Pro Tem Dot Miller, Councilmember Bob Fifer, Councilmember Nancy Ford, Councilmember David Jones, Councilmember John Marriott, Councilmember Lauren Simpson

   Also Present: Mark Deven, City Manager; Rachel Morris, City Attorney; Lorie Gillis, Deputy City Manager; Ryan Stachelski, Director of Community and Economic Development; Bryan Archer, Director of Finance and Kristen Rush, City Clerk.

5. Approval of Minutes of the June 23 and June 28, 2021 City Council Meeting

   The minutes stand approved.

6. Recognition and Communication - none

7. Presentations - none

8. Public Comment
   A. Jennifer Engleman, Arvada resident, addressed council regarding Kipling Townhome Project
   B. Ken Nelson, Arvada resident, addressed council regarding the Kipling Townhome Project

C. Eric Symek, Arvada resident, addressed council regarding the Kipling Townhome Project
D. Terry Rintala, Arvada resident, addressed council regarding the Kipling Townhome Project
E. Dennis Connor, Arvada resident, addressed council regarding traffic on Wadsworth
F. Monica Merel, Arvada resident, addressed council regarding speed bumps on Carr Street
G. Dar-Lon Chang, Arvada resident, addressed council regarding the Geos Neighborhood gas lines
H. Kate Haug, Arvada resident, addressed council regarding traffic on Carr Street in Scenic Heights
E. Tom D'Agostino, Arvada resident, addressed council regarding various issues in Arvada
F. Vickie Walbridge, Arvada resident, addressed council regarding waste hauling

9. New Business

A. Consent Agenda

1. R21-093 A Resolution Granting a Non-Exclusive Public Utility Easement to the Public Service Company of Colorado (Xcel Energy) for the Construction of Utility Lines in Holistic Health and Fitness Park

Councilmember Marriott moved that R21-093, A Resolution Granting a Non-Exclusive Public Utility Easement to the Public Service Company of Colorado (Xcel Energy) for the Construction of Utility Lines in Holistic Health and Fitness Park, be approved.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

B. Resolutions –

1. R21-094 A Resolution Authorizing an Intergovernmental Agreement Between the City of Westminster and the City of Arvada Regarding the Resurfacing of Garrison Street – 88th Avenue South to City Limit

Mark Deven, City Manager, reviewed this resolution with council.

Councilmember Fifer moved that R21-094, A Resolution Authorizing an Intergovernmental Agreement Between the City of Westminster and the City of Arvada Regarding the Resurfacing of Garrison Street– 88th Avenue South to City Limit, be approved.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

2. R21-095 A Resolution Authorizing the Second Revision to the City of Arvada City Council Strategic Plan 2020-2025

Mark Deven, City Manager, reviewed this resolution with council.

Mayor Pro Tem Miller moved that R21-095, A Resolution Authorizing the Second Revision to the City of Arvada City Council Strategic Plan 2020-2025, be approved.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

C. Ordinances (First Reading)

1. CB21-025 An Ordinance Authorizing an Additional Appropriation to the Community Development Fund for Fiscal Year 2021 (Public Hearing to be set for August 2, 2021 at 6:15 p.m.)

Mayor Pro Tem Miller moved that CB21-025, An Ordinance Authorizing an Additional Appropriation to the Community Development Fund for Fiscal Year 2021, be approved on first reading, ordered published in full, and a public hearing set for August 2, 2021 at 6:15 p.m.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

10. Other - none

11. Public Hearings

A. Public Hearing for Second Substantial Amendment to 2020 Community Development Block Grant Annual Action Plan

Mayor Williams opened the public hearing for the Second Substantial Amendment to 2020 Community Development Block Grant Annual Action Plan.

No one wishing to speak for or against, the public hearing was closed.

No action was taken. A resolution recommending City Council approval of the substantial amendment to the 2020 CDBG Annual Action Plan will be submitted at a later date.

B. CB21-021 An Ordinance Adding Section 62-62, Interference with Staff, Faculty, or Students of Educational Institutions, of Article II, Miscellaneous Offenses, of Chapter 62, Offenses, to the Arvada City Code (Ordinance No. 4767)

Mayor Williams opened the public hearing on CB21-021.

Nora Steenson, Deputy City Attorney, reviewed this ordinance with council.

No one wishing to speak for or against, the public hearing was closed.

Councilmember Ford moved that CB21-021, An Ordinance Adding Section 62-62, Interference with Staff, Faculty, or Students of Educational Institutions, of Article II, Miscellaneous Offenses, of Chapter 62, Offenses, to the Arvada City Code, be approved on final reading, numbered 4767 and ordered published by title only.

The following votes were cast on the Motion

Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

C. CB21-022 An Ordinance Amending Section 1-5, General Penalty; Continuing Violations, of Chapter 1, General Provisions, and Section 58-41, Classification of Violations, of Article II, Trial by Jury, of Chapter 58, Municipal Court, of the Arvada City Code (Ordinance No. 4768)

Mayor Williams opened the public hearing on CB21-022.

Nora Steenson, Deputy City Attorney, reviewed this ordinance with council.

No one wishing to speak for or against, the public hearing was closed.

Councilmember Ford moved that CB21-022, An Ordinance Amending Section 1-5, General Penalty; Continuing Violations, of Chapter 1, General Provisions, and Section 58-41, Classification of Violations, of Article II, Trial by Jury, of Chapter 58, Municipal Court, of the Arvada City Code, be approved on final reading, numbered 4768 and ordered published by title only.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

D. Ratification and Approval of CP2021-0003, A Resolution by the Planning Commission for the City of Arvada, Colorado to Amend the 2014 Arvada Comprehensive Plan Land Use Designation Pertaining to 15812 W. 64th Avenue from LDR (Low Density Residential) to MDR (Medium Density Residential)

E. R21-096 A Resolution Setting Forth Certain Findings of Fact and Conclusions as to the Annexation of Certain Land into the City of Arvada, Colorado, 15812 W. 64th Avenue

F. CB21-023 An Ordinance Annexing Certain Land Into the City of Arvada, 15812 W. 64th Avenue in the County of Jefferson and State of Colorado (Ordinance No. 4769)

G. CB21-024 An Ordinance Rezoning Certain Land Within the City of Arvada, from Jefferson County A-2 (Agricultural) to City of Arvada R-13 (Residential 13), and Amending the Official Zoning Maps of the City of Arvada, Colorado, Located at 15812 W 64th Avenue from Low Density Residential to Medium Density Residential. (Ordinance No. 4770)

Mayor Williams opened the public hearing on CP2021-0003, R21-096, CB21-023 and CB21-024.

Rob Smetana, Planning Manager, reviewed this item with council and stated that the posting logs and mailing affidavit have been received and are in order. Mayor Williams made them a part of the official record, along with the staff report.

Sworn Testimony: Alina Randall, representing applicant

Mayor Williams closed the public hearing.

Councilmember Jones moved that Ratification and Approval of CP2021-0003, A Resolution by the Planning Commission for the City of Arvada, Colorado to Amend the 2014 Arvada Comprehensive Plan

Land Use Designation Pertaining to 15812 W. 64th Avenue from LDR (Low Density Residential) to MDR (Medium Density Residential), be approved.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

Councilmember Jones moved that R21-096, A Resolution Setting Forth Certain Findings of Fact and Conclusions as to the Annexation of Certain Land into the City of Arvada, Colorado, 15812 W. 64th Avenue, be approved.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

Councilmember Jones moved that CB21-023, An Ordinance Annexing Certain Land Into the City of Arvada, 15812 W. 64th Avenue in the County of Jefferson and State of Colorado, be approved on final reading, numbered 4769 and ordered published by title only.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

Councilmember Jones moved that CB21-024, An Ordinance Rezoning Certain Land Within the City of Arvada, from Jefferson County A-2 (Agricultural) to City of Arvada R-13 (Residential 13), and Amending the Official Zoning Maps of the City of Arvada, Colorado, Located at 15812 W 64th Avenue from Low Density Residential to Medium Density Residential. (Ordinance No. 4770)

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

H. Major Modification from the Land Development Code Subsection 3-1-3-8 C.1.a for Caliber Collision, Generally Located at 6782 Fig Street
I. Major Modification from the Land Development Code Subsection 3-1-3-8 C.1.c for Caliber Collision, Generally Located at 6782 Fig Street

Mayor Williams opened the public hearing on the Major Modifications 3-1-3-8 C.1.a and 3-1-3-8 C.1.c from the LDC for Caliber Collision

Rob Smetana, Planning Manager, reviewed this item with council and stated that the posting logs and mailing affidavit have been received and are in order. Mayor Williams made them a part of the official record, along with the staff report.

Sworn Testimony: Cole Hauberg, representing applicant
Wade Norris, with questions only
Mayor Williams closed the public hearing.

Councilmember Fifer moved that the Major Modification from the Land Development Code Subsection

3-1-3-8 C.1.a which requires vehicle repair to be conducted within a completely enclosed building to allow Caliber Collision, generally located at 6782 Fig Street, to store vehicles outside of the building within a fenced storage area for 83 vehicle stalls, be approved. This motion is based on the findings of fact adopted by Planning Commission.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

Councilmember Fifer moved that the Major Modification from the Land Development Code Subsection 3-1-3-8 C.1.c which states that storage of vehicles on the premises shall not exceed 15 days to allow Caliber Collision, generally located at 6782 Fig Street, to store vehicles for 60 days, be approved.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

J. Conditional Use Application to Allow Light Industrial Uses Within a New Commercial Flex Building Located in a CG (Commercial, General) Zoning District for Center Land at Indiana Business Park, Generally Located at 14763 W. 65th Way and 6595 Holman Street

Mayor Williams opened the public hearing on the Conditional Use Application for Center Land at Indiana Business Park.

Rob Smetana, Planning Manager, reviewed this item with council and stated that the posting logs and mailing affidavit have been received and are in order. Mayor Williams made them a part of the official record, along with the staff report.

Sworn Testimony: Jeff Weeder, representing applicant
Nancy Young, Arvada resident, in opposition

Mayor Williams closed the public hearing.

Councilmember Jones moved that Conditional Use Application to Allow Light Industrial Uses within a new commercial flex building located in a CG (Commercial, General) zoning district for Center Land at Indiana Business Park, Generally Located at 14763 W. 65th Way and 6595 Holman Street, be approved. This motion is based on the findings of fact adopted by Planning Commission.

The following votes were cast on the Motion
Those voting yes: Williams, Miller, Fifer, Ford, Jones, Marriott, Simpson
The Motion was Approved

12. Public Comment - Five Minute Limit - none

13. City Council Reports
   A. Councilmember Marriott said that he visited the Babe Walls Exhibit along Ralston Creek Trail under Lamar Street and encouraged everyone to go see it.

   B. Councilmember Ford noted the passing of Frances Evans, a long time resident and volunteer in Arvada.

C. Mayor Pro Tem Miller reported on the Blues and BBQ Festival this year and said that the event raised $100,000 for Habitat for Humanity.

D. Mayor Williams discussed comments made tonight during the public comment portion of the meeting.

14. City Manager Reports

A. Mark Deven, City Manager, reviewed the upcoming Workshop Schedule.

15. City Attorney Reports – none

16. Adjournment at 8:00 p.m.

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Marc Williams, Mayor

SEAL:

____
Kristen R. Rush, City Clerk

CITY OF ARVADA

REPORT TO CITY COUNCIL OTHER	AGENDA ITEM 6.A.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: Presentation of the 2020 External Audit and Financial Statements

Report in Brief

The independent annual audit required by the City Charter was performed by BKD, LLP for the year ending December 31, 2020. BKD is an independent national CPA with a local office. A detailed report of the audit and any findings was prepared and presented to the Audit Committee. In 2020, the audit committee included Council Members John Marriott and Lauren Simpson, City Manager Mark Deven, Assistant City Manager Lorie Gillis, Director of Finance Bryan Archer, Assistant Finance Director Lisa Yagi and Controller Debra Nielson.

Financial Impact

N/A

Background

CHAPTER X - BUDGET CONTROL AND FINANCING of the City of Arvada's charter, under subsection 10.9 - Audit states "*The City Council shall provide for an independent annual audit of all City accounts, and the City Council may determine more frequent audits as necessary. Such audits shall be made by a certified public account or firm of certified public accountants, selected by the City Council.*"

Discussion

The independent annual audit required by the City's Charter is overseen and reviewed by the audit committee. The audit committee initiated the oversight process by meeting with BKD representatives in February 2021 in order to receive an overview of the audit process. In addition, individual members of the audit committee met with BKD representatives in order to provide any additional feedback as the audit process continued through the second quarter of 2021. Finally, the audit committee met with BKD representatives to receive an overview of the detailed report, ask questions and offer any additional feedback in response to the findings presented herein.

Public Contact

N/A

Commission Recommendation

N/A

Strategic Alignment

This supports the Organizational and Service Effectiveness Principle : *Provides a well-managed, fiscally responsible government that operates effectively and efficiently while identifying revenue requirements to sustain current service levels and achieve future requested levels of service*

Alternative Courses of Action

N/A

Recommendation for Action

N/A

Suggested Motion:

N/A

Prepared by:
Bryan Archer, Director of Finance

Reviewed by:

Approved by:

Jenna Belec, Executive Assistant	7/21/2021
Bryan Archer, Director of Finance	7/21/2021
Gail Walker, Legal Specialist-Contracts	7/21/2021
Kylie Justus, Assistant City Attorney	7/21/2021
Rachel Morris, City Attorney	7/22/2021
Lorie Gillis, Deputy City Manager	7/22/2021
Mark Deven, City Manager	7/22/2021

Enclosure, exhibits & attachments required to support the report

CITY OF ARVADA

REPORT TO CITY COUNCIL	AGENDA ITEM 8.A.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: Consent Agenda

Report in Brief

8.A.1. R21-097 A Resolution Authorizing a Change Order No. 2 to an Existing Agreement by and between the City of Arvada and Dewberry Engineers, Inc. to Expand the Scope of Work and Increase the Contract Amount by $10,138.00, Project No. 18-WA-11

8.A.2. R21-098 A Resolution Approving the Submission of a Second Substantial Amendment to the 2020 Annual Action Plan for the Community Development Block Grant (CDBG) Program to Allocate Additional CDBG Funds Made Available Through the Coronavirus Aid, Relief and Economic Security Act (CARES Act)

Suggested Motion: Moved by: ___________________________________

I move that the Consent Item(s), Number(s) R____________ be (Removed from the Consent Agenda and Heard Upon Item _____________) (Referred to a Workshop) (Postponed Indefinitely).

YES _______ NO ______ ABSENT ______

That All/Remaining Consent Items be (Approved) (Rejected).

YES _______ NO ______ ABSENT ______

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Enclosure, exhibits & attachments required to support the report

CITY OF ARVADA

REPORT TO CITY COUNCIL RESOLUTION	AGENDA ITEM 8.A.1.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: R21-097 A Resolution Authorizing a Change Order No. 2 to an Existing Agreement by and between the City of Arvada and Dewberry Engineers, Inc. to Expand the Scope of Work and Increase the Contract Amount by $10,138.00, Project No. 18-WA-11

Report in Brief

Attached for City Council consideration is a Resolution Authorizing Change Order No. 2 to an Agreement by and between the City of Arvada and Dewberry Engineers, Inc. for professional services relating to the design of the Zone 5 Pump Station. The proposed Change Order will allow Dewberry Engineers to assist the City team's submission of Energy Rebate application to Xcel Energy, design certain improvements for the electrical infrastructure of the Zone 5 Pump Station, provide onsite inspection of construction activities, and coordinate the inclusion of an access control panel and associated devices within the Pump Station. These improvements were identified for inclusion by our Engineering team and Dewberry Engineers as the Zone 5 Pump Station design progressed from the original scope defined in July 2020.

The Arvada team recommends that City Council approve R21-097, A Resolution Authorizing a Change Order No. 2 to an Existing Agreement by and between the City of Arvada and Dewberry Engineers, Inc. to Expand the Scope of Work and Increase the Contract Amount by $10,138.00, Project No. 18-WA-11

Financial Impact

This is a one-time request for a total of $10,138 and there is funding for this amendment in the following account:

18-WA-11 Zone 5 Pump Station Upgrade (97583)

Background

This change order includes additional work beyond the original contract scope associated with the design and professional services during construction of the Zone 5 Pump Station. A breakdown of costs incurred is attached as Exhibit A to the Change Order No. 2 Agreement included in the agenda packet. The Arvada team has reviewed the final invoicing from the consultant and recommends approval of the change order required for the completion of the Zone 5 Pump Station.

Additional items include Dewberry's assistance with an Xcel Motor Efficiency rebate, surge protection design, onsite inspection during construction, and inclusion of an access panel.

Discussion

Dewberry Engineers, Inc. is performing professional engineering services for the design and construction of the Zone 5 Pump Station. During construction, Dewberry Engineers, Inc.is performing additional work beyond the original contract scope. These items include the following:

- Application for a rebate from Xcel Energy which was an out of scope activity. (20 hours, $2,740)

- Incorporated Owner directed changes to the design including the transient voltage surge suppression and UPS equipment. (8 hours, $1,096)
- Onsite inspection of construction activities including drilled pier and pump station foundation reinforcement and concrete placement. These services have been provided as required by special inspection requirements of the building permit, though they were not included in the estimated project cost during negotiation of Amendment No. 1. (34 hours, $4,658)
- Coordination with the City, the contractor, and the City's security consultant for the inclusion of an access control panel and associated devices into the pump station facility and plant security network. (12 hours, $1,644)

Public Contact

Posting of the City Council agenda.

Commission Recommendation

N/A

Strategic Alignment

Provides the community with a safe, reliable, high-quality water supply, drainage system, and wastewater disposal services for full city buildout, as defined by the Comprehensive Plan.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada Team recommends that City Council approve R21-097, A Resolution Authorizing Change Order No. 2 to an Agreement by and between the City of Arvada and Dewberry Engineers for Professional Services relating to Civil Engineering for the Zone 5 Pump Station.

Suggested Motion:

I move that R21-097, A Resolution Authorizing a Change Order No. 2 to an Existing Agreement by and between the City of Arvada and Dewberry Engineers, Inc. to Expand the Scope of Work and Increase the Contract Amount by $10,138.00, Project No. 18-WA-11, be (approved)(rejected).

Prepared by:
Bethany Yaffe, Civil Engineer

Reviewed by:

Approved by:

Jacqueline Rhoades, Civil Engineer III 7/14/2021
Don Wick, Director of Public Works 7/19/2021

Bryan Archer, Director of Finance	7/19/2021
Tammy Hedlund, Legal Specialist	7/20/2021
Erika Pierce, Litigation Paralegal	7/20/2021
Kelsy Sargent, Assistant City Attorney	7/20/2021
Rachel Morris, City Attorney	7/22/2021
Lorie Gillis, Deputy City Manager	7/22/2021
Mark Deven, City Manager	7/22/2021

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R21-097

A RESOLUTION AUTHORIZING A CHANGE ORDER NO. 2 TO AN EXISTING AGREEMENT BY AND BETWEEN THE CITY OF ARVADA AND DEWBERRY ENGINEERS, INC. TO EXPAND THE SCOPE OF WORK AND INCREASE THE CONTRACT AMOUNT BY $10,138.00 PROJECT NO. 18-WA-11

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk to attest, in form approved by the City Attorney, an Agreement, which is in substantially the same form as that attached hereto, by and between the City of Arvada and Dewberry Engineers, Inc. for professional services relating to Civil Engineering Design of Ralston Water Treatment Water Plant, Zone 5 Pump Station Project in an amount not to exceed $10,138.00.

Section 2. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 2nd day of August, 2021.

____
Marc Williams, Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By: ____________________________

**CHANGE ORDER NO. 2
TO AN EXISTING AGREEMENT BY AND BETWEEN THE CITY OF ARVADA AND DEWBERRY ENGINEERS, INC. TO EXPAND THE SCOPE OF WORK AND INCREASE THE CONTRACT AMOUNT BY $10,138.00**

1.0 RECITALS AND PURPOSE.

1.1 On or about November 19, 2018, the City of Arvada ("Arvada") and Dewberry Engineers, Inc. ("Contractor") entered into an Agreement whereby Contractor would provide engineering services for preliminary design, final design, permitting, bidding, and construction phase services for the Ralston Water Treatment Plant Zone 5 Pump Station and any additional pump stations (the "Agreement").

1.2 Pursuant to Section 9 of the Agreement, Arvada may request additional services which can be accomplished by all parties agreeing to a change in the Scope of Work ("SOW").

1.3 Change Order #1, executed on October 19, 2020, provided for an increase of $76,566.00 to Accommodate Redesign of the Pump Station.

1.4 On or about March 30, 2021, Contractor submitted a Proposal for Contract Change Order No. 2 requesting the contract amount be increased by $56,175.00 as indicated on Exhibit A attached hereto and incorporated herein by this reference.

1.5 Arvada reviewed the Proposal for Contract Change Order No. 2 and has agreed to expand the SOW to incorporate the following work completed by Contractor during the construction phase as indicated on page 2 of Exhibit A: (1) Contractor support of an application for an Excel Energy Rebate' (2) Contractor incorporated Owner directed changes to the design including transient voltage surge protection; (3) Contractor provided onsite inspection of construction activities; and (4) Contractor coordinated inclusion of an access control panel.

1.6 The parties have also agreed to increase the compensation amount by $10,138.00 as indicated on Exhibit B attached hereto and incorporated herein by this reference.

1.7 This document shall constitute Change Order No. 2 to the Agreement to increase the contract compensation amount of the Agreement.

2.0 SCOPE OF SERVICES FOR CHANGE ORDER No. 2.

2.1 The Agreement's SOW shall be modified to reflect the addition of the following: (1) Contractor's support for application of Excel Energy rebate (20 hours, $2,740.00); (2) Contractor's incorporation of Owner directed changes to the design including the transient voltage surge suppression and UPS equipment (8 hours, $1,096.00); (3) Contract's onsite inspection of construction activities including drilled pier and pump station foundation reinforcement and concrete placement (34 hours, $4,658.00); and (4) Contractor's coordination for the inclusion of an access control panel and associated devices into the pump station facility and plant security network (12 hours, $1,644.00), as indicated on page 2 of Exhibit A.

3.0 COMPENSATION FOR SERVICES UNDER CHANGE ORDER No. 2. The Agreement terms are amended to allow the increase of compensation by $10,138.00.

4.0 FULL FORCE AND EFFECT. All other terms and conditions shall be as set forth in the Agreement.

EFFECTIVE this _____ day of _______________, 2021.

CITY OF ARVADA, a Colorado home rule municipal corporation

____
Marc Williams, Mayor
8101 Ralston Road
Arvada, CO 80002

ATTEST:

____
City Clerk

APPROVED AS TO FORM BY:

____
For Rachel A. Morris, City Attorney

DEWBERRY ENGINEERS, INC., a FOREIGN CORPORATION

____

Sean O'Connell, Vice President
8401 Arlington Blvd
Fairfax, VA 22031
ID Number: 20101399410
Email: soconnell@dewberry.com

Exhibit A

PROPOSAL FOR CONTRACT CHANGE ORDER NO. 2

Dewberry

Dewberry Engineers Inc.
990 South Broadway, Suite 400
Denver, CO 80209

303.825.1802
303.825.2322 fax
www.dewberry.com

EXHIBIT
A

March 30, 2021

Jacqueline Rhodes, PE
City Engineer
8101 Ralston Road
Arvada, CO 80001

RE: **Ralston WTP Zone 5 Pump Station**
Proposal for Contract Change Order No. 2

Dear Ms. Rhodes,

This letter provides a Dewberry's proposal for Change Order No. 2 to the Zone 5 Pump Station Project for the City's review and approval. This proposed change order increases the total contract amount to provide continuation of engineering services during construction through the contractor's anticipated date of final completion and to provide additional time for completion of record drawings and project closeout procedures.

We sincerely appreciate the City's consideration of this amendment and understand the financial constraints of the project and sensitivity to additional cost. Per your request, we have reviewed the work completed to date and compared against the original assumptions made in development of the engineering fee estimate. We have also developed a summary of the remaining work to be completed and estimated effort.

Budget Status
As of March 26, 2021, there is approximately $8,100 remaining in the current contract amount. Monthly spending has ranged from $4,000 to $22,000 and has varied depending on the level of project activity and effort required. The first few months of the project saw comparatively higher cost due to a high number of submittals and need for onsite inspection of drilled pier and foundation reinforcement and concrete placement. Average spending for December and January was approximately $9,500 per month.

It is reasonable to anticipate a similar level of effort may be required for the duration of the project to support ongoing project coordination, address contractor's requests for information and clarifications, process pay applications and change orders, review remaining submittals and operation and maintenance manuals, and assist with startup and testing of the facility.

Comparison to Scope of Work and Level of Effort Assumptions
In developing our fee for the project, Dewberry estimated the level of effort required based on assumed durations of activities and number of project deliverables. The original contract value was developed based on an initial scope definition and assumed level of effort. In July 2020, Dewberry and the City negotiated and approved Change Order No. 1 for an increase in the contract value to cover additional work completed by Dewberry and associated budget overruns that occurred during the design and permitting phases of the project. At the City's request, the estimated level of effort to complete the construction phase of the project was updated at that time. Some activities included in the original scope of services were reduced or omitted from the level of effort estimate developed in July. Specifically, the following tasks were included in the original scope of work and fee estimate, but omitted from the July estimated cost to complete the work:

- EOR Field Visits During Construction – 64 hours, $10,180
- Soils and Materials Testing Coordination – 12 hours, $1,740
- Final Completion – 12 hours, $1,520
- RPR Services (4 hours per week average) – 160 hours, $19,200

The remaining construction phase services estimate included 764 hours by Dewberry staff. As of March 26th, Dewberry staff have expended 785 hours. The tasks, assumed level of effort, and actual work completed to date are summarized below.

Task	Assumed Effort	Actual to Date
6.1 Construction Phase Project Management	12 months	9 months
6.2 Construction Contract Administration	12 months	9 months
6.3 Preconstruction Conference	1 meeting & associated documentation	Complete
6.4 Bi-Weekly Progress Meeting w/ Site Visits	20 meetings, each w/ site visit	13 Meetings typically w/ site visits plus additional 12 site visits for rebar inspection, concrete placement, and inspection/observation of construction progress
6.5 Certified Welding Inspection Services	Review Welder WPS & PQRs; Inspect field welded pipe joints, up to 3 days	Reviewed submitted WPS & PQRs; completed 3 days onsite inspection
6.6 Corrosion control inspection	Onsite inspection of corrosion control, prepare and submit CP report	N/A
6.7 Shop Drawings, Submittal Review, O&Ms	120 submittals	89 submittals – several project submittals have included product data from multiple sections, resulting in lower submittal count
6.8 Requests for Information	30 RFIs	12 RFIs and numerous informal requests for information and clarifications
6.9 Substantial Completion	Participate in SC walkthrough and develop punch-list	N/A
6.10 Commissioning and Start-up	Participate in start-up and commissioning planning and execution	N/A

Although the actual work completed has not exceeded the estimated assumptions in terms of the number of deliverables or duration of project activities, Dewberry's level of effort and cost incurred is tracking ahead of the budget. We attribute this to several factors.

- Dewberry supported application for a rebate from Xcel Energy which was an out of scope activity. (20 hours, $2,740)
- Dewberry coordinated with Xcel Energy during the construction phase for the relocation of existing power lines and provision of new power service to the pump station. (8 hours, $1,096)
- Significant coordination was required to accommodate layout changes associated with differing dimensions of electrical gear between the equipment used as the basis of design and that provided by the contractor. (40 hours, $5,480)
- Dewberry has coordinated with the City and contractor to incorporate Owner directed changes to the design including the transient voltage surge suppression and UPS equipment. (8 hours, $1,096)
- Dewberry has provided onsite inspection of construction activities including drilled pier and pump station foundation reinforcement and concrete placement. These services have been provided as required by special inspection requirements of the building permit, though they were not included in the estimated project cost during negotiation of Amendment No. 1. (34 hours, $4,658)
- Dewberry has coordinated with the City, the contractor, and the City's security consultant for the inclusion of an access control panel and associated devices into the pump station facility and plant security network. (12 hours, $1,644)

The highlighted issues are examples of activities which are outside the scope of work for the project and were not factored into the current contract amount. In addition to those issues, the project has simply required a greater amount of coordination than anticipated when the project was first estimated.

Estimated Cost to Complete and Proposed Change Order Amount
We have developed our estimated cost for engineering services through the remainder of the construction phase based on the work completed to date and remaining activities. Based on the estimated cost to complete the work and the current balance remaining in the contract, we propose the contract amount be increased by the amount of $56,175 bringing the total contract value to $496,342.

Our team has worked diligently and efficiently through design and construction with our primary focus on the City's best interest. We have worked through issues and developed solutions on the City's behalf in the most equitable and cost-effective manner possible and we believe our efforts have delivered value to the City well in excess of the cost of our services.

Thank you for your consideration of this contract change order. We sincerely appreciate the opportunity to continue serving the City on this very important project. If you have any questions on our proposal, please contact me at 303-951-0643 or at cweaver@dewberry.com.

Sincerely,
Dewberry Engineers Inc.

Chad Weaver

Chad Weaver, PE
Senior Associate, Project Manager

Attachments
Estimate of Remaining Construction Phase Services as of 3/26/2021

City of Arvada
Ralston WTP Zone 5 Pump Station
Estimate of Remaining Construction Phase Services
As of 3/26/2021

Task	Task Description	Task Cost	Dewberry Subconsultants				Dewberry Direct Costs	Dewberry Labor Cost	Total Hours	Dewberry Staff						
										Weaver	Jones	Maloney	Stout	Nguyen	Parks, Morill, Anderson	Hensley
			Subconsultant Subtotal	Architect	Corrosion Control	Certified Welding Inspector				Eng 5 (PM)	Eng 2 (PE)	Eng 5 (Struct)	Elect Eng 5	Elect Eng 3	CAD 4	Admin
										Hourly Billing Rate ($/hr)						
										$ 170	$ 110	$ 170	$ 170	$ 110	$ 120	$ 105
6	**Engineering Services During Construction**															
6.1	Construction Phase Project Management (6 months, April through Sept.)	$ 4,710	$ -				$ -	$ 4,710	30	24						6
6.2	Construction Contract Administration (6 months, April through Sept.)	$ 12,260	$ 560	$ 560			$ -	$ 11,700	90	30	60					
6.4	Bi-Weekly Progress Meeting and Site Visit (10 meetings/visits remaining)	$ 8,800	$ -				$ 400	$ 8,400	60	30	30					
6.5	Certified Welding Inspection Services	$ 1,373	$ 1,373			$ 1,373	$ -	$ -	-							
6.6	Corrosion Control Inspection (inspection by Contractor) - Coordination and Re	$ 440	$ -				$ -	$ 440	4		4					
6.7	Shop Drawings, Submittals, and O&M Review (est. 12 submittals remaining)	$ 9,600	$ 1,500	$ 1,000	$ 500		$ -	$ 8,100	64	12	24		6	18		4
6.8	Requests for Information (8 RFIs or construction issues)	$ 10,060	$ 800	$ 800			$ -	$ 9,260	70	16	36	6	4	8		
6.9	Substantial Completion	$ 4,180	$ 700	$ 700			$ 20	$ 3,460	26	8	8		2	8		
6.10	Commissioning and Start-up	$ 10,260	$ -				$ 20	$ 10,240	80	20	40		4	16		
6.11	Record Drawings	$ 8,760	$ 1,120	$ 1,120			$ 200	$ 7,440	64		8			16	40	
	Subtotal - Task 6	**$ 70,443**	**$ 6,053**	**$ 4,180**	**$ 500**	**$ 1,373**	**$ 640**	**$ 63,750**	**488**	**140**	**210**	**6**	**16**	**66**	**40**	**10**
A	**Total**	**$ 70,443**	**$ 6,053**	**$ 4,180**	**$ 500**	**$ 1,373**	**$ 640**	**$ 63,750**	**488**	**140**	**210**	**6**	**16**	**66**	**40**	**10**
B	**Amount invoiced as of 3/26/2020**	**$ 432,064**														
C	**Total Estimated Cost at Completion (A + B)**	**$ 502,507**														
D	**Current contract amount**	**$ 440,166**														
E	**Credit for Field Order #1**	**$ 6,165**														
F	**Proposed increase in contract amount (C - D - E)**	**$ 56,175**														
G	**Proposed total contract amount (D + F)**	**$ 496,342**														

Exhibit B

ACCEPTANCE OF CHANGE ORDER NO. 2

Dewberry

Dewberry Engineers Inc.
990 South Broadway, Suite 400
Denver, CO 80209

303.825.1802
303.825.2322 fax
www.dewberry.com

EXHIBIT B

July 19, 2021

Bethany Yaffe, PE
City Engineer
8101 Ralston Road
Arvada, CO 80001

RE: **Ralston WTP Zone 5 Pump Station**
Acceptance of Counter-offer for Contract Change Order No. 2

Dear Ms. Yaffe,

We understand the City has reviewed Dewberry's request for Contract Change Order No. 2, dated March 31, 2021, and have determined that an acceptable amount of additional reimbursement would be limited to $10,138. We appreciate the City's willingness to consider the change order and accept the proposed increase in the contract amount of $10,138 as reimbursement for the services described in the letter.

We sincerely appreciate the opportunity to continue serving the City on this very important project and look forward to the successful completion of construction activities.

Sincerely,
Dewberry Engineers Inc.

Chad Weaver

Chad Weaver, PE
Senior Associate, Project Manager

CITY OF ARVADA

REPORT TO CITY COUNCIL RESOLUTION	AGENDA ITEM 8.A.2.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: R21-098 A Resolution Approving the Submission of a Second Substantial Amendment to the 2020 Annual Action Plan for the Community Development Block Grant (CDBG) Program to Allocate Additional CDBG Funds Made Available Through the Coronavirus Aid, Relief and Economic Security Act (CARES Act)

Report in Brief

This agenda item requests the Council's consideration of a resolution that amends the 2020 CDBG Annual Action Plan to include an additional $406,470 made available through the CARES Act. Specifically, the proposed action will enable the City to allocate an additional $406,470 in CDBG-Coronavirus funding to provide financial assistance to Arvada residents who are experiencing continued financial stress due to the COVID-19 pandemic.

The Arvada team recommends City Council approve R21-098, A Resolution Approving the Submission of a Second Substantial Amendment to the 2020 Annual Action Plan for the Community Development Block Grant (CDBG) Program to Allocate Additional CDBG Funds Made Available Through the Coronavirus Aid, Relief and Economic Security Act (CARES Act).

Financial Impact

The City proposes to allocate $406,470 in new CDBG-Coronavirus funding to the following activities:

- Non-congregate shelter for persons experiencing homelessness exposed to or infected with COVID-19
- Rent/Mortgage relief to Arvada residents
- To provide financial support to the Severe Weather Shelter Network to provide cold weather shelter to people experiencing homelessness
- A two- year pilot Housing Navigator position- this position will partner with the City of Arvada Homeless Navigator to find permanent housing opportunities for people experiencing homelessness

Background

The U.S. Department of Housing and Urban Development (HUD) requires all entitlement communities receiving CDBG funds to prepare and submit a Consolidated Plan every five years to establish a unified, strategic vision for economic development, housing and community development actions. The Consolidated Plan encompasses the analysis of local community needs and coordinates appropriate responses to those needs and priorities. The Consolidated Plan is carried out through Annual Action Plans which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that will be used each year to address the priority needs and specific goals in the Consolidated Plan. The City must submit an Annual Action Plan to HUD no later than November 15 of each year during the five year period.

Per the City's Citizen Participation Plan, a substantial amendment to an Action Plan is required when a "substantial" change is proposed that impacts funding priorities, proposed activities, goals and objectives. This substantial amendment to the 2020 Action Plan is necessary because the City has been allocated new CDBG funding through the March 27, 2020 CARES Act. In accordance with the purpose of the CARES Act, the Arvada team proposes to allocate these funds to activities which support the immediate and long-term aid and recovery efforts for Arvada residents impacted by the Coronavirus.

In accordance with the requirements outlined in the CARES Act, a five-day public review and comment period beginning June 24, 2021 and ending July 1, 2021 was provided and a public notice published in the Arvada Press and on the City's website. According to federal requirements, the City must submit a substantial amendment to the most recent Annual Action Plan approved by HUD. The Arvada City Council approved the 2021 Annual Action Plan on November 2, 2020. The 2021 Annual Action Plan has yet to be approved by HUD; therefore the 2020 Annual Action Plan was amended. The City proposes to allocate $406,470 in new CDBG-Coronavirus funding.

Discussion

The recommended action facilitates the allocation of resources that will provide critical services to assist the most vulnerable members of the community. Based on information from a network of public and nonprofit human services organizations, the most critical needs include: a) finding permanent housing for people experiencing homelessness; b) non-congregate shelter for persons experiencing homelessness or at risk for exposure to COVID-19; c) rent and mortgage relief for Arvada residents who may be at risk to becoming homeless; and d) financial support for the Severe Weather Shelter Network to support homeless services through motel vouchers. It is important to note that the focus on homeless services is associated with the need to minimize the potential to spread the COVID-19 virus.

Public Contact

A public notice was published in the Arvada Press on June 24, 2021 informing the public of the opportunity to make comment on the proposed changes during the public hearing to be held July 19, 2021.

Commission Recommendation

N/A

Strategic Alignment

Approval of this item aligns with the Vibrant Community and Neighborhoods Priority Area within the City Council Strategic Plan, as follows:

"Improves access to quality housing that is affordable to a broad range of income levels and provides resources, housing, and neighborhood assistance services to Arvada residents, neighborhoods, property owners, and stakeholders."

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that City Council approve R21-098, A Resolution Approving the Submission of a Second Substantial Amendment to the 2020 Annual Action Plan for the Community Development Block Grant (CDBG) Program to Allocate Additional CDBG Funds Made Available Through the Coronavirus Aid, Relief and Economic Security Act (CARES Act).

Suggested Motion:

I move that R21-098, A Resolution Approving the Submission of a Second Substantial Amendment to the 2020 Annual Action Plan for the Community Development Block Grant (CDBG) Program to Allocate Additional CDBG Funds Made Available Through the Coronavirus Aid, Relief and Economic Security Act (CARES Act), be (approved) (rejected).

Prepared by:
Rosa Kougl, Executive Assistant

Reviewed by:

Approved by:

Carrie Espinosa, Manager of Housing Preservation and Resources	7/12/2021
Gordon Reusink, Director of Vibrant Community and Neighborhoods	7/12/2021
Bryan Archer, Director of Finance	7/14/2021
Gail Walker, Legal Specialist-Contracts	7/15/2021
Kylie Justus, Assistant City Attorney	7/15/2021
Rachel Morris, City Attorney	7/22/2021
Lorie Gillis, Deputy City Manager	7/22/2021
Mark Deven, City Manager	7/22/2021

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R21-098

A RESOLUTION APPROVING THE SUBMISSION OF A SECOND SUBSTANTIAL AMENDMENT TO THE 2020 ANNUAL ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM TO ALLOCATE ADDITIONAL CDBG FUNDS MADE AVAILABLE THROUGH THE CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT (CARES Act)

WHEREAS, The City of Arvada is eligible to receive an additional $406,470.00 in CDBG funds; and

WHEREAS, The U.S. Department of Housing and Urban Development (HUD) requires all entitlement communities receiving CDBG funds to prepare and submit a Consolidated Plan every five years to establish a unified, strategic vision for economic development, housing, and community development actions. The Consolidated Plan encompasses the analysis of local community needs and coordinates appropriate responses to those needs and priorities; and

WHEREAS, The Consolidated Plan is carried out through Annual Action Plans which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that will be used each year to address the priority needs and specific goals in the Consolidated Plan. The City must submit an Annual Action Plan to HUD no later than November 15 of each year during the five year period; and

WHEREAS, Per the City's Citizen Participation Plan, a substantial amendment to an Action Plan is required when a "substantial" change is proposed as it relates to funding priorities, proposed activities, goals and objectives; and

WHEREAS, The Second Substantial Amendment to the 2020 Action Plan is necessary because the City has been allocated new CDBG funding that it wishes to allocate to Arvada residents; and

WHEREAS, According to federal requirements, the City must submit a substantial amendment to the most recent Annual Action Plan approved by HUD. Arvada City Council approved the 2021 Annual Action Plan on November 2, 2020. The 2021 Annual Action Plan has yet to be approved by HUD; therefore the 2020 Annual Action Plan must be amended; and

WHEREAS, On July 19, 2021, the Arvada City Council held a public hearing regarding the Second Substantial Amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO, AS FOLLOWS:

Section 1. That the City Council of the City of Arvada, Colorado approves the submission of the Second Substantial Amendment to the 2020 Annual Action Plan for the CDBG program to allocate additional CDBG Funds; and

Section 3. That the City Council of the City of Arvada, Colorado directs that the Second Substantial Amendment to the 2020 Annual Action Plan submission for the CDBG Program for the City of Arvada, Colorado for 2020 CDBG funding be submitted to the HUD; and

Section 4. That the City Council of the City of Arvada, Colorado designates the City Manager, or city staff he may designate, to approve alterations, deletions, and/or additions to the Second Substantial Amendment to the 2020 Annual Action Plan Submission for the CDBG Program for the City of Arvada, Colorado and the 2020 Annual Action Plan for 2020 CDBG funding that may be necessitated in response to minimal HUD funding alterations, HUD requirements, subsequent HUD review, or citizen comments.

APPROVED AND ADOPTED this 2nd day of August, 2021.

____
Marc Williams, Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: __________________________

SECOND SUBSTANTIAL AMENDMENT TO THE CITY OF ARVADA 2020 ANNUAL ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

A. EXECUTIVE SUMMARY

The U.S. Department of Housing and Urban Development (HUD) requires all entitlement communities receiving Community Development Block Grant (CDBG) funds, such as the City of Arvada, to prepare and submit a Consolidated Plan every five years to establish a unified, strategic vision for economic development, housing and community development actions. The Consolidated Plan encompasses the analysis of local community needs and coordinates appropriate responses to those needs and priorities. The Arvada City Council adopted the 2020-2024 Five Year Consolidated Plan ("Consolidated Plan") on November 18, 2019.

The Consolidated Plan is carried out through Annual Action Plans which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that will be used each year to address the priority needs and specific goals identified in the Consolidated Plan. The City must submit an Annual Action Plan to HUD by no later than November 15 of each year during the five-year period (unless otherwise specified by HUD). The Arvada City Council adopted the 2020 Annual Action Plan on November 18, 2019 and submitted the document to HUD before the required deadline date.

Per the City's Citizen Participation Plan (CPP), a Substantial Amendment to a Consolidated Plan and Action Plan is required when a "substantial" change is proposed as it relates to funding priorities, proposed activities, goals and objectives. This substantial amendment to the Action Plan is necessary because the City has been allocated new CDBG funding through the March 27, 2020 Coronavirus Aid, Relief and Economic Recovery Act (CARES Act) that it wishes to allocate to activities that assist with immediate and long-term aid and recovery efforts for Arvada residents impacted by the Coronavirus.

B. CITIZEN PARTICIPATION

In accordance with the CARES Act, an expedited public participation process is permitted in order to make funding available as soon as possible and provide reasonable and timely citizen input during the period in which the city is impacted by the Coronavirus. Therefore, the following amended policies will be followed during this time:

1. Virtual public meetings are permitted for the purpose of approving and/or amending Consolidated Plan/Action Plans

2. A minimum five-day public comment period can be utilized for amending Consolidated Plan/Action Plans.

A Notice of Public Hearing and 5-day public review period was published in the Arvada Press and on the City's website on June 24, 2021, informing the public of the proposed Substantial Amendment and inviting public review and comments. The public review period will begin on Thursday June 24, 2021 and will end on July 1, 2021. On July 19, 2021, the Arvada City Council will hold a public hearing regarding the Substantial Amendment.

C. 2020 ANNUAL ACTION PLAN AMENDMENT DETAILS AND NATIONAL OBJECTIVES

The City is proposing to allocate $406,470 in new CDBG-COVID funding to activities that assist with immediate and longer-term needs for low- and moderate-income people impacted by the Coronavirus. Eligible activities that the City of Arvada intends to use the funds for is to pay for a Housing Navigator position that includes salary, benefits and other administrative costs. The City will also use these funds in the same manner as its original allocation of CDBG-CV, which includes assistance with emergency housing, motel vouchers, rental and mortgage assistance, eviction prevention, case management, low-income resident services, physical and mental health assistance, COVID-19 testing, personal protective equipment, deposit and moving costs, food access, utilities, transportation, employment, childcare, and self-sufficiency programing. The full usage of these funds will be utilized to prevent, prepare for, and respond to the COVID-19 pandemic within the City of Arvada. The programming of the additional funds is intended to be broad in scope to allow for quick and nimble response and assistance to anticipated and unanticipated needs as the crisis unfolds within the community. The CIty will work closely with a variety of community partners to assess the immediate and longer-term needs of those impacted by COVID-19 and ensure the funds assist those most in need as efficiently as possible.

All proposed activities will meet one or more of the following objectives:

- Benefit low- and moderate-income people
- Address an urgent community need

The following Table outlines the activity budgets that are being modified to reprogram funds to the proposed activity described in this Substantial Amendment:

Table 1: Proposed Activity Budget Modifications

Program Year/ Activity Title	Existing Budget	New Budget	Difference
Increase Funding/Programming			
2020 CDBG-eligible COVID response funding through CARES Act	$276,525	$682,995	$406,470
Subtotal			$682,995

D. PUBLIC COMMENTS

All public comments received during the 5-day public review period or at the public hearing will be incorporated into the overall Substantial Amendment submitted to HUD.

NOTICE OF PUBLIC HEARING INVITING PUBLIC REVIEW AND COMMENT REGARDING AN AMENDMENT TO THE CITIZEN PARTICIPATION PLAN AND SUBSTANTIAL AMENDMENT TO THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) 2020 ANNUAL ACTION PLAN FOR ADDITIONAL FUNDING OF COMMUNITY DEVELOPMENT BLOCK GRANT CORONAVIRUS (CDBG-CV)

The City of Arvada is proposing to amend its 2020 CDBG Annual Action Plan to make available CDBG-CV funding under the Coronavirus Aid, Relief and Economic Security (CARES) Act to prevent, prepare for, and respond to the pandemic.

This publication will commence a five-day public comment period for the Amendments. A copy of the amendment will be available for public review starting June 24, 2021 through July 1, 2021. The document includes the proposed activities, resources and expenditures for the CDBG program. The document must be prepared according to the U.S. Department of Housing and Urban Development (HUD) regulations.

The City invites public review and comment of the City's Citizen Participation Plan Amendment and the 2020 CDBG Annual Action Plan Substantial Amendment. The documents are available for review at theCity of Arvada website at https://arvada.org/residents/city-neighborhoods/cdgb-funds-at-work-in-arvada.

The City invites all citizens and other interested parties who desire to provide comments regarding the amendment to do so at a public hearing:

At 6:15 P.M., July 19, 2021
in City Council Chambers, Arvada Municipal Building,
8101 Ralston Road, Arvada, Colorado.

If you wish to attend the meeting via Zoom, please contact Kevin Luy at kluy@arvada.org with the meeting date.

Program information is available by contacting the Housing Preservation and Resources Division, Arvada City Hall, 8001 Ralston Road, between the hours of 8 a.m. and 5 p.m. Monday through Friday, or call 720-898-7494. Information is also available on our website at https://arvada.org/residents/city-neighborhoods/cdgb-funds-at-work-in-arvada

FOR FURTHER INFORMATION:

Please contact Carrie Espinosa at: caespinosa@arvada.org or call 720-898-7494, between 8:00 A.M. to 5:00 P.M., weekdays.

Published: City of Arvada website
June 24, 2021

CITY OF ARVADA

REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM 8.B.1.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: R21-099 A Resolution Authorizing an Amendment to the Grant Agreement Between the City of Arvada and Jefferson County for Emergency Rental Assistance to Increase the Agreement Maximum Amount Reimbursable from $499,000 to $1,499,000

Report in Brief

On April 5, 2021, Arvada City Council approved an intergovernmental agreement between the City of Arvada and Jefferson County to accept U.S. Department of Treasury Emergency Rental Assistance (ERA) funds from Jefferson County in the amount of $499,000. The purpose of the funding is to provide rental assistance to Arvada residents impacted by the COVID-19 pandemic.

The need for rental assistance has increased over the last few months. An amendment to the agreement is recommended to increase the grant amount up to $1,499,000 to allow the City to continue to assist households in need. The agreement supports the Vibrant Community and Neighborhoods strategic result to improve access to quality housing affordable for a broad range of income levels.

The Arvada team recommends that the City Council approve R21-099, A Resolution Authorizing an Amendment to the Grant Agreement Between the City of Arvada and Jefferson County for Emergency Rental Assistance to Increase the Agreement Maximum Amount Reimbursable from $499,000 to $1,499,000.

Financial Impact

This amendment would increase the amount of funding provided by Jefferson County through federal funds authorized by the Emergency Rental Assistance Program from $499,000 to $1,499,000 on order to continue to provide emergency rental assistance to Arvada residents financially impacted by COVID-19.

Background

On December 27, 2020, the United States Congress adopted the Emergency Rental Assistance Program (the “ERA Program”), which provided $23.785 billion in funding to state and local governments to provide rental assistance to eligible residents. On January 12, 2021, the United States Department of the Treasury awarded $17.5 million in ERA Program funds to Jefferson County. Jefferson County allocated a portion of these funds to Arvada and other cities within the County to provide rental assistance to residents who meet ERA Program requirements.

The City of Arvada has operated an emergency rent/mortgage assistance program since August 31, 2020 to assist Arvada residents financially impacted by COVID-19. From January 1, 2021 to March 15, 2021, the City has spent approximately $250,000 assisting residents using CARES funds. Jefferson County sub-awarded a portion of the "ERA" funds to the City of Arvada to enable the City to continue the operation of its emergency rental assistance program through 2021. The current agreement provides $499,000 in federal funds with the option to use up to $75,000 for program administration. The "ERA" funds can only be used for rental assistance.

Discussion

The conditions associated with this funding as defined in current proposed Grant Agreement will require the City team to provide Rental Assistance to Eligible Households. As the Grantee, the City shall comply with all terms of the ERA Program and all federal regulations, rules and guidance. "Rental Assistance" means all forms of assistance available under the ERA Program including, without limitation, the payment of rent, rental arrears, utilities and home energy costs. "Eligible Households" means households with their primary residence in Jefferson County that meet all income and other eligibility requirements of the ERA Program. To qualify as an Eligible Household, a household must be obligated to pay rent on a residential dwelling and the City must determine that:

- One or more individuals within the household has qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the COVID-19 pandemic;
- One or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability; and
- The household has a household income at or below 80% of Area Median Income.

Additional conditions associated with this Grant Agreement include reporting requirements regarding the allocation of the funds to individual households, documentation that verifies the eligibility of each household that receives assistance and collaborating with Jefferson County through the review and approval process. While acknowledging the effort necessary to comply with the conditions and reporting requirements of the Grant Agreement, the City team believes that the recommended action will support households that have been impacted by the COVID-19 pandemic. These households will be able to receive rental assistance and that could reduce the possible transition of families into homelessness as the local and regional economy continues to recover. In addition, the ERA program will also support landlords by providing rental payments for their tenants who have been adversely impacted by the pandemic.

The proposed Grant Agreement extends the Fund Expenditure End Date to September 30, 2022 and the Agreement Expiration Date to December 31, 2022.

Public Contact

Information regarding program assistance and eligibility criteria can be found on the City of Arvada website. In addition, the City Council agenda was posted.

Commission Recommendation

N/A

Strategic Alignment

Approval of this resolution authorizing an Intergovernmental Agreement with Jefferson County aligns with the Vibrant Community and Neighborhoods Priority Area within the City Council Strategic Plan. This action also supports the following Principle stated within the VCN Priority Area:

Improves access to quality housing that is affordable to a broad range of income levels and provides resources, housing, and neighborhood assistance services to Arvada residents, neighborhoods, property owners, and stakeholders.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that City Council approve R21-099, A Resolution Authorizing an Amendment to the Grant Agreement Between the City of Arvada and Jefferson County for Emergency Rental Assistance to Increase the Agreement Maximum Amount Reimbursable from $499,000 to $1,499,000.

Suggested Motion:

I move that R21-099, A Resolution Authorizing an Amendment to the Grant Agreement Between the City of Arvada and Jefferson County for Emergency Rental Assistance to Increase the Agreement Maximum Amount Reimbursable from $499,000 to $1,499,000, be (approved) (rejected).

Prepared by:
Rosa Kougl, Executive Assistant

Reviewed by:

Approved by:

Carrie Espinosa, Manager of Housing Preservation and Resources	7/12/2021
Gordon Reusink, Director of Vibrant Community and Neighborhoods	7/12/2021
Bryan Archer, Director of Finance	7/14/2021
Gail Walker, Legal Specialist-Contracts	7/15/2021
Kylie Justus, Assistant City Attorney	7/15/2021
Rachel Morris, City Attorney	7/22/2021
Lorie Gillis, Deputy City Manager	7/22/2021
Mark Deven, City Manager	7/22/2021

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R 21-099

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE GRANT AGREEMENT BETWEEN THE CITY OF ARVADA AND JEFFERSON COUNTY FOR EMERGENCY RENTAL ASSISTANCE TO INCREASE THE AGREEMENT MAXIMUM AMOUNT REIMBURSABLE FROM $499,000.00 TO $1,499,000.00

WHEREAS, intergovernmental agreements ("IGAs") between political subdivisions of the State of Colorado are authorized by C.R.S. Sec. 29-1-103; and

WHEREAS, on December 27, 2020, the United States Congress adopted the Emergency Rental Assistance Program (the "ERA Program"), which provided $23.785 billion in funding to state and local governments to provide rental assistance to eligible residents; and

WHEREAS, On January 12, 2021, the United States Department of the Treasury awarded $17.5 million in ERA Program funds to Jefferson County; and

WHEREAS, Arvada and the County entered into the Jefferson County Emergency Rental Assistance Agreement on April 6, 2021 ("Original Grant Agreement"). Through the Original Grant Agreement, Jefferson County sub-awarded a portion of the funds to Arvada to provide rental assistance to Jefferson County residents who meet ERA Program requirements; and

WHEREAS, the County has more grant funds available and has decided to increase Arvada's Agreement Maximum Amount Reimbursable from $499,00.00 to $1,499,000.00.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVADA THAT:

Section 1. City Council hereby authorizes the Mayor or Mayor Pro Tem to sign and the City Clerk to attest, in form approved by the City Attorney, a First Amendment to the Original Grant Agreement, which is attached hereto, by and between the City of Arvada and Jefferson County for emergency rental assistance.

Section 2. This Resolution to be in full force and effect from and after its passage and approval.

APPROVED AND ADOPTED this 2nd day of August, 2021.

____

Marc Williams, Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By:____

FIRST AMENDMENT TO JEFFERSON COUNTY EMERGENCY RENTAL ASSISTANCE GRANT AGREEMENT

THIS FIRST AMENDMENT TO JEFFERSON COUNTY EMERGENCY RENTAL ASSISTANCE GRANT AGREEMENT (this "First Amendment"), dated for reference purposes only July 7, 2021, is made and entered into by and between the **COUNTY OF JEFFERSON, STATE OF COLORADO**, a body politic and corporate (the "County") and the **CITY OF ARVADA**, a Colorado home rule municipal corporation (the "Grantee").

CFDA # 21.023

RECITALS

A. On December 27, 2020, the United States Congress adopted the Emergency Rental Assistance Program (the "ERA Program"), which provided $23.785 billion in funding to state and local governments to provide rental assistance to eligible residents.

B. On January 12, 2021, the United States Department of the Treasury awarded $17.5 million in ERA Program funds to Jefferson County.

C. Pursuant to the Jefferson County Emergency Rental Assistance Grant Agreement dated March 31, 2021 (the "Agreement"), the County sub-awarded $499,000.00 in ERA Program funds to the Grantee for the purpose of providing rental and other forms of assistance to eligible Jefferson County residents in accordance with ERA Program requirements.

D. The parties now desire to amend the Agreement to increase the amount of sub-awarded funds, to extend the date by which such funds must be expended, and to make such other changes as are set forth herein.

E. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

AGREEMENT

In consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and the Grantee agree as follows:

1. The Agreement Maximum Amount Reimbursable shall be increased to $1,499,000.00.

2. The Fund Expenditure End Date shall be changed to September 30, 2022.

3. The Agreement Expiration Date shall be changed to December 31, 2022.

4. Section 6(c)(iii) of the Agreement shall be amended to change December 30, 2021, to September 30, 2022.

5. Section 6(e) of the Agreement shall be amended to change December 31, 2021, to September 30, 2022.

6. Exhibit A, Section 3.5 of the Agreement shall be amended to change December 23, 2021 to September 23, 2022.

7. The Agreement as modified herein remains in full force and effect and is ratified by the County and the Grantee. In the event of any conflict between the Agreement and this First Amendment, the terms and conditions of this First Amendment shall control.

[Signature Page Follows]

The parties hereto have caused this First Amendment to be executed.

COUNTY OF JEFFERSON
STATE OF COLORADO

By: ______________________________
Mary C. Berg, Executive Director
Department of Human Services

Date: ____________________________

APPROVED AS TO FORM:

____
Jean R. Biondi
Assistant County Attorney

THE GRANTEE:

CITY OF ARVADA, a Colorado home rule municipal corporation

By: ____________________________
Marc Williams, Mayor

Date: ___________________________

CITY OF ARVADA

REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM 8.B.2.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: R21-100 A Resolution Amending the City of Arvada's Investment Policy

Report in Brief

The City of Arvada's investment policy and the Government Finance Officers Association (GFOA) best practices both recommend that the City review its investment policy on a periodic basis. The Arvada Finance team in collaboration with its investment advisor PFM Asset Management (PFM) performed a review of the City's current investment policy. It was found that some changes were necessary to reflect the current industry trends and best practices. The summary of proposed changes to the investment policy includes the following items:

- Change **minimum** credit rating for corporate bonds, municipal bonds, commercial paper and negotiable certificates of deposit from AA to A rating category
- Limit exposure to A category securities at 20% of the total portfolio
- Revise Local Government Investment Pools (LGIP) language

The Arvada team recommends that the City Council approve R21-100, A Resolution Amending the City of Arvada's Investment Policy.

Financial Impact

None

Background

On August 15, 2016 the City Council approved a resolution authorizing PFM to perform investment advisory services for the City. With PFM's expertise, the Arvada Finance team revised the City's investment policy which was approved by the City Council on January 9, 2017. It is the best practice as established by the Government Finance Officers Association and stated in the City's Investment Policy to review it on a periodic basis. In the recent years, PFM and the Finance team have found it more and more challenging to diversify the City's portfolio in the corporate sector because of the high demand for investment grade corporate obligations and the limited number of approved issuers in the market.

Discussion

The City's Investment policy currently allows for corporate securities that are AA- or better by two credit rating agencies. The benefits of adding A rated securities are a greater selection of corporate issuers and potentially higher returns. This change would increase the list of allowable issuers from approximately 20 (AAA and AA) to 70 issuers (including A rated).

The potential risk includes a slight increase in default rates in that category. However, PFM has a robust credit monitoring process and a dedicated credit analysis team that would alert the City should a security be downgraded by a credit rating agency. The 50-year average default rates for AA rated versus A rated companies are 0.25% and 0.64% respectively. In addition, to further mitigate the risks the proposed investment policy limits the exposure of A rated securities to 20% of total portfolio and 5% per issuer. The City has never had a default on any of its investments.

Public Contact

The Finance Department posted notification of the proposed update to the Investment Policy and conducted an Administrative Public Hearing on July 15, 2021 as required by City code. There were no comments received in response to the notice and Administrative Public Hearing. In addition, the City Council agenda was posted.

Commission Recommendation

N/A

Strategic Alignment

The proposed action aligns with the Organizational and Service Effectiveness Priority Area within the City Council Strategic Plan.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that the City Council approve R21-100, A Resolution Amending the City of Arvada's Investment Policy.

Suggested Motion:

I move that R21-100, A Resolution Amending the City of Arvada's Investment Policy, be (approved) (rejected).

Prepared by:
Lisa Yagi, Assistant Finance Director

Reviewed by:

Approved by:

Jenna Belec, Executive Assistant	7/12/2021
Bryan Archer, Director of Finance	7/15/2021
Gail Walker, Legal Specialist-Contracts	7/15/2021
Kylie Justus, Assistant City Attorney	7/15/2021
Rachel Morris, City Attorney	7/22/2021
Lorie Gillis, Deputy City Manager	7/22/2021
Mark Deven, City Manager	7/22/2021

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R21-100

A RESOLUTION AMENDING THE CITY OF ARVADA'S INVESTMENT POLICY

WHEREAS, on May 7, 1990, Resolution R 90-58 was adopted by City Council establishing the Statement of Cash Management Policies and Procedures; and

WHEREAS, the Statement of Cash Management Policies and Procedures has been amended a number of times including, March 4, 1996 by Resolution R 96-039; January 4, 1999 by Resolution R 99-025; September 13, 1999 by Resolution R 99-191; July 31, 2002 (pursuant to a change in state law requiring the Primary Dealer Requirement and the Broker Dealer Certification); October 22, 2007 by Resolution R 07-110; March 5, 2012 by Resolution R 12-019; January 9, 2017 by Resolution R 17-009 (Renaming the Statement of Cash Management and Policies and Procedures to be the "Investment Policy); and

WHEREAS, the City's financial team recommends this amendment to the current investment policy to reflect best practices and further the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. The City of Arvada, Colorado is hereby amends the Investment Policy which is attached hereto.

Section 2. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 2nd day of August, 2021.

____
Marc Williams, Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

Rachel Morris, City Attorney

By:

THE CITY OF ARVADA, COLORADO
INVESTMENT POLICY

August~~June~~ , 2021~~January 9, 2017~~

POLICY

Article XX of the Constitution of the State of Colorado provides the City of Arvada (the "City") with the legal authority to promulgate and implement reasonable standards for its cash management and investment operations. Under the provisions granted by that legal authority, the City Council (the "Council") has adopted specific cash management policies and procedures in accordance with Section 2-121 of the Code of the City of Arvada (the "Code"), and has authorized the City Manager and/or his designee(s) to implement reasonable rules and regulations relating to the cash management and investment activities of the City.

As designated by the City Manager, the Director of Finance shall be committed to the overall success of the City's cash management programs and may establish an advisory committee to review and recommend practices on a number of cash management issues, including, but not limited to, the following:

A. The design and implementation of reliable and effective cash-flow forecasting methodologies which will assist the City's accounting personnel in determining the amounts of cash available for investment; the time period for which the funds may reasonably be invested; and the volatility of specific forecasts, which will allow viable determination of the required liquidity which must characterize the specific investments.

B. The design and implementation of appropriate revenue acceleration programs, to enhance the speed at which monies are collected, deposited, and invested.

C. Controlled disbursement programs, to ensure that City expenses are paid on time without jeopardizing the potential earning capability of the City's cash management program.

D. The use of state-of-the-art techniques for the physical movement of money, taking advantage of the technological and operational procedures which have evolved in recent years.

E. The design and implementation of investment policies and procedures which allow the City to maximize its interest earnings, and ensure the safety of all funds entrusted to the care and control of City personnel.

F. The design and implementation of relationships with bank and investment advisors (if applicable) which are both favorable to the City and responsive to the day-to-day requirements of the City's complex financial operations.

SCOPE AND PURPOSE

This Investment Policy addresses the methods, procedures and practices which must be exercised to ensure effective and judicious fiscal and investment management of the City's funds. It was adopted by the City Council on January 9, 2017 and replaces any previous investment policy or investment procedures of the City.

This Investment Policy applies to all City funds, except defined contribution/benefit pension and retirement funds, deferred compensation funds, funds of the Arvada Urban Renewal Authority, and the self-insured medical fund.

Except for cash in certain restricted and special funds, cash shall be pooled for investment purposes. The investment income derived from any pooled investment account shall be allocated to the contributing funds based upon the proportion of the respective ending balance of the prior month relative to the total pooled balance in each investment portfolio.

INVESTMENT OBJECTIVES

The City's funds shall be invested in accordance with all applicable City policies, Colorado statutes, and Federal regulations, and in a manner designed to accomplish the following objectives, which are listed in priority order:

- Preservation of capital and protection of investment principal
- Maintenance of sufficient liquidity to meet anticipated cash flows
- Attainment of a market rate of return
- Diversification to avoid incurring unreasonable market risks

DELEGATION OF AUTHORITY

The Director of Finance and/or his/her designee(s) is vested with responsibility for managing the City's investment program and for implementing this Investment Policy. The Director of Finance may designate the authority to administer investment transactions and the operation of each investment portfolio to other specifically authorized staff members. No person may engage in an investment transaction except as expressly provided under the terms of this Investment Policy.

The Director of Finance shall establish procedures and internal controls for the operation of the City's investment program, designed to prevent loss of public funds due to fraud, error, misrepresentation and imprudent actions.

The City may engage the support services of outside investment advisors in regard to its investment program, so long as it can be demonstrated that these services produce a net financial advantage or necessary financial protection of the City's financial resources.

It is imperative that any investment advisor who provides support services serve in a fiduciary capacity to the City, be highly qualified, and demonstrably independent. Furthermore, a prospective advisor should be able to provide clear evidence of his/her capabilities on behalf of clients similar to the City. An investment advisor may be selected by the City through a competitive Request for Proposal process.

The City has established strict guidelines regarding the approval of such investment advisors to ensure that such support services are consistent with the City's established policies and procedures. These guidelines include, but are not limited to, the following:

a. Any investment advisor selected shall be a "Registered Investment Advisor" as defined and regulated by the U.S. Securities and Exchange Commission (the “SEC”).

b. Any such investment advisor shall be completely independent of any financial institution or securities brokerage firm, and shall not participate in any commissions, or soft-dollar payments as a result of its relationship to the City.

c. Any such investment advisor shall not take possession of any City monies or investment securities, nor have access to or control over such monies and/or securities. Procedures for delivery, possession, and safekeeping are established in the Safekeeping and Custody section of this investment policy. Such procedures shall remain the same, regardless of the City's relationship with an investment advisor.

d. Pursuant to the terms of the Investment Advisory Agreement, the selected investment advisor may be granted discretionary or non-discretionary authority on behalf of the City.

e. Any such investment advisor shall provide the City with periodic reports regarding the accounting treatment and performance level of the City's investment portfolio(s). Such reports shall be verifiable within the definition of generally accepted accounting principles (GAAP).

f. Fees for investment advisory services shall be fixed monthly charges or a fee based upon the dollar amount of the portfolio(s) as opposed to "performance-based" fees.

INVESTMENT MANAGEMENT STANDARDS

The standard to be used for managing the City’s assets is the "prudent investor" standard applicable to a fiduciary, which states that a prudent investor "shall exercise the judgment and care, under circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital." (Colorado Revised Statutes 15-1-304, Standard for Investments.)

The City’s overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that no investment is totally risk-free and that its investment activities are a matter of public record. Accordingly, the City recognizes that occasional realized losses may occur in any diversified portfolio and shall be considered within the context of each portfolio’s return, provided that adequate diversification has been implemented and the recommended retention or sale of a security is in the best long-term interest of the City.

The Director of Finance and other authorized persons acting in accordance with established procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion to the City Council and appropriate action is taken to control adverse developments.

ETHICS AND CONFLICTS OF INTEREST

City employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the City's investment program or that could impair or create the appearance of an impairment of their ability to make impartial investment decisions. Employees approved to engage in any investment decisions shall disclose to the Director of Finance any material financial interest they have in financial institutions that conduct business with the City, and they shall subordinate their personal investment transactions to those of the City.

AUTHORIZED SECURITIES AND TRANSACTIONS

All investments will be made in accordance with the Colorado Revised Statutes including without limitation the following: C.R.S. 11-10.5-101, et seq. Public Deposit Protection Act; C.R.S. 24-75-601, et. seq. Funds - Legal Investments; C.R.S. 24-75-603, Depositories; C.R.S. 24-75-701, et. seq., Local governments – authority to pool surplus funds, C.R.S. 30-10-701, et. seq. Any revisions or extensions of these sections of the statutes will be assumed to be part of this Investment Policy immediately upon being enacted.

For the purposes of this policy, the diversification requirements are applicable to the overall portfolio holdings (the "Portfolio") of the City, not ~~on the basis of~~based on an individual portfolio. References to rating category includes modifiers. For example, the A rating category includes A-, A and A+ (or the equivalent). All rating requirements are as of the time of purchase.

The ratings requirements outlined in this section are those as published by Standard & Poor's ("S&P"), a Nationally Recognized Statistical Rating Organization ("NRSRO"). Securities purchased may be rated by Standard & Poor's, Moody's Investors Service, or Fitch Ratings, therefore, the ratings equivalents of those referenced by S&P are listed below:

LONG-TERM RATINGS		
Standard & Poor's	Moody's Investors Service	Fitch Ratings
AAA	Aaa	AAA
AA+	Aa1	AA+
AA	Aa2	AA
AA−	Aa3	AA−
A+	A1	A+
A	A2	A
A−	A3	A−

SHORT-TERM RATINGS

Standard & Poor's	Moody's Investors Service	Fitch Ratings
A-1+	P-1	F1+
A-1	P-1	F1

Sources: Standard & Poor's Corporation, Moody's Investors Service, Fitch Ratings

This Investment Policy further restricts the investment of City funds to the following types of securities and transactions:

1. U.S. Treasury Obligations: Any security issued by, fully guaranteed by, or for which the full credit of the United States Treasury is pledged for payment including, but not limited to, Treasury bills, Treasury notes, Treasury bonds and Treasury STRIPS with maturities not exceeding 10 years from the date of trade settlement. 100% of the Portfolio may be invested in U.S. Treasury Obligations.

2. Federal Agency and Instrumentality Securities: Any security issued by, fully guaranteed by, or for which the full credit of the following is pledged for payment: The federal farm credit bank, the federal land bank, a federal home loan bank, the federal agricultural mortgage corporation, the federal home loan mortgage corporation, the federal national mortgage association, the export-import bank, the Tennessee Valley Authority, the government national mortgage association, the world bank, or an entity or organization that is not listed in this paragraph but that is created by, or the creation of which is authorized by, legislation enacted by the United States congress and that is subject to control by the federal government that is at least as extensive as that which governs an entity or organization listed in this paragraph. With the exception of the federal agricultural mortgage corporation s~~S~~uch securities shall be rated in the AA catgeory or the equivalent at the time of purchase by at least two NRSROs. Such securitites shall ~~and~~ have maturities not exceeding five years from the date of trade settlement. 100% of the Portfolio may be invested in Federal Agency and Instrumentality Securities. Subordinated debt may not be purchased.

3. Repurchase Agreements with a termination date of 180 days or less collateralized by U.S. Treasury Obligations or Federal Agency and Instrumentality securities listed in 1. and 2. above with a final maturity not exceeding 10 years. The purchased securities shall have a minimum market value including accrued interest of 102% of the dollar value of the transaction. Collateral shall be held by the City's third-party custodian bank, and the market value of the collateral securities shall be marked-to-the market daily.

   Repurchase Agreements shall be entered into only with broker/dealers recognized as Primary Dealers by the Federal Reserve Bank of New York, or with firms that have a Primary Dealer within their holding company structure. Approved Repurchase Agreement counterparties shall have a short-term credit rating of at least A-1 or the equivalent and a long-term credit rating of at least A or the equivalent by a NRSRO.

   No more than 100% of the Portfolio may be invested in repurchase agreements and no more than 10% may be invested with a single counterparty.

4. Commercial Paper with an original maturity of 270 days or less issued by any corporation or bank. Such securities must be U.S. dollar-denominated and rated ~~at least~~ A-1 or the equivalent at the time of purchase by at least two NRSROs. No more than 35% of the Portfolio may be invested in commercial paper, and no more than 5% may be invested in the obligations of any one issuer.

5. Eligible Banker's Acceptances with maturities not exceeding 180 days, issued by FDIC insured state or national banks with combined capital and surplus of at least $250 million. Banker's Acceptances shall be rated ~~at least~~ A-1 or the equivalent ~~at the time of purchase~~ by at least two NRSROs. No more than 35% of the Portfolio may be invested in banker's acceptances, and no more than 5% may be invested in the obligations of any one issuer.

6. Corporate Debt with a maturity not exceeding five years from the date of trade settlement and issued by any corporation or bank. Such securities must be U.S. dollar-denominated and rated in the ~~at least A~~A~~-~~ category or the equivalent at the time of purchase by at least two NRSROs. No more than 35% of the Portfolio may be invested in corporate debt and no more than 20% of the Portfolio will be invested in securities of all types rated in the A category or the equivalent. ~~, and~~ N~~n~~o more than 5% may be invested in the obligations of any one issuer.

~~7.~~ Municipal Bonds. ~~General Obligation Bonds and Revenue Obligation Bonds~~ Obligations of any ~~of~~ state or local government~~s~~ with maturities not exceeding five years from the date of trade settlement. Such obligations ~~of Colorado (or any political subdivision, institution, department, agency, instrumentality, or authority of the state)~~ shall be rated ~~at least~~ in the A category or the equivalent by at least two NRSROs. ~~Such obligations of any other governmental entity shall be rated at least AA or the equivalent by at least two NRSROs.~~

7.

~~In addition, certificates of participation or other security evidencing rights in payments to be made by a school district under a lease, lease-purchase agreement, or similar agreement if the security carries at least two ratings by NRSROs and each rating is at least A or the equivalent at the time of purchase.~~

No more than 35% of the Portfolio may be invested in municipal bonds and no more than 20% of the Portfolio will be invested in securities of all types rated in the A category or the equivalent. ~~and no~~ No more than 5% may be invested in obligations of a single issuer.

8. Negotiable Certificates of Deposit ("Negotiable CDs") with a maturity not exceeding three years from the date of trade settlement and issued by any bank. Negotiable CDs must be U.S. dollar-denominated and must, at the time of purchase, have either a) a long-term rating ~~of at least AA-~~ in the A category or the equivalent by at least two NRSROs, or b) short-term ratings of ~~at least~~ A-1 or the equivalent by two NRSROs. No more than 35% of the Portfolio may be invested in Negotiable CDs and no more than 20% of the Portfolio will be invested in securities of all types rated in the A category or the equivalent~~,~~ and no more than 5% may be invested in a single issuer.

9. Non-negotiable Certificates of Deposit ("Time CDs") with a maturity not exceeding three years in any FDIC insured state or national bank located in Colorado that is an eligible public depository as defined in C.R.S. 11-10.5-103. Certificates of deposit that exceed FDIC insurance limits shall be collateralized as required by the Public Deposit Protection Act. No more than 20% of the Portfolio may be invested in Time CDs, and no more than 10% may be invested in a single issuer.

10. Local Government Investment Pools ("LGIPs") ~~authorized under C.R.S. 24-75-702 that: 1) seek a constant net asset value of $1.00 per share; 2) limit assets of the pool to those securities authorized by state statute; and 3) have a rating of AAAm or the equivalent by any NRSRO.~~ LGIPs authorized under CRS 24-75-701 et seq. which: 1) seek to maintain a constant daily net asset value per share; 2) limit assets of the fund to securities authorized by CRS 24-75-601 et seq.; and 3) have a rating in the highest category by any NRSRO.100% of the Portfolio may be invested in LGIPs but no single LGIP may constitute more than 50% of the Portfolio. These diversification limits are not applicable to portfolios funded with bond proceeds.

11. Money Market Mutual Funds registered under the Investment Company Act of 1940 that: 1) are "no-load" (no commission or fee shall be charged on purchases or sales of shares); 2) seek a constant net asset value ~~of $1.00~~ per share; 3) have a maximum stated maturity and weighted average maturity in accordance with Rule 2a-7 of the Investment Company Act of 1940; and 4) ~~have a rating of AAAm or the equivalent by any NRSRO~~ have a rating in the highest category by any NRSRO. 100% of the Portfolio may be invested in money market mutual funds but no single fund may constitute more than 50% of the Portfolio.

12. Securities of the City of Arvada or taxing unit of the City, or certificates of participation may be purchased upon recommendation of the Director or Finance.

The Portfolio shall be limited to an aggregate exposure of 50% for the following investment types: Commercial Paper, Bankers Acceptances, Corporate Bonds and Negotiable Certificates of Deposit.

The foregoing list of authorized securities and transactions shall be strictly interpreted.

Securities in which the City has already invested that are downgraded to a level that is below the minimum ratings described herein may be sold or held at the discretion of the Director of Finance. The relevant portfolio will be brought back into compliance with Investment Policy guidelines as soon as is practical.

Should the financial markets experience severe turmoil, the Director of Finance and/or designee, upon approval of the City Manager, may make decisions regarding investments outside of the parameters of this policy on a temporary basis to ensure the City's primary objectives of legality, safety, liquidity and yield are upheld.

The City may, from time to time issue bonds, the proceeds of which must be invested to meet specific cash flow requirements. In such circumstances and notwithstanding the paragraph immediately above, the reinvestment of debt issuance or related reserve funds may, upon the advice of Bond Counsel or financial advisors, deviate from the provisions of this Investment Policy with the written approval of the Director of Finance.

INVESTMENT DIVERSIFICATION

The City shall diversify its investments to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. Nevertheless, the asset allocation in the Portfolio should be flexible depending upon the outlook for the economy, the securities markets and the City's anticipated cash flow needs.

INVESTMENT LIQUIDITY

The Portfolio shall remain sufficiently liquid to meet all cash requirements that may be reasonably anticipated. To the extent possible, investments shall be matched with anticipated cash flows and known future liabilities.

COMPETITIVE TRANSACTIONS

All investment transactions shall be conducted competitively with authorized broker/dealers. At least three broker/dealers shall be contacted for each transaction and their bid or offering prices shall be recorded. If the City is offered a security for which there is no other readily available competitive offering, quotations for comparable or alternative securities will be documented. The competitive transaction requirement is not applicable for new issue security offerings or direct purchases from an issuer.

SELECTION OF BROKER/DEALERS

It shall be the policy of the City to purchase securities only from authorized broker/dealers.

To be eligible, a firm must meet at least one of the following criteria:

1. Be recognized as a Primary Dealer by the Federal Reserve Bank of New York or have a Primary Dealer within its holding company structure,
2. Report voluntarily to the Federal Reserve Bank of New York,
3. Qualify under Securities and Exchange Commission (SEC) Rule 15c3-1 (Uniform Net Capital Rule).

Broker/dealers will be selected on the basis of their expertise in public cash management and their ability to provide service to the City's account.

If the City engages the services of a professional investment advisory firm to assist in the management of investment ~~portoflios~~portfolios in accordance with this Investment Policy, the firm shall be authorized to utilize its own approved list of broker/dealers. Such approved broker/dealers shall still comply with the Broker/Dealer Criteria listed above.

The City may purchase commercial paper from direct issuers even though they are not on the approved broker/dealer list as long as they meet the criteria outlined in item 4 of the Authorized Securities and Transactions section of this Investment Policy.

SAFEKEEPING AND CUSTODY

The Director of Finance shall approve one or more banks to provide safekeeping and custodial services for the City. A City approved safekeeping agreement shall be executed with each custodian bank. The City's safekeeping banks shall qualify as eligible public depositories as defined in C.R.S. 11-10.5-103 and be a Federal Reserve member financial institution.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis. Ownership of all securities shall be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

All investment securities, except non-negotiable Certificates of Deposit, Local Government Investment Pools and Money Market Mutual Funds, purchased by the City will be delivered by book entry and will be held in third-party safekeeping by the City approved custodian bank, its correspondent bank or the Depository Trust Company (DTC).

All Fed wireable book entry securities shall be evidenced by a safekeeping receipt or a customer confirmation issued to the City by the custodian bank stating that the securities are held in the Federal Reserve system in a Customer Account for the custodian bank which will name the City as "customer."

All DTC eligible securities shall be held in the custodian bank's Depository Trust Company (DTC) participant account and the custodian bank shall issue a safekeeping receipt evidencing that the securities are held for the City as "customer."

The City's custodian will be required to furnish the City a monthly report of safekeeping activity, including a list of month-end holdings and market values.

PERFORMANCE BENCHMARKS

Each portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. If applicable, the performance of each investment portfolio may be compared to a total return index that meets the duration target of each portfolio. When analyzing the performance of each investment portfolio, all fees involved with managing it shall be included in the computation of its rate of return.

REPORTING

The Director of Finance and/or designee(s) involved in the investment process shall prepare an investment report to the City Council and City Manager at least quarterly. This report shall summarize the investment earnings and performance results of each investment portfolio. The report shall include a summary of all City investments, their book value or par value, interest earnings for the period, and any realized gains or losses The report shall also include the portfolio's sector allocation, credit ratings, maturity distribution, weighted average maturity, yield to cost, yield to maturity, and comparative benchmark returns, where relevant.

POLICY REVISIONS

This Investment Policy shall be reviewed on a periodic basis by the Director of Finance. If amendments are required, they shall be submitted to the City Council for approval.

SUMMARY OF ELIGIBLE INVESTMENTS AND TRANSACTIONS

The ratings requirements outlined in this summary grid of eligible investments and transactions are those as published by Standard & Poor's ("S&P"), a Nationally Recognized Statistical Rating Organization ("NRSRO"). Securities purchased may be rated by Standard & Poor's, Moody's Investors Service, or Fitch Ratings, therefore, the ratings equivalents of those referenced by S&P are outlined in Authorized Securities and Transactions ~~on page 4~~ of this policy.

Security Type	Maximum Portfolio %	Maximum Issuer %	Maturity Restrictions	Minimum Rating Requirements
U.S. Treasuries	100%	100%	10 years	N/A
Federal Agencies and Instrumentalities	100%	100%	5 years	AA- by 2 NRSROs[1]
Corporate Debt	35%	5%	5 years	~~A~~A- by 2 NRSROs
Municipal Bonds ~~of a Colorado Issuer~~	35%*	5%*	5 years	A- by 2 NRSROs
~~Municipal Bonds of a Non-Colorado Issuer~~	~~35%*~~	~~5%*~~	~~5 years~~	~~AA by 2 NRSROs~~
~~Municipal Bonds, School District Certificates of Participation~~	~~35%*~~	~~5%*~~	~~5 years~~	~~A by 2 NRSROs~~
Commercial Paper	35%	5%	270 days	A-1 by 2 NRSROs
Bankers Acceptances	35%	5%	180 days	A-1 by 2 NRSROs
Repurchase Agreements	100%	10%	180 days	N/A
Non-negotiable Certificates of Deposits ("Time CDs")	20%	10%	3 years	N/A
Negotiable Certificates of Deposit ("Negotiable CD's")	35%	5%	3 years	~~A~~A- or A-1 by 2 NRSROs
Local Government Investment Pools	100%	50%	N/A	~~AAAm~~ Highest rating category by any NRSRO
Money Market Mutual Funds	100%	50%	N/A	~~AAAm~~ Highest rating category by any NRSRO

~~*The aggregate exposure to municipal bonds may not exceed 35% of the Portfolio, and no more than 5% may be invested with a single issuer.~~

Note: The Portfolio shall be limited to an aggregate exposure of 50% for the following investment types: Commercial Paper, Bankers Acceptances, Corporate Bonds and Negotiable Certificates of Deposit. A 20% limit of the Portfolio shall be applicable for securities of all types in the A rating category. For details see Authorized Securities and Transactions.

1. A credit rating is not required for the federal agricultural mortgage corporation

THE CITY OF ARVADA, COLORADO
INVESTMENT POLICY
August _, 2021
POLICY

Article XX of the Constitution of the State of Colorado provides the City of Arvada (the "City") with the legal authority to promulgate and implement reasonable standards for its cash management and investment operations. Under the provisions granted by that legal authority, the City Council (the "Council") has adopted specific cash management policies and procedures in accordance with Section 2-121 of the Code of the City of Arvada (the "Code"), and has authorized the City Manager and/or his designee(s) to implement reasonable rules and regulations relating to the cash management and investment activities of the City.

As designated by the City Manager, the Director of Finance shall be committed to the overall success of the City's cash management programs and may establish an advisory committee to review and recommend practices on a number of cash management issues, including, but not limited to, the following:

A. The design and implementation of reliable and effective cash-flow forecasting methodologies which will assist the City's accounting personnel in determining the amounts of cash available for investment; the time period for which the funds may reasonably be invested; and the volatility of specific forecasts, which will allow viable determination of the required liquidity which must characterize the specific investments.

B. The design and implementation of appropriate revenue acceleration programs, to enhance the speed at which monies are collected, deposited, and invested.

C. Controlled disbursement programs, to ensure that City expenses are paid on time without jeopardizing the potential earning capability of the City's cash management program.

D. The use of state-of-the-art techniques for the physical movement of money, taking advantage of the technological and operational procedures which have evolved in recent years.

E. The design and implementation of investment policies and procedures which allow the City to maximize its interest earnings, and ensure the safety of all funds entrusted to the care and control of City personnel.

F. The design and implementation of relationships with bank and investment advisors (if applicable) which are both favorable to the City and responsive to the day-to-day requirements of the City's complex financial operations.

SCOPE AND PURPOSE

This Investment Policy addresses the methods, procedures and practices which must be exercised to ensure effective and judicious fiscal and investment management of the City's funds. It was adopted by the City Council on January 9, 2017 and replaces any previous investment policy or investment procedures of the City.

This Investment Policy applies to all City funds, except defined contribution/benefit pension and retirement funds, deferred compensation funds, funds of the Arvada Urban Renewal Authority, and the self-insured medical fund.

Except for cash in certain restricted and special funds, cash shall be pooled for investment purposes. The investment income derived from any pooled investment account shall be allocated to the contributing funds based upon the proportion of the respective ending balance of the prior month relative to the total pooled balance in each investment portfolio.

INVESTMENT OBJECTIVES

The City's funds shall be invested in accordance with all applicable City policies, Colorado statutes, and Federal regulations, and in a manner designed to accomplish the following objectives, which are listed in priority order:

- Preservation of capital and protection of investment principal
- Maintenance of sufficient liquidity to meet anticipated cash flows
- Attainment of a market rate of return
- Diversification to avoid incurring unreasonable market risks

DELEGATION OF AUTHORITY

The Director of Finance and/or his/her designee(s) is vested with responsibility for managing the City's investment program and for implementing this Investment Policy. The Director of Finance may designate the authority to administer investment transactions and the operation of each investment portfolio to other specifically authorized staff members. No person may engage in an investment transaction except as expressly provided under the terms of this Investment Policy.

The Director of Finance shall establish procedures and internal controls for the operation of the City's investment program, designed to prevent loss of public funds due to fraud, error, misrepresentation and imprudent actions.

The City may engage the support services of outside investment advisors in regard to its investment program, so long as it can be demonstrated that these services produce a net financial advantage or necessary financial protection of the City's financial resources.

It is imperative that any investment advisor who provides support services serve in a fiduciary capacity to the City, be highly qualified, and demonstrably independent. Furthermore, a prospective advisor should be able to provide clear evidence of his/her capabilities on behalf of clients similar to the City. An investment advisor may be selected by the City through a competitive Request for Proposal process.

The City has established strict guidelines regarding the approval of such investment advisors to ensure that such support services are consistent with the City's established policies and procedures. These guidelines include, but are not limited to, the following:

a. Any investment advisor selected shall be a "Registered Investment Advisor" as defined and regulated by the U.S. Securities and Exchange Commission (the “SEC”).

b. Any such investment advisor shall be completely independent of any financial institution or securities brokerage firm, and shall not participate in any commissions, or soft-dollar payments as a result of its relationship to the City.

c. Any such investment advisor shall not take possession of any City monies or investment securities, nor have access to or control over such monies and/or securities. Procedures for delivery, possession, and safekeeping are established in the Safekeeping and Custody section of this investment policy. Such procedures shall remain the same, regardless of the City's relationship with an investment advisor.

d. Pursuant to the terms of the Investment Advisory Agreement, the selected investment advisor may be granted discretionary or non-discretionary authority on behalf of the City.

e. Any such investment advisor shall provide the City with periodic reports regarding the accounting treatment and performance level of the City's investment portfolio(s). Such reports shall be verifiable within the definition of generally accepted accounting principles (GAAP).

f. Fees for investment advisory services shall be fixed monthly charges or a fee based upon the dollar amount of the portfolio(s) as opposed to "performance-based" fees.

INVESTMENT MANAGEMENT STANDARDS

The standard to be used for managing the City’s assets is the "prudent investor" standard applicable to a fiduciary, which states that a prudent investor "shall exercise the judgment and care, under circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital." (Colorado Revised Statutes 15-1-304, Standard for Investments.)

The City’s overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that no investment is totally risk-free and that its investment activities are a matter of public record. Accordingly, the City recognizes that occasional realized losses may occur in any diversified portfolio and shall be considered within the context of each portfolio’s return, provided that adequate diversification has been implemented and the recommended retention or sale of a security is in the best long-term interest of the City.

The Director of Finance and other authorized persons acting in accordance with established procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion to the City Council and appropriate action is taken to control adverse developments.

ETHICS AND CONFLICTS OF INTEREST

City employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the City's investment program or that could impair or create the appearance of an impairment of their ability to make impartial investment decisions. Employees approved to engage in any investment decisions shall disclose to the Director of Finance any material financial interest they have in financial institutions that conduct business with the City, and they shall subordinate their personal investment transactions to those of the City.

AUTHORIZED SECURITIES AND TRANSACTIONS

All investments will be made in accordance with the Colorado Revised Statutes including without limitation the following: C.R.S. 11-10.5-101, et seq. Public Deposit Protection Act; C.R.S. 24-75-601, et. seq. Funds - Legal Investments; C.R.S. 24-75-603, Depositories; C.R.S. 24-75-701, et. seq., Local governments – authority to pool surplus funds, C.R.S. 30-10-701, et. seq. Any revisions or extensions of these sections of the statutes will be assumed to be part of this Investment Policy immediately upon being enacted.

For the purposes of this policy, the diversification requirements are applicable to the overall portfolio holdings (the "Portfolio") of the City, not based on an individual portfolio. References to rating category includes modifiers. For example, the A rating category includes A-, A and A+ (or the equivalent). All rating requirements are as of the time of purchase.

The ratings requirements outlined in this section are those as published by Standard & Poor's ("S&P"), a Nationally Recognized Statistical Rating Organization ("NRSRO"). Securities purchased may be rated by Standard & Poor's, Moody's Investors Service, or Fitch Ratings, therefore, the ratings equivalents of those referenced by S&P are listed below:

LONG-TERM RATINGS		
Standard & Poor's	Moody's Investors Service	Fitch Ratings
AAA	Aaa	AAA
AA+	Aa1	AA+
AA	Aa2	AA
AA−	Aa3	AA−
A+	A1	A+
A	A2	A
A−	A3	A−

SHORT-TERM RATINGS

Standard & Poor's	Moody's Investors Service	Fitch Ratings
A-1+	P-1	F1+
A-1	P-1	F1

Sources: Standard & Poor's Corporation, Moody's Investors Service, Fitch Ratings

This Investment Policy further restricts the investment of City funds to the following types of securities and transactions:

1. U.S. Treasury Obligations: Any security issued by, fully guaranteed by, or for which the full credit of the United States Treasury is pledged for payment including, but not limited to, Treasury bills, Treasury notes, Treasury bonds and Treasury STRIPS with maturities not exceeding 10 years from the date of trade settlement. 100% of the Portfolio may be invested in U.S. Treasury Obligations.

2. Federal Agency and Instrumentality Securities: Any security issued by, fully guaranteed by, or for which the full credit of the following is pledged for payment: The federal farm credit bank, the federal land bank, a federal home loan bank, the federal agricultural mortgage corporation, the federal home loan mortgage corporation, the federal national mortgage association, the export-import bank, the Tennessee Valley Authority, the government national mortgage association, the world bank, or an entity or organization that is not listed in this paragraph but that is created by, or the creation of which is authorized by, legislation enacted by the United States congress and that is subject to control by the federal government that is at least as extensive as that which governs an entity or organization listed in this paragraph. With the exception of the federal agricultural mortgage corporation such securities shall be rated in the AA catgeory or the equivalent at the time of purchase by at least two NRSROs. Such securitites shall have maturities not exceeding five years from the date of trade settlement. 100% of the Portfolio may be invested in Federal Agency and Instrumentality Securities. Subordinated debt may not be purchased.

3. Repurchase Agreements with a termination date of 180 days or less collateralized by U.S. Treasury Obligations or Federal Agency and Instrumentality securities listed in 1. and 2. above with a final maturity not exceeding 10 years. The purchased securities shall have a minimum market value including accrued interest of 102% of the dollar value of the transaction. Collateral shall be held by the City's third-party custodian bank, and the market value of the collateral securities shall be marked-to-the market daily.

   Repurchase Agreements shall be entered into only with broker/dealers recognized as Primary Dealers by the Federal Reserve Bank of New York, or with firms that have a Primary Dealer within their holding company structure. Approved Repurchase Agreement counterparties shall have a short-term credit rating of at least A-1 or the equivalent and a long-term credit rating of at least A or the equivalent by a NRSRO.

   No more than 100% of the Portfolio may be invested in repurchase agreements and no more than 10% may be invested with a single counterparty.

4. Commercial Paper with an original maturity of 270 days or less issued by any corporation or bank. Such securities must be U.S. dollar-denominated and rated A-1 or the equivalent at the time of purchase by at least two NRSROs. No more than 35% of the Portfolio may be invested in commercial paper, and no more than 5% may be invested in the obligations of any one issuer.

5. Eligible Banker's Acceptances with maturities not exceeding 180 days, issued by FDIC insured state or national banks with combined capital and surplus of at least $250 million. Banker's Acceptances shall be rated A-1 or the equivalent by at least two NRSROs. No more than 35% of the Portfolio may be invested in banker's acceptances, and no more than 5% may be invested in the obligations of any one issuer.

6. Corporate Debt with a maturity not exceeding five years from the date of trade settlement and issued by any corporation or bank. Such securities must be U.S. dollar-denominated and rated in the A category or the equivalent at the time of purchase by at least two NRSROs. No more than 35% of the Portfolio may be invested in corporate debt and no more than 20% of the Portfolio will be invested in securities of all types rated in the A category or the equivalent. No more than 5% may be invested in the obligations of any one issuer.

7. Municipal Bonds. Obligations of any state or local government with maturities not exceeding five years from the date of trade settlement. Such obligations shall be rated in the A category or the equivalent by at least two NRSROs.

   No more than 35% of the Portfolio may be invested in municipal bonds and no more than 20% of the Portfolio will be invested in securities of all types rated in the A category or the equivalent. No more than 5% may be invested in obligations of a single issuer.

8. Negotiable Certificates of Deposit ("Negotiable CDs") with a maturity not exceeding three years from the date of trade settlement and issued by any bank. Negotiable CDs must be U.S. dollar-denominated and must, at the time of purchase, have either a) a long-term rating in the A category or the equivalent by at least two NRSROs, or b) short-term ratings of A-1 or the equivalent by two NRSROs. No more than 35% of the Portfolio may be invested in Negotiable CDs and no more than 20% of the Portfolio will be invested in securities of all types rated in the A category or the equivalent and no more than 5% may be invested in a single issuer.

9. Non-negotiable Certificates of Deposit ("Time CDs") with a maturity not exceeding three years in any FDIC insured state or national bank located in Colorado that is an eligible public depository as defined in C.R.S. 11-10.5-103. Certificates of deposit that exceed FDIC insurance limits shall be collateralized as required by the Public Deposit Protection Act. No more than 20% of the Portfolio may be invested in Time CDs, and no more than 10% may be invested in a single issuer.

10. Local Government Investment Pools ("LGIPs") LGIPs authorized under CRS 24-75-701 et seq. which: 1) seek to maintain a constant daily net asset value per share; 2) limit assets of the fund to securities authorized by CRS 24-75-601 et seq.; and 3) have a rating in the highest category by any NRSRO.100% of the Portfolio may be

invested in LGIPs but no single LGIP may constitute more than 50% of the Portfolio. These diversification limits are not applicable to portfolios funded with bond proceeds.

11. Money Market Mutual Funds registered under the Investment Company Act of 1940 that: 1) are "no-load" (no commission or fee shall be charged on purchases or sales of shares); 2) seek a constant net asset value per share; 3) have a maximum stated maturity and weighted average maturity in accordance with Rule 2a-7 of the Investment Company Act of 1940; and 4) have a rating in the highest category by any NRSRO. 100% of the Portfolio may be invested in money market mutual funds but no single fund may constitute more than 50% of the Portfolio.

12. Securities of the City of Arvada or taxing unit of the City, or certificates of participation may be purchased upon recommendation of the Director or Finance.

The Portfolio shall be limited to an aggregate exposure of 50% for the following investment types: Commercial Paper, Bankers Acceptances, Corporate Bonds and Negotiable Certificates of Deposit.

The foregoing list of authorized securities and transactions shall be strictly interpreted.

Securities in which the City has already invested that are downgraded to a level that is below the minimum ratings described herein may be sold or held at the discretion of the Director of Finance. The relevant portfolio will be brought back into compliance with Investment Policy guidelines as soon as is practical.

Should the financial markets experience severe turmoil, the Director of Finance and/or designee, upon approval of the City Manager, may make decisions regarding investments outside of the parameters of this policy on a temporary basis to ensure the City's primary objectives of legality, safety, liquidity and yield are upheld.

The City may, from time to time issue bonds, the proceeds of which must be invested to meet specific cash flow requirements. In such circumstances and notwithstanding the paragraph immediately above, the reinvestment of debt issuance or related reserve funds may, upon the advice of Bond Counsel or financial advisors, deviate from the provisions of this Investment Policy with the written approval of the Director of Finance.

INVESTMENT DIVERSIFICATION

The City shall diversify its investments to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. Nevertheless, the asset allocation in the Portfolio should be flexible depending upon the outlook for the economy, the securities markets and the City's anticipated cash flow needs.

INVESTMENT LIQUIDITY

The Portfolio shall remain sufficiently liquid to meet all cash requirements that may be reasonably anticipated. To the extent possible, investments shall be matched with anticipated cash flows and known future liabilities.

COMPETITIVE TRANSACTIONS

All investment transactions shall be conducted competitively with authorized broker/dealers. At least three broker/dealers shall be contacted for each transaction and their bid or offering prices shall be recorded. If the City is offered a security for which there is no other readily available competitive offering, quotations for comparable or alternative securities will be documented. The competitive transaction requirement is not applicable for new issue security offerings or direct purchases from an issuer.

SELECTION OF BROKER/DEALERS

It shall be the policy of the City to purchase securities only from authorized broker/dealers.

To be eligible, a firm must meet at least one of the following criteria:

1. Be recognized as a Primary Dealer by the Federal Reserve Bank of New York or have a Primary Dealer within its holding company structure,
2. Report voluntarily to the Federal Reserve Bank of New York,
3. Qualify under Securities and Exchange Commission (SEC) Rule 15c3-1 (Uniform Net Capital Rule).

Broker/dealers will be selected on the basis of their expertise in public cash management and their ability to provide service to the City's account.

If the City engages the services of a professional investment advisory firm to assist in the management of investment portfolios in accordance with this Investment Policy, the firm shall be authorized to utilize its own approved list of broker/dealers. Such approved broker/dealers shall still comply with the Broker/Dealer Criteria listed above.

The City may purchase commercial paper from direct issuers even though they are not on the approved broker/dealer list as long as they meet the criteria outlined in item 4 of the Authorized Securities and Transactions section of this Investment Policy.

SAFEKEEPING AND CUSTODY

The Director of Finance shall approve one or more banks to provide safekeeping and custodial services for the City. A City approved safekeeping agreement shall be executed with each custodian bank. The City's safekeeping banks shall qualify as eligible public depositories as defined in C.R.S. 11-10.5-103 and be a Federal Reserve member financial institution.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis. Ownership of all securities shall be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

All investment securities, except non-negotiable Certificates of Deposit, Local Government Investment Pools and Money Market Mutual Funds, purchased by the City will be delivered by book entry and will be held in third-party safekeeping by the City approved custodian bank, its correspondent bank or the Depository Trust Company (DTC).

All Fed wireable book entry securities shall be evidenced by a safekeeping receipt or a customer confirmation issued to the City by the custodian bank stating that the securities are held in the Federal Reserve system in a Customer Account for the custodian bank which will name the City as "customer."

All DTC eligible securities shall be held in the custodian bank's Depository Trust Company (DTC) participant account and the custodian bank shall issue a safekeeping receipt evidencing that the securities are held for the City as "customer."

The City's custodian will be required to furnish the City a monthly report of safekeeping activity, including a list of month-end holdings and market values.

PERFORMANCE BENCHMARKS

Each portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. If applicable, the performance of each investment portfolio may be compared to a total return index that meets the duration target of each portfolio. When analyzing the performance of each investment portfolio, all fees involved with managing it shall be included in the computation of its rate of return.

REPORTING

The Director of Finance and/or designee(s) involved in the investment process shall prepare an investment report to the City Council and City Manager at least quarterly. This report shall summarize the investment earnings and performance results of each investment portfolio. The report shall include a summary of all City investments, their book value or par value, interest earnings for the period, and any realized gains or losses The report shall also include the portfolio's sector allocation, credit ratings, maturity distribution, weighted average maturity, yield to cost, yield to maturity, and comparative benchmark returns, where relevant.

POLICY REVISIONS

This Investment Policy shall be reviewed on a periodic basis by the Director of Finance. If amendments are required, they shall be submitted to the City Council for approval.

SUMMARY OF ELIGIBLE INVESTMENTS AND TRANSACTIONS

The ratings requirements outlined in this summary grid of eligible investments and transactions are those as published by Standard & Poor's ("S&P"), a Nationally Recognized Statistical Rating Organization ("NRSRO"). Securities purchased may be rated by Standard & Poor's, Moody's Investors Service, or Fitch Ratings, therefore, the ratings equivalents of those referenced by S&P are outlined in Authorized Securities and Transactions of this policy.

Security Type	Maximum Portfolio %	Maximum Issuer %	Maturity Restrictions	Minimum Rating Requirements
U.S. Treasuries	100%	100%	10 years	N/A
Federal Agencies and Instrumentalities	100%	100%	5 years	AA- by 2 NRSROs[1]
Corporate Debt	35%	5%	5 years	A- by 2 NRSROs
Municipal Bonds	35%*	5%*	5 years	A- by 2 NRSROs
Commercial Paper	35%	5%	270 days	A-1 by 2 NRSROs
Bankers Acceptances	35%	5%	180 days	A-1 by 2 NRSROs
Repurchase Agreements	100%	10%	180 days	N/A
Non-negotiable Certificates of Deposits ("Time CDs")	20%	10%	3 years	N/A
Negotiable Certificates of Deposit ("Negotiable CD's")	35%	5%	3 years	A- or A-1 by 2 NRSROs
Local Government Investment Pools	100%	50%	N/A	Highest rating category by any NRSRO
Money Market Mutual Funds	100%	50%	N/A	Highest rating category by any NRSRO

Note: The Portfolio shall be limited to an aggregate exposure of 50% for the following investment types: Commercial Paper, Bankers Acceptances, Corporate Bonds and Negotiable Certificates of Deposit. A 20% limit of the Portfolio shall be applicable for securities of all types in the A rating category. For details see Authorized Securities and Transactions.

1. A credit rating is not required for the federal agricultural mortgage corporation

CITY OF ARVADA

pfm

Investment Policy Update

August 2, 2021

PFM Asset Management LLC

1550 Wewatta Street
Suite 200
Denver, CO 80202

Chris Blackwood, Managing Director
Stefani VonHoltum-Niesent, Senior Managing Consultant

Corporate Securities Rated "A" Can Add Value to Fixed Income Portfolios

- Arvada's Investment Policy allows for corporate securities
  - Existing policy parameters for corporate securities
    - 35% aggregate allocation limit in corporate sector
    - 5% issuer limit rated AA- or better by two NRSROs
    - 5-year maturity limit for U.S. dollar-denominated securities
- Benefits of adding A rated corporates
  - Diversification benefits with broader universe of corporate issuers
  - Higher potential returns
- Risks associated with A rated corporates
  - Downgrade and default risks slightly higher than AA rated corporates
  - Risks seek to be mitigated with a robust credit monitoring process and credit exposure limitations

Corporate Long-Term Ratings Definitions

Investment Grade

S&P	Moody's	Fitch	Definitions (by Moody's)
AAA	Aaa	AAA	Obligations rated Aaa are judged to be of the highest quality, with minimal credit risk.
AA	Aa	AA	Obligations rated Aa are judged to be of high quality and are subject to very low credit risk.
A	A	A	Obligations rated A are considered upper-medium grade and are subject to low credit risk.
BBB	Baa	BBB	Obligations rated Baa are subject to moderate credit risk. They are considered medium grade and as such may possess certain speculative characteristics.
BB	Ba	BB	Obligations rated Ba are judged to have speculative elements and are subject to substantial credit risk.
B	B	B	Obligations rated B are considered speculative and are subject to high credit risk.
CCC	Caa	CCC	Obligations rated Caa are judged to be of poor standing and are subject to very high credit risk.
CC	Ca	CC	Obligations rated Ca are highly speculative and are likely in, or very near, default, with some prospect of recovery of principal and interest.
C	C	C	Obligations rated C are the lowest rated class and are typically in default, with little prospect for recovery of principal or interest.

Source: Moody's Investor Services, Standards and Poor's, Fitch Ratings.

1-5 Year Index Returns

Index	Effective Duration	Yield	Period Ended 12/31/2020			
			1 Year	3 Years	5 Years	10 Years
U.S. Treasury	2.66	0.18%	4.25%	3.31%	2.33%	1.79%
Federal Agency	2.31	0.31%	3.35%	2.94%	2.15%	1.69%
Corp AAA	1.84	0.47%	4.71%	3.86%	2.88%	2.45%
Corp AA	2.66	0.48%	4.83%	3.93%	3.13%	2.63%
Corp A	2.71	0.70%	5.52%	4.36%	3.54%	3.17%
Corp BBB	2.82	1.16%	6.00%	4.93%	4.44%	3.92%

Source: ICE BofA Merrill Lynch 1-5 Year Indices. Returns greater than 1 year are annualized.

Rating Analysis

Average five-year letter rating migration rates, 1970-2020

	Aaa	Aa	A	Baa	Ba	B	Caa	Ca-C	WR	Def
Aaa	54.46%	22.59%	4.81%	0.61%	0.30%	0.03%	0.04%	0.00%	17.10%	0.07%
Aa	2.07%	46.40%	23.77%	3.82%	0.74%	0.25%	0.11%	0.03%	22.56%	0.25%
A	0.17%	7.21%	52.40%	14.28%	2.32%	0.69%	0.14%	0.01%	22.14%	0.64%
Baa	0.14%	0.92%	11.75%	50.65%	7.95%	2.47%	0.52%	0.09%	24.22%	1.29%
Ba	0.03%	0.18%	2.37%	14.63%	28.26%	11.37%	2.06%	0.12%	34.59%	6.38%
B	0.02%	0.07%	0.41%	2.28%	7.53%	23.01%	6.49%	0.59%	44.06%	15.54%
Caa	0.00%	0.00%	0.09%	0.56%	1.43%	7.49%	14.81%	1.21%	50.95%	23.46%
Ca-C	0.00%	0.00%	0.30%	0.75%	1.59%	4.44%	2.86%	2.86%	48.03%	39.17%

Source: Moody's Annual Default Study: Corporate Default and Recovery Rates, 1920-2020

Conclusion

- Potential benefits of A rated corporates:
  - Enhance risk-adjusted returns when used prudently
  - Increase the universe of corporate issuers
    - Based on PFM's approved issuer list, the available issues for the City's portfolio would increase from approximately 20 (AAA and AA) to 70 (including A rated issues)[1]
- Potential credit risks:
  - Increase in the portfolio risk profile
  - The proposed policy sets a combined exposure limit of 20% for A rated securities (corporate bonds, municipal bonds and bank certificates of deposit)

1. Example only, as of 3/31/21. PFM's approved issuer list may change

Thank You

pfm

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CITY OF ARVADA

REPORT TO CITY COUNCIL ORDINANCE FIRST READING	AGENDA ITEM 8.C.1.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: CB21-020 An Ordinance Amending Chapter 54, Motor Vehicles and Traffic, of the Arvada City Code (Public Hearing to be set for August 16, 2021 at 6:15 p.m.)

Report in Brief

The Mobility & Planning Innovations (MPI) Division of Arvada Public Works along with the City Attorney's Office is proposing an update to revise the adopted Colorado Model Traffic Code, to allow scooters and electric assist bikes on public roadways. The City's ordinance also supplements the state updates by restricting shared micromobility through a permit process as part of a pilot program. The pilot program will allow the City and micromobility vendors to collect data and evaluate the service as a "first and last mile" solution to transit and ultimately keep the program with renewed permits or end the pilot project if it's not successful in the Arvada community.

The Arvada team recommends that the City Council approve CB21-020, An Ordinance Amending Chapter 54, Motor Vehicles and Traffic, of the Arvada City Code, on first reading, ordered published in full, and a public hearing date be set for August 16, 2021 at 6:15 p.m.

Financial Impact

The City of Arvada has created a fee-per-permit and fee-per-ride structure associated with the Shared Micromobility program. The permit revenue generated from the pilot program is estimated at $12,000 per year, which will be used by Arvada Public Works for signing, striping, parking, and other traffic control expenses incurred by the City to support safety and operation of the mobility devices on the City's transportation system.

Background

Per information previously presented to City Council at workshops, the City of Arvada is responding to transportation innovations known as micromobility that have the potential to provide a specific "first and last mile" solution to access transit.

Shortly after the RTD G-Line Commuter Rail service started operating in 2019, the Citizen's Transportation Advisory Committee started to evaluate the number of bicycles in the G-Line cars and also started to monitor station parking and passenger drop off. While parking facilities towards the end-of-line stations were constantly nearing capacity, the Committee observed that the bike racks in the train cars were also full and discussed "first and last mile" solutions to help with these two challenges. The Committee reviewed an array of options including infrastructure updates that would reconstruct walk routes to the stations, shuttle circulator service, and shared micromobility. In early 2020, the Committee presented information to City Council about proceeding with shared micromobility as a first and last mile solution that would be privately operated and offer the public with transportation solutions in conjunction with transit to meet the City's Multi-Modal Transportation Plan goals and objectives.

In 2020, following the Committee's presentation to Council, team members from the MPI Division of Public Works developed a roadmap to allow for e-bikes and e-scooters on municipal trails and roadways, first for personal use and then as a shared micromobility option. Team members went through a public outreach process and worked with various departments including Code Enforcement, PD, Parks, and etc. The results - focused on personal micromobility devices on trails - were presented to

City Council in early 2021.

MPI Division and City Attorney's Office team members have worked to develop a pilot program related to the Shared Micromobility option and have presented the information on the proposed ordinance at the July 26, 2021, City Council Workshop. The ordinance is intended to supplement the Colorado Model Traffic Code and establish a managed roll-out of shared micromobility devices that would provide first and last mile connectivity to the G-Line commuter rail. Our team presented the results from four (4) public meetings as part of the outreach process and reviewed the ordinance language related to the pilot program.

Discussion

The Colorado Model Traffic Code is used by Arvada Police for traffic enforcement purposes. The City team is proposing the adoption of updated "rules of the road" that include a reclassification of scooters as vehicles and electric assist bicycles, known as micromobility. The City of Arvada is adding municipal regulations to manage and permit "shared" micromobility that is permitted under the updated Model Traffic Code, allowing a limited number of companies and e-devices to operate in the City. Under the City's code, shared micrmobility devices will be operating using a permit requirement.

It is important to note that the permit requires data sharing and fees to cover Public Works costs and create a system that can be self enforcing. The fiscal impact is neutral under this plan, and the rules associated with the permit structure minimizes risk to the City of Arvada while positioning companies as a primary contact for operating issues, public complaints, and liability.

Public Contact

The Arvada team has used SpeakUp Arvada to hold four public meetings, answer community questions, and guide constituents to the project page (https://speakup.arvada.org/shared-micromobility). On the SpeakUp page, members of the public are able to take a survey, provide input, and use the project email for follow-up questions and communication (e-mobility@arvada.org).

Commission Recommendation

The Citizen's Transportation Advisory Committee has been engaged in the work associated with the Mobility and Planning Innovations Division and supports the implementation of the micromobility pilot program as described herein.

Strategic Alignment

The recommended action that would amend Chapter 54 of the City Code as described herein aligns with the Infrastructure Priority Area of the City Council Strategic Plan. Specifically, the recommended action supports the following Principle within the Infrastructure Priority Area:

Provides safe and efficient connections to modes of transportation, including transit, streets, sidewalks, and bikeways with a focus on enhanced technology... minimizing traffic congestion.

In addition, the recommended action aligns with the Community and Economic Development Priority Area and specifically supports the following Principle:

Supports the community's vision by cultivating an environment that attracts and retains private-sector investment, a talented workforce, and an engaged business community.

Alternative Courses of Action

N/A.

Recommendation for Action

The Arvada team recommends that the City Council approve CB21-020, An Ordinance Amending Chapter 54, Motor Vehicles and Traffic, of the Arvada City Code, on first reading, ordered published in full, and a public hearing date be set for August 16, 2021 at 6:15 p.m.

Suggested Motion:

I move that CB21-020, An Ordinance Amending Chapter 54, Motor Vehicles and Traffic, of the Arvada City Code, be (approved on first reading, ordered published in full, and a public hearing date be set for August 16, 2021 at 6:15 p.m.) (rejected).

Prepared by:
John Firouzi, Senior Transportation Planner

Reviewed by:

Approved by:

John Firouzi, Senior Transportation Planner	7/12/2021
Don Wick, Director of Public Works	7/14/2021
Bryan Archer, Director of Finance	7/14/2021
Gail Walker, Legal Specialist-Contracts	7/14/2021
Erika Pierce, Litigation Paralegal	7/19/2021
Rachel Morris, City Attorney	7/22/2021
Lorie Gillis, Deputy City Manager	7/22/2021
Mark Deven, City Manager	7/22/2021

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. 21-020
ORDINANCE NO. _________

AN ORDINANCE AMENDING CHAPTER 54, MOTOR VEHICLES AND TRAFFIC, OF THE ARVADA CITY CODE

WHEREAS, Arvada's City Council Strategic Plan provides that, in supporting infrastructure, Arvada provides safe and efficient connections to modes of transportation, including transit, streets, sidewalks, and bikeways with a focus on enhanced technology at high-priority intersections improving safety and minimizing traffic congestion; and

WHEREAS, innovative transportation technologies have resulted in the creation and operation of personal transportation devices in more communities around the nation; and

WHEREAS, micromobility is designed to address certain "last mile" transportation needs in urban and suburban settings; and

WHEREAS, advances in micromobility technology carry the promise of reducing congestion in ways that increase reliance on clean energy and create little or no pollution; and

WHEREAS, micromobility also brings with it regulatory, infrastructure, and other challenges; and

WHEREAS, the City Council finds that the adoption of new transportation technologies should be done in ways that allow for the thoughtful evaluation and efficient operation of micromobility options that may benefit those living, working, or traveling in Arvada; and

WHEREAS, the City Council also deems it necessary to update traffic laws that recognize the increasing use of micromobility devices and to protect the safety of users, pedestrians, and drivers.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Section 54-33, MTC Part 2 "Equipment" amended, of Article II, Model Traffic Code, of Chapter 54, Motor Vehicles and Traffic, is hereby amended to read as follows:

"Sec. 54-33. MTC Part 2 "Equipment" amended.

The Model Traffic Code is hereby amended by amending section 221 of Part 2, to read as follows:

221. Bicycle, electric scooter, and personal mobility device equipment.

(1) No other provision of this part 2 of this Code shall apply to a bicycle, electrical assisted bicycle, electric scooter, or EPAMD or to equipment for use on a bicycle, electrical assisted bicycle, electric scooter, or EPAMD except those provisions in this Code made specifically applicable to such a vehicle.

(2) Every bicycle, electrical assisted bicycle, electric scooter, or EPAMD in use at the times described in section 204 shall be equipped with a lamp on the front emitting a white light visible from a distance of at least five hundred feet to the front.

(3) Every bicycle, electrical assisted bicycle, electric scooter, or EPAMD shall be equipped with a red reflector of a type approved by the department, which shall be visible for six hundred feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle.

(4) Every bicycle, electrical assisted bicycle, electric scooter, or EPAMD when in use at the times described in section 204 shall be equipped with reflective material of sufficient size and reflectivity to be visible from both sides for six hundred feet when directly in front of lawful lower beams of head lamps on a motor vehicle or, in lieu of such reflective material, with a lighted lamp visible from both sides from a distance of at least five hundred feet.

(5) A bicycle, electrical assisted bicycle, electric scooter, or EPAMD or its rider may be equipped with lights or reflectors in addition to those required by subsections (2) to (4) of this section.

(6) A bicycle, electrical assisted bicycle, or electric scooter shall not be equipped with, nor shall any person use upon a bicycle, electrical assisted bicycle, or electric scooter, any siren or whistle.

(7) Every bicycle, electrical assisted bicycle, or electric scooter shall be equipped with a brake or brakes that will enable its rider to stop the bicycle, electrical assisted bicycle, or electric scooter within twenty-five feet from a speed of ten miles per hour on dry, level, clean pavement.

(8) A person engaged in the business of selling bicycles, electrical assisted bicycles, or electric scooters at retail shall not sell any bicycle, electrical assisted bicycle, or electric scooter, unless the bicycle, electrical assisted bicycle, or electric scooter has an identifying number permanently stamped or cast on its frame.

(9)

(a) Every manufacturer or distributor of new electrical assisted bicycles intended for sale or distribution in this state shall permanently affix to each electrical assisted bicycle, in a prominent location, a label that contains the classification number, top assisted speed, and motor wattage of the electrical assisted bicycle. The label must be printed in the Arial font in at least nine-point type.

(b) A person shall not knowingly modify an electrical assisted bicycle so as to change the speed capability or motor engagement of the electrical assisted bicycle without also appropriately replacing, or causing to be replaced, the label indicating the classification required by subsection (9)(a) of this section.

(10)

(a) An electrical assisted bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States consumer product safety commission and codified at 16 CFR 1512 or its successor regulation.

(b) A class 2 electrical assisted bicycle must operate in a manner so that the electric motor is disengaged or ceases to function when the brakes are applied. Class 1 and class 3 electrical assisted bicycles must be equipped with a mechanism or circuit that cannot be bypassed and that causes the electric motor to disengage or cease to function when the rider stops pedaling.

(c) A class 3 electrical assisted bicycle must be equipped with a speedometer that displays, in miles per hour, the speed the electrical assisted bicycle is traveling."

The remaining portions of sec. 54-33 shall remain unchanged.

Section 2. Section 54-36, MTC Part 8 "Pedestrians" amended, of Article II, Model Traffic Code, of Chapter 54, Motor Vehicles and Traffic, is hereby amended to read as follows:

"Sec. 54-36. MTC Part 8 "Pedestrians" amended.

The Model Traffic Code is hereby amended by amending section 802 of Part 8 to read as follows:

802. Pedestrians' right-of-way in crosswalks.

(1) When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(2) Subsection (1) of this section shall not apply under the conditions stated in section 803.

(3) No pedestrian shall suddenly leave a curb or other place of safety and ride a bicycle, ride an electrical assisted bicycle, ride an electric scooter, walk, or run into the path of a moving vehicle that is so close as to constitute an immediate hazard.

(4) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(5) Whenever special pedestrian-control signals exhibiting "Walk" or "Don't Walk" word or symbol indications are in place, as declared in the traffic control manual adopted by the department of transportation, such signals shall indicate and require as follows:

(a) "Walk" (steady): While the "Walk" indication is steadily illuminated, pedestrians facing such signal may proceed across the roadway in the direction of the signal indication and shall be given the right of-way by the drivers of all vehicles.

(b) "Don't Walk" (steady): While the "Don't Walk" indication is steadily illuminated, no pedestrian shall enter the roadway in the direction of the signal indication.

(c) "Don't Walk" (flashing): Whenever the "Don't Walk" indication is flashing, no pedestrian shall start to cross the roadway in the direction of such signal indication, but any pedestrian who has partly completed crossing during the "Walk" indication shall proceed to a sidewalk or to a safety island, and all drivers of vehicles shall yield to any such pedestrian.

(d) Whenever a signal system provides for the stopping of all vehicular traffic and the exclusive movement of pedestrians and "Walk" and "Don't Walk" signal indications control such pedestrian movement, pedestrians may cross in any direction between corners of the intersection offering the shortest route within the boundaries of the intersection while the “Walk” indication is exhibited, if signals and other official devices direct pedestrian movement in such manner consistent with section 803 (4).

(6) Any person who violates any provision of this section commits a class A traffic infraction.”

The remaining portions of sec. 54-36 remain unchanged.

Section 3. Section 54-41, MTC Part 14 “Other offenses” amended, of Article II, Model Traffic Code, of Chapter 54, Motor Vehicles and Traffic, is hereby amended to read as follows:

“Sec. 54-41. MTC Part 14 “Other offenses” amended.

The Model Traffic Code is hereby amended by amending section 1401 of Part 14, amending section 1402 of Part 14, and by amending section 1412 of Part 14, to read as follows:

1401. Reckless driving.

(1) A person who drives a motor vehicle, bicycle, electrical assisted bicycle, electric scooter, or low-power scooter in such a manner as to indicate either a wanton or a willful disregard for the safety of persons or property is guilty of reckless driving.

1402. Careless driving.

(1) A person who drives a motor vehicle, bicycle, electrical assisted bicycle, electric scooter, or low-power scooter in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, is guilty of careless driving.

. . . .

1412. Operation of bicycles and other human-powered vehicles.

(1) Every person riding a bicycle, electrical assisted bicycle, or electric scooter, shall have all of the rights and duties applicable to the drive of any other vehicle under this Code, except as to special regulations in this Code and except as to those provisions which by their nature can have no application. Said riders shall comply with the rules set forth in this section and section 221.

(2) It is the intent of the general assembly that nothing contained in House Bill No. 1246, enacted at the second regular session of the fifty-sixth general assembly, shall in any way be construed to modify or increase the duty of the department of transportation or any political subdivision to sign or maintain highways or sidewalks or to affect or increase the liability of the state of Colorado or any political subdivision under the "Colorado Governmental Immunity Act," Article 10 of title 24, C.R.S.

(3) No bicycle, electrical assisted bicycle, or electric scooter shall be used to carry more persons at one time than the number for which it is designed or equipped.

(4) No person riding upon any bicycle, electrical assisted bicycle, or electric scooter shall attach the same or himself or herself to any motor vehicle upon a roadway.

(5)

(a) Any person operating a bicycle, an electrical assisted bicycle, or an electric scooter upon a roadway at less than the normal speed of traffic shall ride in the right-hand lane, subject to the following conditions:

(I) If the right-hand lane then available for traffic is wide enough to be safely shared with overtaking vehicles, a rider shall ride far enough to the right as judged safe by the rider to facilitate the movement of such overtaking vehicles unless other conditions make it unsafe to do so.

(II) A rider may use a lane other than the right-hand lane when:

(A) Preparing for a left turn at an intersection or into a private roadway or driveway;

(B) Overtaking a slower vehicle; or

(C) Taking reasonably necessary precautions to avoid hazards or road conditions.

(III) Upon approaching an intersection where right turns are permitted and there is a dedicated right-turn lane, a rider may ride on the left-hand portion of the dedicated right-turn lane even if the rider does not intend to turn right.

(b) A rider shall not be expected or required to:

(I) Ride over or through hazards at the edge of the roadway, including but not limited to fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or narrow lanes; or

(II) Ride without a reasonable safety margin on the right-hand side of the roadway.

(c) A person operating a bicycle, an electrical assisted bicycle, or electric scooter upon a one-way roadway with two or more marked traffic lanes may ride as near to the left-hand curb or edge of such roadway as judged safe by the rider, subject to the following conditions:

(I) If the left-hand lane then available for traffic is wide enough to be safely shared with overtaking vehicles, a rider shall ride far enough to the left as judged safe by the rider to facilitate the movement of such overtaking vehicles unless other conditions make it unsafe to do so.

(II) A rider shall not be expected or required to:

(A) Ride over or through hazards at the edge of a roadway, including but not limited to fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or narrow lanes; or

(B) Ride without a reasonable safety margin on the left-hand side of the roadway.

(6)

(a) Persons riding bicycles, electrical assisted bicycles, or electric scooters upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles and electric scooters.

(b) Persons riding bicycles, electrical assisted bicycles, or electric scooters two abreast shall not impede the normal and reasonable movement of traffic and, on a laned roadway, shall ride within a single lane.

(7) A person operating a bicycle, electrical assisted bicycle, or electric scooter shall keep at least one hand on the handlebars at all times.

(8)

(a) A person riding a bicycle, electrical assisted bicycle, or electric scooter intending to turn left shall follow a course described in sections 901(1), 903, and 1007 or may make a left turn in the manner prescribed in paragraph (b) of this subsection (8).

(b) A person riding a bicycle, electrical assisted bicycle, or electric scooter intending to turn left shall approach the turn as closely as practicable to the right-hand curb or edge of the roadway. After proceeding across the intersecting roadway to the far corner of the curb or intersection of the roadway edges, the rider shall stop, as much as practicable, out of the way of traffic. After stopping, the rider shall yield to any traffic proceeding in either direction along the roadway that the rider_had been using. After yielding and complying with any official traffic control device or police officer regulating traffic on the highway along which the rider intends to proceed, the rider may proceed in the new direction.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (8), the transportation commission and local authorities in their respective jurisdictions may cause official traffic control devices to be placed on roadways and thereby require and direct that a specific course be traveled.

(9)

(a) Except as otherwise provided in this subsection (9), every person riding a bicycle, electrical assisted bicycle, or electric scooter shall signal the intention to turn or stop in accordance with section 903; except that a person riding a bicycle, electrical assisted bicycle, or electric scooter may signal a right turn with the right arm extended horizontally.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the bicycle, electrical assisted bicycle, or electric scooter before turning and shall be given while the bicycle, electrical assisted bicycle, or electric scooter is stopped waiting to turn. A signal by hand and arm need not be given continuously if the hand is needed in the control or operation of the bicycle, electrical assisted bicycle, or electric scooter.

(10)

(a) A person riding a bicycle, electrical assisted bicycle, or electric scooter upon and along a sidewalk or pathway or across a roadway upon and along a crosswalk shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian. A person riding a bicycle, electrical assisted bicycle, or electric scooter in a crosswalk shall do so in a manner that is safe for pedestrians.

(b) A person shall not ride a bicycle, electrical assisted bicycle, or electric scooter upon and along a sidewalk or pathway or across a roadway upon and along a crosswalk where such use of bicycles, electrical assisted bicycles, or electric scooters is prohibited by official traffic control devices. A person riding a bicycle, electrical assisted bicycle, or electric scooter shall dismount before entering any crosswalk where required by official traffic control devices.

(c) person riding or walking a bicycle, electrical assisted bicycle, or electric scooter upon and along a sidewalk or pathway or across a roadway upon and along a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances, including, but not limited to, the rights and duties granted and required by section 802.

(d) (Deleted by amendment, L. 2005, p. 1353, § 1, effective July 1, 2005.)

(11)

(a) A person may park a bicycle, electrical assisted bicycle, or electric scooter on a sidewalk unless prohibited or restricted by an official traffic control device.

(b) A bicycle, electrical assisted bicycle, or electric scooter parked on a sidewalk shall not impede the normal and reasonable movement of pedestrian or other traffic.

(c) A bicycle, electrical assisted bicycle, or electric scooter may be parked on the road at any angle to the curb or edge of the road at any location where parking is allowed.

(d) A bicycle, electrical assisted bicycle, or electric scooter may be parked on the road abreast of another such bicycle(s) or electric scooter(s) near the side of the road or any location where parking is allowed in such a manner as does not impede the normal and reasonable movement of traffic.

(e) In all other respects, bicycles, electrical assisted bicycles, or electric scooters parked anywhere on a highway shall conform to the provisions of part 12 of this Code regulating the parking of vehicles.

(12)

(a) Any person riding a bicycle, electrical assisted bicycle, or electric scooter who violates any provision of this Code other than this section which is applicable to such a vehicle and for which a penalty is specified shall be subject to the same specified penalty as any other vehicle.

(13) Upon request, the law enforcement agency having jurisdiction shall complete a report concerning an injury or death that involves a bicycle, electrical assisted bicycle, or electric scooter on the roadways of the state, even if such accident does not involve a motor vehicle.

(14)

(a) A person may ride a class 1 or a class 2 electrical assisted bicycle or an electric scooter on a bike or pedestrian path where bicycles are authorized to travel.

(b) A person shall not ride a class 3 electrical assisted bicycle on a bike or pedestrian path unless:

(I) The path is within a street or highway; or

(II) The local authority permits the operation of a class 3 electrical assisted bicycle on a path under its jurisdiction.

(15)

(a) A person under sixteen years of age shall not ride a class 3 electrical assisted bicycle upon any street, highway, or bike or pedestrian path; except that a person under sixteen years of age may ride as a passenger on a class 3 electrical assisted bicycle that is designed to accommodate passengers.

(b) A person shall not operate or ride as a passenger on a class 3 electrical assisted bicycle unless:

(I) Each person under eighteen years of age is wearing a protective helmet of a type and design manufactured for use by operators of bicycles;

(II) The protective helmet conforms to the design and specifications set forth by the United States consumer product safety commission or the American Society for Testing and Materials; and

(III) The protective helmet is secured properly on the person's head with a chin strap while the class 3 electrical assisted bicycle is in motion.

(c) A violation of subsection (15)(b) of this section does not constitute negligence or negligence per se in the context of any civil personal injury claim or lawsuit seeking damages."

. . . .

The remaining portions of sec. 54-41 shall remain unchanged.

Section 4. Section 54-43, MTC "Appendices: Definitions" amended, of Article II, Model Traffic Code, of Chapter 54, Motor Vehicles and Traffic, is hereby repealed and reenacted to read as follows:

"**Sec. 54-43. MTC "Appendices: Definitions" amended.**

The Model Traffic Code is hereby amended by adding certain definitions to the "Appendices: Definitions" section to read as follows:

(7.5) "Barricade" means a portable or fixed barrier having object markings used to close all or a portion of the right-of-way to vehicular traffic.

(13.5) "City" or "municipality" means the City of Arvada.

(28.5) "Electrical assisted bicycle" means a vehicle having two or three wheels, fully operable pedals, and an electric motor not exceeding seven hundred fifty watts of power. Electrical assisted bicycles are further required to conform to one of three classes as follows:

(a) "Class 1 electrical assisted bicycle" means an electrical assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty miles per hour.

(b) "Class 2 electrical assisted bicycle" means an electrical assisted bicycle equipped with a motor that provides assistance regardless of whether the rider is pedaling but ceases to provide assistance when the bicycle reaches a speed of twenty miles per hour.

(c) "Class 3 electrical assisted bicycle" means an electrical assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty-eight miles per hour.

(28.7) "Electric personal assistive mobility device" or "EPAMD" means a self-balancing, nontandem two-wheeled device, designed to transport only one person, that is powered solely by an electric propulsion system producing an average power output of no more than seven hundred fifty watts.

(28.8) “Electric scooter” means a device weighing less than one hundred pounds with handlebars that is powered by an electric motor and that has a maximum speed of twenty miles per hour on a paved level surface when powered solely by the electric motor. An electric scooter does not include an electrical assisted bicycle, EPAMD, motorcycle, or low-power scooter.

(42.5) "Holiday" means Sundays, New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Day, or any such additional statutory holidays as the city may adopt by ordinance.

(47.5) "Lane-use control signal" means a traffic-control signal which is erected to control the direction of vehicular traffic movement in an individual lane.

(69.5) "Passenger loading zone" means a designated space reserved for the exclusive use of vehicles during the loading or unloading of passengers or their property.

(74.5) "Prima facie speed limit" means a speed limit above which the driver is presumed to be driving unlawfully but, if charged with exceeding it, a driver may show cause to prove that his speed was safe for conditions and therefore, that he was not guilty of a speed violation.

(111) “Toy vehicle” means any vehicle, whether or not home-built by the user, that has wheels with an outside diameter of not more than fourteen inches and is not designed, approved, or intended for use on public roadways or highways. "Toy vehicle" includes, but is not limited to, gas-powered or electric-powered vehicles commonly known as mini bikes, "pocket" bikes, kamikaze boards, go-peds, and stand-up scooters except for electric scooters as defined in subsection 28.8 of this section.

(112.5) "Traffic-control signal" means any device, whether manually, electrically, electronically, or mechanically operated, by which traffic is alternately directed to sop and permitted to proceed.”

Section 5. Section 54-91, Definitions, of Article III, Motor Vehicles on Public Property, of Chapter 54, Motor Vehicles and Traffic, is hereby repealed and reenacted to read as follows:

“Sec. 54-91. Definitions.

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

City-owned land means any park, ballpark, recreation area, lake area, city-owned street, easement, sidewalk, or area dedicated or commonly used for vehicular or pedestrian traffic, city storage facility, city garage area, pet park, and any and all other lands and premises owned by the city or other legally recognized public entity.

Electric devices means electrical assisted bicycles, EPAMD, and electric scooters as defined in Section 54-43.

Unlicensed motor vehicle means a motor vehicle that is not required to be registered or to display a license plate and includes motor bicycles, dune buggies, trail bikes, minibikes, go-carts, racing minibikes, racing scooters, snowmobiles, and similar vehicles. It does not include electric devices or wheelchairs."

<u>Section 6.</u> Section 54-93, Use or operation prohibited, of Article III, Motor Vehicles on Public Property, of Chapter 54, Motor Vehicles and Traffic, is hereby repealed and reenacted to read as follows:

"Sec. 54-93. Use or operation prohibited.

It shall be unlawful for any person to use or operate an unlicensed motor vehicle upon city-owned land. Nothing in this article prohibits the operation of golf cars on golf courses located within the city."

<u>Section 7.</u> Section 54-96, Signs allowing use, of Article III, Motor Vehicles on Public Property, of Chapter 54, Motor Vehicles and Traffic, is hereby repealed, retitled, and reenacted to read as follows:

"Sec. 54-96. Permission to operate a motor vehicle.

The city may grant permission to any person to use or operate a motor vehicle on city-owned land where such use or operation is prohibited under this article. Permission may be granted through a sign or signs posted by the city at the direction of the city manager or the city parks director. Any sign granting permission must specify the type of motor vehicle that is permitted and area for which permission is granted, and may specify the hours of permissible use."

Section 8. Article XI, Micromobility Program, of Chapter 54, Motor Vehicles and Traffic, of the Arvada City Code is hereby enacted to read as follows:

ARTICLE XI. MICROMOBILITY PROGRAM

Sec. 54-301. Definitions.

For purposes of this article, the following words and phrases have the following meaning, unless otherwise indicated:

City means the City of Arvada.

Devices means bicycles, scooters, electrical assisted bicycles, electric scooters, and other small, wheeled vehicles designed specifically for shared-use and deployed by micromobility operators.

Director means the director of public works or his or her designee.

Micromobility means a network or system of devices, placed in the public right-of-way and for rent in short time increments, that provides increased mobility options over short distances in urban areas.

Mobility as a Service permit program or *program* means a program allowing for the implementation and operation of micromobility within the city for a prescribed period of time.

Operator: a person or entity who offers devices to be used for micromobility.

Permit means a document issued by the director to an operator that allows the operator to offer micomobility devices and services in the city.

Sec. 54-302. Micromobility operator permit and pilot program.

To assist with the implementation and operation of micromobility within the city, the director shall create the "mobility as a service permit program." The director shall establish a permit application process, and develop program criteria and requirements for micromobility operation within the city's rights-of-way.

Sec. 54-303. Rules and regulations.

(a) The director may promulgate rules and regulations consistent with this chapter to govern the program, including, but not limited to, permitting obligations, the operation of devices, and rules necessary to enhance public safety.

(b) All persons must comply with the rules and regulations adopted pursuant to this chapter.

Sec. 54-304. Permit required.

No person or entity shall conduct or carry on the business of offering devices without first obtaining a permit from the director under this article.

Sec. 54-305. Permit application.

(a) An operator desiring a permit must submit a permit application to the director under the rules and regulations adopted pursuant to sec. 54-303 of this article, and must pay the fee(s) prescribed in sec. 54-306 of this article.

(b) In accordance with the program criteria established under this article, the director is authorized to review, approve, and issue a micromobility permit to an operator who applies for a permit.

Sec. 54-306. Permit fees.

(a) An operator must pay the initial, maintenance, and renewal fees associated with a program permit as prescribed in the rules and regulations adopted pursuant to sec. 54-303 of this article.

(b) Fees prescribed pursuant to this article are non-refundable.

Sec. 54-307. Denial, suspension, or revocation of permits.

(a) The director may deny an application for a permit under this chapter if the applicant fails to demonstrate that it meets all of the requirements for a permit as provided in the rules and regulations adopted pursuant to sec. 54-303.

(b) The director may suspend or revoke a permit issued under this chapter if the operator fails to comply with the requirements of this chapter. A request for appeal must be provided in writing to the director no less than seven days after receiving the termination letter via certified mail. Any permit holder not satisfied with the director's decision may request a final appeal hearing with a hearing officer pursuant to Chapter 2, Article V, Division 3 of this code. Such hearing shall be set before the end of the 30 day decommissioning period set by Arvada in the original notice provided via certified mail. The decision made by the hearing officer is final.

(c) Any operator whose permit is suspended or revoked must reclaim and remove their entire fleet of devices within 30 days of notice of suspension or revocation.

Sec. 54-308. Status of program.

The director will file with the city manager no later than January 31, 2022, a report assessing the program for City Council's six month review. City Council may terminate the pilot program on February 16, 2022 or allow the pilot program to continue. The program described herein will operate as a pilot program through and including September 13, 2022 with the possibility of extending to December 31, 2022. Unless terminated by city council action prior to that date, the micromobility program will operate as a city program on the same terms set forth in this article beginning on January 1, 2023.

Secs. 54-309-320. Reserved.

Section 9. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each part or parts thereof irrespective of the fact that any part or parts to be declared unconstitutional or invalid.

Section 10. Effective date. This ordinance shall take effect DATE.

INTRODUCED, READ, AND ORDERED PUBLISHED this 2nd day of August, 2021.

PASSED, ADOPTED AND APPROVED this ________ day of ______________, 2021.

____
Marc Williams, Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By: ______________________________________

Publication Dates: August 5, 2021
____

REDLINE/STRIKEOVER VERSION

FOR INFORMATION ONLY -- NOT PART OF THE ORDINANCE

Underlined indicates new material
~~**Strikethrough**~~ indicates deleted material

Sec. 54-33. MTC Part 2 "Equipment" amended.

The Model Traffic Code is hereby amended by amending section 221 of Part 2, to read as follows:

221. Bicycle, electric scooter, and personal mobility device equipment.

(1) No other provision of this part 2 of this Code shall apply to a bicycle, electrical assisted bicycle, electric scooter, or EPAMD or to equipment for use on a bicycle, electrical assisted bicycle, electric scooter, or EPAMD except those provisions in this Code made specifically applicable to such a vehicle.

(2) Every bicycle, electrical assisted bicycle, electric scooter, or EPAMD in use at the times described in section 204 shall be equipped with a lamp on the front emitting a white light visible from a distance of at least five hundred feet to the front.

(3) Every bicycle, electrical assisted bicycle, electric scooter, or EPAMD shall be equipped with a red reflector of a type approved by the department, which shall be visible for six hundred feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle.

(4) Every bicycle, electrical assisted bicycle, electric scooter, or EPAMD when in use at the times described in section 204 shall be equipped with reflective material of sufficient size and reflectivity to be visible from both sides for six hundred feet when directly in front of lawful lower beams of head lamps on a motor vehicle or, in lieu of such reflective material, with a lighted lamp visible from both sides from a distance of at least five hundred feet.

(5) A bicycle, electrical assisted bicycle, electric scooter, or EPAMD or its rider may be equipped with lights or reflectors in addition to those required by subsections (2) to (4) of this section.

(6) A bicycle, electrical assisted bicycle, or electric scooter shall not be equipped with, nor shall any person use upon a bicycle, electrical assisted bicycle, or electric scooter, any siren or whistle.

(7) Every bicycle, electrical assisted bicycle, or electric scooter shall be equipped with a brake or brakes that will enable its rider to stop the bicycle, electrical assisted bicycle,

or electric scooter within twenty-five feet from a speed of ten miles per hour on dry, level, clean pavement.

(8) A person engaged in the business of selling bicycles, electrical assisted bicycles, or electric scooters at retail shall not sell any bicycle, electrical assisted bicycle, or electric scooter, unless the bicycle, electrical assisted bicycle, or electric scooter has an identifying number permanently stamped or cast on its frame.

(9)

(a) Every manufacturer or distributor of new electrical assisted bicycles intended for sale or distribution in this state shall permanently affix to each electrical assisted bicycle, in a prominent location, a label that contains the classification number, top assisted speed, and motor wattage of the electrical assisted bicycle. The label must be printed in the Arial font in at least nine-point type.

(b) A person shall not knowingly modify an electrical assisted bicycle so as to change the speed capability or motor engagement of the electrical assisted bicycle without also appropriately replacing, or causing to be replaced, the label indicating the classification required by subsection (9)(a) of this section.

(10)

(a) An electrical assisted bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States consumer product safety commission and codified at 16 CFR 1512 or its successor regulation.

(b) A class 2 electrical assisted bicycle must operate in a manner so that the electric motor is disengaged or ceases to function when the brakes are applied. Class 1 and class 3 electrical assisted bicycles must be equipped with a mechanism or circuit that cannot be bypassed and that causes the electric motor to disengage or cease to function when the rider stops pedaling.

(c) A class 3 electrical assisted bicycle must be equipped with a speedometer that displays, in miles per hour, the speed the electrical assisted bicycle is traveling."

Sec. 54-36. MTC Part 8 "Pedestrians" amended.

The Model Traffic Code is hereby amended by amending section 802 of Part 8 to read as follows:

802. Pedestrians' right-of-way in crosswalks.

(1) When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(2) Subsection (1) of this section shall not apply under the conditions stated in section 803.

(3) No pedestrian shall suddenly leave a curb or other place of safety and ride a bicycle, ride an electrical assisted bicycle, ride an electric scooter, walk, or run into the path of a moving vehicle that is so close as to constitute an immediate hazard.

(4) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(5) Whenever special pedestrian-control signals exhibiting "Walk" or "Don't Walk" word or symbol indications are in place, as declared in the traffic control manual adopted by the department of transportation, such signals shall indicate and require as follows:

(a) "Walk" (steady): While the "Walk" indication is steadily illuminated, pedestrians facing such signal may proceed across the roadway in the direction of the signal indication and shall be given the right of-way by the drivers of all vehicles.

(b) "Don't Walk" (steady): While the "Don't Walk" indication is steadily illuminated, no pedestrian shall enter the roadway in the direction of the signal indication.

(c) "Don't Walk" (flashing): Whenever the "Don't Walk" indication is flashing, no pedestrian shall start to cross the roadway in the direction of such signal indication, but any pedestrian who has partly completed crossing during the "Walk" indication shall proceed to a sidewalk or to a safety island, and all drivers of vehicles shall yield to any such pedestrian.

(d) Whenever a signal system provides for the stopping of all vehicular traffic and the exclusive movement of pedestrians and "Walk" and "Don't Walk" signal indications control such pedestrian movement, pedestrians may cross in any direction between corners of the intersection offering the shortest route within the boundaries of the intersection while the "Walk" indication is exhibited, if signals and other official devices direct pedestrian movement in such manner consistent with section 803 (4).

(6) Any person who violates any provision of this section commits a class A traffic infraction."

Sec. 54-41. MTC Part 14 "Other offenses" amended.

The Model Traffic Code is hereby amended by amending section 1401, amending section 1402, and, amending section 1412, to Part 14, to read as follows:

1401. Reckless driving.

(1) A person who drives a motor vehicle, bicycle, electrical assisted bicycle, electric scooter, or low-power scooter in such a manner as to indicate either a wanton or a willful disregard for the safety of persons or property is guilty of reckless driving.

(2) Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.

1402. Careless driving.

(1) A person who drives a motor vehicle, bicycle, electrical assisted bicycle, electric scooter, or low-power scooter in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, is guilty of careless driving.

(2) Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.

1412. Operation of bicycles and other human-powered vehicles.

(1) Every person riding a bicycle, electrical assisted bicycle, or electric scooter, shall have all of the rights and duties applicable to the drive of any other vehicle under this Code, except as to special regulations in this Code and except as to those provisions which by their nature can have no application. Said riders shall comply with the rules set forth in this section and section 221.

(2) It is the intent of the general assembly that nothing contained in House Bill No. 1246, enacted at the second regular session of the fifty-sixth general assembly, shall in any way be construed to modify or increase the duty of the department of transportation or any political subdivision to sign or maintain highways or sidewalks or to affect or increase the liability of the state of Colorado or any political subdivision under the "Colorado Governmental Immunity Act", Article 10 of title 24, C.R.S.

(3) No bicycle, electrical assisted bicycle, or electric scooter shall be used to carry more persons at one time than the number for which it is designed or equipped.

(4) No person riding upon any bicycle, electrical assisted bicycle, or electric scooter shall attach the same or himself or herself to any motor vehicle upon a roadway.

(5) (a) Any person operating a bicycle, an electrical assisted bicycle, or an electric scooter upon a roadway at less than the normal speed of traffic shall ride in the right-hand lane, subject to the following conditions:

(I) If the right-hand lane then available for traffic is wide enough to be safely shared with overtaking vehicles, a rider shall ride far enough to the right as judged safe by the rider to facilitate the movement of such overtaking vehicles unless other conditions make it unsafe to do so.

(II) A rider may use a lane other than the right-hand lane when:

(A) Preparing for a left turn at an intersection or into a private roadway or driveway;

(B) Overtaking a slower vehicle; or

(C) Taking reasonably necessary precautions to avoid hazards or road conditions.

(III) Upon approaching an intersection where right turns are permitted and there is a dedicated right-turn lane, a rider may ride on the left-hand portion of the dedicated right-turn lane even if the rider does not intend to turn right.

(b) A rider shall not be expected or required to:

(I) Ride over or through hazards at the edge of the roadway, including but not limited to fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or narrow lanes; or

(II) Ride without a reasonable safety margin on the right-hand side of the roadway.

(c) A person operating a bicycle, an electrical assisted bicycle, or electric scooter upon a one-way roadway with two or more marked traffic lanes may ride as near to the left-hand curb or edge of such roadway as judged safe by the rider, subject to the following conditions:

(I) If the left-hand lane then available for traffic is wide enough to be safely shared with overtaking vehicles, a rider shall ride far enough to the left as judged safe by the rider to facilitate the movement of such overtaking vehicles unless other conditions make it unsafe to do so.

(II) A rider shall not be expected or required to:

(A) Ride over or through hazards at the edge of a roadway, including but not limited to fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or narrow lanes; or

(B) Ride without a reasonable safety margin on the left-hand side of the roadway.

(6)(a) Persons riding bicycles, electrical assisted bicycles, or electric scooters upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles and electric scooters.

(b) Persons riding bicycles, electrical assisted bicycles, or electric scooters two abreast shall not impede the normal and reasonable movement of traffic and, on a laned roadway, shall ride within a single lane.

(7) A person operating a bicycle, electrical assisted bicycle, or electric scooter shall keep at least one hand on the handlebars at all times.

(8) (a) A person riding a bicycle, electrical assisted bicycle, or electric scooter intending to turn left shall follow a course described in sections 901(1), 903, and 1007 or may make a left turn in the manner prescribed in paragraph (b) of this subsection (8).

(b) A person riding a bicycle, electrical assisted bicycle, or electric scooter intending to turn left shall approach the turn as closely as practicable to the right-hand curb or edge of the roadway. After proceeding across the intersecting roadway to the far corner of the curb or intersection of the roadway edges, the rider shall stop, as much as practicable, out of the way of traffic. After stopping, the rider shall yield to any traffic proceeding in either direction along the roadway that the rider had been using. After yielding and complying with any official traffic control device or police officer regulating traffic on the highway along which the rider intends to proceed, the rider may proceed in the new direction.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (8), the transportation commission and local authorities in their respective jurisdictions may cause official traffic control devices to be placed on roadways and thereby require and direct that a specific course be traveled.

(9)(a) Except as otherwise provided in this subsection (9), every person riding a bicycle, electrical assisted bicycle, or electric scooter shall signal the intention to turn or stop in accordance with section 903; except that a person riding a bicycle, electrical assisted bicycle, or electric scooter may signal a right turn with the right arm extended horizontally.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the bicycle, electrical assisted bicycle, or electric scooter before turning and shall be given while the bicycle, electrical assisted bicycle, or electric scooter is stopped waiting to turn. A signal by hand and arm need not be given continuously if the hand is needed in the control or operation of the bicycle, electrical assisted bicycle, or electric scooter.

(10)(a) A person riding a bicycle, electrical assisted bicycle, or electric scooter upon and along a sidewalk or pathway or across a roadway upon and along a crosswalk shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian. A person riding a bicycle, electrical assisted bicycle, or electric scooter in a crosswalk shall do so in a manner that is safe for pedestrians.

(b) A person shall not ride a bicycle, electrical assisted bicycle, or electric scooter upon and along a sidewalk or pathway or across a roadway upon and along a crosswalk where such use of bicycles, electrical assisted bicycles, or electric scooters is prohibited by official traffic control devices. A person riding a bicycle, electrical assisted bicycle, or electric scooter shall dismount before entering any crosswalk where required by official traffic control devices.

(c) A person riding or walking a bicycle, electrical assisted bicycle, or electric scooter upon and along a sidewalk or pathway or across a roadway upon and along a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances, including, but not limited to, the rights and duties granted and required by section 802.

(d) (Deleted by amendment, L. 2005, p. 1353, § 1, effective July 1, 2005.)

(11)(a) A person may park a bicycle, electrical assisted bicycle, or electric scooter on a sidewalk unless prohibited or restricted by an official traffic control device.

(b) A bicycle, electrical assisted bicycle, or electric scooter parked on a sidewalk shall not impede the normal and reasonable movement of pedestrian or other traffic.

(c) A bicycle, electrical assisted bicycle, or electric scooter may be parked on the road at any angle to the curb or edge of the road at any location where parking is allowed.

(d) A bicycle, electrical assisted bicycle, or electric scooter may be parked on the road abreast of another such bicycle(s) or electric scooter(s) near the side of the road or any location where parking is allowed in such a manner as does not impede the normal and reasonable movement of traffic.

(e) In all other respects, bicycles, electrical assisted bicycles, or electric scooters parked anywhere on a highway shall conform to the provisions of part 12 of this Code regulating the parking of vehicles.

(12)(a) Any person who violates any provision of this section commits a class 2 misdemeanor traffic offense.

(b) Any person riding a bicycle, electrical assisted bicycle, or electric scooter who violates any provision of this Code other than this section which is applicable to such a vehicle and for which a penalty is specified shall be subject to the same specified penalty as any other vehicle.

(13) Upon request, the law enforcement agency having jurisdiction shall complete a report concerning an injury or death that involves a bicycle, electrical assisted bicycle, or electric scooter on the roadways of the state, even if such accident does not involve a motor vehicle.

(14)(a) A person may ride a class 1 or a class 2 electrical assisted bicycle or an electric scooter on a bike or pedestrian path where bicycles are authorized to travel.

(b) A person shall not ride a class 3 electrical assisted bicycle on a bike or pedestrian path unless:

(I) The path is within a street or highway; or

(II) The local authority permits the operation of a class 3 electrical assisted bicycle on a path under its jurisdiction.

(15)(a) A person under sixteen years of age shall not ride a class 3 electrical assisted bicycle upon any street, highway, or bike or pedestrian path; except that a person under sixteen years of age may ride as a passenger on a class 3 electrical assisted bicycle that is designed to accommodate passengers.

(b) A person shall not operate or ride as a passenger on a class 3 electrical assisted bicycle unless:

(I) Each person under eighteen years of age is wearing a protective helmet of a type and design manufactured for use by operators of bicycles;

(II) The protective helmet conforms to the design and specifications set forth by the United States consumer product safety commission or the American Society for Testing and Materials; and

(III) The protective helmet is secured properly on the person's head with a chin strap while the class 3 electrical assisted bicycle is in motion.

(c) A violation of subsection (15)(b) of this section does not constitute negligence or negligence per se in the context of any civil personal injury claim or lawsuit seeking damages.

Sec. 54-43. – MTC "Appendices: Definitions" amended.

(7.5)"Barricade" means a portable or fixed barrier having object markings used to close all or a portion of the right-of-way to vehicular traffic.

(13.5)"City" or "municipality" means the City of Arvada.

(28.5) "Electrical assisted bicycle" means a vehicle having two or three wheels, fully operable pedals, and an electric motor not exceeding seven hundred fifty watts of power. Electrical assisted bicycles are further required to conform to one of three classes as follows:

(a) "Class 1 electrical assisted bicycle" means an electrical assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty miles per hour.

(b) "Class 2 electrical assisted bicycle" means an electrical assisted bicycle equipped with a motor that provides assistance regardless of whether the rider is pedaling but ceases to provide assistance when the bicycle reaches a speed of twenty miles per hour.

(c) "Class 3 electrical assisted bicycle" means an electrical assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty-eight miles per hour.

(28.7) "Electric personal assistive mobility device" or "EPAMD" means a self-balancing, nontandem two-wheeled device, designed to transport only one person, that is powered solely by an electric propulsion system producing an average power output of no more than seven hundred fifty watts.

(28.5) "Electric scooter" means a device weighing less than one hundred pounds; with handlebars and an electric motor; that is powered by an electric motor; and that has a maximum speed of twenty miles per hour on a paved level surface when powered solely by the electric motor. An electric scooter does not include an electrical assisted bicycle, electric personal assistive mobility device, motorcycle, or low-power scooter.

(42.5)"Holiday" means Sundays, New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Day, or any such additional statutory holidays as the city may adopt by ordinance.

(47.5)"Lane-use control signal" means a traffic-control signal which is erected to control the direction of vehicular traffic movement in an individual lane.

(69.5)"Passenger loading zone" means a designated space reserved for the exclusive use of vehicles during the loading or unloading of passengers or their property.

(74.5)"Prima facie speed limit" means a speed limit above which the driver is presumed to be driving unlawfully but, if charged with exceeding it, a driver may show cause to prove that his speed was safe for conditions and therefore, that he was not guilty of a speed violation.

(111) "Toy vehicle" means any vehicle, whether or not home-built by the user, that has wheels with an outside diameter of not more than fourteen inches and is not designed, approved, or intended for use on public roadways or highways. "Toy vehicle" includes, but is not limited to, gas-powered or electric-powered vehicles commonly known as mini bikes, "pocket" bikes, kamikaze boards, go-peds, and stand-up scooters except for electric scooters as defined in subsection 28.8 of this section.

(112.5)"Traffic-control signal" means any device, whether manually, electrically, electronically, or mechanically operated, by which traffic is alternately directed to sop and permitted to proceed.

"Sec. 54-91. Definitions.

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

City-owned lands ~~shall~~ means any park~~s~~, ballpark~~s~~, recreation area~~s~~, lake area~~s~~, city-owned street~~s~~, easement~~s~~ and sidewalk~~s~~ or area~~s~~ dedicated or commonly used for vehicular or pedestrian traffic, city storage facility~~ies~~, city garage area, pet park~~s~~ and any and all other lands and premises owned by the city or other legally recognized public entity.

Electric devices means electrical assisted bicycles, EPAMD, and electric scooters as defined in Section 54-43.

Unlicensed motor vehicle~~, licensed motor vehicle~~ ~~shall refer to any of the following but need not necessarily be limited to those vehicles as herein set forth: motorcycles, motor scooters,~~ means a motor vehicle that is not required to be registered or to display a license plate and includes motor bicycles, dune buggies, trail bikes, minibikes, go-carts, racing minibikes, racing scooters, snowmobiles, and similar vehicles. It does not include electric devices or wheelchairs." ~~any other vehicle designed for the transportation of the driver, passengers or products and propelled by an internal combustion engine or other type of engine, either licensed or unlicensed~~.

"Section 54-93, Use or operation prohibited.

~~Except for use upon dedicated and improved roads and streets~~ it shall be unlawful for any person to use or operate unlicensed motor vehicles ~~or licensed motor vehicles~~ upon city-owned lands ~~which are described in this article~~. Nothing in this article prohibits the operation of golf cars on golf courses located within the city."

"Sec. 54-96. Permission to operate a motor vehicle.

The city may grant permission to any person to use or operate a motor vehicle on city-owned land where such use or operation is prohibited under this article. Permission may be granted through a sign or signs posted by the city at the direction of the city manager or the city parks director. Any sign granting permission must specify the type of motor vehicle that is permitted and area for which permission is granted, and may specify the hours of permissible use."

ARTICLE XI. MICROMOBIILTY PROGRAM

Sec. 54-301. Definitions.

For purposes of this article, the following words and phrases have the following meaning, unless otherwise indicated:

City means the City of Arvada.

Devices means bicycles, scooters, electrical assisted bicycles, electric scooters, and other small, wheeled vehicles designed specifically for shared-use and deployed by micromobility operators.

Director means the Director of Public Works or his or her designee.

Micromobility means a network or system of devices, placed in the public right-of-way and for rent in short time increments, that provides increased mobility options over short distances in urban areas.

Mobility as a Service Permit Program or *Program* means a pilot program allowing for the implementation and operation of micromobility within the city for a prescribed period of time.

Operator: a person or entity who offers devices to be used for micromobility.

Permit means a document issued by the Director to an operator that allows the operator to offer micomobility devices and services in the city.

Sec. 54-302. – Micromobility operator permit and pilot program.

To assist with the implementation and operation of micromobility within the City of Arvada, the director shall create the pilot "mobility as a service permit program." The director shall establish a permit application process, and develop program criteria and requirements for micromobility operation within the city's rights-of-way.

Sec. 54-303. – Rules and regulations.

(a) The director may promulgate rules and regulations consistent with this chapter to govern the program, including, but not limited to, permitting obligations, the operation of devices, and rules necessary to enhance public safety.

(b) All persons must comply with the rules and regulations adopted pursuant to this chapter.

Sec. 54-304. – Permit required.

No person or entity shall conduct or carry on the business of offering devices without first obtaining a permit from the director under this article.

Sec. 54-305. – Permit application.

(a) An operator desiring a permit must submit a permit application to the director under the rules and regulations adopted pursuant to sec. 54-303 of this article, and must pay the fee(s) prescribed in sec. 54-306 of this article.

(b) In accordance with the program criteria established under this article, the director is authorized to review, approve, and issue a micromobility permit to an operator who applies for a permit.

Sec. 54-306. – Permit fees.

(c) An operator must pay the initial, maintenance, and renewal fees associated with a program permit as prescribed in the rules and regulations adopted pursuant to sec. 54-303 of this article.

(d) Fees prescribed pursuant to this article are non-refundable.

Sec. 54-307. – Denial, suspension, or revocation of permits.

(d) The director may deny an application for a permit under this chapter if the applicant fails to demonstrate that it meets all of the requirements for a permit as provided in the rules and regulations adopted pursuant to sec. 54-303.

(e) The director may suspend or revoke a permit issued under this chapter if the operator fails to comply with the requirements of this chapter. A request for appeal must be provided in writing to the director no less than seven days after receiving the termination letter via certified mail. Any permit holder not satisfied with the director's decision may request a final appeal hearing with a hearing officer pursuant to Chapter 2, Article V, Division 3 of this code. Such hearing shall be set before the end of the 30 day decommissioning period set by Arvada in the original notice provided via certified mail. The decision made by the hearing officer is final.

(f) Any operator whose permit is suspended or revoked must reclaim and remove their entire fleet of devices within 30 days of notice of suspension or revocation.

Sec. 54-308. – Expiration.

The director will file with the city manager no later than January 31, 2021, a report assessing the program for City Council's six month review. City Council may terminate the pilot program on February 7, 2022 or allow the pilot program to continue. The program described herein will operate as a pilot program through and including September 19, 2022 with the possibility of extending to December 31, 2022. Unless terminated by city council action prior to that date, the micromobility program will operate as a city program on the same terms set forth in this article beginning on January 1, 2023.

Secs. 54-309-320. – Reserved.

CITY OF ARVADA

REPORT TO CITY COUNCIL ORDINANCE FIRST READING	AGENDA ITEM 8.C.2.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: CB21-026 An Ordinance Enacting and Amending Certain Provisions of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code to Prohibit Persons Under the Age of 21 From Entering Smoking Businesses, to Prohibit the Sale or Distribution of Tobacco Products to Persons Under the Age of 21, and to Prohibit Self Service Displays of Tobacco Products (Public Hearing to be set for August 16, 2021 at 6:15 p.m.)

Report in Brief

In February 2020 the Arvada team presented information to the City Council regarding regulation and enforcement of tobacco and vaping by youth under the age of 21. This information was presented following the change in Federal law that increased the tobacco purchase age to 21 and consideration at that time of similar changes to State law.

Now, with revised Federal and State tobacco laws in place, the Arvada team is prepared to present amendments to the City's existing Smoking Restricted in Public Places Ordinance ("Smoking Ordinance"). In brief, the amendment revises the Smoking Ordinance to provide a minimum legal tobacco-purchase age of 21. It also provides for certain signage requirements, mandatory identification checks for tobacco sales, and clarifies other provisions related to the sale of tobacco products in Arvada. All changes align with current Federal and State laws.

The Arvada team recommends that the City Council approve CB21-026, An Ordinance Enacting and Amending Certain Provisions of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code to Prohibit Persons Under the Age of 21 From Entering Smoking Businesses, to Prohibit the Sale or Distribution of Tobacco Products to Persons Under the Age of 21, and to Prohibit Self Service Displays of Tobacco Products.

Financial Impact

No fiscal impact is expected from the enactment of this ordinance and its amendments. To the extent necessary, enforcement will be handled with existing APD resources.

Background

The City adopted the Smoking Ordinance in 2004 (Ordinance #3919). The Smoking Ordinance broadly prohibits smoking tobacco products in defined public places, prohibits the distribution of tobacco products to underage persons, and provides penalties for violations.

The City amended the Smoking Ordinance in 2006, 2008, and 2015 (Ordinances #4003, #4127, and #4501) to recodify language, and to address the emergence of "vaping" with additional definitions of electronic smoking devices and related revisions throughout.

In 2019 the City received requests from citizens, educators, Jefferson County Public Health, and other youth and health advocates expressing concerns regarding the impacts of tobacco use among middle and high school students. Educators and youth advocates also expressed concerns regarding the increased use of vaping products by youth and the associated adverse health impacts. In response to these concerns, the City Council asked the City team to review potential changes to the City's smoking ordinance that would restrict youth access to tobacco and vaping products.

In 2019 and 2020, respectively, the Federal and State governments raised the minimum legal tobacco-purchase age from 18 to 21. In 2020, Jefferson County Public Health approached Arvada (along with other jurisdictions) to advocate for conforming amendments to local tobacco laws and to propose implementation of administrative tobacco licensing programs.

A year later, with a better understanding of the impact of the Federal and State laws, the Arvada team is prepared to present an amendment to the City's existing tobacco codes.

The proposed Ordinance was presented to the City Council during a workshop on April 26. Council members expressed support for the Ordinance and directed the City team to proceed with the process necessary to present the amendments for the Council's consideration. This process began with notifications to the affected businesses that this Ordinance will be considered by the City Council, that the changes reflect existing State and Federal law, and that businesses will be provided a reasonable period of time to comply. On May 26, a letter was sent to all Arvada retailers that sell tobacco and vaping products in order to notify them of the amendments to the City's Smoking Ordinance. The letter summarized the proposed amendments and stated that the City Council will consider the Ordinance during a public hearing scheduled for August 16.

Discussion

Smoking Ordinance provisions will be amended as summarized below. An underline/strikeover version of the changes is included in the agenda packet for the City Council's review.

A.C.C. Section	Revision
38-303. Definitions.	Add definition of "*Self-service display*". Replace definition of "*Cigarette*" with "*Tobacco product or nicotine product*" as revised and relocated from 38-305.5(b).
38-304. Smoking prohibited.	Revise to age 21.
Sec. 38-305. Persons under age 21 prohibited on premises.	Revise title and language to reflect age 21.
Sec. 38-305.5. No distribution to persons under age 21; identification check and signage required; no sale by minors.	Revise title and references to age 21. Revise and relocate definition (b) to 38-303. Add identification check and signage requirements. Add age requirements for employees who sell tobacco products to align with CRS.
Sec. 38-306.5. Self-service displays prohibited.	New provision prohibiting self-service tobacco display/sales.

Enforcement of the proposed amended Ordinance would be assigned to the Police Department's Civilian Operations unit. The Liquor Licensing Control Administrator will be the team member responsible for enforcement. Assignment of the enforcement program to this position was determined because the responsibilities are similar to liquor enforcement.

The enforcement program will be primarily complaint driven similar to other civilian enforcement programs within the Police Department, including Animal Management and Code Enforcement. In addition to the investigation of complaints, the Liquor Licensing Control Administrator will conduct a minimum of one proactive inspection of all tobacco and vaping retailers annually. These inspections will include review for the required signage, compliance with age requirements for employees who sell tobacco products and prohibition of self-service displays. The locations of these retailers are available to the Liquor

Licensing Control Administrator through business licenses provided by the Finance Department and other records such as collection of sales and cigarette taxes.

Retailers who are determined to have sold tobacco and/or vaping products to underage persons will receive a summons for the Arvada Municipal Court in accordance with the proposed amendments to the Ordinance. The Police and City Attorney teams do not believe that the enforcement of the proposed amended Ordinance will significantly increase the caseload for the City Attorney's prosecution team and Municipal Court.

The proposed amendments to the Smoking Ordinance will substantially align with applicable State and Federal laws. The amendments include provisions intended to ensure retailer compliance, and to otherwise discourage underage persons from purchasing tobacco in Arvada.

The enforcement program as described herein will be primarily complaint driven with one annual proactive inspection per retail location. This level of enforcement can be sustained by the Police Department without the need of a licensing program which would exact fees from retailers. If there is a need for fees to be exacted in order to support more frequent inspections, the need for licensing can be reevaluated.

Public Contact

Posting of the City Council agenda. In addition, as stated previously herein, a letter was sent On May 26 to all Arvada retailers who sell tobacco and vaping products in order to notify them of the amendments to the City's Smoking Ordinance. The letter summarized the proposed amendments and stated that the City Council will consider the Ordinance during a public hearing scheduled for August 16.

Commission Recommendation

N/A.

Strategic Alignment

Consideration of the proposed amendments to the Smoking Ordinance aligns with the Organization and Service Effectiveness Priority Area of the City Council Strategic Plan.

Alternative Courses of Action

N/A.

Recommendation for Action

The Arvada team recommends that the City Council approve CB21-026, An Ordinance Enacting and Amending Certain Provisions of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code to Prohibit Persons Under the Age of 21 From Entering Smoking Businesses, to Prohibit the Sale or Distribution of Tobacco Products to Persons Under the Age of 21, and to Prohibit Self Service Displays of Tobacco Products.

Suggested Motion:

I move that CB21-026, An Ordinance Enacting and Amending Certain Provisions of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code to Prohibit Persons Under the Age of 21 From Entering Smoking Businesses, to Prohibit the Sale or Distribution of Tobacco Products to Persons Under the Age of 21, and to Prohibit Self Service Displays of Tobacco Products, be (approved on first reading, ordered published in full, and a public hearing date be set for August 16, 2021 at 6:15 p.m.) (rejected).

Prepared by:
Aaron Jacks, Assistant City Attorney

Reviewed by:

Approved by:

Rachel Morris, City Attorney	7/22/2021
Lorie Gillis, Deputy City Manager	7/22/2021
Mark Deven, City Manager	7/22/2021

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. 21- 026
ORDINANCE NO.

AN ORDINANCE ENACTING AND AMENDING CERTAIN PROVISIONS OF DIVISION 3, SMOKING RESTRICTED IN PUBLIC PLACES, OF ARTICLE VII, AIR POLLUTION, OF CHAPTER 38, ENVIRONMENT, OF THE ARVADA CITY CODE TO PROHIBIT PERSONS UNDER THE AGE OF 21 FROM ENTERING SMOKING BUSINESSES, TO PROHIBIT THE SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21, AND TO PROHIBIT SELF SERVICE DISPLAYS OF TOBACCO PRODUCTS

WHEREAS, the City of Arvada adopted Ordinance No. 3919, the “Smoking Restricted in Public Places Ordinance” (the “Ordinance”), in 2004; and

WHEREAS, the Ordinance prohibited the smoking of tobacco products in public places in Arvada and prohibited the sale and distribution of cigarettes and tobacco products to minors; and

WHEREAS, the City of Arvada subsequently amended the Ordinance to regulate the sale of electronic smoking devices as tobacco products; and

WHEREAS, pursuant to the United States Code § 21 USC 387f, as amended effective December 20, 2019, and C.R.S. 18-13-121, as amended effective March 23, 2020, it is now unlawful under Federal and State law to sell tobacco products to persons under the age of 21; and

WHEREAS, research indicates that approximately 95 percent of smokers begin smoking before age 21, with most beginning before age 16, and that smokers frequently transition from experimentation to tobacco addiction between the ages of 18 and 21; and

WHEREAS, nicotine is known to be a highly addictive and extremely toxic substance which causes chronic disease; and

WHEREAS, the City Council has determined that amending the Ordinance to prohibit the sale of tobacco products to persons under the age of 21 and to prohibit the sale of tobacco products via self-service displays will protect against harm to the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

<u>Section 1.</u> Sec. 38-303, Definitions, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby amended by adding or amending certain definitions to read as follows:

"Self-service display means the display or storage of tobacco products or nicotine products in a manner that is physically accessible to the public without the assistance of an employee of a business that offers such products for sale. A vending machine is a type of self-service display.

Smoking business means:

A sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, nicotine products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental; or

A sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale or manufacture of hookah or shisha products and related smoking products, including, but not limited to, any plant or other organic matter packaged for smoking or held out as a smoking product, or any sole proprietorship, corporation, partnership, or other enterprise engaged in the promotion of hookah or shisha smoking, sometimes referred to as a hookah bar, café, or lounge; or

A sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the manufacture of electronic smoking devices or other electronic smoking products and accessories or in the distribution or sale at wholesale of any of these devices, products, or accessories; or

A sole proprietorship, corporation, partnership, or other enterprise operating as a retail outlet deriving a majority of its revenue from the sale at retail of electronic smoking devices or other electronic smoking products and accessories, or which is engaged primarily in the sale at retail of electronic smoking devices or other electronic smoking products and accessories. This type of smoking business will be known as a specialty vaping store.

Tobacco product or *nicotine product* means:

A product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or

Any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including any electronic smoking device.

As used in this division, "tobacco product" or "nicotine product" does not include a product that the food and drug administration of the United

States department of health and human services has approved as a tobacco use cessation product."

Section 2. The last sentence of Sec. 38-304, Smoking prohibited, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby amended to read as follows:

> "…. Any person who is 21 years of age or older may use or operate an electronic smoking device within a specialty vaping store as defined in section 38-303."

Section 3. Sec. 38-305, Minors prohibited on premises, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby repealed, retitled, and reenacted to read as follows:

"Sec. 38-305. Persons under age 21 prohibited on premises.

(a) It shall be unlawful for a person under the age of 21 years to be admitted to or be on the premises of a smoking business.

(b) The owner, operator, manager, or other person who controls a smoking business shall post and keep at all times visible to the public in a conspicuous place on the premises, a sign to be provided by the city clerk's office which shall read as follows:

> "WARNING: It is illegal for any person under 21 years of age to be on the premises of this business, and upon conviction, a fine may be imposed.""

Section 4. Sec. 38-305.5, No distribution to minors, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby repealed, retitled, and reenacted to read as follows:

"Sec. 38-305.5 No distribution to persons under age 21; identification check and signage required; no sale by minors.

(a) It shall be unlawful to give, sell, distribute, dispense, or offer for sale to any person who is under 21 years of age a tobacco product or nicotine product, or coupon therefor.

(b) It shall be unlawful to give, sell, distribute, dispense, or offer for sale a tobacco product or nicotine product, or coupon therefor, to a person who appears to be under the age of 50 years without first examining the government-issued photographic identification of the person to confirm that they are at least 21 years of age.

(c) The owner, operator, manager, or other person who controls any business that sells tobacco products or nicotine products shall post and keep at all times visible to the public in a conspicuous place on the premises, a sign to be provided by the city clerk's office which shall read as follows:

"WARNING: It is illegal to sell cigarettes, tobacco products, or nicotine products to any person under 21 years of age. State law requires that, to purchase tobacco products or nicotine products at this retail location, a person must present a valid government-issued photographic identification at the time of purchase if the person appears to be under fifty years of age."

(d) The owner, operator, manager, or other person who controls any business that sells tobacco products or nicotine products shall not permit a person under eighteen years of age to sell or participate in the sale of cigarettes, tobacco products, or nicotine products. This section does not prohibit an employee of a business who is eighteen years of age or older but under twenty-one years of age from handling or otherwise having contact with cigarettes, tobacco products, or nicotine products that are offered for sale at such business."

Section 5. Sec. 38-306.5, Self-service displays prohibited, of Division 3, Smoking Restricted in Public Places, of Article VII, Air Pollution, of Chapter 38, Environment, of the Arvada City Code is hereby enacted to read as follows:

"Sec. 38-306.5. Self-service displays prohibited.

The display for sale of tobacco products or nicotine products by means of a self-service display is prohibited. The owner, operator, manager, or other person who controls any business that sells tobacco products or nicotine products shall not permit the display for sale of any such products by means of a self-service display."

Section 6. The remaining provisions of the Smoking Restricted in Public Places Ordinance shall remain unchanged.

Section 7. If any section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional, or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 8. This Ordinance shall take effect five days after publication following passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 2nd day of August, 2021.

PASSED, ADOPTED, AND APPROVED this _____ day of ___________________, 2021.

____
Marc Williams, Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

____
Rachel A. Morris, City Attorney

Publication Dates: August 5, 2021

____

REDLINE/STRIKEOVER VERSION

FOR INFORMATION ONLY -- NOT PART OF THE ORDINANCE

Underlined indicates new material
Double underlined indicates relocated material
~~**Strikeover**~~ indicates deleted material

Sec. 38-303. Definitions.

As used in this division, the following words are defined as follows:

Electronic smoking device means a device that can be used to deliver particulates or vaporized substances, including but not limited to nicotine, to the person inhaling from the device. An electronic smoking device may be homemade, manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, an electronic hookah, electronic pen, electronic pipe, a heat stick, a hookah, or under any other product name or descriptor. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration as a tobacco cessation product or for use in mitigating, treating, or preventing disease.

Public place means any indoor or outdoor facility or area that is open to members of the public who enter such facility or area, including but not limited to parks, trails, golf courses, mercantile establishments, restaurants, taverns, theaters, financial institutions, educational facilities, hospitals, health care facilities and institutions, libraries, auditoriums, arenas, assembly or meeting rooms, public conveyances including, but not limited to, taxicabs and limousines excepting those limousines that are under private hire, government-owned or operated means of mass transportation, including, but not limited to, buses, vans, and trains, all public transit platforms, waiting areas, and stations, governmental buildings, office buildings, restrooms, elevators, child care centers, outdoor customer seating areas, and waiting rooms of professional persons.

Self-service display means the display or storage of tobacco products or nicotine products in a manner that is physically accessible to the public without the assistance of an employee of a business that offers such products for sale. A vending machine is a type of self-service display.

Smoke or smoking means:

The possession of a lighted cigarette, cigar, or pipe containing tobacco or other matter or substance, regardless of its composition, or the lighting of such cigarette, cigar, or pipe; or

The possession of an electronic smoking device which is emitting a vapor or is otherwise active, burning, lit, or operating.

"Smoke or smoking" does not include the use or possession of a product specifically approved by the United States Food and Drug Administration as a tobacco use cessation product or for use in mitigating, treating, or preventing disease.

Smoking business means:

A sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, nicotine products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental; or

A sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale or manufacture of hookah or shisha products and related smoking products, including, but not limited to, any plant or other organic matter packaged for smoking or held out as a smoking product, or any sole proprietorship, corporation, partnership, or other enterprise engaged in the promotion of hookah or shisha smoking, sometimes referred to as a hookah bar, café, or lounge; or

A sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of electronic smoking devices or other smoking products, or accessories for these devices or products, either at wholesale or retail, in which the sale, manufacture, or promotion of other products is merely incidental. These businesses are sometimes referred to as a vaping bar, café, or lounge.

Sports arena means any indoor or outdoor sports pavilions, athletic fields, gymnasiums, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in the physical exercise, participate in athletic competition, or witness sports events.

Tobacco means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking.

"Tobacco" also includes cloves and any other plant matter or product that is packaged for smoking.

~~*Cigarette,*~~ *Tobacco product* or *nicotine product* means:

> A product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or
>
> Any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including any electronic smoking device. ~~The device may be homemade, manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, an electronic hookah, electronic pen, electronic pipe, a heat stick, a hookah, or under any other product name or descriptor.~~
>
> As used in this ~~section~~ division, "~~cigarette,~~ tobacco product~~,~~ or nicotine product" does not include a product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product.

Sec. 38-304. Smoking prohibited.

It shall be unlawful for any person to smoke in any public place or sports areas as defined in the division or a cigar-tobacco bar as defined in C.R.S. §25-14-203.

Exceptions: The use of an electronic smoking device is allowed on stage at a theatrical production site if smoking by a theatrical character is an integral part of the storyline of the production.

Any person who is ~~18~~ 21 years of age or older may use or operate an electronic smoking device within a specialty vaping store as defined in section 38-303.

Sec. 38-305. ~~Minors~~ Persons under age 21 prohibited on premises.

(a) It shall be unlawful for a person under the age of ~~18~~ 21 years to be admitted to or be on the premises of a smoking business.

(b) The owner, operator, manager, or other person who controls a smoking business shall post and keep at all times visible to the public in a conspicuous place on the premises, a sign to be provided by the city clerk's office which shall read as follows:

"WARNING: It is illegal for any person under ~~18~~ <u>21</u> years of age to be on the premises of this business, and upon conviction, a fine may be imposed."

Sec. 38-305.5. No distribution to ~~minors~~ <u>persons under age 21; identification check and signage required; no sale by minors</u>.

(a) It shall be unlawful to give, sell, distribute, dispense, or offer for sale to any person who is under the age of ~~18~~ <u>21</u> years a ~~cigarette,~~ tobacco product~~,~~ or nicotine product, or coupon therefor.

~~(b) As used in this section, "cigarette, tobacco product, or nicotine product" means:~~
~~(1) A product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or~~
~~(2) Any device that can be used to deliver tobacco or nicotine to the person inhaling from the device. The device may be homemade, manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, an electronic hookah, electronic pen, electronic pipe, a heat stick, a hookah, or under any other product name or descriptor.~~
~~(3) As used in this section, "cigarette, tobacco product, or nicotine product" does not include a product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product.~~

<u>(b) It shall be unlawful to give, sell, distribute, dispense, or offer for sale a tobacco product or nicotine product, or coupon therefor, to a person who appears to be under the age of 50 years without first examining the government-issued photographic identification of the person to confirm that they are at least 21 years of age.</u>

<u>(c) The owner, operator, manager, or other person who controls any business that sells tobacco products or nicotine products shall post and keep at all times visible to the public in a conspicuous place on the premises, a sign to be provided by the city clerk's office which shall read as follows:</u>

<u>"WARNING: It is illegal to sell cigarettes, tobacco products, or nicotine products to any person under 21 years of age. State law requires that, to purchase tobacco products or nicotine products at this retail location, a person must present a valid government-issued photographic identification at the time of purchase if the person appears to be under fifty years of age."</u>

(d) The owner, operator, manager, or other person who controls any business that sells tobacco products or nicotine products shall not permit a person under eighteen years of age to sell or participate in the sale of cigarettes, tobacco products, or nicotine products. This section does not prohibit an employee of a business who is eighteen years of age or older but under twenty-one years of age from handling or otherwise having contact with cigarettes, tobacco products, or nicotine products that are offered for sale at such business.

Sec. 38-306.5. Self-service displays prohibited.

The display for sale of tobacco products or nicotine products by means of a self-service display is prohibited. The owner, operator, manager, or other person who controls any business that sells tobacco products or nicotine products shall not permit the display for sale of any such products by means of a self-service display.

CITY OF ARVADA

REPORT TO CITY COUNCIL ORDINANCE FIRST READING	AGENDA ITEM 8.C.3.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: CB21-027 An Ordinance Repealing and Reenacting Chapter 82, Purchasing and Contracts, of the Arvada City Code (Public Hearing to be set for August 16, 2021 at 6:15 p.m.)

Report in Brief

Local governments exist to provide services to their citizens. While many factors impact Arvada's ability to provide services, municipal operations depend on our ability to procure the goods and services necessary to support these operations. A well-crafted purchasing ordinance and policy provides structure for purchasing operations, provides guidance for City team members involved in procurement processes, and helps create transparency around City purchasing procedures.

Arvada's current Purchasing Ordinance has been in place for many years and it has been revised many times. In addition, the City Council recently authorized numerous changes to the current ordinance. As a result, City team members are recommending the entire Ordinance (Chapter 82 of the City Code) be repealed and reenacted.

The purposes of the proposed Ordinance and the companion Administrative Policy and Procedures related to the Purchasing Ordinance (Policy) are to clarify processes and procedures, promote competition, ensure the equitable treatment of those impacted by purchasing and contracting processes, and enhance the fiscal controls that maintain the integrity of Arvada's purchasing system.

The Arvada team recommends that the City Council approve CB21-027, An Ordinance Repealing and Reenacting Chapter 82, Purchasing and Contracts, of the Arvada City Code, on first reading, ordered published in full, and a public hearing date be set for August 16, 2021 at 6:15 p.m.

Financial Impact

The proposed Ordinance will have no discernible financial impact. While acknowledging this fact, the Arvada team believes that the proposed Purchasing Ordinance and Policy should be easier to understand and use and therefore result in more streamlined purchasing and contracting functions.

Background

As is the case with any large city, Arvada purchases many goods and services. Best municipal procurement practices require that cities purchase goods and services according to set laws and policies that promote competition and ensure the ethical administration of purchasing and contracting functions.

Arvada has had a purchasing ordinance in place since at least 1988. It has been revised many times. It has come to be seen as outdated and increasingly difficult to understand. In these cases, repealing and reenacting the entire ordinance is often the best course of action.

Multiple amendments to any law over long periods of time can lead to issues with the comprehension and application of its provisions. When regulatory frameworks are clear and fairly applied, they engender trust in City employees and the public alike.

Discussion

This table highlights some of the changes contained in the new ordinance:

The Purchasing Ordinance

Issue (Current Ordinance)	**Solution (Proposed Ordinance)**
Articles and sections are not arranged in a logical order.	Articles are arranged in a more logical order to better align with the City's solicitations and contracting processes.
Defined words / terms are not used in the ordinance.	Only words and terms used in the ordinance are defined; certain definitions have been updated or now conform to C.R.S. definitions. See sec. 82-4.
Ethics provisions are confusing.	Ethics rules are given a more prominent place and are easier to understand. See article II.
Solicitation methods and processes are confusing.	Solicitation methods are set forth in table format for ease of use. See Tables 82-41(c) and 82-42(a). The ordinance defines pre-qualification processes and recognizes that the City may pre-qualify vendors to do work for the City. It also creates rules for soliciting work from pre-qualified vendors. See secs. 82-4 and and 82-41(c).
Cooperative and emergency contracts rules are not very detailed.	Rules around the use of cooperative and emergency rules are more detailed. See secs. 82-42(c) and (d). See also Table 82-62(a).
Contract and purchase order approval and modification limits are much lower than peer cities; provisions are confusing.	Purchasing approval limits have been raised to conform to those in peer cities. See Table 82-62(a). Contracts of: --Up to $199,000.99 will be approved by directors and key team members; --Between $200,000 - $299,000.99 will be approved by the deputy city manager; --Between $300,000 - $499,999.99 will be approved by the city manager; and --$500,000 or more will be approved by city council. Provisions relating to monetary modifications are also set forth in Table 82-62.
Lack of guidance about approvals of unbudgeted purchases.	These purchases are addressed in Table 82-62(a).
The ordinance does not contain much information about fiscal controls.	Numerous fiscal controls have been added to the ordinance and the policy. They include: --Increased transparency around what is reported in the Weekly Memo (e.g., unbudgeted purchases will be reported). See Policy sec. 1.3.1; --Housing contracts, including those for housing rehabilitation, are subject to the ordinance (i.e., the exception for housing contracts has been removed from the Ordinance). See sec. 82.3(a); --Enhanced transparency around sole source purchases of more than $50,000 - sole source purchases will be reported to and published by the purchasing manager. See Policy sec. 5.2.1; --Cooperative contract purchases of $200,000.00 or more will be subject to enhanced oversight by the finance director. See sec. 82-42(c)(2); -- Monetary modifications (change orders) that push the total spend on a contract to more than $500,000.00 will go to CC for approval. See Table 82-62(a); and --Work done before a purchase order is issued or before council approval of a contract will be addressed by the deputy city manager. See Policy sec. 7.3.6.

A redline / strikethrough version containing all changes is attached to the proposed Ordinance.

The Purchasing Policy

Procurement and contracting tasks impact many employees across all City work systems. Over the years, Arvada has adopted several purchasing policies -- some of these policies are 40 years old. These policies do not conform to the current or proposed Purchasing Ordinances. This creates confusion and reduces transparency. Following a review of existing policies, the team is recommending that four existing purchasing policies be rescinded and replaced with the proposed Policy. Here is a summary of the features of the new Policy:

Issue (Current Policies)	**Solution (Proposed Policy)**
Existing policies are scattered across four City policies.	Policies are consolidated into one policy; the existing policies will be rescinded.
Existing policies refer to outdated processes or procedures.	Policy has been updated to conform to current practices.
Existing policies do not conform to the existing Purchasing Ordinance.	The proposed Policy will conform to the proposed Ordinance.
No existing policy refers to the ethical responsibilities of City employees	The proposed Policy contains ethics provisions that supplement the ethics rules contained in the proposed Ordinance. See sec. 2.
Existing policies do not contain very much information about solicitation processes.	Solicitation methods and processes are clearly outlined. See secs. 3-5. Pre-qualification processes are described in ways that reduce confusion. See sec. 4.
Existing policies do not detail the formation and use of purchase orders and contracts.	Provisions about the formation and use of purchase orders and contracts, as well as contract administration, have been added. See secs. 7-8.

If the City Council adopts the proposed Purchasing Ordinance, the proposed Policy will be adopted and promulgated by the City Manager. These documents will be disseminated to City team members, and team members will be trained on them as appropriate. Employees will be responsible for acting in accordance with the new Ordinance and Policy.

Public Contact

The City Council hosted a workshop on this topic in 2020. In addition, the City Council Agenda was posted.

Commission Recommendation

N/A

Strategic Alignment

The Ordinance aligns with the Organizational and Service Effectiveness Priority Area of the City Council Strategic Plan. Specifically, the following Principle within this Priority Area supports the recommended action:

Provides a well-managed, fiscally responsible government that operates effectively and efficiently while identifying revenue requirements to sustain current service levels and achieve future requested levels of service.

Alternative Courses of Action

N/A.

Recommendation for Action

The Arvada team recommends that the City Council approve CB21-027, An Ordinance Repealing and Reenacting Chapter 82, Purchasing and Contracts, of the Arvada City Code, on first reading, ordered published in full, and a public hearing date be set for August 16, 2021 at 6:15 p.m.

Suggested Motion:

I move that CB21-027, An Ordinance Repealing and Reenacting Chapter 82, Purchasing and Contracts, of the Arvada City Code, be (approved on first reading, ordered published in full, and a public hearing date be set for August 16, 2021 at 6:15 p.m.) (rejected).

Prepared by:
Toni Riebschlager, Law Office Administrator

Reviewed by:

Approved by:

Nora Steenson, Deputy City Attorney	7/21/2021
Rachel Morris, City Attorney	7/22/2021
Bryan Archer, Director of Finance	7/22/2021
Lorie Gillis, Deputy City Manager	7/22/2021
Mark Deven, City Manager	7/22/2021

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. 21-027

ORDINANCE NO.

AN ORDINANCE REPEALING AND REENACTING CHAPTER 82, PURCHASING AND CONTRACTS, OF THE ARVADA CITY CODE

WHEREAS, the City Council has determined that public procurement processes must be conducted professionally and ethically; and

WHEREAS, Council finds that it is in the best interests of the city to promote competition in city bidding processes to the extent practicable; and

WHEREAS, Council finds that it is in the best interests of the city and the public to procure at a fair price those goods and services necessary for municipal operations; and

WHEREAS, Council finds that it is in the best interests of the city and the public to provide for a systematic, efficient, and effective procurement process done in accordance with existing laws and policies.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Chapter 82, Purchasing and Contracts, of the Arvada City Code is hereby repealed and reenacted to read as follows:

"PURCHASING AND CONTRACTS

ARTICLE I.

IN GENERAL

Sec. 82-1. Short title.

This chapter shall be known and may be cited as the "Purchasing Ordinance."

Sec. 82-2. Legislative declaration and intent.

The purpose of this chapter is to prescribe purchasing procedures for the city to follow in contracting for the construction of capital and other improvements, for the purchase of tangible goods, and for the acquisition of professional, consulting, and other services. This chapter shall be construed and applied to promote the following purposes: to simplify the law governing the city's procurement processes; to provide for transparency and public confidence in the city's procurement procedures; to ensure the fair and equitable treatment of all persons who deal with the city's procurement system; to facilitate city procurement activities; to maximize the purchasing value of public funds; to promote effective broad-based competition; and to maintain the quality and integrity of the city's fiscal controls and procurement system.

Sec. 82-3. Applicability.

(a) *Applicability.* This chapter applies to the city's procurement of goods and services, and to every expenditure of public funds for purchasing irrespective of the source of funds. This chapter applies to every city purchase or contract solicited after the effective date of this ordinance. The date of the solicitation shall be the date the solicitation is first published or issued by the city.

Exceptions. Except as otherwise set forth herein, the following contracts are excepted from the requirements of this chapter:

1. Advertising services;

2. Art for display, purchase, or performance, or agreements for the maintenance of art where the maintenance is done by the artist or by a foundation or other entity authorized by the artist or the artist's estate;

3. Continuing education programs, and professional memberships, licenses, and publications for city employees;

4. Employment contracts between city council and the city manager, the city attorney, and the presiding or other municipal court judges;

5. Emergency contracts awarded under section 82-42 of this chapter or as a result of a declared civil emergency, emergency, or local disaster under chapter 26 of this Code;

6. Food and merchandise purchased for resale at city golf course facilities, except that apparel purchased by the city for use by employees while on duty are subject to the requirements of this chapter;

7. Intergovernmental agreements;

8. Legal research tools, including books and software;

9. Outside legal counsel and investigators; and

10. Real property agreements including annexation agreements.

Sec. 82-4. Definitions.

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

Administrative policy or policies mean the "Administrative Policy and Procedures Related to the Purchasing Ordinance" as adopted by the city.

Award or intent to award means the selection of a bid or proposal by the city. An award does not mean that a contract has been executed or that a purchase order has been approved.

Award approval means the authorization of an award by the execution or approval of a purchase order, or by the execution of a contract by an authorized employee or city council.

Best value means a technique in a competitive solicitation process which emphasizes value over price and permits the evaluation of criteria such as qualifications, experience, and performance data to determine the best overall value to the city.

Bid means an offer of a price for goods or equipment.

Bidder means a person who files a submission in response to a city-issued solicitation, and includes a person who files a response to a request for bids, proposals, qualifications, or capital improvement project competitive sealed bids. It also includes a person who responds to a city request for qualifications for the purpose of pre-qualifying as a contractor to perform work for the city on as-needed basis.

Budgeted means included in the city council's approved budget.

City means the City of Arvada.

City attorney means the city attorney for the City of Arvada or designee thereof.

City manager means the manager of the City of Arvada or designee thereof.

Code means the Arvada City Code.

Construction means the process of building or replacing a city-owned building or structure, including but not limited to water infrastructure, bridges, or other city-owned infrastructure assets. Construction includes the demolition of bridges, water infrastructure, or other city-owned infrastructure assets, but does not include demolition of other city-owned structures or buildings. It also does not include the routine operation, repair, or maintenance of city-owned buildings or structures.

Contract means any type of city agreement, including a purchase order, between the city and a contractor, where the principal purpose is to acquire goods, service, or construction or to dispose of property for the benefit of the city. Contract includes a modification to a contract.

Contractor means any person having a contract with the city, regardless of what the person may be called or how the person is described.

Cooperative contract means a valid and current purchasing agreement negotiated by another entity for use by all public agencies that are members of the purchasing cooperative group.

Day means calendar day.

Director or *work system director* means a manager of a city work system or a department director.

Documented quote means a fiscal control where one or more valid written quotes are obtained as part of a solicitation process.

Electronic communication means an interactive communication that is transmitted electronically and capable of being produced in a written format, but does not include instant messaging, text messaging, or phone messages.

Electronic signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record to which it is affixed.

Emergency contract means a contract necessary to respond to urgent and compelling circumstances that create a threat to the public's health, safety, or welfare, or to an emergency declared under chapter 26 of this Code.

Employee means a regular or probationary full-or part-time city employee.

Fiscal control means a financial management practice designed to ensure expenditures are authorized by and in accordance with the amounts specified in the adopted budget, to reassure city council and citizens of responsible procurement and spending strategies, and to ensure all transactions are documented appropriately and in accordance with this Code and Colorado law.

Formal solicitation means a procurement method used for contracts or purchase orders of $50,000.00 or more that features the issuance of a public, written announcement of, or request for, bids, proposals, or qualifications.

Good or *goods* mean anything that has economic and physical utility, excluding real property, and includes those services incidental or necessary to providing the good or goods.

Modification means any written alteration of a contract, regardless of what it may be called, accomplished in accordance with terms of that contract, and includes a change order related to or renewal of an existing contract. A modification may be monetary or no cost in nature. An extension of a contract that results in the payment of additional funds to a contractor shall be deemed a monetary modification.

No cost procurement means the acquisition of a good or service following an unsolicited offer or an offer that did not arise from a competitive solicitation process, or from a provider that proposes the acquisition of a particular good or service by the city for free, at no charge, or on a complimentary basis.

Person means any business, individual, union, committee, club, other organization, or group of individuals.

Procurement or *procurement process* means the purchasing, renting, leasing, or otherwise acquiring of any goods, services, professional services, or construction. It includes all functions that pertain to the acquisition of any supply, service, or construction, including the description of requirements, the selection and solicitation of sources, solicitation and bid award protests, the preparation and award of a contract, and all phases of contract administration and claims.

Pre-qualify or *pre-qualification* means a process by which the city may solicit, evaluate, and select vendors for the purpose of creating a list of vendors eligible to perform work for the city on an as-needed or on-call basis, and which is completed in advance of identifying the specific service needed or work to be done.

Professional services means the services of accountants, architects, consultants, engineers, landscape architects, and other such professions which often result in the delivery of a written report or analysis.

Project owner means the director or designee thereof tasked with oversight and completion of a particular procurement project originating from within the work system.

Purchase order means a contract containing preprinted terms which is used as a tool in the city procurement process.

Purchasing manager means the manager of the city's purchasing program or designee thereof.

Real property means land and whatever is growing upon, erected upon, or affixed to land including water, mineral, and subsurface rights and excluding personal property.

Responsible means the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

Responsive means a bid or proposal submitted in a form prescribed by the city that meets the specifications, acceptability requirements, and terms and conditions of the solicitation.

Services mean the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports or items which are merely incidental to the required performance.

Sole source means a procurement process conducted without competition and in accordance with the provisions of this chapter for the acquisition of goods or services, or a contract awarded as a result of such a process.

Solicitation means the process of trying to obtain a good or service, and includes all documents and related information, whether attached or incorporated by reference, published prior to the response deadline on an electronic bidding system or otherwise in connection with that procurement effort.

Specification means any description of the physical or functional characteristics or of the nature of a good or service, or a description of any requirement for inspecting, testing, or preparing a good or service for delivery.

Variation means a statement submitted to the city by a bidder that outlines a request to alter or modify the terms of a solicitation.

Vendor means a person offering something for sale.

Work system means the organizational unit around which the city's workforce is structured and through which employees are grouped together according to the nature of the work they do to accomplish the city's strategic goals and objectives. Work system includes a department within a city work system.

Writing means any written recordings, papers, books, or documentary materials, regardless of physical form or characteristics, and includes emails or other electronic communication capable of being produced in a written format, but does not include instant messaging, text messaging, or telephone messages.

Sec. 82-5. Administrative policies and procedures.

The city manager may, with assistance from the finance director, develop or amend and promulgate under sec. 2-121 of this Code administrative policies and procedures necessary to implement the city's purchasing and contracts processes.

Sec. 82-6. Procurement records.

(a) *Procurement records public.* Subject to any limitations provided for by federal or state law concerning open access and right to privacy, all procurement information is hereby declared to be a public record and open for inspection pursuant to C.R.S. § 24-72-201 et seq., as may be amended, except the custodian of records may deny inspection of responses to solicitations until the award is approved or the city determines that it will not be awarding a contract.

(b) *Records maintenance and retention.* All procurement records shall be kept and maintained in accordance with the city's records retention schedule. The city clerk is the official custodian of city procurement records. The responsibility for keeping and maintaining procurement records is as follows:

(1) The purchasing manager shall keep and maintain records of all formal solicitation processes, solicitations for tasks of $50,000 or more performed under a contract with a pre-qualified vendor, all sole source justification records, and all records relating to emergency contracts.

(2) The director shall keep and maintain records of solicitations and contracts initiated by his or her department, except those ordinarily kept and maintained by the city clerk, or by the purchasing manager as set forth herein. The director is also responsible for ensuring that all bonds, notices, certificate of insurance, and other documents required by a contract are timely obtained, current, and maintained for record keeping purposes. The director may delegate any of these responsibilities, for any or all procurements, to the project owner or to another work system employee.

Sec. 82-7. Compliance with state and federal grant requirements.

When a procurement process involves the expenditure of state or federal grant or assistance funds, the procurement shall be done in compliance with all applicable state and federal laws, statutes, and other requirements. In these cases, employees must also act in accordance with the solicitation rules and other provisions of this chapter, and all applicable city policies. In the event of a conflict between state, federal, or city laws, statutes or other requirements, the most stringent, or strictest, law, statute, or requirement shall apply to the procurement.

Sec. 82-8. Conflicts.

To the extent of any conflict between this Code and the administrative policies relating to this Code, the provisions of this Code will prevail, and then the provisions of the administrative policies, in that order.

Secs. 82-9 – 82-20. Reserved.

ARTICLE II.

ETHICS IN CITY PROCUREMENT PROCESSES

Sec. 82-21. Purpose.

The conduct of city employees must hold the respect and confidence of the public. Unethical behaviors undermine the public's trust in government and the integrity of public procurement processes. Ethics provisions are intended to protect the integrity of the city's procurement processes, and encourage ethical conduct by employees and others involved in these processes.

Sec. 82-22. Definitions.

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

Confidential information means any information which is available to an employee only because of the employee's status as an employee of the city and is not a matter of public knowledge or available to the public on request.

Direct participation or *directly participating* means to be the project owner for a solicitation, or to be the director of the work system or department which initiated the solicitation.

Financial interest means:

(a) Any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, anything of value, except that receipt of an advertising or promotional item of minimal value by shall not be considered a financial interest;

(b) Ownership of five percent or more of any property or business; or

(c) Being an officer, director, trustee, or partner of, or being a manager, supervisor, employee, or holding a similar position in a business.

Exception: Assets held by an employee or an employee's family member in a disclosed blind trust shall not be deemed to be a financial interest that constitutes a conflict of interest with regard to matters pertaining to that financial interest.

Former employee means a person who was employed by the city within the past 12 months, but who is no longer employed by the city.

Gift, gratuity, or kickback means anything of value including but not limited to cash, a gift certificate, a gift card, loan, advance, service, or an offer of employment, either given or promised. It does not include an advertising or promotional item of minimal value, or the occasional donation at a city work site of perishable items for consumption by city employees.

Immediate family or *family* means an employee's spouse, child, parent, sibling, grandparent, or grandchild (including natural, step, adopted, foster, or in-law relationships); or a person whom the employee identifies as his or her significant other or domestic partner whose primary residence or place of primary abode is the same as the employee's.

Sec. 82-23. Unethical acts by employees—prohibited.

(a) *Conflicts of interest.* Every employee is responsible for being a good steward of city resources, and for carrying out procurement duties for the benefit of the city.

(1) Generally. It shall be unethical for an employee to use or attempt to use his or her position to gain financial benefit or avoid a financial loss to the employee or his or her family, if that opportunity is available only because the employee holds or held a position at the city.

(2) Financial conflict of interest. It shall be unethical for an employee to participate directly or indirectly in a solicitation process when the employee knows the employee or a member of the employee's immediate family has a financial interest pertaining to the award or the contract.

(i) Waiver. The city council may grant a waiver from this subsection (a)(2) upon making a written determination that the financial interest of the employee has been publicly disclosed, that the employee will be able to perform procurement functions without actual or apparent bias or favoritism, and that the award will be in the best interests of the city.

(3) Conflict of interest related to negotiating employment. It shall be unethical for an employee to participate directly or indirectly in a solicitation process when the employee is negotiating an employment arrangement with a bidder or prospective bidder involved in that solicitation process, or when the employee knows a member of the employee's family is negotiating an employment arrangement with a bidder or prospective bidder involved in that solicitation process.

(b) *Gift, gratuity, or kickback.* It shall be unethical for an employee to solicit, demand, accept, agree to accept, or keep for his or her own personal use, or for that of his or her family, any gift, gratuity, or kickback from another person in connection with any procurement process action, advice, decision, or recommendation made or done by that city employee.

(c) *Contemporaneous employment.* It shall be unethical for an employee who is participating directly or indirectly in a solicitation process to negotiate employment with, be, or to become the employee of any person contracting with the city while still a city employee. It shall also be unethical for an employee who has participated directly in a solicitation process to accept employment with, or to become the employee of any person contracting with the city as a result of that solicitation process within six months of leaving employment with the city. This provision shall not be construed to prevent any former employee from engaging in any lawful occupation at any place he or she sees fit, but merely to declare the practice of accepting employment under these circumstances contrary to best purchasing practices and unethical.

(1) Waiver. The city council may grant a waiver from this subsection (c) upon making a written determination that the contemporaneous employment of the city

employee has been publicly disclosed, that the employee will be able to perform procurement functions without actual or apparent bias or favoritism, and that the award will be in the best interests of the city.

(d) *Use of confidential information.* It shall be unethical for an employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

(e) *Attempt to influence city procurement process.* It shall be unethical for an employee to purposely influence or attempt to influence a city procurement process in a manner that provides the employee or his or her family with a personal financial gain that would not otherwise have been available to them, or that allows the employee or his or her family to avoid a financial loss, if it were not for the employee's position as an employee.

Sec. 82-24. Unethical acts generally—prohibited.

(a) *Contingent fees.* It shall be unethical for any person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of a bona fide city employee or a bona fide commercial selling agency established for the purpose of securing business.

(b) *Gifts, gratuities, or kickbacks.* It shall be unethical for any person to offer, give, or agree to give any city employee or former city employee a gift, gratuity, or kickback in connection with any procurement process action, advice, decision, or recommendation by that employee or former employee.

(c) *Inducements.* It shall be unethical for any person to make, permit, or allow to be made to a prime or higher-tier contractor or a person associated with a prime or higher-tier contractor a gift, gratuity, or kickback as an inducement for the award of a subcontract or order in connection with a city solicitation, bid, or contract. It shall be unethical for a prime or higher-tier contractor to solicit or accept a gift, gratuity, or kickback from a prospective subcontractor in connection with a city solicitation, bid, or contract.

(d) *Negotiating employment.* It shall be unethical for any bidder or person representing a bidder in a city solicitation to negotiate with or offer employment to a city employee who is participating in that solicitation. It shall be unethical for a contractor to hire or employ a city employee or former employee whom the contractor knows or should know participated in the solicitation that resulted in the work awarded to that contractor within six months of the date of the award contract to that contractor.

Secs. 82-25 – 82-40. Reserved.

ARTICLE III.

SOLICITATIONS

Sec. 82-41. Competitive solicitation methods.

(a) *Acceptable methods.* The purchasing program is responsible for determining which solicitation method is appropriate to a procurement process in accordance with the provisions of this article. An employee responsible for purchasing goods or services for the city will use competitive solicitation methods whenever possible to effectuate the provisions of this chapter and to maximize the value of the public funds in ways that are efficient and effective in light of the degree of complexity associated with the good or service being purchased.

(1) Documented quotes. Documented quotes must be obtained using the city's highest ethical standards.

(b) *Best value procurement.* The city, through the purchasing division, will solicit requests for qualifications and requests for proposals based upon a best value procurement basis, which includes the evaluation of qualifications, experience, and proposed performance measures to award and renew contracts based upon the best value to the city.

(c) *Required solicitation methods: thresholds.*

COMPETITIVE SOLICITATION METHODS	
Amount / nature of the contract or task	**Required solicitation method**
For a contract up to and including $9,999.99	One documented quote: The project owner shall obtain and document one quote for the required good or service. Exception: A contract for computer software may be solicited as set forth in the administrative policy.
For a contract from $10,000.00 up to and including $49,999.99	Three documented quotes: The project owner shall obtain and document three quotes for the required good or service, and submit to the purchasing manager the contract and the three documented quotes. Exception: A contract for computer software may be solicited as set forth in the administrative policy.
For a contract of $50,000.00 or more, or for any contract for on-call or as-needed work with a pre-qualified vendor	Formal solicitation: The project owner shall follow the formal solicitation process set forth in the administrative policy.
For a task up to and including $49,999.99 *for which vendors have been*	One documented quote: The project owner shall obtain and document one quote from a vendor who has been pre-qualified to perform the type of work required, and who has a contract with

pre-qualified by the city and with whom the city has contracted for on-call or as-needed work	the city to perform the work on an on-call or as-needed basis.
For a task of $50,000.00 or more *for which vendors have been pre-qualified by the city and with whom the city has contracted for on-call or as-needed work*	Bid the eligible pool: The project owner shall publish the solicitation to all vendors who are pre-qualified by the city to perform the type of work required and who have sufficient value remaining on their on-call or as-needed work contract from which they may be paid for the work. No formal solicitation is required. The project owner shall submit to the purchasing manager the solicitation documentation, and each quote received. Exception: If the cost of the task exceeds the approved annual value of the contract of every vendor who is pre-qualified to perform the type of work required, or if no vendor pre-qualified to perform the work has sufficient value remaining on their on-call or as-needed work contract from which they may be paid for the work, the project owner shall formally solicit the work.

Table 82-41(c)

Nothing in this section 82-41(c) shall be construed to limit the city's ability to use a vendor who has not been pre-qualified to perform work if using a non- pre-qualified vendor is in the best interests of the city.

(d) *No contingencies.* No employee shall include or add a contingency amount to a solicitation. All monetary changes to contracts or purchase orders shall be processed using a change order, and in accordance with article IV of this chapter.

Sec. 82-42. Non-competitive solicitation methods.

(a) *Sole source contracts: thresholds.* Sole source contracts may be approved if the required documentation clearly demonstrates based on all of the facts and circumstances surrounding the acquisition of a good or service that the acquisition may only be achieved through the use of one product or vendor, and that there are no other products or vendors as suitable or acceptable to provide the good or service to the city. In determining whether a sole source purchase request meets these requirements, the city manager or purchasing manager may seek additional information about the purchase from the director, or consult any other city employee including the deputy city manager.

SOLE SOURCE CONTRACTS		
Amount of contract	**Process required**	**Authority to approve the sole source purchase request**

From $10,000.00 up to and including $49,999.99	The director shall submit to the purchasing manager a written sole source purchase request containing documentation sufficient to justify the purchase under this section.	The purchasing manager may approve the sole source request. Approval authority for the contract is as set forth in Table 82-62(a).
$50,000.00 or more	The director shall submit to the purchasing manager and the city manager a written sole source purchase request containing documentation sufficient to justify the purchase under this section.	The city manager may approve the sole source request. Approval authority for the contract is as set forth in Table 82-62(a).

Table 82-42(a)

Exceptions: All contracts for up to and including $9,999.00, and all contracts for computer software in an amount up to and including $49,999.99, shall be solicited as set forth in sec. 82-41(c).

(b) *No cost contracts.* An employee evaluating a no cost offer should evaluate additional terms or conditions connected to the no cost offer that create future obligations of any type for the city or for affected citizens.

(c) *Cooperative contracts.* Purchases of goods and services from valid cooperative entity agreements are exempt from competitive solicitation methods. The city must be a member of the cooperative through which it purchases a good or service.

(1) Aggregate purchases. If the amount of goods purchased under a cooperative contract from a single vendor will exceed $200,000.00 aggregated annually, the purchase must be done using a formal solicitation process. The formal solicitation may be among contractors who are pre-qualified by the purchasing program.

(2) Purchases of $200,000.00 or more. Notwithstanding any other provision of this ordinance, the finance director may, at his or her sole discretion, require a cooperative contract purchase of $200,000.00 or more related to, or in support of, a capital improvement project be done using a formal solicitation process.

(d) *Emergency contracts.*

(1) Approval. An emergency contract may be approved if all the facts and circumstances surrounding the emergency acquisition clearly demonstrate:

(i) The contract is necessary to respond to an urgent, unforeseen, and compelling circumstance that creates a threat to the public's health, safety or welfare, or is necessary under an emergency declared under chapter 26 of this Code;

(ii) The immediate procurement of the good or service is essential to prevent serious harm to the operation of the city, to city property, or to preserve the health, safety, or welfare of the public; and

(iii) There is insufficient time to procure the good or service through regular bidding and purchasing methods.

(2) Competition encouraged. Even in emergency situations, the city manager shall seek to ensure as much competition in the procurement of a good or service as is reasonable under the circumstances. The city manager should consult with the purchasing manager to the extent practicable in making emergency purchases.

(3) Limitations. Only those goods or services necessary to respond to or resolve an emergency may be procured under an emergency contract.

(4) Documentation. As soon as is reasonably practicable following an emergency purchase, the director of the department or work system responsible for the purchase shall submit to the city manager written documentation describing the nature of the emergency, the good or service acquired through the emergency contract, the amount paid for the good or service, and the reasoning behind the selection of the vendor or vendors chosen to meet the emergency need. The city manager shall then promptly submit this information to the purchasing manager and the city council.

(5) Powers of the city manager. Except as set forth herein, nothing in this subsection (d) is intended to limit or affect the powers or authority of the city manager under a declared civil emergency, emergency, or local disaster issued under chapter 26 of this Code.

(6) On-call contracts with pre-qualified vendors. Nothing in this subsection (d) shall be construed to limit the ability of the city to award emergency work to vendors who are pre-qualified to perform the services or work needed and who have on call or as-needed contracts with the city to perform that type of work, if the other requirements of this ordinance and the policy are met.

Sec. 82-43. Other solicitation methods.

The finance director may establish, through the administrative policies process, other competitive solicitation methods consistent with the provisions of this chapter and deemed to be in the best interests of the city.

Sec. 82-44. Electronic signatures—solicitations.

Subject to any limitations in the Colorado Uniform Electronic Transactions Act, by submitting a proposal to a city-issued solicitation for goods or services, a bidder agrees to the use of electronic signatures. Notwithstanding the foregoing, the city may require that any proposal be executed with manual signatures.

Sec. 82-45. Correction to or withdrawal of a bid.

Changes to a bid after the submission deadline may be allowed only when a bidder can show by clear and convincing evidence that a mistake of fact was made and that the mistake was unintentional. A request to correct a bid must be in writing, must be submitted to the purchasing manager within seven days of the bid opening, and must contain the bidder's name, address, city solicitation number and title. Nothing in this section precludes negotiations between the city and a bidder about the scope of work.

Sec. 82-46. Administration of solicitations.

The purchasing manager shall be responsible for administering all formal solicitations subject to the provisions of this chapter.

Sec. 82-47. Award.

(a) *Award.* The city will select the most qualified responsible and responsive bidder to receive the award. The award shall be based on the provisions of this chapter, the administrative policy, the specifications set forth in the solicitation, and the selection criteria deemed appropriate to the solicitation. Because an award by itself does not mean the award has also been approved, no vendor may claim reliance upon an award.

(b) *Variations.* A variation to the terms of a solicitation requested and submitted by a contractor is not agreed to by the fact of an award by the city. The city shall enter into a contract or issue a purchase order on the same terms and conditions that were included in the solicitation, except the city may, in its sole discretion, negotiate terms and conditions with the selected vendor within the scope of the solicitation. The city may also consider variation requests when selecting a bidder for an award. An award may be cancelled by the city if negotiations concerning a term or a condition or a requested variation are unsuccessful.

Sec. 82-48. Construction contract bid security.

(a) *Required.* Bid security shall be required for all invitations for bids for construction contracts on the city supplied form. Bid security shall be a bond provided by a surety company authorized to do business in Colorado, the equivalent in cash, or otherwise supplied in a form satisfactory to the city.

(b) *Amount.* Bid security shall be in an amount equal to at least 5% of the amount of the bid.

(c) *Rejection for noncompliance.* If a request for bids requires security, substantive noncompliance requires that the bid be rejected as nonresponsive.

(d) *Reduction in amount; waiver.* If the project owner estimates the amount of the bid to be less than $200,000.00, the work system director may reduce or waive the requirement of bid security.

Sec. 82-49. Construction contract performance and payment bonds.

(a) *Bonds.* When a construction contract is awarded, the following bonds shall be delivered to the city and shall become binding on the parties upon the execution of the contract:

(1) Performance bond. A performance bond satisfactory to the city, executed by a surety company authorized to do business in Colorado or otherwise secured in a manner satisfactory to the city, in an amount equal to 100% of the price specified in the contract; and

(2) Payment bond. A payment bond satisfactory to the city, executed by a surety company authorized to do business in Colorado or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract, in an amount equal to 100% of the price specified in the contract.

(b) *Security.* In lieu of providing a performance or payment bond, a contractor may provide an unconditional letter of credit for 100% of the amount required. Such security must be in a form acceptable to the city attorney.

(c) *Reduction in amount.* If a construction contract is awarded in an amount less than $100,000.00, the director may reduce the amount of the performance and payment bonds or security or waive these requirements entirely if deemed appropriate by the director. For all other performance and payment bonds or security, the city manager may reduce the amount of the performance and payment bonds or security to 50% of the contract amount upon a written finding that it is in the best interests of the city to do so.

(d) *Additional bond requirements.* Nothing in this section shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds or in circumstances other than those specified in this section.

Secs. 82-50– 82-60. Reserved.

ARTICLE IV.

CONTRACTING

Sec. 82-61. Contracting authority.

(a) *Authorized individuals.* The following employees are authorized to procure goods and services and perform other duties described in this chapter for the work system, department, division, or program for which they are responsible:

(1) The city manager;

(2) The deputy city manager;

(3) A work system director;

(4) The city engineer;

(5) The city's water treatment plant operator; and

(6) The purchasing manager. The purchasing manager is authorized to procure goods and services and perform other duties for the purchasing program or for work systems or departments as described in this chapter and the administrative policy.

The city manager may designate any other city employee to perform duties as described in this chapter and the policy.

(b) *Temporary delegation of authority.* Each authorized individual may temporarily delegate his or her purchasing duties to another employee in his or her chain of command. Any such delegation or notification must be in writing. Any person designated by the city to serve in an acting capacity for any of these positions is authorized to perform the purchasing duties set forth for that position while he or she serves in an acting capacity.

Sec. 82-62. Authority to approve, modify, and terminate contracts.

(a) *Approval; modification.* The authority to approve or modify a contract is set forth in the table below:

CONTRACT AND PURCHASE ORDER APPROVAL AND MODIFICATION AUTHORITY		
Amount / nature of the contract or purchase order?	**Who may approve?**	**Who may approve a monetary modification, or aggregated monetary modifications, to the contract or purchase order?**
No cost procurements, no cost modifications to an existing contract or purchase order, and contracts and purchase orders up to and including $199,999.99	A director, the city engineer, and the city's water treatment plant operator.	Up to and including $199,999.99: A director; Between $200,000.00 and $299,999.99: The deputy city manager; Between $300,000.00 and 499,999.99: The city manager; or Of $500,000 or more: The city council.
$200,000.00 up to	The deputy	Up to and including $299,999.99: The deputy city

and including $299,999.99	city manager.	manager; Between $300,000.00 and $499,999.99: The city manager; or Of $500,000 or more: The city council.
$300,000.00 up to and including $499,999.99	The city manager.	Up to and including $499,999.99: The city manager; or Of $500,000.00 or more: The city council.
$500,000.00 or more	The city council by resolution.	Up to 20% of the original contract amount, or $499,999.99, whichever is less: The city manager; or Of 20% or more of the original contract amount, or for $500,000.00 or more: The city council.
Unbudgeted purchases up to and including $49,999.99	A director.	Of $50,000.00 or more: The city council. Once approved by city council, the authority to approve a monetary modification or cumulative modifications will be determined by the amount of the modified contract or purchase order as set forth in this table.
Unbudgeted purchases of $50,000.00 or more	The city council by resolution.	Once approved by city council, the authority to approve a monetary modification or cumulative modifications will be determined by the amount of the modified contract or purchase order as set forth in this table.
Emergency contracts of any amount	The city manager.	The city manager.

Table 82-62(a)

(b) *Calculation of contract amount for purposes of approval or modification.* The annual aggregated amount of a contract calculated by fiscal year will be used to calculate the total amount of the contract for purposes of determining who is authorized to approve or modify it under this section. The original contract amount shall be added to the modification or cumulative modifications amount totals when calculating the aggregated monetary modification totals. In the case of a multi-year contract which the city may terminate at or within one year of the beginning of the term of the contract, the amount of the first year of the contract will be used to determine who is authorized to approve or modify the contract.

(c) *Termination of a contract.* Except as set forth in subsection (f) of this section, only the city manager may terminate a contract.

(d) *Dividing a contract.* No purchase permitted by this Ordinance shall be divided for the purpose of circumventing the requirements of this section. This includes modifying contracts that would result in circumvention of the requirements of this section.

(e) *City attorney approval required.* Except for purchase orders, the city attorney must approve all contracts as to form. This includes contracts otherwise excepted from the provisions of this chapter under sec. 82-3.

(f) *Special counsel contracts.* The city attorney has the authority of a director to approve and modify contracts. The city council authorizes the city attorney to enter into contracts for compensation to outside or special counsel and investigators, and also gives approval for these contracts up to the monetary limit set forth for directors in Table 82-62(a). Contracts for special or outside counsel that exceed this limit shall be submitted by the city attorney to city council for approval by whatever means the city council deems appropriate. The city attorney may terminate a contract with outside or special counsel or with an investigator.

Sec. 82-63. Contract formation.

(a) *Form of contract.* Subject to the limitations of this chapter, the city may use any contract appropriate to the procurement which best promotes the interests of the city.

(b) *No indemnification.* In accordance with Section 1 of Article XI of the Colorado Constitution, the city shall not agree to indemnify any third party.

(c) *Waiver of jury trial.* Any person entering into a contract for the sale or provisions of any type of good, service, or professional service to the city waives the right to a jury trial related to any contract claim.

(d) *Ordinances rules, regulations, and orders.* Each contractor shall be responsible for remaining fully informed of and complying with all applicable laws, ordinances, rules, regulations, and orders of the city, county, state, federal or other governmental entities having jurisdiction over the work or otherwise governing or affecting the goods or services supplied to the city under the contract.

Sec. 82-64. Multi-year contracts.

(a) *Multi-year contracts authorized.* Unless otherwise provided by law, the city may enter into a contract for the purchase of goods or services for any period of time deemed to be in the best interest of the city. The term of the contract and conditions of renewal or extension, if any, should be included in the solicitation. Funds shall be available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds, and these conditions shall be included as a provision of the multi-term contract.

(b) *Pricing.* Pricing in multi-year contracts shall be reasonably firm and documented for the initial and each renewal term of the contract such that the contract serves the best interests of the city.

(c) *Non-appropriation.* When funds are not appropriated or otherwise made available to support continuation of performance in a renewal period, the contract shall be terminated. Termination for non-appropriation shall not be deemed a breach of contract.

Secs. 82-65 – 82-80. Reserved.

ARTICLE V.

PROTESTS AND CLAIMS

Division 1.

Award protests

Sec. 82-81. Informal award protest—generally.

(a) *Required.* Before filing a formal protest of an award, an aggrieved person must first file an informal award protest notice with the purchasing manager.

(b) *Standing.* Only an actual bidder who is aggrieved by an award may protest that award.

Sec. 82-82. Informal award protest—process.

(a) *Deadline for filing informal award protest.* An aggrieved bidder must file an informal protest arising out of an award not later than 21 days after the closing date of the solicitation, unless the purchasing manager, in his or her sole discretion, finds the aggrieved bidder could not have known of the reason for the protest within those 21 days.

(b) *Method of filing informal award protest*. The aggrieved bidder shall contact the purchasing manager in writing and provide information specific enough for the purchasing manager to understand the award at issue, the nature of the award protest, and any suggested resolution to the asserted protest. In addition, the informal award protest must contain a statement that specifies the exact nature of the competitive disadvantage created by or as a result of the alleged issues in the city's award process, other than that the aggrieved bidder was not selected for the award.

(c) *Resolution of informal award protest*. The purchasing manager is authorized to review and respond to an informal protest of an award. If the purchasing manager finds there is no evidence of any competitive disadvantage created by or as a result of alleged issues in the city's award other than that the aggrieved bidder was not selected for the award, the purchasing manager shall deny the protest. The purchasing manager shall, within 14 days of receipt of the informal award protest, respond in writing to the aggrieved bidder in writing, stating the reason or reasons for the decision reached by the purchasing manager. The purchasing manager's response must contain a copy of the city's formal award protest form.

(d) *Status of the award upon filing of informal protest.* Upon the filing of an informal protest, the award process shall be held in abeyance until the purchasing manager issues a written response to the informal protest.

Exception: If the city manager determines work related to the contested award is necessary to protect substantial city interests, the city manager may order the award approval process and work to proceed despite the filing of an informal protest.

(e) *Effect of failure to file informal award protest.* Failure of an aggrieved bidder to timely file an informal protest of an award shall be deemed a waiver of the right to file a formal protest of that award.

(f) *Appeal from denial of informal award protest.* Should the informal protest set forth herein not resolve the matter to the aggrieved bidder's satisfaction, the aggrieved bidder may then file a formal protest of the award as set forth in sec. 82-83.

Sec. 82-83. Formal award protest—process.

(a) *Standing.* Only a person aggrieved by the response of the purchasing manager issued under sec. 82-82(c) may file a formal protest of an award.

(b) *Deadline for filing formal award protest*. An aggrieved person must file a formal award protest not later than seven days after the date the purchasing manager issued the response to the informal protest as set forth in sec. 82-82(c).

(c) *Method of filing formal award protest*. The aggrieved person must file a formal award protest with the city clerk using a form provided by the city. The filing must include a copy of the purchasing manager's written response to the aggrieved person's informal award protest issued under sec. 82-82(c). The formal award protest form must be complete in all respects when submitted. A protest form that is not complete in all respects or that does not include a copy of the purchasing manager's written response shall be promptly returned by the clerk to the aggrieved person. An aggrieved person may resubmit a protest form deemed incomplete by the clerk, and the clerk shall accept it, if the resubmitted form is complete and submitted to the clerk within the deadline set forth in subsection (b) of this section.

(d) *Employee actions.* Once a completed formal award protest form has been timely submitted to the city clerk, the clerk shall notify the purchasing manager and the city manager of receipt of the protest. The purchasing manager shall, not later than seven days after submission of the completed formal protest form, file with the city manager all relevant documentation relating to the award, and may also submit to the city manager a statement summarizing the city's actions and Code provisions relevant to the matter.

(e) *Authority to settle matter or determine formal protest.* With the approval of the city attorney, the city manager is authorized to review and settle a protest of a bid award, and to issue a decision related to a bid award protest.

(f) *Issue; materiality.* The issue before the city manager in a formal award protest is whether an aggrieved person with standing has demonstrated by substantial and competent evidence that the bid award process violated the Code or other applicable law. For purposes of determining the outcome of a protest, an administrative or clerical error, or a defect that is not material to the award or that may be corrected by the city, shall not be considered a violation of the Code.

> (1) City manager's responsibilities. In evaluating a formal protest, the city manager shall review all information submitted by the aggrieved person and the purchasing manager, and may ask the aggrieved person or the purchasing manager for more information. Any such request and response shall be made a part of the record. The city manager may take into account any relevant procurement information, any relevant information provided by the aggrieved person or the purchasing manager, and also may notice any other relevant fact or circumstance.

(g) *Decision.* The city manager shall, not later than 21 days after submission of the completed formal award protest form, issue a written decision on the protest. The decision must contain the reason or reasons for the decision, as well as a description of the remedy, if applicable. The decision must set forth appeal rights, if any. The decision must be furnished to the aggrieved person in writing. Should the city manager fail to issue a written decision on the protest within the time frame set forth herein, the protest shall be deemed denied, and the aggrieved person may proceed as if an adverse decision has been received.

(h) *Delay of award.* If a formal award protest is timely filed by a person with standing, the award process may not proceed until the city manager has either issued a written decision on the protest or failed to issue a decision as set forth in subsection (g) of this section.

> Exception: If the city manager determines work related to the contested award is necessary to protect substantial city interests, the city manager may order the award process and work to proceed despite the filing of a formal protest. The city manager shall make a written finding to this effect. The city manager shall notify the aggrieved person that the award process and work will proceed, and also that the formal protest will proceed.

(i) *Effect of failure to file formal award protest.* Failure of a claimant to timely file a formal award protest claim shall be deemed a waiver of the contract claim.

(j) *Appeal.* The city manager's decision, or a denial of a protest as a result of the manager's failure to issue a written decision, shall be considered a final agency decision. An appeal of the city manager's decision may proceed under Rule 106 of the Colorado Rules of Civil Procedure.

Sec. 82-84. Remedies for awards in violation of the law.

(a) *Remedies.* If the city manager determines an award violated the Code or other applicable law, the city manager may, with the approval of the city attorney, order any remedy the city manager deems appropriate to the circumstances.

(b) *Termination of the contract.* If the city manager allowed work on the contract to begin under the exception to sec. 82-83(h), and the manager finds cancellation of the contract is necessary as a result of the findings made in the formal award protest, the city manager may order the contract to be terminated. Termination by the manager under this provision shall not be considered a breach of the contract. The person awarded the contract will be compensated for the actual costs reasonably incurred under the contract through the time of the termination notice, if the person submits to the city manager an itemized invoice of those costs not later than 14 days after the termination notice.

Secs. 82-85 – 82-90. Reserved.

Division 2.

Contract claims

Sec. 82-91. Definitions. The following words, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Claim means any threatened or asserted demand or action arising from or related to the administration or completion of a city contract made by the contractor awarded the contract, and includes without limitation, disputes arising under a contract, those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. A claim does not include an invoice or payment request submitted under the terms of a contract, although an invoice or payment request may be converted to a claim, if the amount is disputed or is not acted on within a reasonable period of time and if the contractor gives written notice to the city of the conversion. It also does not include a solicitation or bid protest.

Claimant means a person who is a party to city contract, who is aggrieved by an action or occurrence caused in whole or in part by a city employee that affects the completion of or payment on that contract, and who files an informal dispute resolution notice or a formal contract claim with the city.

Sec. 82-92. Generally.

(a) *Required.* Before filing a formal contract claim, a claimant must first file an informal contract claim dispute notice with the purchasing manager.

(b) *Standing.* Only a contractor who is a party to a city contract and who is aggrieved by an action or occurrence caused in whole or in part by a city employee and that affects the completion of that contract, or a person expressly authorized to act on the contractor's behalf, may file a claim. If a subcontractor or lower tier subcontractor lacks standing to file a claim because privity of contract does not exist between the city and the subcontract, a contractor with privity of contract may present the subcontractor's claim about that contract to the city on behalf of the subcontractor.

(c) *Election of alternate claim process.* The city may, in any contract, include provisions that govern the filing, consideration of, and payment of any or all claims by any party to the agreement arising out of or related to that contract. The claims procedure established under the agreement shall exclusively govern any claim arising out of that contract.

Sec. 82 – 93. Informal contract claim dispute notice—required.

(a) *Deadline for filing informal contract claim dispute notice.* A claimant must file an informal contract claim dispute notice not later than 14 days after the claimant knows or should have known of the facts giving rise to the claim, whichever is earlier.

(b) *Method of filing informal contract claim dispute notice*. The claimant shall contact the purchasing manager in writing and provide information specific enough for the purchasing manager to understand which contract is at issue, the nature of the occurrence giving rise to the contract dispute or disputes, the nature of the injury asserted by the contractor, and any suggested resolution to the asserted claim or claims.

(c) *Resolution of informal contract claim dispute*. The purchasing manager is authorized to review and respond to an informal contract claim dispute notice. The purchasing manager shall, as soon as is practicable, respond to the claimant in writing, stating the reason or reasons for the decision reached by the purchasing manager. The purchasing manager's response must contain a copy of the city's formal contract claim form.

(d) *Effect of failure to file informal contract dispute notice.* Failure of a claimant to timely file an informal contract claim dispute notice shall be deemed a waiver of the right to file a formal contract claim.

(e) *Appeal from denial of informal contract claim notice.* Should the informal contract claim dispute resolution process set forth herein not resolve the matter to the claimant's satisfaction, the claimant may then file a formal contract claim as set forth in sec. 82-93.

Sec. 82-94. Contract claim—formal process.

(a) *Standing.* Before filing a formal contract claim, a claimant must first file an informal contract claim dispute notice with the purchasing manager. Only a claimant aggrieved by the response of the purchasing manager issued under sec. 82-92(c) may file a formal contract claim.

(b) *Deadline for filing formal contract claim*. A claimant must file a formal contract claim not later than 14 days after the date the purchasing manager issued the response to the informal claim as set forth in sec. 82-92(c).

(c) *Method of filing formal contract claim*. A claimant must file a formal contract claim with the city clerk using a form provided by the city. The filing must include a copy of the purchasing manager's written response issued under sec. 82-92(c). The formal contract claim form must be complete in all respects when submitted. A formal contract claim form that is not complete in all respects or that does not include a copy of the purchasing manager's written response shall be promptly returned by the clerk to the claimant. A claimant may resubmit a claim form deemed incomplete by the clerk, and the clerk shall accept it, if the resubmitted form is complete and submitted to the clerk within the deadline set forth in subsection (b) of this section.

(d) *Employee actions.* Once a completed formal contract claim form has been timely submitted to the city clerk, the clerk shall notify the purchasing manager and the city manager of receipt of the claim. The purchasing manager shall, not later than seven days of submission of the completed formal contract claim form, file with the city manager all relevant documentation relating to the claim, including a copy of the solicitation, bid award, and executed contract. The purchasing manager may also submit to the city manager a statement summarizing the city's actions and Code provisions relevant to the matter.

(e) *Authority to settle or determine formal contract claim.* With the approval of the city attorney, the city manager is authorized to review and settle or determine a formal contract claim, and to issue a decision related to a formal contract claim. The city manager may take the following actions to settle or determine a claim:

(1) Deny the claim;

(2) Allow the claim if it is found to be valid or to have merit, and, if the claim is for an amount greater than that justly due the claimant, allow the claim in the amount justly due and deny it as to the balance; or

(3) Deny or compromise the claim if the legal liability of the city or the amount justly due is disputed.

If the city manager allows the claim in whole or in part, or compromises the claim, and if the claimant accepts the amount allowed or offered to settle the claim, the manager may require the claimant to accept that amount in settlement of the entire claim.

(f) *Issue; materiality.* The issue before the city manager in a formal contract claim matter is whether a claimant with standing has demonstrated by substantial and competent evidence that the claim is valid or has merit.

(1) Manager's responsibilities. In evaluating a claim, the city manager shall review all information submitted by the claimant and the purchasing manager, and may ask the claimant or the purchasing manager for more information. Any such request and response shall be made a part of the record. The city manager may take into account any

relevant information in the contract file, any relevant information provided by the claimant, and may also notice any other relevant fact or circumstance.

(g) *Decision.* The city manager shall, not later than 21 days of submission of the completed formal contract claim form, issue a written decision on the claim. The decision must contain the reason or reasons for the decision, as well as a description of the remedy, if applicable. The decision must set forth appeal rights, if any. The decision must be furnished to the claimant in writing. Should the city manager fail to issue a written decision on the claim within the time frame set forth herein, the claim shall be deemed denied, and the claimant may proceed as if an adverse decision has been received.

(h) *Effect of failure to file formal contract claim.* Failure of a claimant to timely file a formal contact claim shall be deemed a waiver of the contract claim.

(i) *Appeal.* The city manager's decision, or a denial of a claim as a result of the city manager's failure to issue a written decision, shall be considered a final agency decision. An appeal may proceed under Rule 106 of the Colorado Rules of Civil Procedure.

Secs. 82-95—82-100. Reserved."

Section 2. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. This ordinance shall be effective September 1, 2021.

INTRODUCED, READ, AND ORDERED PUBLISHED this 2nd day of August, 2021.

PASSED, ADOPTED, AND APPROVED this ______ day of ________, 2021.

____
Marc Williams, Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By: ____

Publication Dates: August 5, 2021

____

REDLINE/STRIKEOVER VERSION

FOR INFORMATION ONLY -- NOT PART OF THE ORDINANCE

Underlined indicates new material
~~Strikethrough~~ indicates deleted material

"PURCHASING AND CONTRACTS

ARTICLE I. IN GENERAL

Sec. 82-1. Short title.

This chapter shall be known and may be cited as the "~~"Arvada~~ Purchasing ~~and Contracts~~ Ordinance."~~."~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

Sec. 82-2. Legislative declaration and intent ~~Purposes~~.

The purpose of this chapter is to prescribe purchasing procedures for the city to follow in contracting for the construction of capital and other improvements, for the purchase of tangible goods, and for the acquisition of professional, consulting, and other services. This chapter shall be construed and applied to promote the following purposes: to ~~and policies:~~

~~(a) To~~ simplify~~, clarify, and modernize~~ the law governing the city's procurement processes; to~~by the City of Arvada;~~

~~(b) To~~ provide for ~~increased~~ transparency and public confidence in the city's~~procedures followed in public~~ procurement procedures; to~~;~~

~~(c) To~~ ensure the fair and equitable treatment of all persons who deal with the city's procurement system; to ~~of the City of Arvada;~~

~~(d) To~~ facilitate city procurement activities;~~ and~~ to maximize the purchasing value of public funds; to ~~of the City of Arvada;~~

~~(e) To~~ promote effective broad-based competition; and to maintain the quality and integrity of the city's fiscal controls and procurement system.

Sec. 82-3. Applicability.

(~~(f) To establish safeguards for the maintenance of~~ a ~~procurement system of quality and integrity.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-3.~~) Applicability. This ~~Application and procurement procedures.~~

~~(a) Application. Except as set forth in subsection (b), this~~ chapter applies~~shall apply~~ to the city's procurement of goods and services,~~ by the city~~ and to every expenditure of public funds for purchasing irrespective of the source of funds. This chapter applies to every city purchase or contract solicited after the effective date of this ordinance. The date of the solicitation shall be the date the solicitation is first published or issued by the city.~~, unless the procurement is listed as an exclusion.~~

Exceptions. Except as otherwise set forth herein, the following contracts are excepted from the requirements of this chapter:

1. Advertising services;

2. Art for display, purchase, or performance, or agreements for the maintenance of art where the maintenance is done by the artist or by a foundation or other entity authorized by the artist or the artist's estate;

3. Continuing education programs, and professional memberships, licenses, and publications for city employees;

4. Employment contracts between city council and the city manager, the city attorney, and the presiding or other municipal court judges;

5. Emergency contracts awarded under section 82-42 of this chapter or as a result of a declared civil emergency, emergency, or local disaster under chapter 26 of this Code;

6. Food and merchandise purchased for resale at city golf course facilities, except that apparel purchased by the city for use by employees while on duty are subject to the requirements of this chapter;

7.~~(b) Exceptions.~~
~~(1) Real property transactions;~~
~~(2) Annexation agreements;~~
~~(3)~~ Intergovernmental agreements;

8. Legal research tools, including books and software;

9. Outside~~(4) Contracts with outside~~ legal counsel and~~/or~~ investigators; and

10. Real property ~~(5) Employment~~ agreements including~~;~~
~~(6) Any contract for housing rehabilitation;~~
~~(7) Continuing education programs;~~
~~(8) Legal research tools, including, but not limited to, books and software;~~
~~(9) Professional memberships, licenses, and subscriptions;~~
~~(10) Advertising services, whether the advertising services are in physical or digital form;~~

~~(11) Purchases of art;~~

~~(12) Art exhibit agreements;~~

~~(13) Food products purchased for resale at banquet facilities and golf course facilities, and merchandise purchased for resale at golf course facilities; and~~

~~(14) Emergency contracts.~~

~~(c) City attorney review of contract exceptions. Notwithstanding the above, real property transactions,~~ annexation agreements.~~, intergovernmental agreements, and art exhibits must be approved as to form by the city attorney's office . If an agreement listed under subsection (b) utilizes a written contract template, the template must be approved as to form by the city attorney's office. To the extent that it applies, insurance shall be obtained on all excepted contracts. All excepted contracts shall be negotiated in the best interests of the city.~~

~~(d) Federal funds. When the procurement involves expenditure of federal funds, the procurement shall be conducted in accordance with any mandatory applicable federal laws or regulations.~~

~~(e) Grants, gifts bequests. Nothing in this chapter shall prevent compliance with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with section 13.6 of the Charter.~~

~~(f) No third party rights. This chapter does not create or confer any right or entitlement upon any person to bid on, or receive an award of any city contract.~~

~~(g) Effect of administrative rules directed to this chapter. All persons shall comply with the administrative rules or regulations (as amended from time to time) governing procedures for procurement of and contracting for goods and services under this chapter.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

Sec. 82-4. ~~Authorization.~~

~~(a) Authorized individuals and positions. The following individuals, and their duly appointed designees as provided for in this section, are authorized to procure goods and services and perform other duties described in this chapter as the appointing authority for their respective city department:~~

~~(1) City manager;~~

~~(2) City attorney;~~

~~(3) Municipal judge;~~

~~(4) Deputy city manager;~~

~~(5) Department heads;~~

~~(6) Purchasing division; and~~

~~(7) Any city employee designated in writing by the city manager to procure goods and services.~~

~~(b) Temporary delegation of authorization. The individuals identified above may temporarily delegate those responsibilities and duties to another employee in the chain of command.~~

~~(1) Delegation of authority must be in writing. A writing includes email or other electronic communication capable of being produced in a written format. A writing does not include instant~~

~~messaging, text messaging or phone messages. Written notification by an authorized individual that another employee is or will be designated as acting in the authorized individual's capacity during the authorized individual's absence will suffice as the temporary delegation of authorization required under this subsection.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-5.~~ Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: Administrative policy or policies mean the "~~rules, (formally, "~~Administrative Policy and Procedures Related to the Purchasing Ordinance" as adopted by the city.

Award or intent to award means the selection of a bid or proposal by the city. An award does not mean that a contract has been executed or that a purchase order has been approved.

Award approval means the authorization of an award by the execution or approval of a purchase order, or by the execution of a contract by an authorized employee or city council.

Best value means a technique in a competitive solicitation process which emphasizes value over price and permits the evaluation of criteria such as qualifications, experience, and performance data to determine the best overall value to the city.

Bid means an offer of a price for goods or equipment.

Bidder means a person who files a submission in response to a city-issued solicitation, and includes a person who files a response to a request for bids, proposals, qualifications, or capital improvement project competitive sealed bids. It also includes a person who responds to a city request for qualifications for the purpose of pre-qualifying as a contractor to perform work for the city on as-needed basis.

Budgeted means included in the city council's approved budget.

City means the~~Rules Governing~~ City of Arvada.~~ Purchasing and Contracts") for purposes of this chapter, means administrative rules or regulations governing procedures for procurement of and contracting for goods and services under this chapter.~~

~~Best value procurement means the application of methods, including but not limited to, total cost of ownership and performance based contracting to determine best value by weighing and balancing multiple factors, and requires the comparison of the benefits offered against life cycles, including the resources necessary to conduct the procurement, purchase price, fiscal tracking and processing costs, reliability, vendor responsiveness, risk, product/service quality, storage, maintenance, operational costs, integration, training, and disposal.~~

~~Bid means an offer of a price for goods, services, or equipment.~~
~~Change order means a written order signed and issued by the city, directing the contractor or vendor to make modifications authorized by the contract or negotiated with the contractor or vendor.~~
~~Confidential information means any information which is available to an employee only because of the employee's status as an employee of the city and is not a matter of public knowledge or available to the public on request.~~

City attorney means the city attorney for the City of Arvada or designee thereof.

City manager means the manager of the City of Arvada or designee thereof.

Code means the Arvada City Code.

Construction means the process of building or~~, improving,~~ replacing a city-owned building or ~~demolishing any~~ structure, including but not limited to water infrastructure, bridges~~ or building~~, or other city-owned infrastructure assets. Construction includes the demolition of bridges, water infrastructure, or other city-owned infrastructure assets, but does not include demolition of other city-owned structures or buildings. ~~improvements of any kind to any real property.~~ It also does not include the routine operation,~~ and~~ repair, or ~~preventative~~ maintenance of city-owned~~existing structures,~~ buildings~~,~~ or structures.~~real property.~~
~~Construction bid means a bid process for the solicitation of capital improvement projects using a template approved by the city attorney's office.~~
Contract means any type of city agreement, including a purchase order, between the city and a contractor, where the principal purpose is to acquire goods, service, or construction or to dispose of property for the benefit of the city. Contract includes a modification to a contract.

Contractor means any person having a contract with the city~~all types of city agreements~~, regardless of what the person~~they~~ may be called or how the person is described.~~(e.g., agreements, addenda, amendments, purchase orders, etc.), for the procurement or disposal of goods, services, or construction. It does not include field orders.~~

Cooperative contract means a valid and current purchasing agreement negotiated by another entity for use by all public agencies that are members of the purchasing cooperative group.

Day means calendar day.

Director or work system director means a manager of a city work system or a department director.

Documented quote means a~~the manner of~~ fiscal control where one or more~~three~~ valid written quotes are ~~documented and attached to a purchase order for the purchasing program's review and storage. Documents quotes must be~~ obtained as part of a solicitation process.~~using the city's highest ethical standards, barring collusion or other unlawful practices.~~

Electronic communication means an interactive communication~~communications~~ that is~~are~~ transmitted electronically and capable of being produced in a written format, but ~~. Electronic communication~~ does not include instant messaging, text messaging, or phone messages.

Electronic signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record to which it is affixed.~~.~~

Emergency contract means a contract necessary to respond to urgent and compelling circumstances that create ~~necessitated by virtue of~~ a threat to the public's~~public~~ health, ~~welfare~~ safety, or welfare,~~other good cause as determined by the city manager~~ or to an emergency declared under chapter 26~~employee delegated the authority by the city manager.~~

~~Employee, for purposes~~ of this Code.~~chapter, means an individual drawing a salary, wages, or other monetary compensation from the city, whether elected or not; any uncompensated individual performing personal services for the city or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the city; or any uncompensated individual serving as an elected official of the city.~~

Employee means a regular or probationary full-or part-time city employee.

Fiscal control~~Financial interest~~ means a financial~~:~~

~~(1) Any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than $500.00 per year, or its equivalent;~~

~~(2) Ownership of five percent or more of any property or business; or~~

~~(3) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of~~ management practice designed~~.~~

~~Fiscal controls means maintaining fiscal management practices~~ to ensure ~~that~~ expenditures are authorized by and in accordance with the amounts specified in the adopted budget, to reassure city council and citizens of responsible procurement and spending strategies, and to ensure all transactions are documented appropriately~~in an appropriate manner~~ and in accordance with this Code and Colorado law.

Formal solicitation means a procurement method used for contracts or purchase orders of $50,000.00 or more that features the issuance of a public, written announcement of, or request for, bids, proposals, or qualifications.

Good or goods mean~~Formal bid means a bid which has been submitted in a sealed envelope to prevent dissemination of its contents before the scheduled opening.~~

~~Formal proposal means an offer in a sealed envelope from a prospective provider where the city specifies the goals to be met and requests that the vendor apply its expertise in reaching these stated goals in the most effective method.~~

~~Goods means~~ anything that has economic and physical utility, excluding real property, and includes those services incidental or necessary to providing the good or goods.~~.~~

Modification means any written alteration of a contract, regardless of what it may be called, accomplished in accordance with terms of that contract, and includes a change order related to or renewal of an existing contract. A modification may be monetary or no cost in nature. An extension of a contract that results in the payment of additional funds to a contractor shall be deemed a monetary modification.

~~Gratuity means any payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.~~

~~Immediate family, for purposes of this chapter, means an employee's spouse, child, parent, sibling, grandparent, grandchild (including natural, step, adopted, foster, or in-law relationships); and also includes any other relative, or person who the employee identifies as his/her significant other or domestic partner whose primary residence or place of primary abode is the same as the employee.~~

~~Insurance means adequate insurance coverage that meets all city requirements, as promulgated by the risk manager.~~

No cost procurement~~purchase~~ means the acquisition of a good or service following an unsolicited offer~~,~~ or an offer that did not arise from a competitive~~documented~~ solicitation process, or from a provider that proposes the ~~particular~~ acquisition of a particular good~~goods~~ or service by the city~~services~~ for ~~"~~free,~~" or~~ at ~~"~~no charge, or on a complimentary basis.~~" Such offers usually contain additional terms and conditions that can stipulate future obligations for the city, financial or otherwise, that may not comply with this chapter, or any associated administrative rules.~~

Person means any business, individual, union, committee, club, other organization, or group of individuals.

Procurement or procurement process means the purchasing, renting, leasing, or otherwise acquiring of any goods, services, professional services, or construction. It~~ also~~ includes all functions that pertain to the acquisition~~obtaining~~ of any supply, service, or construction, including the description of requirements, the selection~~,~~ and solicitation of sources, solicitation and bid award protests, the preparation and award of a contract, and all phases of contract administration and claims.~~. Procurement shall not include the buying, purchasing, renting or leasing of real property.~~

Pre-qualify or pre-qualification means a process by which the city may solicit, evaluate, and select vendors for the purpose of creating a list of vendors eligible to perform work for the city on an as-needed or on-call basis, and which is completed in advance of identifying the specific service needed or work to be done.

Professional services means the services of accountants, architects, consultants, engineers, landscape architects, and other such professions which often result in the delivery of a written ~~furnishing of labor, time, or effort by a contractor with specialized knowledge, which may include intensive preparation or education and the furnishing of a~~ report or analysis.~~written or oral advice and information.~~

Project owner means the director or designee thereof tasked with oversight and completion of a particular procurement project originating from within the work system.

~~Public cooperative agreement means a valid and current purchasing agreement negotiated by another public entity for use by all public agencies participating therein.~~

~~Public entity means the United States federal government, any state in the United States and any county, city, city and county, town or district, including any political subdivision thereof, or any instrumentality of a political subdivision thereof, or any association, whether incorporated or not, of the state, cities, city and county, towns or districts.~~

Purchase order means a contract containing~~form of contractual document,~~ preprinted ~~with~~ terms ~~pre-written or written on the document,~~ which is used as a tool in the city procurement process.

Purchasing manager means the manager~~for a city department or division, receiving area or vendor. It may include a standard set~~ of ~~terms used by~~ the city's purchasing program~~city~~ or designee thereof.~~vendor.~~

Real property means land and whatever is growing upon, erected upon, or affixed to land including water, mineral, and subsurface rights and excluding personal property.

Responsible means~~bidder or offeror means a person or entity who has~~ the capability in all respects to perform fully the contract requirements~~,~~ and the ~~tenacity, perseverance, experience,~~ integrity and~~,~~ reliability that~~, capacity, facilities, equipment, insurance and credit which~~ will ensure~~assure~~ good faith performance.

Responsive ~~bidder~~ means a bid~~person~~ or proposal~~entity who has~~ submitted ~~a bid or offer which conforms~~ in a form prescribed by~~all material respects to~~ the city that meets the specifications, acceptability requirements, and terms and conditions of~~set forth in~~ the solicitation.

Services mean~~means~~ the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports or items which are merely incidental to the required performance.

Sole source~~Solicitation or competitive solicitation~~ means a~~city invitations or requests for bids, requests for proposals, requests for qualifications, requests for quotation, and other accepted methods to solicit information and costs for~~ procurement process conducted without competition and in accordance with the provisions of this chapter for the acquisition of goods or~~,~~ services, or a contract awarded as a result of such a process.

Solicitation means~~construction for~~ the process of trying to obtain a good or service,~~city~~ and includes all documents and related information, whether attached or incorporated by reference, published prior to the response deadline on an electronic bidding system or otherwise in connection with that procurement effort.~~utilized for the solicitation.~~

Specification means any description of the physical or functional characteristics or of the nature of a good or~~,~~ service, or ~~construction item. It may include~~ a description of any requirement for inspecting, testing, or preparing a good or~~supply,~~ service~~, or construction item~~ for delivery.

Variation means a statement submitted to the city by a bidder that outlines a request to alter or modify the terms of a solicitation.

Vendor means a person offering something for sale.

Work system means the organizational unit around which the city's workforce is structured and through which employees are grouped together according to the nature of the work they do to accomplish the city's strategic goals and objectives. Work system includes a department within a city work system.

Writing means any written recordings, papers, books, or documentary materials, regardless of physical form or characteristics, and includes emails or other electronic communication capable of being produced in a written format, but does not include instant messaging, text messaging, or telephone messages.

~~Successful solicitation means the lowest responsive, responsible, and qualified bidder as determined by the city. Factors to be included may include the quality, availability, delivery of the product, qualifications of the contractor, vendor or consultant, and any special requirements relevant to the solicitation as determined by the city.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

Sec. 82-5. Administrative policies and procedures~~6. Public access to procurement information~~.

The city manager may, with assistance from the finance director, develop or amend and promulgate under sec. 2-121 of this Code administrative policies and procedures necessary to implement the city's purchasing and contracts processes.

Sec. 82-6. Procurement records.

(a) Procurement records public. Subject to any limitations provided for by federal or state law concerning open access and right to privacy, all procurement information is hereby declared to be a public record and open for inspection pursuant to C.R.S. § 24-72-201 et seq., as may be amended, except the~~ from time to time. The~~ custodian of records may deny inspection of responses to solicitations until ~~such time as~~ the award~~contract~~ is approved~~awarded~~ or the city determines that it will not be awarding a contract.

Records maintenance~~(Ord. No. 4625, § 1, 3-5-2018)~~
~~Sec. 82-7. Authority~~ and retention. All procurement records shall be kept and maintained in ~~duties of the purchasing manager.~~
~~(a) In~~ accordance with ~~this chapter, and subject to the supervision of the finance director, the purchasing manager shall:~~
~~(1) Advise, assist, and collaborate with appointing authorities on the administrative procedures and rules for quality and fiscal control of the procurement process;~~
~~(2) Upon consultation with the city attorney and with the approval of the city manager, debar or suspend firms or individuals from consideration for awards of contracts;~~
~~(3) Assist in dispute resolution of bid protests and contract claims;~~
~~(4) Collaborate with appointing authorities to determine the most appropriate method of procurement given the needs and best interest of the city and the nature of the goods or services being solicited; and~~
~~(5) The city manager may delegate, in writing, to the purchasing manager or appointing authority any of the functions that the city manager is to perform under this chapter.~~
~~(Ord. No. 4625, § 1, 3-5-2018)~~
~~Sec. 82-8. Authority to award and terminate contracts and contract modifications.~~
~~(a) City council. Award, modification and termination of contracts for more than $150,000.00, are subject to the approval of the city council.~~
~~(b) City manager. The city manager is hereby authorized to approve, and terminate contracts that are $150,000.00 or less, and to approve a modification, or cumulative modifications, of no more than 15% of the original contract amount, but not to exceed a total modification, or cumulative modifications, of $150,000.00. The city manager is authorized to delegate the authority to approve contracts that are $150,000.00 or less to the appointing authority as provided below.~~
~~(1) City manager modification of contracts approved by city council. The city manager shall have the authority to modify contracts originally awarded by the city council of no more than 15 percent of the original contract amount but the total modification, or cumulative modifications, is not to exceed $150,000.00.~~
~~(2) Appointing authority approval and modification of contracts.~~

~~(i) Deputy city manager(s). The deputy city manager(s) is hereby authorized to approve contracts that are $125,000.00 or less, and to approve a modification, or cumulative modifications, of no more than 15 percent of the original contract amount, but not to exceed the total of $125,000.00.~~

~~(ii) Department heads. Department heads are hereby authorized to approve contracts that are $100,000.00 or less, and to approve a modification, or cumulative modifications, of no more than 15 percent of the original contract amount, but not to exceed the total of $100,000.00.~~

~~(3) Execution of insurance binders and renewals by city manager. Notwithstanding the dollar limits for award or modification of a contract provided in this Article I, the city manager shall nonetheless be authorized to execute and deliver binders for property and liability insurance and excess worker's compensation, or renewals or extensions of employee health or benefit insurance policies on behalf of the city under the following circumstances:~~

~~(i) The option to bind, renew or extend the insurance policy or execute a binder shall be a term or provision of a contract or policy authorized by the city council; and~~

~~(ii) The original insurance policy, whether property and liability, excess worker's compensation or employee health and benefit, to be bound, renewed or extended, as the case may be, shall have been previously recommended to the city council as being in the best interest of the city as determined through the appropriate procurement process provided for in Article II of this chapter; and~~

~~(iii) Funds shall be available in the current or projected budget for payment of premiums during any term or term of renewal or extension of such insurance policy.~~

~~(4) Finance director development and modification of administrative rules. The finance director shall have the authority to develop, modify, and amend administrative rules for procurement and contracts following the requirements set forth in the Code of the City of Arvada.~~

~~(c) Calculation of contract amount for multiple year contracts. Unless the terms of a multiple year contract allows the city to terminate the contract before or at the conclusion of a period of one year from commencement of the contract, the aggregate amount of multiple year contracts will be considered when calculating the total amount of the contract for purposes of the limitations on the ability to award, modify or terminate contracts under this chapter and under the administrative rules.~~

~~(d) No contract divided. No contract shall be divided for the purpose of circumventing the requirements of this section. This includes modifying or amending contracts that would result in circumvention of the requirements of this section.~~

~~(e) No contract approved, terminated or modified. Except as otherwise stated herein, no contract, with the exception of purchase orders, shall be approved, terminated, or modified unless such contract has first been approved as to form by the city attorney or designee thereof.~~

~~(f) Fiscal controls. The purchasing division shall develop a process to report to city council, on a regular basis, the award of new contracts.~~

~~(g) Approval of purchase orders. The purchasing division shall administer an approval process of purchase orders to ensure fiscal control of documented quotes and reporting of awards over $50,000.01 to city council.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-9. Electronic signatures and administration.~~

~~(a) Subject to any limitations in the Colorado Uniform Electronic Transactions Act, by submitting a proposal to a city issued solicitation for goods or services the person or entity agrees to the use of electronic signatures. Notwithstanding the foregoing, the city may, in its discretion, require that any such proposal be executed with manual signatures.~~

~~(b) The purchasing division shall be responsible for and maintain central administration of all electronic solicitations with the exception of quick quotes for goods, and city departments will coordinate with the purchasing division in its role in this regard.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Secs. 82-10—82-30. Reserved.~~

~~ARTICLE II. SOLICITATION THRESHOLDS AND METHODS~~

~~Sec. 82-31. Solicitation thresholds.~~

~~(a) $5,000.00 or less. At least one competitive, documented quote is required for purchases of goods and services in a total amount of $5,000.00 or less. Additional documented quotes are encouraged, but not required.~~

~~(b) $5,000.01 to $50,000.00. Purchases of goods or services from $5,000.01 through $50,000.00 require a competitive solicitation process called documented quotes, as defined in section 82-5. The process and procedure for obtaining documented quotes is set forth in the administrative rules.~~

~~(c) $50,000.01 and greater. Purchases of goods or services of $50,000.01 and greater shall require a formal solicitation process. The formal solicitation process is set forth in the administrative rules.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-32. Non-competitive and exceptional methods.~~

~~(a) Sole source of $5,000.01 to $50,000.00. A sole source may be used when the proposed purchase of goods and services between the amounts of $5,000.01 and $50,000.00 can only be achieved with one product or service that will meet the city's need and there is only one vendor capable of providing that product or service based on a written document, approved by the purchasing manager, that justifies a sole source with sufficient facts, circumstances, and reasoning to substantiate the sole source including an explanation as to why there are no other vendors suitable or acceptable to meet that need.~~

~~(b) Sole source of $50,000.01 and greater. A sole source may be used when the proposed purchase of goods and services in a total amount of $50,000.01 and greater can only be achieved with one product or service that will meet the city's need and there is only one vendor capable of providing that product or service based on a written document, approved by the city manager after consultation with the purchasing manager, that justifies a sole source with sufficient facts,~~

~~circumstances, and reasoning to substantiate the sole source including an explanation as to why there are no other vendors suitable or acceptable to meet that need.~~

~~(1) Approval of the sole source justification shall not preempt the authority of city council approval, except in the case of the emergency purchase of goods and services.~~

~~(2) The process and procedure for contracting for sole source procurement is set forth in the administrative rules.~~

~~(c) Emergency procurements and emergency contracts. Notwithstanding any provisions of this chapter, the city manager may authorize emergency procurements of goods and/or services when there exists a threat to public health, welfare, or safety, or other good cause exists, regardless of the dollar amount. Emergency purchases:~~

~~(1) Shall only be made when a situation creates an immediate and serious need for products and services that cannot be met through normal purchasing methods and the lack of which would seriously jeopardize the operation of the city, the preservation or protection of property or the health or safety of any person.~~

~~(2) Even in emergency situations, as much competition as is reasonable under the circumstances shall he obtained.~~

~~(3) Shall be limited to only the products and services specifically needed for resolving the emergency.~~

~~(4) The appointing authority shall promptly notify the purchasing manager if an emergency purchase is necessary so that any reasonable efforts toward emergency competition may be considered and documented.~~

~~(5) Upon resolution of the emergency, the appointing authority shall prepare a written document which describes the facts and circumstances of the emergency and the reasoning behind the selection of the vendor(s) chosen to meet the emergency need.~~

~~(d) Public cooperative agreements. Purchases of goods and services from valid public entity agreements are exempt from competitive solicitations.~~

~~(e) No cost purchases. Notwithstanding any other provision of this chapter no employee may accept a no cost purchase without approval by the city attorney's office.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-33. Competitive methods.~~

~~(a) Acceptable methods. Acceptable methods for obtaining competitive solicitations for goods and services in the best interest of the city, and consistent with the provisions of this chapter, shall seek to maximize the value of the public funds in the most efficient and effective manner that meets the city's requirements and the degree of complexity associated with the good or service being purchased.~~

~~(b) Best value procurement. The city, through the purchasing division, solicits requests for qualifications and requests for proposal based upon a best value procurement basis, which includes the evaluation of qualifications, experience, and performance measures to award and renew contracts based upon the best value to the city.~~

~~(c) Administrative rules. The application of specific methods, including directions is set forth in the administrative rules and any standardized document templates.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-34. Other procurement methods.~~

~~The finance director may establish, through the administrative rules process, other competitive procurement methods that are deemed to be in the best interest of the city and that are consistent with the provisions of this chapter.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Secs. 82-35 – 82-70. Reserved.~~

~~ARTICLE III. CONTRACT ADMINISTRATION~~

~~Sec. 82-71. Types of contracts.~~

~~Subject to the limitations of this section, any contract which is appropriate to the procurement and which will promote the best interest of the city may be used.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-72. Multi-term contracts.~~

~~(a) Unless otherwise provided by law, a contract for the purchase by the city of goods or services may be entered into for any period of time deemed to be in the best interest of the city; provided, however, the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds and such condition shall be included as a provision of the multi-term contract.~~

~~(b) Prior to the use of a multi-term contract, it shall be documented that estimated requirements cover the period of the contract and are reasonably firm and continuing; and that such a contract will serve the best interest of the city by encouraging effective competition or otherwise promoting economies in city procurement.~~

~~(c) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-~~the city's~~73. Right to audit records.~~

~~(a) The city may at reasonable times and places, audit the books and~~ records retention schedule. The city clerk is the official custodian of city procurement ~~of any contractor who has submitted cost or pricing data to the extent such books, documents, papers and~~ records ~~are pertinent to cost or pricing data.~~

~~(b) The city may audit the books and records of any contractor or subcontractor when a negotiated contract is not a firm fixed price contract and books, documents, papers and records are pertinent to the performance of such contract.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-74. Construction contract performance and payment bonds.~~

~~(a) When a construction contract is awarded, the following bonds or security shall be delivered to the city and shall become binding on the parties upon the execution of the contract:~~
~~(1) A performance bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, in an amount equal to 100 percent of the price specified in the contract; and~~
~~(2) A payment bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for the contract, which bond shall be in an amount equal to 100 percent of the price specified in the contract; and~~
~~(3) In lieu of providing a performance or payment bond, a contractor may provide cash or an unconditional letter of credit for 100 percent of the amount required. Such security must be in a form acceptable to the city attorney. The city shall hold any cash provided hereunder in an interest bearing account, and said interest shall be returned to the contractor at such time as said cash is returned; if all or part of the cash is converted to the city's ownership, the city shall also receive all or a pro-rata share of the interest.~~
~~(b) The appointing authority is authorized to reduce the amount of performance and payment bonds to 50 percent of the contract price for each bond when a written determination is made that is in the best interests of the city to do so.~~
~~(c) Nothing in this section shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds.~~
~~(Ord. No. 4625, § 1, 3-5-2018)~~
~~Secs. 82-75—82-100. Reserved.~~
~~ARTICLE IV. DEBARMENT OR SUSPENSION~~
~~Sec. ~~. The ~~82-101. Authority to debar or suspend.~~
~~(a) Upon reasonable investigation, and after consultation with the city attorney, the purchasing manager is authorized to debar a person from consideration for award of contracts. The debarment shall be for a period of not more than three years. After consultation with the city attorney, the purchasing manager is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person, or if the person is not an individual, any principal thereof, has engaged in any activity which might lead to debarment. In addition, a suspension may be similarly imposed on a person whose past or present conduct or contract performance with the city or any other entity, or if the person is not an individual, any principal thereof, whose past or present conduct or contract performance is deemed to be unduly uncooperative, inadequate, incomplete, inefficient, or otherwise unprofessional. The suspension shall be for a period not to exceed six months. The causes for debarment or suspension shall include but not be limited to:~~
~~(1) Conviction for commission of a criminal offense as an incident to performance or to obtaining or attempting to obtain a public or private contract or subcontract;~~

~~(2) Conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or honesty affects~~ responsibility for keeping and maintaining procurement records is as follows:~~as a city contractor;~~

(1) The purchasing manager shall keep and maintain records of all formal solicitation processes, solicitations for tasks of $50,000 or more performed under a contract with a pre-qualified vendor, all sole source justification records, and all records relating to emergency contracts.

(2) The director shall keep and maintain records of solicitations and contracts initiated by his or her department, except those ordinarily kept and maintained by the city clerk, or by the purchasing manager as set forth herein. The director is also responsible for ensuring that all bonds, notices, certificate of insurance, and other documents required by a contract are timely obtained, current, and maintained for record keeping purposes. The director may delegate any of these responsibilities, for any or all procurements, to the project owner or to another work system employee.

Sec. 82-7. Compliance with state and federal grant requirements.

When a procurement process involves the expenditure of state or federal grant or assistance funds, the procurement shall be done in compliance with all applicable state and federal laws, statutes, and other requirements. In these cases, employees must also act in accordance with the solicitation rules and other provisions of this chapter, and all applicable city policies. In the event of a conflict between state, federal, or city laws, statutes or other requirements, the most stringent, or strictest, law, statute, or requirement shall apply to the procurement.

~~(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;~~
~~(4) Violation of contract provisions, as set forth in subsections (5) and (6) of this section, of a character which is regarded by the city manager to be so serious as to justify debarment action;~~
~~(5) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;~~
~~(6) Recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;~~

~~(7) Any other cause the city manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter; or~~

~~(~~Sec. 82-8. Conflicts.

To the extent~~) Violation~~ of any conflict between this Code and~~provision in~~ the administrative policies relating to this Code, the provisions of this Code will prevail, and then the provisions of the administrative policies, in that order.~~rules pertaining to ethics in public contracting.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-102. Decision to debar or suspend.~~

~~The city manager shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning administrative review.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-103. Notice of decision.~~

~~A copy of the decision required by section 82-102 shall be mailed or otherwise furnished to the debarred or suspended person.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-104. Finality of decision.~~

~~A decision under section 82-102 shall be final unless the debarred or suspended person, within ten days after receipt of the decision, submits in writing to the city manager a request for an administrative hearing before the city manager. The administrative hearing shall be held in compliance with section 2-121 et seq.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

Secs. 82-9 – ~~105—~~82-20. ~~120.~~Reserved.

ARTICLE II.~~V. APPEALS AND REMEDIES~~

~~Sec. 82-121. Authority of the city manager to settle bid protests and contract claims.~~

~~The city manager is authorized to settle, with the city attorney's approval, any protest regarding the solicitation or award of a city contract, or any claim arising out the performance of a city contract. Before protesting in writing to the purchasing manager as outlined in section 82-122, any actual or prospective bidder or contractor who has a grievance in connection with the solicitation or award of a contract shall first seek resolution of the matter with the appointing authority.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-122. Bid protests.~~

~~(a) After first seeking resolution of the matter with the appointing authority, any actual or prospective bidder or contractor who has a protest in connection with the solicitation or award of a contract may protest in writing to the purchasing manager. A protest with respect to an invitation for bids or request for proposals, must be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and could not~~

~~have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. In any case, a written protest must be submitted within the following time period if the protest relates to the solicitation, bid, or proposal process, no later than ten days after the bid opening; or if the protest relates to the award of the contract, no later than ten days after the contract is awarded.~~

~~(b) In the event of a timely protest under subsection (a) of this section, the solicitation or award of the contract shall not proceed further until the purchasing manager has issued a written decision on the protest or until the city manager makes a determination that the award of a contract without delay is necessary to protect substantial interests of the city. If the purchasing manager does not, within 14 days after receiving the protest, or within such longer period as may be agreed upon by the parties, issue a written decision on the protest or make a determination that the award of the contract is necessary, the protest shall be considered denied.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-123. Contract claims.~~

~~(a) Except as stated in this subsection (a) of this section, all claims by a contractor against the city relating to a contract which has already been awarded by the city, must be submitted in writing to the appointing authority. The contractor may request a conference with the appointing authority on the claim. Claims include, without limitation, disputes arising under a contract, those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, including purchase orders. This subsection shall not apply to the bid protest process described in section 82-122 or to any matter covered by the bid protest process.~~

~~(b) The decision of the appointing authority shall be issued in writing, and shall be mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under subsection (c) of this section. If the appointing authority does not issue a written decision regarding the claim within 14 days after receipt of the claim, or within such longer period as may be agreed upon between the parties, then the claim shall be considered denied and the aggrieved contractor may proceed as if an adverse decision has been received.~~

~~(c) The appointing authority's decision shall be final unless within 14 days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the city manager. If the city manager does not issue a written decision within 14 days after receipt of the written appeal, or within such longer period as may be agreed upon by the parties, the appeal shall be considered denied.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec. 82-124. Remedies for solicitations or awards in violation of law.~~

~~(a) If prior to the bid opening or the closing date for receipt of proposals, the appointing authority, after consultation with the city attorney, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be canceled or revised to comply with applicable law.~~

~~(b) If after bid opening or the closing date for receipt of proposals, the appointing authority, after consultation with the city attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be canceled.~~

~~(c) If after an award the appointing authority, after consultation with the city attorney, determines that a solicitation or award of a contract was in violation of applicable law, and if the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified and affirmed; provided it is determined by the appointing authority that doing so is in the best interests of the city, or the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, prior to the termination.~~

~~(d) If the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interest of the city.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Secs. 82-125 – 82-140. Reserved.~~

~~ARTICLE VI.~~ ETHICS IN CITY PROCUREMENT PROCESSES~~PUBLIC CONTRACTING~~

Sec. 82-21. Purpose.

The conduct~~141. Employee conflict~~ of city employees must hold the respect and confidence of the public. Unethical behaviors undermine the public's trust in government and the integrity of public procurement processes. Ethics provisions are intended to protect the integrity of the city's procurement processes, and encourage ethical conduct by employees and others involved in these processes~~interest~~.

~~(a) It~~Sec. 82-22. Definitions.

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

Confidential information means any information which is available to an employee only because of the employee's status as an employee of the city and is not a matter of public knowledge or available to the public on request.

Direct participation or ~~be unethical for any city employee to participate~~ directly participating means to be the project owner for a solicitation, or to be the director of the work system or department which initiated the solicitation.

Financial interest means:

(a) Any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, anything of value, except~~or indirectly in the contracting process when the city employee knows~~ that receipt of an advertising or promotional item of minimal value by shall not be considered a financial interest;

(b) Ownership of five percent or more of any property or business; or

(c) Being an officer, director, trustee, or partner of, or being a manager, supervisor,~~the~~ employee, or holding a similar position in a business.

Exception: Assets held by an employee or an employee's family~~ or any~~ member ~~of the city employee's immediate family has a financial interest pertaining to the contract, or any other person, business, or organization with whom the city employee or any member of the city employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the contract.~~
~~(b) A city employee or any member of a city employee's immediate family who holds a financial interest~~ in a disclosed blind trust shall not be deemed to be a financial interest that constitutes~~have~~ a conflict of interest with regard to matters pertaining to that financial interest.

Former ~~(Ord. No. 4625, § 1, 3-5-2018)~~
~~Sec. 82-142. Gratuities and kickbacks.~~
~~(a) It shall be unethical for any person to offer, give, or agree to give any city employee or former city employee, which means someone who was employed by the city within one year, or for any city employee or former city employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.~~
~~(b) It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.~~
~~(Ord. No. 4625, § 1, 3-5-2018)~~
~~Sec. 82-143. Prohibition against contingent fees.~~
~~It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.~~
~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec.~~ employee means a person who was employed by the city within the past 12 months, but who is no longer employed by the city.

Gift, gratuity, or kickback means anything of value including but not limited to cash, a gift certificate, a gift card, loan, advance, service, or an offer of employment, either given or promised. It does not include an advertising or promotional item of minimal value, or the occasional donation at a city work site of perishable items for consumption by city employees.

Immediate family or family means an employee's spouse, child, parent, sibling, grandparent, or grandchild (including natural, step, adopted, foster, or in-law relationships); or a person whom the employee identifies as his or her significant other or domestic partner whose primary residence or place of primary abode is the same as the employee's.

~~82-144. Contemporaneous employment~~ Sec. 82-23. Unethical acts by employees—prohibited.

(a) Conflicts of interest. Every employee is responsible for being a good steward of city resources, and for carrying out procurement duties for the benefit of the city.

(1) Generally. It shall be unethical for an employee to use or attempt to use his or her position to gain financial benefit or avoid a financial loss to the employee or his or her family, if that opportunity is available only because the employee holds or held a position at the city.

(2) Financial conflict of interest. It shall be unethical for an employee to participate~~any city employee who is participating~~ directly or indirectly in a solicitation ~~the procurement~~ process when the~~to become or to be, while a city~~ employee knows~~,~~ the employee or a member of the employee's immediate family has a financial interest pertaining to the award or the contract.~~any person contracting with the governmental body.~~

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec.~~

(i) Waiver. ~~82-145. Waivers from contemporaneous employment prohibition and other conflicts of interest.~~

The city council may grant a waiver from this subsection (a)(2)~~section 82-141 or section 82-144~~ upon making a written determination that the ~~contemporaneous employment or~~ financial interest of the ~~city~~ employee has been publicly disclosed, that the employee will be able to perform procurement functions without actual or apparent bias or favoritism, and that the award will be in the best interests of the city.

(3) Conflict of interest related to negotiating employment. It shall be unethical for an employee to participate directly or indirectly in a solicitation process when the employee is negotiating an employment arrangement with a bidder or prospective bidder involved in that

solicitation process, or when the employee knows a member of the employee's family is negotiating an employment arrangement with a bidder or prospective bidder involved in that solicitation process.

(b) Gift, gratuity, or kickback. It shall be unethical for an employee to solicit, demand, accept, agree to accept, or keep for his or her own personal use, or for that of his or her family, any gift, gratuity, or kickback from another person in connection with any procurement process action, advice, decision, or recommendation made or done by that city employee.

(c) Contemporaneous employment. It shall be unethical for an employee who is participating directly or indirectly in a solicitation process to negotiate employment with, be, or to become the employee of any person contracting with the city while still a city employee. It shall also be unethical for an employee who has participated directly in a solicitation process to accept employment with, or to become the employee of any person contracting with the city as a result of that solicitation process within six months of leaving employment with the city. This provision shall not be construed to prevent any former employee from engaging in any lawful occupation at any place he or she sees fit, but merely to declare the practice of accepting employment under these circumstances contrary to best purchasing practices and unethical.

(1) Waiver. The city council may grant a waiver from this subsection (c) upon making a written determination that the contemporaneous employment of the city employee has been publicly disclosed, that the~~and the city~~ employee will be able to perform procurement functions without actual or apparent bias or favoritism, and that the award will be in the best interests of the city.

~~(Ord. No. 4625, § 1, 3-5-2018)~~

~~Sec.~~

(d) ~~82-146.~~ Use of confidential information.

It shall be unethical for an~~any~~ employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

(e) Attempt to influence city procurement process. It shall be unethical for an employee to purposely influence or attempt to influence a city procurement process in a manner that provides the employee or his or her family with a personal financial gain that would not otherwise have been available to them, or that allows the employee or his or her family to avoid a financial loss, if it were not for the employee's position as an employee.

~~(Ord. No. 4625, § 1, 3-5-2018)~~

Sec. 82-24. Unethical acts generally—prohibited.

(a) Contingent fees. It shall be unethical for any person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of a bona fide city employee or a bona fide commercial selling agency established for the purpose of securing business.

(b) Gifts, gratuities, or kickbacks. It shall be unethical for any person to offer, give, or agree to give any city employee or former city employee a gift, gratuity, or kickback in connection with any procurement process action, advice, decision, or recommendation by that employee or former employee.

(c) Inducements. It shall be unethical for any person to make, permit, or allow to be made to a prime or higher-tier contractor or a person associated with a prime or higher-tier contractor a gift, gratuity, or kickback as an inducement for the award of a subcontract or order in connection with a city solicitation, bid, or contract. It shall be unethical for a prime or higher-tier contractor to solicit or accept a gift, gratuity, or kickback from a prospective subcontractor in connection with a city solicitation, bid, or contract.

(d) Negotiating employment. It shall be unethical for any bidder or person representing a bidder in a city solicitation to negotiate with or offer employment to a city employee who is participating in that solicitation. It shall be unethical for a contractor to hire or employ a city employee or former employee whom the contractor knows or should know participated in the solicitation that resulted in the work awarded to that contractor within six months of the date of the award contract to that contractor.

Secs. ~~82-147 —~~82-25 – 82-40. ~~160.~~ Reserved.

ARTICLE III.

SOLICITATIONS

Sec. 82-41. Competitive solicitation methods.

(a) Acceptable methods. The purchasing program is responsible for determining which solicitation method is appropriate to a procurement process in accordance with the provisions of this article. An employee responsible for purchasing goods or services for the city will use competitive solicitation methods whenever possible to effectuate the provisions of this chapter and to maximize the value of the public funds in ways that are efficient and effective in light of the degree of complexity associated with the good or service being purchased.

(1) Documented quotes. Documented quotes must be obtained using the city's highest ethical standards.

(b) Best value procurement. The city, through the purchasing division, will solicit requests for qualifications and requests for proposals based upon a best value procurement basis, which includes the evaluation of qualifications, experience, and proposed performance measures to award and renew contracts based upon the best value to the city.

(c) Required solicitation methods: thresholds.

COMPETITIVE SOLICITATION METHODS	
Amount / nature of the contract or task	Required solicitation method
For a contract up to and including $9,999.99	One documented quote: The project owner shall obtain and document one quote for the required good or service. Exception: A contract for computer software may be solicited as set forth in the administrative policy.
For a contract from $10,000.00 up to and including $49,999.99	Three documented quotes: The project owner shall obtain and document three quotes for the required good or service, and submit to the purchasing manager the contract and the three documented quotes. Exception: A contract for computer software may be solicited as set forth in the administrative policy.
For a contract of $50,000.00 or more, or for any contract for on-call or as-needed work with a pre-qualified vendor	Formal solicitation: The project owner shall follow the formal solicitation process set forth in the administrative policy.
For a task up to and including $49,999.99 for which vendors have been pre-qualified by the city and with whom the city has contracted for on-call or as-needed work	One documented quote: The project owner shall obtain and document one quote from a vendor who has been pre-qualified to perform the type of work required, and who has a contract with the city to perform the work on an on-call or as-needed basis.

For a task of $50,000.00 or more for which vendors have been pre-qualified by the city and with whom the city has contracted for on-call or as-needed work	Bid the eligible pool: The project owner shall publish the solicitation to all vendors who are pre-qualified by the city to perform the type of work required and who have sufficient value remaining on their on-call or as-needed work contract from which they may be paid for the work. No formal solicitation is required. The project owner shall submit to the purchasing manager the solicitation documentation, and each quote received. Exception: If the cost of the task exceeds the approved annual value of the contract of every vendor who is pre-qualified to perform the type of work required, or if no vendor pre-qualified to perform the work has sufficient value remaining on their on-call or as-needed work contract from which they may be paid for the work, the project owner shall formally solicit the work.

Table 82-41(c)

Nothing in this section 82-41(c) shall be construed to limit the city's ability to use a vendor who has not been pre-qualified to perform work if using a non- pre-qualified vendor is in the best interests of the city.

(d) No contingencies. No employee shall include or add a contingency amount to a solicitation. All monetary changes to contracts or purchase orders shall be processed using a change order, and in accordance with article IV of this chapter.

Sec. 82-42. Non-competitive solicitation methods.

(a) Sole source contracts: thresholds. Sole source contracts may be approved if the required documentation clearly demonstrates based on all of the facts and circumstances surrounding the acquisition of a good or service that the acquisition may only be achieved through the use of one product or vendor, and that there are no other products or vendors as suitable or acceptable to provide the good or service to the city. In determining whether a sole source purchase request meets these requirements, the city manager or purchasing manager may seek additional information about the purchase from the director, or consult any other city employee including the deputy city manager.

SOLE SOURCE CONTRACTS		
Amount of contract	Process required	Authority to approve the sole source purchase request

From $10,000.00 up to and including $49,999.99	The director shall submit to the purchasing manager a written sole source purchase request containing documentation sufficient to justify the purchase under this section.	The purchasing manager may approve the sole source request. Approval authority for the contract is as set forth in Table 82-62(a).
$50,000.00 or more	The director shall submit to the purchasing manager and the city manager a written sole source purchase request containing documentation sufficient to justify the purchase under this section.	The city manager may approve the sole source request. Approval authority for the contract is as set forth in Table 82-62(a).

Table 82-42(a)

Exceptions: All contracts for up to and including $9,999.00, and all contracts for computer software in an amount up to and including $49,999.99, shall be solicited as set forth in sec. 82-41(c).

(b) No cost contracts. An employee evaluating a no cost offer should evaluate additional terms or conditions connected to the no cost offer that create future obligations of any type for the city or for affected citizens.

(c) Cooperative contracts. Purchases of goods and services from valid cooperative entity agreements are exempt from competitive solicitation methods. The city must be a member of the cooperative through which it purchases a good or service.

(1) Aggregate purchases. If the amount of goods purchased under a cooperative contract from a single vendor will exceed $200,000.00 aggregated annually, the purchase must be done using a formal solicitation process. The formal solicitation may be among contractors who are pre-qualified by the purchasing program.

(2) Purchases of $200,000.00 or more. Notwithstanding any other provision of this ordinance, the finance director may, at his or her sole discretion, require a cooperative contract purchase of $200,000.00 or more related to, or in support of, a capital improvement project be done using a formal solicitation process.

(d) Emergency contracts.

(1) Approval. An emergency contract may be approved if all the facts and circumstances surrounding the emergency acquisition clearly demonstrate:

(i) The contract is necessary to respond to an urgent, unforeseen, and compelling circumstance that creates a threat to the public's health, safety or welfare, or is necessary under an emergency declared under chapter 26 of this Code;

(ii) The immediate procurement of the good or service is essential to prevent serious harm to the operation of the city, to city property, or to preserve the health, safety, or welfare of the public; and

(iii) There is insufficient time to procure the good or service through regular bidding and purchasing methods.

(2) Competition encouraged. Even in emergency situations, the city manager shall seek to ensure as much competition in the procurement of a good or service as is reasonable under the circumstances. The city manager should consult with the purchasing manager to the extent practicable in making emergency purchases.

(3) Limitations. Only those goods or services necessary to respond to or resolve an emergency may be procured under an emergency contract.

(4) Documentation. As soon as is reasonably practicable following an emergency purchase, the director of the department or work system responsible for the purchase shall submit to the city manager written documentation describing the nature of the emergency, the good or service acquired through the emergency contract, the amount paid for the good or service, and the reasoning behind the selection of the vendor or vendors chosen to meet the emergency need. The city manager shall then promptly submit this information to the purchasing manager and the city council.

(5) Powers of the city manager. Except as set forth herein, nothing in this subsection (d) is intended to limit or affect the powers or authority of the city manager under a declared civil emergency, emergency, or local disaster issued under chapter 26 of this Code.

(6) On-call contracts with pre-qualified vendors. Nothing in this subsection (d) shall be construed to limit the ability of the city to award emergency work to vendors who are pre-qualified to perform the services or work needed and who have on call or as-needed contracts with the city to perform that type of work, if the other requirements of this ordinance and the policy are met.

Sec. 82-43. Other solicitation methods.

The finance director may establish, through the administrative policies process, other competitive solicitation methods consistent with the provisions of this chapter and deemed to be in the best interests of the city.

Sec. 82-44. Electronic signatures—solicitations.

Subject to any limitations in the Colorado Uniform Electronic Transactions Act, by submitting a proposal to a city-issued solicitation for goods or services, a bidder agrees to the use of electronic signatures. Notwithstanding the foregoing, the city may require that any proposal be executed with manual signatures.

Sec. 82-45. Correction to or withdrawal of a bid.

Changes to a bid after the submission deadline may be allowed only when a bidder can show by clear and convincing evidence that a mistake of fact was made and that the mistake was unintentional. A request to correct a bid must be in writing, must be submitted to the purchasing manager within seven days of the bid opening, and must contain the bidder's name, address, city solicitation number and title. Nothing in this section precludes negotiations between the city and a bidder about the scope of work.

Sec. 82-46. Administration of solicitations.

The purchasing manager shall be responsible for administering all formal solicitations subject to the provisions of this chapter.

Sec. 82-47. Award.

(a) Award. The city will select the most qualified responsible and responsive bidder to receive the award. The award shall be based on the provisions of this chapter, the administrative policy, the specifications set forth in the solicitation, and the selection criteria deemed appropriate to the solicitation. Because an award by itself does not mean the award has also been approved, no vendor may claim reliance upon an award.

(b) Variations. A variation to the terms of a solicitation requested and submitted by a contractor is not agreed to by the fact of an award by the city. The city shall enter into a contract or issue a purchase order on the same terms and conditions that were included in the solicitation, except the city may, in its sole discretion, negotiate terms and conditions with the selected vendor within the scope of the solicitation. The city may also consider variation requests when selecting a bidder for an award. An award may be cancelled by the city if negotiations concerning a term or a condition or a requested variation are unsuccessful.

Sec. 82-48. Construction contract bid security.

(a) Required. Bid security shall be required for all invitations for bids for construction contracts on the city supplied form. Bid security shall be a bond provided by a surety company authorized to do business in Colorado, the equivalent in cash, or otherwise supplied in a form satisfactory to the city.

(b) Amount. Bid security shall be in an amount equal to at least 5% of the amount of the bid.

(c) Rejection for noncompliance. If a request for bids requires security, substantive noncompliance requires that the bid be rejected as nonresponsive.

(d) Reduction in amount; waiver. If the project owner estimates the amount of the bid to be less than $200,000.00, the work system director may reduce or waive the requirement of bid security.

Sec. 82-49. Construction contract performance and payment bonds.

(a) Bonds. When a construction contract is awarded, the following bonds shall be delivered to the city and shall become binding on the parties upon the execution of the contract:

(1) Performance bond. A performance bond satisfactory to the city, executed by a surety company authorized to do business in Colorado or otherwise secured in a manner satisfactory to the city, in an amount equal to 100% of the price specified in the contract; and

(2) Payment bond. A payment bond satisfactory to the city, executed by a surety company authorized to do business in Colorado or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract, in an amount equal to 100% of the price specified in the contract.

(b) Security. In lieu of providing a performance or payment bond, a contractor may provide an unconditional letter of credit for 100% of the amount required. Such security must be in a form acceptable to the city attorney.

(c) Reduction in amount. If a construction contract is awarded in an amount less than $100,000.00, the director may reduce the amount of the performance and payment bonds or security or waive these requirements entirely if deemed appropriate by the director. For all other performance and payment bonds or security, the city manager may reduce the amount of the performance and payment bonds or security to 50% of the contract amount upon a written finding that it is in the best interests of the city to do so.

(d) Additional bond requirements. Nothing in this section shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds or in circumstances other than those specified in this section.

Secs. 82-50– 82-60. Reserved.

ARTICLE IV.

CONTRACTING

Sec. 82-61. Contracting authority.

(a) Authorized individuals. The following employees are authorized to procure goods and services and perform other duties described in this chapter for the work system, department, division, or program for which they are responsible:

(1) The city manager;

(2) The deputy city manager;

(3) A work system director;

(4) The city engineer;

(5) The city's water treatment plant operator; and

(6) The purchasing manager. The purchasing manager is authorized to procure goods and services and perform other duties for the purchasing program or for work systems or departments as described in this chapter and the administrative policy.

The city manager may designate any other city employee to perform duties as described in this chapter and the policy.

(b) Temporary delegation of authority. Each authorized individual may temporarily delegate his or her purchasing duties to another employee in his or her chain of command. Any such delegation or notification must be in writing. Any person designated by the city to serve in an acting capacity for any of these positions is authorized to perform the purchasing duties set forth for that position while he or she serves in an acting capacity.

Sec. 82-62. Authority to approve, modify, and terminate contracts.

(a) Approval; modification. The authority to approve or modify a contract is set forth in the table below:

CONTRACT AND PURCHASE ORDER APPROVAL AND MODIFICATION AUTHORITY		
Amount / nature of the contract or purchase order?	Who may approve?	Who may approve a monetary modification, or aggregated monetary modifications, to the contract or purchase order?
No cost procurements, no cost modifications to an existing contract or purchase order, and contracts and purchase orders up to and including $199,999.99	A director, the city engineer, and the city's water treatment plant operator.	Up to and including $199,999.99: A director; Between $200,000.00 and $299,999.99: The deputy city manager; Between $300,000.00 and 499,999.99: The city manager; or Of $500,000 or more: The city council.
$200,000.00 up to and including $299,999.99	The deputy city manager.	Up to and including $299,999.99: The deputy city manager; Between $300,000.00 and $499,999.99: The city manager; or Of $500,000 or more: The city council.
$300,000.00 up to and including $499,999.99	The city manager.	Up to and including $499,999.99: The city manager; or Of $500,000.00 or more: The city council.
$500,000.00 or more	The city council by resolution.	Up to 20% of the original contract amount, or $499,999.99, whichever is less: The city manager; or Of 20% or more of the original contract amount, or for $500,000.00 or more: The city council.
Unbudgeted	A director.	Of $50,000.00 or more: The city council.

purchases up to and including $49,999.99		Once approved by city council, the authority to approve a monetary modification or cumulative modifications will be determined by the amount of the modified contract or purchase order as set forth in this table.
Unbudgeted purchases of $50,000.00 or more	The city council by resolution.	Once approved by city council, the authority to approve a monetary modification or cumulative modifications will be determined by the amount of the modified contract or purchase order as set forth in this table.
Emergency contracts of any amount	The city manager.	The city manager.

Table 82-62(a)

(b) Calculation of contract amount for purposes of approval or modification. The annual aggregated amount of a contract calculated by fiscal year will be used to calculate the total amount of the contract for purposes of determining who is authorized to approve or modify it under this section. The original contract amount shall be added to the modification or cumulative modifications amount totals when calculating the aggregated monetary modification totals. In the case of a multi-year contract which the city may terminate at or within one year of the beginning of the term of the contract, the amount of the first year of the contract will be used to determine who is authorized to approve or modify the contract.

(c) Termination of a contract. Except as set forth in subsection (f) of this section, only the city manager may terminate a contract.

(d) Dividing a contract. No purchase permitted by this Ordinance shall be divided for the purpose of circumventing the requirements of this section. This includes modifying contracts that would result in circumvention of the requirements of this section.

(e) City attorney approval required. Except for purchase orders, the city attorney must approve all contracts as to form. This includes contracts otherwise excepted from the provisions of this chapter under sec. 82-3.

(f) Special counsel contracts. The city attorney has the authority of a director to approve and modify contracts. The city council authorizes the city attorney to enter into contracts for compensation to outside or special counsel and investigators, and also gives approval for these contracts up to the monetary limit set forth for directors in Table 82-62(a). Contracts for special or outside counsel that exceed this limit shall be submitted by the city attorney to city council for approval by whatever means the city council deems appropriate. The city attorney may terminate a contract with outside or special counsel or with an investigator.

Sec. 82-63. Contract formation.

(a) Form of contract. Subject to the limitations of this chapter, the city may use any contract appropriate to the procurement which best promotes the interests of the city.

(b) No indemnification. In accordance with Section 1 of Article XI of the Colorado Constitution, the city shall not agree to indemnify any third party.

(c) Waiver of jury trial. Any person entering into a contract for the sale or provisions of any type of good, service, or professional service to the city waives the right to a jury trial related to any contract claim.

(d) Ordinances rules, regulations, and orders. Each contractor shall be responsible for remaining fully informed of and complying with all applicable laws, ordinances, rules, regulations, and orders of the city, county, state, federal or other governmental entities having jurisdiction over the work or otherwise governing or affecting the goods or services supplied to the city under the contract.

Sec. 82-64. Multi-year contracts.

(a) Multi-year contracts authorized. Unless otherwise provided by law, the city may enter into a contract for the purchase of goods or services for any period of time deemed to be in the best interest of the city. The term of the contract and conditions of renewal or extension, if any, should be included in the solicitation. Funds shall be available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds, and these conditions shall be included as a provision of the multi-term contract.

(b) Pricing. Pricing in multi-year contracts shall be reasonably firm and documented for the initial and each renewal term of the contract such that the contract serves the best interests of the city.

(c) Non-appropriation. When funds are not appropriated or otherwise made available to support continuation of performance in a renewal period, the contract shall be terminated. Termination for non-appropriation shall not be deemed a breach of contract.

Secs. 82-65 – 82-80. Reserved.

ARTICLE V.

PROTESTS AND CLAIMS

Division 1.

Award protests

Sec. 82-81. Informal award protest—generally.

(a) Required. Before filing a formal protest of an award, an aggrieved person must first file an informal award protest notice with the purchasing manager.

(b) Standing. Only an actual bidder who is aggrieved by an award may protest that award.

Sec. 82-82. Informal award protest—process.

(a) Deadline for filing informal award protest. An aggrieved bidder must file an informal protest arising out of an award not later than 21 days after the closing date of the solicitation, unless the purchasing manager, in his or her sole discretion, finds the aggrieved bidder could not have known of the reason for the protest within those 21 days.

(b) Method of filing informal award protest. The aggrieved bidder shall contact the purchasing manager in writing and provide information specific enough for the purchasing manager to understand the award at issue, the nature of the award protest, and any suggested resolution to the asserted protest. In addition, the informal award protest must contain a statement that specifies the exact nature of the competitive disadvantage created by or as a result of the alleged issues in the city's award process, other than that the aggrieved bidder was not selected for the award.

(c) Resolution of informal award protest. The purchasing manager is authorized to review and respond to an informal protest of an award. If the purchasing manager finds there is no evidence of any competitive disadvantage created by or as a result of alleged issues in the city's award other than that the aggrieved bidder was not selected for the award, the purchasing manager shall deny the protest. The purchasing manager shall, within 14 days of receipt of the informal award protest, respond in writing to the aggrieved bidder in writing, stating the reason or reasons for the decision reached by the purchasing manager. The purchasing manager's response must contain a copy of the city's formal award protest form.

(d) Status of the award upon filing of informal protest. Upon the filing of an informal protest, the award process shall be held in abeyance until the purchasing manager issues a written response to the informal protest.

Exception: If the city manager determines work related to the contested award is necessary to protect substantial city interests, the city manager may order the award approval process and work to proceed despite the filing of an informal protest.

(e) Effect of failure to file informal award protest. Failure of an aggrieved bidder to timely file an informal protest of an award shall be deemed a waiver of the right to file a formal protest of that award.

(f) Appeal from denial of informal award protest. Should the informal protest set forth herein not resolve the matter to the aggrieved bidder's satisfaction, the aggrieved bidder may then file a formal protest of the award as set forth in sec. 82-83.

Sec. 82-83. Formal award protest—process.

(a) Standing. Only a person aggrieved by the response of the purchasing manager issued under sec. 82-82(c) may file a formal protest of an award.

(b) Deadline for filing formal award protest. An aggrieved person must file a formal award protest not later than seven days after the date the purchasing manager issued the response to the informal protest as set forth in sec. 82-82(c).

(c) Method of filing formal award protest. The aggrieved person must file a formal award protest with the city clerk using a form provided by the city. The filing must include a copy of the purchasing manager's written response to the aggrieved person's informal award protest issued under sec. 82-82(c). The formal award protest form must be complete in all respects when submitted. A protest form that is not complete in all respects or that does not include a copy of the purchasing manager's written response shall be promptly returned by the clerk to the aggrieved person. An aggrieved person may resubmit a protest form deemed incomplete by the clerk, and the clerk shall accept it, if the resubmitted form is complete and submitted to the clerk within the deadline set forth in subsection (b) of this section.

(d) Employee actions. Once a completed formal award protest form has been timely submitted to the city clerk, the clerk shall notify the purchasing manager and the city manager of receipt of the protest. The purchasing manager shall, not later than seven days after submission of the completed formal protest form, file with the city manager all relevant documentation relating to the award, and may also submit to the city manager a statement summarizing the city's actions and Code provisions relevant to the matter.

(e) Authority to settle matter or determine formal protest. With the approval of the city attorney, the city manager is authorized to review and settle a protest of a bid award, and to issue a decision related to a bid award protest.

(f) Issue; materiality. The issue before the city manager in a formal award protest is whether an aggrieved person with standing has demonstrated by substantial and competent evidence that the bid award process violated the Code or other applicable law. For purposes of determining the outcome of a protest, an administrative or clerical error, or a defect that is not material to the award or that may be corrected by the city, shall not be considered a violation of the Code.

(1) City manager's responsibilities. In evaluating a formal protest, the city manager shall review all information submitted by the aggrieved person and the purchasing manager, and may ask the aggrieved person or the purchasing manager for more information. Any such request and response shall be made a part of the record. The city manager may take into account any relevant procurement information, any relevant information provided by the aggrieved person or the purchasing manager, and also may notice any other relevant fact or circumstance.

(g) Decision. The city manager shall, not later than 21 days after submission of the completed formal award protest form, issue a written decision on the protest. The decision must contain the reason or reasons for the decision, as well as a description of the remedy, if applicable. The decision must set forth appeal rights, if any. The decision must be furnished to the aggrieved person in writing. Should the city manager fail to issue a written decision on the protest within the time frame set forth herein, the protest shall be deemed denied, and the aggrieved person may proceed as if an adverse decision has been received.

(h) Delay of award. If a formal award protest is timely filed by a person with standing, the award process may not proceed until the city manager has either issued a written decision on the protest or failed to issue a decision as set forth in subsection (g) of this section.

Exception: If the city manager determines work related to the contested award is necessary to protect substantial city interests, the city manager may order the award process and work to proceed despite the filing of a formal protest. The city manager shall make a written finding to this effect. The city manager shall notify the aggrieved person that the award process and work will proceed, and also that the formal protest will proceed.

(i) Effect of failure to file formal award protest. Failure of a claimant to timely file a formal award protest claim shall be deemed a waiver of the contract claim.

(j) Appeal. The city manager's decision, or a denial of a protest as a result of the manager's failure to issue a written decision, shall be considered a final agency decision. An appeal of the city manager's decision may proceed under Rule 106 of the Colorado Rules of Civil Procedure.

Sec. 82-84. Remedies for awards in violation of the law.

(a) Remedies. If the city manager determines an award violated the Code or other applicable law, the city manager may, with the approval of the city attorney, order any remedy the city manager deems appropriate to the circumstances.

(b) Termination of the contract. If the city manager allowed work on the contract to begin under the exception to sec. 82-83(h), and the manager finds cancellation of the contract is necessary as a result of the findings made in the formal award protest, the city manager may order the contract to be terminated. Termination by the manager under this provision shall not be considered a breach of the contract. The person awarded the contract will be compensated for the actual costs reasonably incurred under the contract through the time of the termination notice, if the person submits to the city manager an itemized invoice of those costs not later than 14 days after the termination notice.

Secs. 82-85 – 82-90. Reserved.

Division 2.
Contract claims

Sec. 82-91. Definitions. The following words, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Claim means any threatened or asserted demand or action arising from or related to the administration or completion of a city contract made by the contractor awarded the contract, and includes without limitation, disputes arising under a contract, those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. A claim does not include an invoice or payment request submitted under the terms of a contract, although an invoice or payment request may be converted to a claim, if the amount is disputed or is not acted on within a reasonable period of time and if the contractor gives written notice to the city of the conversion. It also does not include a solicitation or bid protest.

Claimant means a person who is a party to city contract, who is aggrieved by an action or occurrence caused in whole or in part by a city employee that affects the completion of or payment on that contract, and who files an informal dispute resolution notice or a formal contract claim with the city.

Sec. 82-92. Generally.

(a) Required. Before filing a formal contract claim, a claimant must first file an informal contract claim dispute notice with the purchasing manager.

(b) Standing. Only a contractor who is a party to a city contract and who is aggrieved by an action or occurrence caused in whole or in part by a city employee and that affects the completion of that contract, or a person expressly authorized to act on the contractor's behalf, may file a claim. If a subcontractor or lower tier subcontractor lacks standing to file a claim because privity of contract does not exist between the city and the subcontract, a contractor with privity of contract may present the subcontractor's claim about that contract to the city on behalf of the subcontractor.

(c) Election of alternate claim process. The city may, in any contract, include provisions that govern the filing, consideration of, and payment of any or all claims by any party to the agreement arising out of or related to that contract. The claims procedure established under the agreement shall exclusively govern any claim arising out of that contract.

Sec. 82 – 93. Informal contract claim dispute notice—required.

(a) Deadline for filing informal contract claim dispute notice. A claimant must file an informal contract claim dispute notice not later than 14 days after the claimant knows or should have known of the facts giving rise to the claim, whichever is earlier.

(b) Method of filing informal contract claim dispute notice. The claimant shall contact the purchasing manager in writing and provide information specific enough for the purchasing manager to understand which contract is at issue, the nature of the occurrence giving rise to the contract dispute or disputes, the nature of the injury asserted by the contractor, and any suggested resolution to the asserted claim or claims.

(c) Resolution of informal contract claim dispute. The purchasing manager is authorized to review and respond to an informal contract claim dispute notice. The purchasing manager shall, as soon as is practicable, respond to the claimant in writing, stating the reason or reasons for the decision reached by the purchasing manager. The purchasing manager's response must contain a copy of the city's formal contract claim form.

(d) Effect of failure to file informal contract dispute notice. Failure of a claimant to timely file an informal contract claim dispute notice shall be deemed a waiver of the right to file a formal contract claim.

(e) Appeal from denial of informal contract claim notice. Should the informal contract claim dispute resolution process set forth herein not resolve the matter to the claimant's satisfaction, the claimant may then file a formal contract claim as set forth in sec. 82-93.

Sec. 82-94. Contract claim—formal process.

(a) Standing. Before filing a formal contract claim, a claimant must first file an informal contract claim dispute notice with the purchasing manager. Only a claimant aggrieved by the response of the purchasing manager issued under sec. 82-92(c) may file a formal contract claim.

(b) Deadline for filing formal contract claim. A claimant must file a formal contract claim not later than 14 days after the date the purchasing manager issued the response to the informal claim as set forth in sec. 82-92(c).

(c) Method of filing formal contract claim. A claimant must file a formal contract claim with the city clerk using a form provided by the city. The filing must include a copy of the purchasing manager's written response issued under sec. 82-92(c). The formal contract claim form must be complete in all respects when submitted. A formal contract claim form that is not complete in all respects or that does not include a copy of the purchasing manager's written response shall be promptly returned by the clerk to the claimant. A claimant may resubmit a claim form deemed incomplete by the clerk, and the clerk shall accept it, if the resubmitted form is complete and submitted to the clerk within the deadline set forth in subsection (b) of this section.

(d) Employee actions. Once a completed formal contract claim form has been timely submitted to the city clerk, the clerk shall notify the purchasing manager and the city manager of receipt of the claim. The purchasing manager shall, not later than seven days of submission of the completed formal contract claim form, file with the city manager all relevant documentation relating to the claim, including a copy of the solicitation, bid award, and executed contract. The purchasing manager may also submit to the city manager a statement summarizing the city's actions and Code provisions relevant to the matter.

(e) Authority to settle or determine formal contract claim. With the approval of the city attorney, the city manager is authorized to review and settle or determine a formal contract claim, and to issue a decision related to a formal contract claim. The city manager may take the following actions to settle or determine a claim:

(1) Deny the claim;

(2) Allow the claim if it is found to be valid or to have merit, and, if the claim is for an amount greater than that justly due the claimant, allow the claim in the amount justly due and deny it as to the balance; or

(3) Deny or compromise the claim if the legal liability of the city or the amount justly due is disputed.

If the city manager allows the claim in whole or in part, or compromises the claim, and if the claimant accepts the amount allowed or offered to settle the claim, the manager may require the claimant to accept that amount in settlement of the entire claim.

(f) Issue; materiality. The issue before the city manager in a formal contract claim matter is whether a claimant with standing has demonstrated by substantial and competent evidence that the claim is valid or has merit.

(1) Manager's responsibilities. In evaluating a claim, the city manager shall review all information submitted by the claimant and the purchasing manager, and may ask the claimant or the purchasing manager for more information. Any such request and response shall be made a part of the record. The city manager may take into account any relevant information in the contract file, any relevant information provided by the claimant, and may also notice any other relevant fact or circumstance.

(g) Decision. The city manager shall, not later than 21 days of submission of the completed formal contract claim form, issue a written decision on the claim. The decision must contain the reason or reasons for the decision, as well as a description of the remedy, if applicable. The decision must set forth appeal rights, if any. The decision must be furnished to the claimant in writing. Should the city manager fail to issue a written decision on the claim within the time frame set forth herein, the claim shall be deemed denied, and the claimant may proceed as if an adverse decision has been received.

(h) Effect of failure to file formal contract claim. Failure of a claimant to timely file a formal contact claim shall be deemed a waiver of the contract claim.

(i) Appeal. The city manager's decision, or a denial of a claim as a result of the city manager's failure to issue a written decision, shall be considered a final agency decision. An appeal may proceed under Rule 106 of the Colorado Rules of Civil Procedure.

Secs. 82-95—82-100. Reserved."

CITY OF ARVADA
POLICY AND PROCEDURES

Authorized by City Manager: ____________________________

Policy No. ___________________ Effective date: _____________

Revision date(s): ____________

TITLE: **Administrative Policy and Procedures Related to the Purchasing Ordinance**

PURPOSE: This procurement management policy ("purchasing policy" or "policy") is meant to promote the purposes set forth in the Purchasing Ordinance and to provide employees involved in city procurement processes with guidance that allows them to make responsible business decisions on behalf of the city related to the acquisition of necessary goods and services, and to the management of city contracts. This policy is intended to support work systems by ensuring they acquire needed goods and services in a timely and cost effective manner, ensuring employees follow appropriate business practices throughout the procurement process, and facilitating proper monitoring of and reporting about the city's contract activities.

POLICY: It is the policy of the city that employees shall act in accordance with the city's Purchasing Ordinance and this policy to ensure that city procurement processes are conducted ethically and efficiently. The city recognizes that work systems are in the best position to determine what they need to run their programs, and that the purchasing program is best situated to determine how to most effectively and efficiently purchase goods and services for the city. While this approach recognizes the proficiency of the purchasing program, employees are responsible for understanding the city's Purchasing Ordinance and this policy, and for using their best business judgment in actions and decisions related to the city's procurement processes and the management of city contracts.

AUTHORITY: This policy is authorized under Arvada City Code (Code) sec. 82-5, and issued under Code sec. 2-121.

RESCISSION: Approval of this policy by the city manager shall serve to rescind the following city policies:

1000.08 Contract Management (Effective date: May 2, 2018);
3300.04 Purchasing Procedures (Effective date: November 15, 1982);
3300.05 Retaining Professional Consulting Services (Effective date: November 15, 1982) and

3300.06 Selecting Consultants on CDOT Contracts Using Federal Aid (Effective date: March 8, 2004).

DEFINITIONS: All words, terms, and phrases defined in Chapter 82, Purchasing and Contracts, of the Code are incorporated by reference into this policy. The following words, terms, and phrases, when used in this policy, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Contract coordinator means an employee or employees designated by a director to facilitate the administrative and procedural tasks associated with the management of that work system's or department's contracts through the CMP or otherwise.

Contract management process or *CMP* means a digital process or processes established by the city to manage legal and administrative tasks related to contract projects, including but not limited to requesting a contract, gathering and storing relevant information about contract activities and data, presenting a contract to those authorized to approve them in accordance with the Purchasing Ordinance, ensuring the proper execution of a contract, and managing contract renewals, extensions, and modifications.

Contract request form or *CRF* means an electronic form containing information pertinent to a procurement project that is to be completed and submitted by an employee to the city attorney's office each time a contract to acquire a good or service is needed by a work system, and each time a work system wishes to modify an existing contract. A CRF is one component of the city's CMP.

Insurance means an arrangement or agreement by which a company or public entity provides a guarantee of compensation for a specified loss, damage, or injury in return for consideration, and includes adequate coverage that meets all city requirements as determined by the city's risk manager.

Performance measures means a set of standards or metrics established to measure a contractor's performance in a service contract and in evaluating responses to solicitations.

OBJECTIVES: The city's goal in every transaction is to obtain the best value possible. The city strives to procure goods and services through uniform solicitation procedures that are professional and impartial, and to acquire those goods and services through the use of contracts that have terms and conditions appropriate to protect the city's interests.

CONFLICTS: This policy shall be read in conjunction with Chapter 82, Purchasing and Contracts, of the Code. To every extent possible, this policy should be construed and applied to promote the purposes of, and interpreted to harmonize, with the provisions of the Purchasing Ordinance. To the extent there are any conflicts between any of these documents, the provisions of the Purchasing Ordinance prevail, and then the provisions of this policy, in that order.

PROCEDURES:

1. EMPLOYEE ROLES AND RESPONSIBILITIES

1.1. Generally. In addition to any duties set forth in the Purchasing Ordinance or elsewhere in this policy, the following employees shall have the responsibilities set forth herein.

1.2. City attorney. The city attorney is responsible for designing or selecting the CMP. The city attorney shall collaborate with the work systems and departments in creating, adopting, and revising processes and procedures to efficiently manage the city's contracts through the CMP. For purposes of this policy, the city attorney or his or her staff may be referred to as "Legal."

1.3. City manager. The city manager is responsible for ensuring the city council receives information about city contracts as set forth herein.

1.3.1. *Memo to city council.* The city manager shall, in a regular and timely manner, submit to the city council a list of all newly awarded, formally solicited contracts of $50,000.00 up through and including $499.999.99 that were previously budgeted in the city council approved budget, and a list of all unbudgeted change orders of up and including $499,999.99 for CIPs. This information shall be provided to the city council by the manager as part of the manager's "Friday memo" to council, unless otherwise directed by council.

1.4. Contract coordinator. Each work system's or department's contract coordinator shall work with the project owner, the purchasing program, and Legal to coordinate the completion of tasks associated with the contracting process, including but not limited to the submission of a CRF, and the execution of each contract. At all times during the procurement process, the contract coordinator will update Legal (via CMP entry) about the status and outcome of contract negotiations, contract compliance issues, key communications, and performance measures assessment results.

1.5. Deputy city manager. The deputy city manager is responsible for reviewing after-the-fact purchase orders and premature contract work notices, and for transmitting information about those orders and notices to the city manager as appropriate.

1.6. Director. Each director shall:

1.6.1. *Training.* Ensure each work system or department employee receives training appropriate to the employee's role about the city's procurement processes. This training shall ensure that each work system or department employee who participates in a city procurement process is familiar with the Purchasing Ordinance and this policy; and

1.6.2. *Designate a contract coordinator.* Designate as a contract coordinator at least one work system or department employee. This designation may be changed at the sole discretion of the director.

Exceptions:

1. The director may designate the project owner as the contract coordinator for a specific contract project.

2. With the purchasing manager's permission, a director may designate a purchasing program employee as the contract coordinator for a specific project or for all purchasing projects from that work system or department.

1.6.3. *Provide information.* Provide to the city manager timely information about department or work system purchasing matters to assist the city manager in fulfilling his or his obligation to communicate with city council under sec. 1.3 of this policy.

1.7. Project owner. The project owner is a work system or departmental employee who serves as the subject matter expert about the goods or services being acquired by the city, and functions as the primary point of contact with Legal and the purchasing program about substantive matters related to the contract. At all times during the procurement process, the project owner shall ensure pertinent details of the project are communicated to the contract coordinator, if the contract coordinator is different than the project owner. If no contract coordinator has been designated for the project, the project owner shall fulfill the responsibilities of the contract coordinator.

1.8. Purchasing manager. The purchasing manager shall serve as the city's in-house purchasing expert. The purchasing manager shall assist work systems make informed, best value purchasing decisions. The purchasing manager is also responsible for ensuring goods and services are procured and paid for in a streamlined and efficient manner, creating and maintaining forms and databases necessary to facilitate the work of the purchasing program, validating cooperative participation agreements, ensuring compliance with applicable city and Colorado state diversity initiatives relating to purchasing to the extent practicable, encouraging the participation of local businesses in city procurement processes where practicable, and assisting city employees with procurement process tasks.

2. ETHICS IN CITY PROCUREMENT PROCESSES

2.1. Generally. It is the policy of the City of Arvada that employees act in the best interests of the city and avoid conflicts of interest in city procurement processes. Employees should understand that when it comes to conflicts of interest, appearances are as important as reality. Disclosure of real or apparent conflicts is one way to reduce the appearance of impropriety.

2.2. Employee conduct. In addition to the ethics prohibitions set forth in the Purchasing Ordinance, employees shall conduct themselves in accordance with the following:

2.2.1. *Standards.* Each employee who participates directly or indirectly in or is aware of a city procurement process shall act in accordance with the highest legal and ethical standards with regard to that procurement.

2.2.2. *Responsibility.* Each employee who participates directly or indirectly in a procurement process is responsible for ensuring that each action he or she takes in that process comports with the Code and this policy.

2.2.3. *Avoiding conflicts.* An employee shall not make a procurement decision for or on behalf of the city if his or her personal, professional, or economic interests, or those of his or her family, may be affected by that procurement decision in ways that do not accrue to other members of the public.

2.2.4. *Influence or attempt to influence.* An employee shall not engage in an action related to a procurement that would appear to a reasonable person as having been done to influence or attempt to influence a procurement action or decision for the benefit of that employee or that employee's family.

2.2.5. *Disclosure.* An employee who has a relationship with or to a bidder that might be perceived by a reasonable person as potentially influencing that employee's objectivity in any procurement process in which the employee is involved shall immediately disclose this situation in writing to his or her supervisor. This includes disclosure by an employee that he or she has entered into negotiations with or received an offer of employment from a bidder or a prospective bidder on a solicitation in which the employee is directly or indirectly participating. It also includes disclosure by an employee who knows or should know that a family member has entered into negotiations with or received an offer of employment from a bidder or prospective bidder on a solicitation in which the employee is directly or indirectly participating.

2.2.6. *Potential conflict of interest.* An employee who knows or should know of a potential conflict of interest related to a procurement process shall, immediately upon learning of the potential conflict, disclose the potential conflict in writing to his or her supervisor.

2.2.7. *Consultation.* An employee who is unsure about whether a particular circumstance constitutes a conflict of interest should consult with his or her supervisor.

2.3. Accountability. In accordance with the city's personnel rules, an employee who violates the provisions of the Purchasing Ordinance or this policy, or other city personnel rules or policies applicable to procurement activities, may be subject to corrective or disciplinary action.

3. SOLICITATIONS GENERALLY

3.1. Solicitation procedures. The type of solicitation used to acquire a particular good or service is determined by the amount of the purchase, among other factors. The purchasing manager is authorized to determine which solicitation method is most appropriate for a particular solicitation based on the Purchasing Ordinance and this policy. The project owner is responsible for consulting with the purchasing manager as needed in completing all solicitation tasks.

3.1.1. *Posting solicitation information.* Except for employees who work in the purchasing program, no employee shall post information related to any formal solicitation to the city's bidding and purchasing database.

3.2. Project owner tasks. The project owner shall ensure that applicable city ordinances, policies, and rules are followed in every solicitation. The project owner shall complete the following tasks:

3.2.1. *Insurance.* Consult with the risk manager to obtain approved insurance requirements;

3.2.2. *Scope of work.* Ensure the scope of work is as accurate as possible;

3.2.3. *Performance measurements.* Ensure the appropriate performance measures are either set forth in the solicitation, or are otherwise accounted for in a solicitation for a project that require such measures;

3.2.4. *Promote competition.* Ensure the solicitation is not tailored to favor one process, product, type of equipment, or vendor, such that the solicitation provides for open and fair competition;

3.2.5. *Legal requirements.* Ensure the solicitation includes specifications, the city's general terms and conditions, and the city's approved purchasing "Legal Requirements" and "Insurance Requirements" documents, as applicable to the procurement;

3.2.6. *Evaluation criteria.* Ensure the evaluative requirements used to award a contract conform to the technical requirements of each bid;

3.2.7. *Accountability.* To promote accountability in the city's procurement processes, ensure that only city employees are tasked with scoring or assessing the evaluative requirements in the solicitation process, except that members of the city council may also be responsible for these tasks;

3.2.8. *IT impact.* In the case of an acquisition with a computer software or hardware component, make Information Technology (IT) aware of the impending acquisition at the earliest practicable time to allow IT team members to incorporate the newly acquired components into existing city hardware and software systems; and

3.2.9. *Notification.* Notify the successful and other bidders as appropriate.

3.3. Solicitation irregularity. The purchasing manager may waive any minor solicitation defect or irregularity which does not affect the competiveness of or alter any material term of the solicitation.

3.4 Disqualification or rejection of a submission. A submission not filed by the time deadline stated in the solicitation is ineligible for consideration and will not be considered. A submission that is incomplete, nonconforming, nonresponsive, conditional, or fails to meet the requirements identified in the solicitation or bid specifications may be rejected by the city. The city shall not accept a solicitation submission from, nor award a contract to, a person who is in arrears to the city through debt or contract, who has defaulted on a surety or otherwise defaulted upon any financial obligation to the city, or who is engaged in active or open litigation against the city.

3.5 Correction or withdrawal of a bid or solicitation submission. Except as authorized by the Purchasing Ordinance or this policy, a solicitation submission shall be accepted without alteration. The city holds bidders responsible for the accuracy of their submissions. Bidders are responsible for reviewing and understanding all aspects of a solicitation prior to submitting a bid. Prior to submitting a bid, bidders should review the city's general and special contract terms and conditions that apply to the project, including those relating to: insurance requirements, shop drawings, inspection and testing of materials, order of procedure, and stated allowances. Bidders are responsible for examining and understanding any drawings and specifications related to a bid, and for the accuracy of the estimated quantities of goods or services necessary to complete the project on which they are bidding. Bidders must engage in all due diligence necessary to submit an accurate bid, including conducting a site examination, as necessary. A request to correct or withdraw an inadvertently erroneous submission shall be processed as follows:

3.5.1 *Before the bid opening or solicitation deadline.* A bidder who wishes to correct or withdraw a submission before a bid opening or solicitation deadline shall file written notice with the purchasing manager prior to the time set for bid opening or the solicitation deadline.

3.5.2. *After the bid opening or solicitation deadline.* A bidder who wishes to correct or withdraw a submission after the bid opening or solicitation deadline shall file a written request with the purchasing manager. A request to correct or withdraw an inadvertently erroneous bid after the bid opening or solicitation deadline shall be permitted only to the extent the bidder can show by clear and convincing evidence that an unintentional factual mistake was made. A request to correct a bid must also set forth the bid price actually intended. The city shall not accept a request to correct or withdraw a bid or solicitation submission after the bid opening or solicitation deadline where the bidder asserts he or she misunderstood the quantity or nature of the work to be done.

3.5.2.1. Based on the criteria set forth in sec. 3.5.2 above, the purchasing manager may, in his or her sole discretion, permit or deny the correction or withdrawal of a bid or solicitation submission filed after the bid opening or solicitation deadline. The purchasing manager's decision shall be in writing and shall contain the reason or reasons for the decision.

3.5.3. *Cancellation of award.* The purchasing manager may, at his or her sole option, cancel an award based on a bid mistake.

3.5.4. *Award.* A solicitation shall be awarded to the most qualified responsible and responsive bidder whose submission meets the requirements and criteria set forth in the solicitation. In the event the most qualified responsive bid exceeds the budgeted funds, or all responsive bids exceed the funds allocated for the purchase, the director may in his or her sole discretion reduce the scope of work, reject all bids, or negotiate an adjustment of the bid price with the lowest priced most qualified responsive bidder to bring the bid within the amount of available funds. Any term of a bid which is noted as a variation or an exception in response to a solicitation is subject to negotiation at the sole discretion of the director. If noted in a formal solicitation, the city may negotiate other terms of a bid, when doing so is in the best interests of the city.

3.5.4.1. Failure of a successful bidder to enter in to a contract with the city not later than 45 days following the date of the bid award may be considered by the city to be just cause to rescind the award to that bidder. The city may then award the bid to the next higher most qualified responsive bidder in the same manner as previously described.

3.6 Memo to city council. In order to allow city council time to review each award, work on any contract noted in the city manager's Friday memo to the council shall be held in abeyance for no fewer than five days after the city manager has submitted the memo to the council.

4. COMPETITIVE SOLICITATION METHODS

4.1. Generally. The city encourages the use of competitive solicitation methods. The city may use one of any number of competitive solicitation methods. These include documented quotes, and formal solicitations utilizing Requests for Bids (RFB), Requests for Proposals (RFP), and Requests for Qualifications (RFQ). Although the city ordinarily secures vendors by using solicitation methods at the time a good or service is needed, the city may also pre-qualify vendors to submit for certain work projects or for on-call professional services.

4.2. Documented quotes. A documented quote or quotes process shall be used for certain contract projects as set forth in Table 82-41(c) of the Code. A request for a documented quote need not be posted or published. Documented quotes may be returned to the city by any written means convenient to the city, including but not limited to email or other electronic means.

Exception: For acquisitions of software valued at up to and including $49,999.99, the project owner shall work in conjunction with IT to evaluate a minimum of three software provider options. The project owner and IT are not obligated to contact software vendors directly for documented quotes, but shall do due diligence in ensuring best value software acquisitions for the city.

For these software acquisitions, the project owner shall keep and maintain a log of tasks completed as part of the city's evaluation process, and a record of the reasons why the project owner and IT determined a particular software vendor should be awarded the software contract.

4.2.1. *Project owner tasks.* In addition to completing the tasks necessary for any procurement, the project owner managing a project for which documented quotes are required shall:

4.2.1.1. Ensure each documented quote carries the vendor's name and all appropriate contact information, the specific nature of the good or service about which the quote applies, the date of the quote, and the quote itself; and

4.2.1.2. Send the documented quote or quotes to the purchasing program.

4.2.2. *Award to other than the lowest bidder.* Subject to the approval of the purchasing manager, a project owner may award a contract to other than the lowest bidder. An award to other than the lowest bidder shall be documented in writing. The writing shall list the documented quotes, and include a detailed explanation containing the reason or reasons for the award.

4.2.3 *Pre-qualified vendors.* Responses to solicitations may be limited to persons who have been pre-qualified by the city through a previous pre-qualification process.

4.2.4. *Confidential.* Documented quotes shall remain confidential until the city either awards the bid or decides to not award the bid. Release of these records after the award or the decision to not award shall be governed by the Colorado Open Records Act.

4.3. Formal solicitations. A formal solicitation process shall be used for certain work as set forth in Table 82-41(c) of the Code. Formal solicitation processes shall be coordinated with the purchasing manager.

4.3.1. *Notice.* Adequate public notice is required for all formal solicitations, except for emergency contracts. Vendors must be given adequate time to prepare and submit formal bids. All formal solicitation processes must be posted by the purchasing manager to the city's selected electronic centralized government bid information platform. A solicitation for a capital improvement project must be posted or published at least 21 days before a vendor response is due, unless the purchasing manager approves a shorter time frame. An electronic RFP solicitation must be posted or published at least 14 days before a vendor response is due, unless the purchasing manager approves a shorter time frame. Electronic RFB/RFQ solicitations must be posted or published for at least seven days.

4.3.2. *Requests for bids.* In the case of an electronic solicitation, the city's selected electronic centralized government bid information platform shall serve as the repository for sealed bids until the time designated in the request.

4.3.3. *Bid submission.* A bid submission shall contain the solicitation name and number for which the bid is being submitted. If the bid requires a bidder to use a specific bid proposal form, the bid must be submitted using that form. The bid proposal form must be complete in all respects and executed when submitted.

4.3.4. *Bid opening.* Sealed formal bids shall be opened in the presence of one or more witnesses and read aloud at the time and place stated in the solicitation. All bid openings shall be open to the public. Should the purchasing manager determine in the purchasing manager's sole discretion that there exists good cause to delay a bid opening, the bid opening may be extended for a reasonable time, not to exceed seven days.

4.3.5. *Confidential.* The results of a bid review shall remain confidential until the city either awards the bid or decides to not award the bid.

4.3.6. *Award.* In accordance with the city's best value procurement strategy, the city may award a project for which a formal solicitation has been used to other than the lowest bidder.

4.4. Pre-qualification generally. Prequalification processes are often appropriate for work or services that are required by the city, but which arise intermittently or on an as-needed basis based on business needs. Using pre-qualified vendors to do work on an on-call or as-needed basis allows the city to respond quickly and effectively to service needs while still benefiting from a broad and competitive solicitation of qualified vendors. Except as set forth in the Purchasing Ordinance or herein, the city may use a prequalification process to fulfill contracts for professional services or other contracts as deemed in the best interests of the city. Work of an emergency nature (e.g., work needed to repair unexpected damage to infrastructure such as a roadway or underground utilities) may be performed on an on-call or as-needed basis under a contract with a vendor who has been pre-qualified by the city to perform that type of work.

4.4.1 *Process and selection of pre-qualified vendors.* A work system or department may pre-qualify vendors for general services or for specialized work. Pre-qualification processes must be formally solicited as RFQs. Each pre-qualification solicitation or process shall contain a time frame during which the pre-qualified vendors may be used by the city, as well as a statement of an annual, aggregate cap on the amount that may be paid out to vendors pre-qualified through that solicitation. In pre-qualifying vendors, the city shall consider:

4.4.1.1. The qualifications of the vendor;

4.4.1.2. The vendor's resources;

4.4.1.3. The vendor's ability to complete the anticipated contract work;

4.4.1.4. The past performance of the vendor on similar projects; and

4.4.1.5. Any other relevant information indicative of the vendor's ability to provide the best value to the city given the requirements of anticipated city projects.

4.4.2 *Final selection of a pre-qualified vendor to perform a task.* Each task performed by a pre-qualified vendor as a result of a pre-qualification process shall be done under an on-call or as-needed work contract approved by Legal. Once a contract for on-call or as-needed work with a pre-qualified vendor is in place, the project owner shall make a final selection of a vendor by soliciting work on a task basis and in conformance with the solicitation rules set forth in A.C.C. sec. 82-41(c) and this policy. The city may use any reasonable criteria in making the final selection to perform a task, including but not limited to vendor availability and cost.

4.4.3. *Contract; performance measures.* Each on-call or as-needed work contract with a pre-qualified vendor shall state an annual, aggregate cap on expenditures paid out to that vendor (a not-to-exceed amount), and be approved in conformance with the approval limits set forth in sec. 82-62(a) of the Purchasing Ordinance. The project owner may then award tasks to a pre-qualified vendor up to the not-to-exceed amount stated in that vendor's contract for that year. The project owner shall be responsible for tracking aggregate amounts paid to on-call or as-needed vendors, and for tracking performance measures for on-call or as-needed work contracts. If applicable, performance measurement requirements must be as set forth in the terms and conditions of the applicable contract template, or into the terms of a purchase order.

4.4.4. *Posting of awards to pre-qualified bidders.* The purchasing manager shall, within five days of an award of a contract of $50,000.00 or more to a pre-qualified bidder, publish the award in the city's selected electronic centralized bid information platform.

4.5 Selection of consultants for CDOT contracts. The selection process for design consultants in projects involving a contract between the city and the Colorado Department of Transportation in which federal aid is utilized shall comply with applicable federal regulations and state statutes.

5. NON-COMPETITIVE SOLICITATION METHODS

5.1. Generally. The Purchasing Ordinance authorizes several types of non-competitive solicitation methods for the purchase or acquisition of goods and services, including sole source contracts, no cost contracts, cooperative contracts, and emergency contracts. Any contract required for such purchase or acquisition shall comply with the Purchasing Ordinance and this policy.

5.2. Sole source contracts. A sole source purchase request shall contain the information set forth in Arvada City Code sec. 82-42(a), outline the need for the proposed good or service, and contain a detailed explanation of the efforts made by the project owner to determine that sole source procurement is in the best interests of the city. The purchasing manager shall create and make available to employees a sole source purchasing form.

5.2.1. *Posting of sole source awards.* The purchasing manager shall, within five days of a sole source award of more than $50,000.00, publish the award in the city's selected electronic centralized bid information platform.

5.3. Cooperative contracts. The city may take advantage of favorable pricing and terms from valid public entity contracts or agreements that provide for access by local governments, including but not limited to those awarded by the federal government, the Colorado State Purchasing Office, and the Multiple Assembly of Procurement Officials ("MAPO"). A cooperative contract may result in lower costs while still ensuring bid requirements are met.

5.3.1. *Membership required.* The city must be a member of the cooperative through which it purchases a good or service. The purchasing manager shall determine whether a valid cooperative exists and whether Arvada is a member of that cooperative.

5.3.2. *Documentation.* Each purchase order or contract for the acquisition of a good or service purchased through a valid cooperative agreement must contain the cooperative name and the agreement number.

6. RESERVED

7. FORMATION OF PURCHASE ORDERS AND CONTRACTS

7.1. Contract formation; purchase order or contract. The city may use any contract appropriate to a procurement which best promotes the interests of the city. This includes a purchase order. The purchasing manager is best situated to determine when it is in the best interests of the city to use a purchase order or a contract to acquire a good or service. The purchasing manager shall consult with Legal as necessary when determining whether a purchase order or a contract is best suited for the procurement.

7.2. Purchase orders. A purchase order is a type of contract containing minimal terms and conditions related to the acquisition of a good or service. A standard purchase order is generally appropriate when an acquisition involves goods (e.g., equipment, materials, or supplies), and when the purchase involves a known quantity of goods to be purchased for a set price. A blanket purchase order is generally appropriate for annual, fixed-dollar purchases where there is uncertainty about the exact amount of goods the city will need to purchase during a given year.

7.2.1. *Contents.* Each purchase order shall contain the requisition date, the item to be purchased, and include the city solicitation number, item number, description, and quantity or amount purchased), account to be charged, cooperative agreement number if applicable, shipping costs if any, and an authorized signature.

7.2.2. *Approval.* All purchase orders of $10,000.00 or more shall be sent to and approved by the purchasing manager before the receipt of goods or services. No invoice may be approved by the purchasing manager prior to the approval of a purchase order.

7.2.3. *After-the-fact purchase orders.* A purchase order received by the purchasing manager after the city has already received the goods or services acquired under that purchase order shall be deemed an after-the-fact purchase order. The purchasing manager shall notify the deputy city manager each time an after-the-fact purchase order occurs.

7.3. Contracts. A contract is generally appropriate when an acquisition requires training by a contractor of city employees by a contractor, the installation of products or equipment by a contractor on or about city facilities, the phased acquisition of goods and services, the execution of a licensing agreement, or a long-term contract. A contract is also appropriate for construction or other activities that carry substantial risks for the city. Legal shall determine what legal provisions are appropriate for each city contract.

7.3.1. *Contract terms.* City contracts shall contain standard contract clauses approved by Legal. Any deviation from a standard contract term must be approved by Legal. All contractors engaged in work for the city must agree to abide by applicable laws, statutes, ordinances, rules, and regulations throughout the term of the contract.

7.3.4. *Submitting a CRF.* If a contract is needed, the contract coordinator shall submit a CRF. No CRF shall be submitted until all relevant contract information is available and in substantially final form. Relevant information includes but is not limited to information that is necessary to draft a contract or that will become a part of the contract, such as the contractor's proposal/quote, scope of work, insurance requirements, sole source form, etc. Failure to submit all relevant contract information may result in project delays.

7.3.5. *Project owner responsibilities.* The project owner responsible for a project for which a contract is required shall:

7.3.5.1. Timely notify the purchasing manager of a bid award;

7.3.5.2. After negotiations have been finalized, ensure the final scope of work has been submitted as part of the CRF;

7.3.5.3. When appropriate, ensure performance measures and reporting procedures have been established and provided with the vendor's response;

7.3.5.4. Attach all relevant documents to the CRF or otherwise make them available to Legal at generally the same time the CRF is submitted: and

7.3.5.5. Upon receipt of a draft contract from Legal, review the contract to ensure it properly captures the scope of work, terms and conditions specific to the project, and other project details, and notify the staff attorney about any suggested revisions and comments.

7.3.6. *Premature work without a contract.* The purchasing manager shall notify the deputy city manager each time a project owner authorizes work for which no contract has been executed or no purchase order has been issued. The notice shall detail the nature of the work and the apparent reason or reasons why the work was started before being approved in accordance with the Purchasing Ordinance.

7.4 <u>Execution of contracts - signatures.</u>

7.4.1. *Electronic signatures.* Subject to any limitations in the Colorado Uniform Electronic Transactions Act, by entering into a contract with the city, a contractor agrees to the use of electronic signatures. Notwithstanding the foregoing, the city may require that any contract be executed with manual signatures.

7.4.2. *Manual signatures.* The following contracts shall be signed with a manual or original signature:

7.4.2.1. Bonds issued to finance a capital improvement project;

7.4.3.2. Deeds;

7.4.3.3. Easements;

7.4.3.4. Development agreements;

7.4.3.5 Annexation agreements;

7.4.3.6. Subordination agreements; and

7.4.3.7. Liens and lien releases.

7.4.3. *Execution of contracts.* The project owner is responsible for ensuring each contract is fully and appropriately executed as set forth in the Purchasing Ordinance, and for ensuring the purchasing program and Legal receives notice that each contract has been fully executed.

8. CONTRACT ADMINISTRATION

8.1. Generally. The director is responsible for ensuring each contractor performs in accordance with purchase order terms or contract requirements. Should an issue involving contract performance or payment, or other contract administration arise, the director should contact the purchasing manager for assistance.

8.2. Contract modifications. All contract amendments or revisions are modifications. All contract modifications must follow the approval authority rules set forth in the Purchasing Ordinance. No additional monetary modification authority may be built into an award prior to the time the need for a modification arises.

9. AMERICANS WITH DISABILITIES (ADA) POLICY. All procurement processes shall comport with the city's ADA Contractors, Licensing, and Certification policy.

CITY OF ARVADA

REPORT TO CITY COUNCIL ORDINANCE FIRST READING

AGENDA ITEM 8.C.4.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: CB21-028, An Ordinance Submitting Proposed Amendments to Sections 4.3, 4.6, 5.13 and 5.14 of the Charter for the City of Arvada to the Registered Electors at the November 2, 2021 Regular Municipal Election and Setting Ballot Titles (Public Hearing to be set for August 16, 2021 at 6:15 p.m.)

Report in Brief

The purpose of this ordinance is to set titles for four proposed ballot measures making amendments to City Charter Sections 4.3, 4.6, 5.13 and 5.14 of the Charter. The proposed ballot measures would ask Arvada voters to vote on the following amendments to the Charter: 1) whether to delete language in Section 4.3 of the Charter prohibiting an employee of another municipality from being qualified to hold Arvada City Council office; 2) whether to amend Section 4.6 of the Arvada Charter to increase the number of days to fill a City Council vacancy from 30 days to 45 days; 3-4) whether to amend Section 5.13 and 5.14 of the Arvada Charter to increase the number of days to circulate petitions for initiative and referendum from 30 days to 60 days. In order for these questions to be on the ballot in November, the City Council must adopt an ordinance submitting the ballot measures to the voters and setting the language for ballot measures no later than August 16, 2021.

The Arvada team recommends that the City Council approve CB21-028, An Ordinance Submitting Proposed Amendments to Sections 4.3, 4.6, 5.13 and 5.14 of the Charter for the City of Arvada to the Registered Electors at the November 2, 2021 Regular Municipal Election and Setting Ballot Titles, on first reading, ordered published in full, and a public hearing date be set for August 16, 2021 at 6:15 p.m.

Financial Impact

None.

Background

Section 13.13 of the Charter requires that a Charter Review Committee be formed every 10 years to review the Charter and recommend to Council amendments, deletions, or other changes to the Charter. In addition, Section 13.9 of the Arvada Charter authorizes City Council to submit any proposed questions to the electors of the City without receipt of a petition. Section 31-2-210 of the Colorado Revised Statutes requires that City Council set ballot titles for any home rule Charter amendments by ordinance.

On January 11, 2021, City Council voted to appoint 21 individuals to the Charter Review Committee. At a workshop on the same date, City Council identified 8 issues for the Charter Review Committee to analyze and follow up with recommendations. The Charter Review Committee met on February 11, 2021, February 25, 2021, March 11, 2021 and March 25, 2021 to discuss proposed revisions to the Charter.

Discussion

The Charter Review Committee presented its report to City Council at a workshop on April 26, 2021, and recommended nine proposed revisions to the Charter. Subsequently, the Charter Review Committee ranked its top recommended revisions. The City team drafted questions to be submitted to the voters which address the Committee's top recommended revisions, as follows:

1) To delete language in Section 4.3 of the Charter prohibiting an employee of another municipality from being qualified to hold Arvada City Council office;
2) Amending Section 4.6 of the Arvada Charter to increase the number of days to fill a City Council vacancy from 30 days to 45 days;
3-4) Amending Sections 5.13 and 5.14 of the Arvada Charter to increase the number of days to circulate petitions for initiative and referendum from 30 days to 60 days.

To keep the ballot measures understandable for voters, the proposed amendments to Sections 5.13 and 5.14 will each have their own questions on the ballot, creating four total ballot measures.

The remaining five revisions recommended by the Charter Review Committee will be considered for future ballot measures.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

As noted above, the Charter Review Committee recommended all of the proposed Charter amendments, along with five additional Charter amendments.

Strategic Alignment

This action aligns with the City Council Strategic Plan Priority Area of Organizational and Service Effectiveness.

Alternative Courses of Action

NA

Recommendation for Action

The Arvada team recommends that the City Council approve CB21-028, An Ordinance Submitting Proposed Amendments to Sections 4.3, 4.6, 5.13 and 5.14 of the Charter for the City of Arvada to the Registered Electors at the November 2, 2021 Regular Municipal Election and Setting Ballot Titles, on first reading, ordered published in full, and a public hearing date be set for August 16, 2021 at 6:15 p.m.

Suggested Motion:

I move that CB21-028, An Ordinance Submitting Proposed Amendments to Sections 4.3, 4.6, 5.13 and 5.14 of the Charter for the City of Arvada to the Registered Electors at the November 2, 2021 Regular Municipal Election and Setting Ballot Titles, be (approved on first reading, ordered published in full, and a public hearing date be set for August 16, 2021 at 6:15 p.m.) (rejected).

Prepared by:
Rachel Morris, City Attorney

Reviewed by:

Approved by:

Lorie Gillis, Deputy City Manager 7/26/2021
Mark Deven, City Manager 7/27/2021

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. 21-028

ORDINANCE NO. _________

AN ORDINANCE SUBMITTING PROPOSED AMENDMENTS TO SECTIONS 4.3, 4.6, 5.13 AND 5.14 OF THE CHARTER FOR THE CITY OF ARVADA TO THE REGISTERED ELECTORS AT THE NOVEMBER 2, 2021 REGULAR MUNICIPAL ELECTION AND SETTING BALLOT TITLES.

WHEREAS, pursuant to Section 13.13 of the Arvada Charter, City Council appointed a 2021 Charter Review Committee on January 11, 2021 (Resolution No. R21-010) for the purpose of performing a comprehensive review of the City Charter; and

WHEREAS, the 2021 Charter Review Committee completed its review of the City Charter and issued a final report; and

WHEREAS, on April 26, 2021, City Council considered the final report of the Charter Review Committee; and

WHEREAS, Section 13.9 of the City Charter authorizes City Council on its own initiative to submit more than one charter amendment at any one election; and

WHEREAS, City Council has determined that certain City Charter amendment questions shall be placed on the Regular Municipal Election ballot for November 2, 2021.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Pursuant to the provisions of CRS Section 31-2-210(4), notice is hereby given to registered electors of the City of Arvada that the following proposed amendments to the Charter of the City of Arvada, Colorado will be submitted to the registered electors at the regular municipal election to be held on Tuesday, November 2, 2021.

Section 4.3 - Qualifications

Each Councilmember when nominated and elected shall be a registered elector of the City of Arvada, a citizen of the United States for at least one (1) year, and,

(a) In the case of Councilmembers elected from districts, shall have resided in the City for one (1) year and the respective district for one (1) year immediately preceding such election, and

(b) In the case of Councilmembers elected at large, shall have resided in the City for one (1) year immediately preceding such election.

In the case of an annexation, any person who has resided within the territory annexed for the prescribed time shall be deemed to have met the residence requirements for the municipality, district and precinct to which the territory was annexed.

In the case of any revision, alteration, or change in district boundaries as a result of the federal enumeration of population as required in Section 4.1.1 of this Charter, any person who is otherwise qualified and is excluded from his or her district as a result of any such district boundary change shall be deemed to have met the one (1) year residency requirement for purposes of qualifying for nomination and election as required in subsection (a) above.

No Councilmember, including the Mayor, shall be a salaried employee of the City of Arvada ~~nor any other municipality~~ during his/her term of office. No former Councilmember, including the Mayor, shall hold any compensated appointed office of employment with the City until one (1) year after expiration of the term for which the member was elected to City Council. No individual shall be eligible to hold the office of City Councilmember, or Mayor, who has been convicted of a felony in any court of the United States within ten (10) years of the date of assuming the office of City Councilmember. The City Council shall be the judge of the election and qualifications of its own members.

Section 4.6. - Vacancies.

An elective office shall become vacant whenever any officer is recalled, dies, becomes incapacitated, resigns, is convicted of a felony, or ceases to be a resident of the City, or, in the case of a Councilmember elected from a district, ceases to be a resident of the respective district from which he or she was elected or appointed. In addition, a Councilmember shall forfeit his/her office upon failing to attend three (3) consecutive regular meetings of the City Council without being excused by the City Council. In case of a vacancy the remaining Councilmembers shall choose by a majority vote, and within ~~thirty (30)~~ FORTY-FIVE (45) days after such vacancy occurs, a person qualified under Section 4.3 of this Charter to fill such vacancy; provided, however, the person chosen as Mayor shall be a member of the City Council. If such vacancy occurs during the first two (2) years of a term, the person appointed by City Council shall serve only until the next regular election, at which time the seat shall be filled by election for the remaining two (2) years of the term. If three (3) or more vacancies exist simultaneously, the remaining Councilmembers shall, at the next regular meeting of City Council, call for a special election to fill such vacancies, provided there will not be a Regular Municipal Election within ninety (90) days.

Section 5.13(b) - Initiative procedures.

(b) An initiated ordinance may be submitted to the City Council by filing with the City Clerk a notice of intent to file a petition for an initiated ordinance. The notice of intent to file an initiative petition shall be signed by not less than five (5) registered electors of the City. The filing of said notice of intent shall be a condition precedent to filing an initiative petition as hereinafter provided. If the initiated ordinance is to be submitted to the registered electors at the next regular municipal election, the petition shall be signed by registered electors of the City in a number at least equal to ten (10) percent of the total number of registered electors of the City as of the date the notice of intent is filed with the City Clerk. If the initiated ordinance is to be submitted to the registered electors at a special election, the petition shall be signed by the registered electors of the City in a number at least equal to ten (10) percent of the total number of registered electors of the City as of the date the notice of intent is filed with the City Clerk. The petition must be filed with the City Clerk within ~~thirty (30)~~ SIXTY (60) days the form [from] the date the notice of intent is filed with the City Clerk.

Section 5.14(c) - Referendum procedures.

(c) If a petition calling for a referendum of an ordinance is signed within ~~thirty (30)~~ SIXTY (60) days from the effective date of the ordinance by registered electors of the City in a number at least equal to ten (10) percent of the total number of registered electors of the City as of the date of the filing of the notice of intent and the petition is filed with the City Clerk, the ordinance shall be further suspended from operation. If, however, no such petition is filed with the City Clerk within the ~~thirty (30)~~ SIXTY (60) day period, the ordinance shall be in full force and effect upon the expiration of the ~~thirty (30)~~ SIXTY (60) day period.

NOW, THEREFORE, CITY COUNCIL HEREBY PLACES THE FOLLOWING BALLOT QUESTIONS ON THE NOVEMBER 2, 2021 REGULAR ELECTION BALLOT:

<u>Section 2.</u> Pursuant to the provisions of C.R.S. § 31-2-210(1)(b), there shall be submitted to the registered electors of the City of Arvada at the regular municipal election to be held on Tuesday, November 2, 2021, a proposed amendment to Chapter IV, City Council, Section 4.3, Qualifications, to delete language that prohibits an employee from another municipality from running for public office in Arvada, to read as follows:

QUESTION NO. 1 - AMENDMENT TO THE CHARTER FOR THE CITY OF ARVADA

Shall Chapter IV, Section 4.3, "Qualifications," of the Arvada City Charter concerning qualifications to be a candidate for City Council, be amended by deleting language that prohibits an employee from another municipality from running for public office in Arvada?

☐ YES
☐ NO

Section 3. Pursuant to the provisions of C.R.S. § 31-2-210(1)(b), there shall be submitted to the registered electors of the City of Arvada at the regular municipal election to be held on Tuesday, November 2, 2021, a proposed amendment to Chapter IV, City Council, Section 4.6, Vacancies, to increase the number of days to fill a City Council vacancy from 30 days to 45 days, to read as follows:

QUESTION NO. 2 - AMENDMENT TO THE CHARTER FOR THE CITY OF ARVADA

Shall Chapter IV, Section 4.6, "Vacancies," of the Arvada City Charter concerning procedures for filling vacancies on City Council, be amended by increasing the number of days to fill a City Council vacancy from 30 days to 45 days?

☐ YES
☐ NO

Section 4. Pursuant to the provisions of C.R.S. § 31-2-210(1)(b), there shall be submitted to the registered electors of the City of Arvada at the regular municipal election to be held on Tuesday, November 2, 2021, a proposed amendment to Chapter V, City Council Procedure, Section 5.13, Initiative Procedures, to increase the amount of time permitted to gather signatures for an initiative petition from 30 days 60 days, to read as follows:

QUESTION NO. 3 - AMENDMENT TO THE CHARTER FOR THE CITY OF ARVADA

Shall Chapter V, Section 5.13, "Initiative Procedures," of the Arvada City Charter concerning procedures for submitting initiative petitions, be amended by increasing the amount of time permitted to gather signatures on an initiative petition from 30 days to 60 days?

- YES
- NO

Section 5. Pursuant to the provisions of C.R.S. § 31-2-210(1)(b), there shall be submitted to the registered electors of the City of Arvada at the regular municipal election to be held on Tuesday, November 2, 2021, a proposed amendment to Chapter V, City Council Procedure, Section 5.14, Referendum Procedures, to increase the amount of time permitted to gather signatures for a referendum petition from 30 days 60 days, to read as follows:

QUESTION NO. 4 - AMENDMENT TO THE CHARTER FOR THE CITY OF ARVADA

Shall Chapter V, Section 5.14, "Referendum Procedures," of the Arvada City Charter concerning procedures for submitting referendum petitions, be amended by increasing the amount of time permitted to gather signatures on a referendum petition from 30 days to 60 days?

- YES
- NO

Section 6. A judicial determination that any section of this ordinance is illegal, invalid, or void shall not affect the enforceability of any other section or provision.

Section 7. This ordinance shall be effective five days after publication following final passage. The ordinance shall, however, be contingent upon its passage by the electorate as required in C.R.S. § 31-2-210(1)(b).

INTRODUCED, READ, AND ORDERED PUBLISHED this 2nd day of August, 2021.

PASSED, ADOPTED, AND APPROVED this _____ day of ___________________, 2021.

____

Marc Williams, Mayor

ATTEST:

____

City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By: __________________________________

Publication Dates: August 5, 2021

CITY OF ARVADA

REPORT TO CITY COUNCIL	AGENDA ITEM 9.A.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: Appointment to the Olde Town Arvada Business Improvement District Board

Report in Brief

City Council needs to make one appointment for a new position to the Olde Town Arvada Business Improvement District Board.

I move to **Appoint** Brandon Capps to the Olde Town Arvada Business Improvement District Board for a three year term ending April 30, 2024.

Prepared by:
Chris Koch, CCO Admin

Reviewed by:
Toni Riebschlager, Law Office Administrator 7/15/2021

Approved by:

Rachel Morris, City Attorney 7/22/2021
Lorie Gillis, Deputy City Manager 7/22/2021
Mark Deven, City Manager 7/22/2021

Enclosure, exhibits & attachments required to support the report

CITY OF ARVADA

# REPORT TO CITY COUNCIL PUBLIC HEARING	AGENDA ITEM 10.A.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: CB21-025 An Ordinance Authorizing an Additional Appropriation to the Community Development Fund for Fiscal Year 2021 (Ordinance No. 4771)

Report in Brief

Council action is requested on the attached ordinance authorizing an additional appropriation to the 2021 Community Development Fund, Fund 9, totaling $775,525. The source of these funds are from Federal COVID relief programs that have been allocated to local governments in order to assist residents in need in response to the economic impact of the pandemic.

The Arvada team recommends that CB21-025, An Ordinance Authorizing an Additional Appropriation to the Community Development Fund for Fiscal Year 2021, be approved on final reading, numbered 4771 and ordered published by title only.

Financial Impact

The City of Arvada received a total of $775,525 in grants due to the COVID-19 pandemic:

- Community Development Block Grant in the amount of $276,525 in CARES funding to assist households affected by the COVID-19 pandemic.
- Jefferson County grant in the amount of $499,000 to aid residents of Arvada by providing emergency rental assistance dollars

Background

On January 11, 2021, Arvada City Council approved a funding agreement with the U.S. Department of Housing and Urban Development for $276,525 in Community Development Block Grant Coronavirus funding. This funding was approved to assist with non-congregate sheltering and emergency rent/mortgage assistance.

On April 5, 2021, Arvada City Council approved an intergovernmental agreement between the City of Arvada and Jefferson County Human Services totaling $499,000 in emergency rental assistance funding to assist Arvada residents impacted by COVID-19.

A budget amendment is necessary to include both grants into the Community Development Fund budget and therefore authorize the expenditure of these funds to meet the needs of Arvada residents for Emergency Rental Assistance.

Discussion

The City of Arvada has continued to provide much needed rental assistance to the residents of Arvada, saving many from the threat of eviction and possible homelessness. Here are some of the details of how this funding has supported our community:

- In the last quarter of 2020, from August to December, 64 households received emergency assistance totaling over $170,000.

- In the first quarter of 2021, from January to mid-April, 71 households have received emergency assistance totaling over $387,000.
- Since joining with Jefferson County in the administration of the Federal Emergency Rental Assistance program (ERA) funds through their Neighborly Assistance portal, beginning in mid-April through today, the City of Arvada has provided 91 resident households with over $628,000; additional applications for dozens of Arvada households are in process.

While the pandemic restrictions are lifting and employers have begun hiring and bringing back employees from furlough and unemployment, residents are still struggling to pay rent and bring their income back up to pre-pandemic levels and consistency. Some have shared that they have been borrowing money, cashing in their 401k, and charging credit cards to pay their rent, and are out of options now with nowhere to go if evicted. The need and the urgency for this assistance is actually increasing.

The number of applications received across Jefferson County, and Arvada, has increased exponentially as the final extension of the national CDC eviction moratorium ends on July 31 gets closer, increasing stress and the need for quick assistance. The Emergency Rental Assistance provides a lifeline to these households, who otherwise would not have a place to live. In addition to the experience of homelessness, they would also have an eviction on their credit record making finding a new place incredibly difficult to secure in the future.

This program is also supporting many small landlords, often dependent on the income from a small rental or two. Many have expressed appreciation for the City's engagement and dedication to supporting both the tenants and local landlords in accessing these generous federal funds. This program is making a significant difference in the lives of Arvada's vulnerable residents, all who have been directly impacted by the COVID pandemic, and continue to feel the economic impact.

Public Contact

Arvada residents impacted by COVID-19 seek rental assistance through emails and phone calls to the Housing team. In association with the Council's consideration of the recommended action, the Council agenda was posted.

Commission Recommendation

N/A

Strategic Alignment

Approval of this item aligns with the Vibrant Community and Neighborhoods Priority Area within the City Council Strategic Plan, as follows:

Improves access to quality housing that is affordable to a broad range of income levels and provides resources, housing, and neighborhood assistance services to Arvada residents, neighborhoods, property owners, and stakeholders.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that CB21-025, An Ordinance Authorizing an Additional Appropriation to the Community Development Fund for Fiscal Year 2021, be approved.

Suggested Motion:

I move that that CB21-025, An Ordinance Authorizing an Additional Appropriation to the Community Development Fund for Fiscal Year 2021, be (approved on final reading, numbered 4771 and ordered published by title only) (rejected)

Prepared by:
Rosa Kougl, Executive Assistant

Reviewed by:

Approved by:

Carrie Espinosa, Manager of Housing Preservation and Resources	7/12/2021
Gordon Reusink, Director of Vibrant Community and Neighborhoods	7/12/2021
Bryan Archer, Director of Finance	7/14/2021
Gail Walker, Legal Specialist-Contracts	7/15/2021
Kylie Justus, Assistant City Attorney	7/15/2021
Rachel Morris, City Attorney	7/22/2021
Lorie Gillis, Deputy City Manager	7/22/2021
Mark Deven, City Manager	7/22/2021

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. 21-025

ORDINANCE NO. 4771

AN ORDINANCE AUTHORIZING AN ADDITIONAL APPROPRIATION TO THE COMMUNITY DEVELOPMENT FUND FOR FISCAL YEAR 2021

WHEREAS, the City Council of the City of Arvada adopted Ordinance No. 4660 (Council Bill No. 18-043), which authorized the annual appropriation for Fiscal Year 2021; and

WHEREAS, Section 10.8(a) of the Arvada Home Rule Charter provides that City Council may make additional appropriations by Ordinance during the fiscal year for unanticipated expenditures required of the City; and

WHEREAS, the City received the following grants due to the COVID-19 pandemic:

- Jefferson County Grant in the amount of **$499,000.00** to aid residents of Arvada by providing emergency rental assistance dollars; and
- Community Development Block Grant in the amount of **$276,525.00** in CARES funding to assist households affected by the COVID-19 pandemic.

Total = $775,525.00

WHEREAS, the City Council of the City of Arvada finds that an additional appropriation to the Community Development Fund, Fund 09, is necessary in order for the City to meet unanticipated expenditures of the COVID-19 grant monies described above; and

WHEREAS, The City Council of the City of Arvada further finds that such additional expenses and budgeted expenses do not exceed budgeted revenues and reserves for Fiscal Year 2021.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. The following sums of money as may be needed or deemed necessary to defray the expenses and liabilities of the City of Arvada are hereby appropriated for the Community Development Fund for the Fiscal Year 2021.

Fund	Original Budget	New Request	Revised Budget
Community Development	1,042,102	$ 775,525	1,817,627
Total	**$ 1,042,102**	**$ 775,525**	**$ 1,817,627**

Section 2. This Ordinance shall take effect five days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 19th day of July, 2021.

PASSED, ADOPTED AND APPROVED this 2nd day of August, 2021.

____
Marc Williams, Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By:________________________________

Publication Dates: July 22, 2021
August 5, 2021

CITY OF ARVADA

REPORT FROM CITY COUNCIL	AGENDA ITEM 12.A.

DATE: August 2, 2021

SUBJECT: Council Committee Reports

Report in Brief

City Council members are appointed to various committees and boards as set out on the attached listing. As meetings are held, individual council members will report back to the full City Council any relevant discussions and issues that occurred.

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Enclosure, exhibits & attachments required to support the report

Council Member	Committee
Marc Williams	Arvada Urban Renewal Authority E-470 Authority (alternate) Jefferson Parkway Public Highway Authority Northwest Parkway Authority (Associate Member) (alternate) Urban Drainage and Flood Control District West Connect Coalition *Metro Mayors Caucus
Dot Miller	Adams County Economic Development Association Arvada Municipal Court/Judicial Committee CML Policy Committee Jefferson County Community Corrections Board (alternate) Smart City Advisory Committee
Bob Fifer	Apex Coordinating Committee Arvada Fire Protection District Coordinating Committee Arvada Transportation Committee Denver Regional Council of Governments Jefferson County R-1 Schools Coordinating Committee Jeffco Transportation Action & Advisory Group (JEFFTAAG) Smart City Advisory Committee
Nancy Ford	Arvada Center for the Arts and Humanities Arvada Sustainability Advisory Committee Arvada Visitors Center Committee (alternate) Rocky Flats Stewardship Council
David Jones	E-470 Authority (alternate) Jefferson County Community Corrections Board Jefferson County R-1 Schools Coordinating Committee Jefferson Economic Development Council (JEDC) Jefferson Parkway Public Highway Authority Northwest Parkway Authority (Associate Member) (alternate) West Connect Coalition (alternate)
John Marriott	Adams County Economic Development Association (alternate) Apex Coordinating Committee Arvada Audit Committee Arvada Economic Development Association Board Arvada Municipal Court/Judicial Committee CML Policy Committee Denver Regional Council of Governments (alternate) Jeffco Transportation Action & Advisory Group (JEFFTAAG) (alternate) Olde Town Business Improvement (BID) District Rocky Mountain Metropolitan Airport Community Noise Roundtable
Lauren Simpson	Arvada Audit Committee Arvada Fire Protection District Coordinating Committee Arvada Visitors Center Committee Smart City Advisory Committee

*Asterisked committees are not appointed by Council

CITY OF ARVADA

REPORT TO CITY COUNCIL	AGENDA ITEM 13.A.

TO: THE HONORABLE CITY COUNCIL DATE: August 2, 2021

SUBJECT: Review of Future Workshops and Presentations

Report in Brief

The City Manager's Office maintains a list of upcoming workshops and presentations to be scheduled for City Council meetings. During City Manager Reports, at the end of City Council business meetings, City Manager, Mark Deven, will review with City Council the tentative schedule and make any adjustments necessary.

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Rachel Morris, City Attorney	7/22/2021
Lorie Gillis, Deputy City Manager	7/22/2021
Mark Deven, City Manager	7/22/2021

Enclosure, exhibits & attachments required to support the report

2021 CITY COUNCIL WORKSHOPS, PRESENTATIONS AND RETREATS (TENTATIVE)

WORKSHOPS	Date	Lead
Traffic Calming Pilot Projects Update – 45-60 minutes (Keep this agenda light) The Mobility and Planning Innovations (MPI) Division of Public Works will be presenting an update on the Traffic Calming Pilot Projects for W 57th Ave and Grandview Ave near Olde Town, and provide City Council with next steps related to a citywide Traffic Calming Program that supports the Police Department and Public Works Department initiatives on traffic safety. The presentation will briefly recap public outreach results and how citizen input has been incorporated into the pilot projects.	July 26	PW
Proposed Ordinance and Rules and Regulations related to Micromobility (e-Scooters, e-Bikes)	July 26	PW
Pomona Parcel	Aug 9	VCN
10-year model	Aug 9	Fin
Housing and Homeless Program Update	Aug 23	VCN
Bond Project Update	Aug 23	PW
CIP Update	Aug 23	
Budget Presentation	Sept 27	Fin
Pay Plan	Oct 11	Fin
Communications Update	Oct 25	CMO
Bond Project Update	Nov 22	PW
Master Plan Update on Storm and Wastewater	Nov 22	PW
	Dec 13	
Council Retreat Update	TBD	CMO
Pomona Parcel	TBD	CMO
Pocket Neighborhoods	TBD	
Meyers Pool	TBD	CMO
City Marketing Plan	TBD	CMO
Traffic Violation Fee	TBD	PW
Financial Scenarios for Street Maintenance Deficit/Options for Increasing Maintenance Funds Engage City Council in a discussion around the current street maintenance needs and how the City might fund them. This will include revenue enhancements, future allocations and expenditure realignments.	TBD	PW/Fin/ CMO
Fiber Master Plan The Fiber Master Plan which is also called Arvada Fiber Optic Network (AFON), was first presented to City Council 4/10/2017. City Councils had set a strategic goal to build a fiber network to enable high speed/real-time connectivity to city facilities and assets in order to enhance city operations. This workshop is intended to brief City Council as to the progress of the AFON build out. Updates are intended to cover conduit installation progress, fiber installation progress, current collocate opportunities, IGA member updates, and connections to current assets (city buildings, traffic, signals, utilities, radio, etc.).	TBD	PW
Community Survey Update The purpose of this item is to continue a discussion with Council about the Community Survey results and what the City team is doing to apply what is learned. Discussion will include an update on action plans targeting key drivers of the City's 5-star rating as well as how Worksystems are targeting specific measures.	TBD	CMO
Problem Properties	TBD	P.D.
Water Storage – Plan B (include with master plan presentation)	TBD	Utilities
Activation of Historical Assets	TBD	VCN
N.W. Arvada	TBD	CED

Body Worn Cameras	TBD	PD
Customer Service Philosophy	TBD	CMO
Ask Arvada Update	TBD	CMO
Diversity and Equity Committee	TBD	CMO
COUNCIL JOINT MEETINGS/DINNERS:		
Denver Water Board Apex Board AURA Board Arvada Center Board–Per Coop Agreement - Annually after October 1 of each year Jefferson Parkway Meeting with Jeffco and Broomfield Council Annual Retreat	May 14	