Statement of Vision

Lafayette’s panoramic view of the Rocky Mountains inspires our view into the future. We value our heritage, our unique neighborhoods, a vibrant economy, and active lifestyles. We envision a future that mixes small-town livability with balanced growth and superior city services.

NOTICE OF CITY COUNCIL MEETING
City Hall Council Chambers
1290 S. Public Road
Lafayette, Colorado

This meeting will be conducted in person and by electronic and telephonic means pursuant to the Declaration of Local Disaster Emergency issued by the Mayor of the City of Lafayette on March 17, 2020 and City of Lafayette Resolution No. 2020-23 extending the Declaration until terminated by City Council.

SEE BELOW THE AGENDA FOR ACCESS AND PARTICIPATION OPTIONS

June 7, 2022

AGENDA
5:30PM CITY COUNCIL MEETING

I. OPENING OF REGULARLY SCHEDULED MEETING
Call to Order
Pledge of Allegiance
Roll Call

II. PUBLIC INPUT

III. CONSENT AGENDA
A. May 17, 2022 City Council Meeting Minutes
B. May 23, 2022 City Council Workshop Summary
E. Second Reading / Ordinance No. 17, Series 2022 / Vacating a Portion of a Utility Easement Within Certain Real Property Located in Boulder County, Commonly Known as 712 South Cherryvale Road

F. Second Reading / Ordinance No. 18, Series 2022 / Amending Article XIV of Chapter 30, “Buildings and Building Regulations,” of the Code of Ordinances to Enact a New Section 30-406 Regarding Fee Waivers

G. Resolution No. 2022-25 / Establishing the Boulder County Region Opioid Council

H. Resolution No. 2022-29 / Appointing an Interim Local Licensing Authority Hearing Officer

I. Resolution No. 2022-30 / Subordination Agreements (Deeds of Trust) / 900 S. US. Hwy 287 (JAX Outdoor) and 400 W. South Boulder (JAX Farm and Ranch)

IV. PROCLAMATIONS

J. Lesbian, Gay, Bisexual, Transgender, and Queer+ Pride Month / June 2022

K. Juneteenth / June 19, 2022

L. Gun Violence Awareness Day / June 3, 2022

V. REGULAR BUSINESS

M. Items Pertaining to Firearm Regulations
   1. Resolution No. 2022-33 / Expressing the City Council’s Strong Support for Colorado Local Governments Enacting and Enforcing Local Firearms Regulations, and Imploring the Colorado General Assembly to Enact Statewide Laws to Address Gun Violence and Prevention
   2. First Reading / Ordinance No. 20, Series 2022 / Amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to Regulate the Possession of Unfinished Frames and Receivers and Unserialized Firearms
   3. First Reading / Ordinance No. 21, Series 2022 / Amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to Require All Firearm Dealers to Post Signs at All Locations Where Firearm Transfers Take Place
   4. First Reading / Ordinance No. 22, Series 2022 / Amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to Prohibit the Open Carrying of Firearms in Public Places
   5. First Reading / Ordinance No. 23, Series 2022 / Amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to Prohibit the Carrying of Firearms on City Property

N. Resolution No. 2022-31 / Revocable Right-of-Way License Agreement with Teocalli Cocina Tequileria, LLC d/b/a Teocalli Cocina for Use of Certain City-Owned Right-of-Way Adjacent to 103 N. Public Road
O. Items Pertaining to Water Use

1. Resolution No. 2022-32 / Imposing Additional Time Restrictions on the Use of Water from the City’s Municipal Water System to Irrigate, Sprinkle, or Otherwise Apply Water to Any Outdoor Vegetation, Pursuant to Section 120-13(e) of the Code of Ordinances


VI. STAFF REPORTS

P. City Attorney’s Report
Q. City Administrator’s Report

VII. COUNCIL APPOINTMENTS

R. Appointment to the Lafayette Open Space Advisory Committee
S. Appointments to the Human Rights Commission
T. Appointments to the Lafayette Urban Renewal Authority

VIII. COUNCIL REPORTS

IX. ADJOURNMENT

OPTIONS FOR ACCESSING THE MEETING

- Attend the meeting in person. City Hall Council Chambers, 1290 S. Public Road.
- Tune to Comcast Channel 8 or HD Channel 881.
- View the meeting on your computer at https://www.cityoflafayette.com/627/Streaming-Video.
- Listen to the meeting by calling 1-877-853-5247 (toll free). Once connected, you will be asked for the meeting number. The meeting number is 869 1163 2580. Press # after entering the number.

OPTIONS FOR PARTICIPATING IN THE MEETING

- Attend the meeting in person. City Hall Council Chambers, 1290 S. Public Road.
- Submit written comments to the City Clerk’s Office at https://www.lafayetteco.gov/FormCenter/City-Clerk-19/Public-Input-463. If your remarks are received by 3pm on the day of the meeting, they will be read into the record.
- Participate by telephone. Call 1-877-853-5247 (toll free). Once connected, you will be asked for the meeting number. The meeting number is 869 1163 2580. Press # after entering the number. To request to speak, press *9 during Public Input to raise your hand. When it is your turn, we will unmute your microphone.
I. OPENING OF REGULARLY SCHEDULED MEETING

Call to Order
Mayor Mangat called the May 17, 2022 meeting of the Lafayette City Council to order at 5:35pm in the Council Chambers at Lafayette City Hall, 1290 S. Public Road, Lafayette, Colorado. The meeting was conducted in person and via electronic participation due to the presence of Coronavirus disease 2019 (COVID-19) in Colorado and subsequent Safer at Home Executive Order from Governor Jared Polis.

Roll Call
Those attending in Council Chambers included Mayor Jaideep (JD) Mangat, Mayor Pro Tem Brian Wong, and Councilors Tim Barnes, Tonya Briggs, Enihs Medrano, Nicole Samson, and Stephanie Walton.

City staff included City Administrator Fritz Sprague, City Attorney Mary Lynn Macsalka, City Clerk Lynnette Beck, Police Chief Rick Bashor, Public Works Director Jeff Arthur, Deputy City Clerk Susan Barker, Planning and Building Director Jeff Brasel, Assistant to the Parks, Recreation, and Open Space Director Ben Mazal, Sustainability Coordinator Elizabeth Szorad, and Communications Director Debbie Wilmot.

II. PUBLIC INPUT

Frank Archuleta spoke about public pool access for Latino children and a history of racism in Lafayette.

Karen Norback spoke about the waste hauler contract.

Mayor Mangat read the following email comments:

Lisa Bailey wrote in favor of more pickleball courts.

Richard Rochester submitted comments in support of short-term rentals.

Riley Mancuso submitted comments in opposition to the recognition of Police Week.

III. CONSENT AGENDA

A. May 3, 2022 City Council Meeting Minutes

B. First Reading / Ordinance No. 18, Series 2022 / Amending Article XIV of Chapter 30, “Buildings and Building Regulations,” of the Code of Ordinances to Enact a New Section 30-406 Regarding Fee Waivers

C. Second Reading / Ordinance No. 16, Series 2022 / Extending the Deadline for Compliance with Conditions in Ord. No. 29, Series 2021, Pertaining to Silo Subdivision Filing No. 1 and the Vacation of Certain Rights-of-Way and Public Easements

D. Items Related to Utility Easements at 712 South Cherryvale Road
1. Resolution No. 2022-28 / Approving and Accepting an Easement and Agreement Between the City and Connor Snipes for the Installation, Operation and Maintenance of a Pipeline for the Conveyance and Distribution of Potable Water

2. First Reading / Ordinance No. 17, Series 2022 / Vacating a Portion of a Utility Easement Within Certain Real Property Located in Boulder County, Commonly Known as 712 South Cherryvale Road

E. Contract / Churchich Recreation / Playground Equipment Replacement

F. Change Order / Altitude Athletic Surfaces, LLC / Pickleball Courts

A motion was made by Mayor Pro Tem Wong and seconded by Councilor Briggs to approve the Consent Agenda. The motion passed 7-0.

IV. PROCLAMATIONS

G. National Police Week / May 15-21, 2022

Councilor Walton read and moved to approve the proclamation. Mayor Pro Tem Wong seconded. The motion passed 7-0.

H. Honoring the Class of 2022

Councilor Medrano read and moved to approve the proclamation. Councilor Briggs seconded. The motion passed 7-0.

V. REGULAR BUSINESS

I. First Reading / Ordinance No. 14, Series 2022 / Amending Chapter 75, “Offenses – Miscellaneous,” of the Code of Ordinances

This ordinance updated certain miscellaneous criminal offenses in Chapter 75 of the Lafayette Code of Ordinances to reflect changes in state law. City Attorney Macsalka presented this item. She reviewed the current offenses in Chapter 75 and the changes proposed by the ordinance.

There were no questions from Council.

A motion was made by Councilor Walton and seconded by Councilor Barnes to approve on first reading Ordinance No. 14, Series 2022, amending Chapter 75, “Offenses – Miscellaneous,” of the Code of Ordinances. The motion passed 7-0.


This ordinance repealed and reenacted the entirety of Chapter 10, “Alcoholic Beverages,” of the Code to establish a hearing officer to serve as the Local Licensing Authority for all local alcohol beverage licensing matters and hearings. The ordinance also updated terminology in the Code to be consistent with the Colorado Liquor, Beer, and Special Event Liquor Permits Codes, reorganized Chapter 10 overall, updated provisions pertaining to enforcement, and generally modernized the language used in the Code. Clerk Beck reviewed the highlights of the ordinance, beneficial outcomes, and timeline of next steps.
There were no questions from Council.

*A motion was made by Councilor Samson and seconded by Councilor Medrano to approve on first reading Ordinance No. 15, Series 2022, repealing and reenacting Chapter 10, “Alcoholic Beverages,” of the Code of Ordinances. The motion passed 7-0.*

K. Contract / Republic Services / Residential Solid Waste Hauling Services

In November 2021, staff released a request for proposals for residential solid waste collection. Staff conducted a comprehensive overview of the submitted proposals and published a simplified one-page information sheet of each proposal for residents to review. On April 15, 2022, City Council selected Republic Services as the contractor and approved weekly organics collection, an annual hard-to-recycle event, and multiple recycle cart sizes as contract alternatives.

Sustainability Coordinator Szorad presented this item. She reviewed the contract term, annual rate changes, outreach and education efforts, performance fees, future customer service option, and next steps.

Council asked about calculation of block segments, public input comments about including youth in outreach and education, and the call center.

*A motion was made by Mayor Pro Tem Wong and seconded by Councilor Walton to ratify the Comprehensive Residential Refuse, Recyclables, and Organics Collection Services Contract with Allied Waste Transportation, Inc. d/b/a Republic Services of Denver, with the contract term beginning on October 1, 2022, and to authorize the City Administrator to execute the contract on behalf of the City. The motion passed 7-0.*

VI. STAFF REPORTS

L. City Attorney’s Report

There was no report from City Attorney Macsalka.

M. City Administrator’s Report

Administrator Sprague reported that the City’s water conditions had not improved since the update on May 3. He reminded Council of three regulations already in place: (1) no watering between the hours of 10am and 6pm, (2) no overspray on hard surfaces, and (3) no washing of hard surfaces. Staff continues to actively monitor water usage and may be evaluating restrictions and/or other conservation tools for the season.

Council asked what the other tools might be and about enforcement for waste as a result of broken pipes or sprinkler systems.

VII. COUNCIL REPORTS

Councilor Briggs asked for an update regarding the Miller name and moving forward on renaming the roundabout and the Mary Miller Theater. Mayor Mangat and Administrator Sprague will discuss the timing of bringing this back to Council.
Mayor Mangat asked Councilors for their thoughts on reading Public Input emails into the record. This practice started during the pandemic when Council was meeting remotely. City Attorney Macsalka referenced Resolution No. 2022-24, which details what is required for public participation when a declaration of local disaster emergency is in effect. The resolution provides that “[i]n the event public access to the regular meeting location is not feasible, practical, or prudent due to the emergency, appropriate arrangements, if feasible, will be made to allow the public to observe, listen, or, if applicable, provide public input during the meeting while it is occurring from another location or remotely.” She clarified that reading the emails into the record had been Council’s choice, but that it was not a formal rule. Council made no changes to its practice at this time.

VIII. ADJOURN TO EXECUTIVE SESSION

N. Pursuant to section 24-6-402(4)(b) of the Colorado Revised Statutes to confer with the City Attorney for the purpose of receiving legal advice on specific legal questions pertaining to Senate Bill 21-256

A motion was made by Mayor Mangat and seconded by Mayor Pro Tem Wong to adjourn to executive session pursuant to Colorado Revised Statutes section 24-6-402(4)(b) to confer with the City Attorney for the purposes of receiving legal advice on specific legal questions pertaining to Senate Bill 21-256. The motion passed 6-0.

Council adjourned to executive session and ended the public meeting at 7:14pm.

CITY OF LAFAYETTE, COLORADO

________________________________________
ATTEST      Jaideep Mangat, Mayor

____________________________________
Lynnette Beck, City Clerk

The minutes herein are a summary of the business conducted at this meeting, not a verbatim transcript. Only the actions taken and the text appearing in quotation marks are verbatim.
I. Opening of Regularly Scheduled Workshop

The May 23, 2022 workshop of the Lafayette City Council was opened at 5:35pm in the Council Chambers at Lafayette City Hall, 1290 S. Public Road, Lafayette, Colorado.

Those in attendance from City Council were Mayor Jaideep (JD) Mangat, Mayor Pro Tem Brian Wong, and Councilors Tim Barnes, Tonya Briggs, Nicole Samson, and Stephanie Walton. Councilor Erihs Medrano was absent.

The following City staff members were present: City Administrator Fritz Sprague, Deputy City Administrator Kady Doelling, City Clerk Lynnette Beck, Public Works Director Jeff Arthur, Planning and Building Director Jeff Brasel, City Engineer Bryan McIlwee, Transportation Engineer Michelle Melonakis, and Network Administrator Daniel Wooldridge.

Other participants included Molly Chiang from the Boulder County Housing Authority, and Kathleen Bracke and Stacey Proctor from the Boulder County Department of Community Planning & Permitting.

II. Willoughby Corner Update

Administrator Sprague introduced this item. Director Brasel and Molly Chiang presented. They summarized the project and reviewed its history, financing and partnerships, development agreements, potential City financial support, community center component and programming, and next steps.

Council asked about land costs and grants, the compliance period for tax credits, uses of the community center, infrastructure, affordable housing program guidelines, program administration, project timing and funding, water tap fees, and Private Activity Bond allocation.

III. Boulder County Transportation Tax Renewal – Potential 2022 Ballot Item

Administrator Sprague introduced this item. Engineer Melonakis, Stacey Proctor, and Kathleen Bracke presented transit planning coordination efforts between Boulder County and the City of Lafayette, Boulder County’s role in transportation, an overview of transportation funding, funding analysis and draft scenarios, transportation equity, and next steps.

Council asked about individuals included in the description of transportation equity, air quality impacts of regional mobility corridors, TABOR (Tax Payer’s Bill of Rights) thresholds, funds for municipalities, partnering with RTD, bicycle trails and facilities, and the proposed tax increments.
IV. Adjourn

The workshop was adjourned at 7:51pm.

Approved this 7th day of June, 2022.

CITY OF LAFAYETTE, COLORADO

______________________________
Jaideep Mangat, Mayor

ATTEST

______________________________
Lynnette Beck, City Clerk
EXECUTIVE SUMMARY

Ordinance No. 14, Series 2022, updates certain miscellaneous criminal offenses in the Chapter 75 of the Lafayette Code of Ordinances to reflect changes in state law. City Council unanimously passed the ordinance on first reading on May 17.

CITY COUNCIL STRATEGIC OUTCOME (MOST APPLICABLE): AFFORDABLE, ATTAINABLE, AND JUST

BACKGROUND INFORMATION

The Colorado legislature recently amended certain terms, definitions, penalties, and procedures for certain criminal offenses in state statute, for which the City either has a counterpart offense, or which the City may now enforce because the state has designated the offense a misdemeanor over which the City has jurisdiction.

To maintain consistency between certain state and local offenses and to allow for local enforcement of certain offenses, the City must amend certain offenses in Chapter 75, “Offenses – Miscellaneous,” of the Code. By keeping the City’s counterpart offenses in line with state statute, the City’s police officers and municipal court can rely on the Colorado appellate courts’ interpretation and application of the same laws at the state level. It also allows the City’s and the County’s law enforcement agencies to be operating from the same understanding of certain offenses. This is important considering that law enforcement officers for the City and Boulder County often assist each other in the field or refer matters to the other agency depending on the circumstances or location of a particular offense.

Ordinance No. 14, Series 2022, will update certain offenses and add two new sections in Chapter 75 of the Code to reflect related changes in state statute.

NEXT STEPS

None.
Recommendation
Staff recommends approval of this ordinance.

Proposed Motion Language

Attachment(s)
A: Ordinance No. 14, Series 2022

WHEREAS, the State of Colorado has recently amended certain terms, definitions, penalties, and procedures for certain offenses for which the City either has a counterpart offense, or which the City may now enforce because the State has designated the offense a misdemeanor over which the City has jurisdiction; and

WHEREAS, to maintain consistency between certain State and local offenses and to allow for local enforcement of certain offenses, it is necessary that the City amend certain offenses in Chapter 75 of the Code of Ordinances of the City of Lafayette, Colorado.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. That section 75-180, “Disorderly conduct” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:¹

Sec. 75-180. - Disorderly conduct.
(a) It shall be unlawful for any person to commit disorderly conduct. A person commits disorderly conduct when a person intentionally, knowingly, or recklessly:

(1) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace;

(2) Makes unreasonable noise in a public place or near a private residence that the person has no right to occupy;

(3) Fights with another in a public place except in an amateur or professional contest of athletic skill;

(4) Not being a peace officer, discharges a firearm in a public place except when engaged in lawful target practice or hunting; Not being a peace officer, discharges a firearm in a public place, except when engaged in lawful target practice or hunting or the ritual discharge of blank ammunition cartridges as an attendee at a funeral for a deceased person who was a veteran of the armed forces of the United States; or

¹ Additions to the Code are indicated by underlining. Deletions from the Code are indicated by strikethrough.
(5) Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the object is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm. Not being a peace officer, displays a real or simulated firearm, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a firearm, or represents verbally or otherwise that they are armed with a firearm in a public place in a manner calculated to alarm and does alarm another person.

(b) It is an affirmative defense to prosecution under subsection (a)(1) of this section that the person had significant provocation for his or her abusive or threatening conduct.

Section 2. That section 75-201, “Obstruction of peace officer, code enforcement officer, animal control officer, firefighter, emergency medical services provider, rescue specialist or volunteer,” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

Sec. 75-201. - Obstruction of peace officer, code enforcement officer, animal control officer, firefighter, emergency medical services provider, rescue specialist or volunteer.

(a) It shall be unlawful for any person to obstruct a peace officer, firefighter, emergency medical services provider, rescue specialist, code enforcement officer, animal control officer or volunteer when, by using or threatening to use violence, force, physical interference, or an obstacle, such person knowingly obstructs, impairs or hinders the enforcement of any penal law or the preservation of the peace by a peace officer, acting under color of his or her official authority; knowingly obstructs, impairs, or hinders the prevention, control, or abatement of fire by a firefighter, acting under color of his or her official authority; knowingly obstructs, impairs, or hinders the administration of medical treatment or emergency assistance by an emergency medical service provider or rescue specialist, acting under color of his or her official authority; or knowingly obstructs, impairs, or hinders the administration of emergency care or emergency assistance by a volunteer, acting in good faith to render such care or assistance without compensation at the place of an emergency or accident.

(b) To assure that animals used in law enforcement or fire prevention activities are protected from harm, a person commits obstructing a peace officer or firefighter when, by using or threatening to use violence, force, physical interference, or an obstacle, the person knowingly obstructs, impairs or hinders any such animal.

(c) A person shall not be charged with the offense described in subsection (a) of this section because the person remained silent or because the person stated a verbal opposition to an order by a government official.

(ed) It is not a defense to a prosecution under this section that the peace officer was acting in an illegal manner; if the peace officer was acting under color of his or her official authority. A peace officer acts "under color of his or her official authority" if, in the regular course of assigned duties, they makes a judgment in good faith based on surrounding facts and circumstances that they must act to enforce the law or preserve the peace.
(de) For purposes of this section, unless the context otherwise requires:

(1) "Rescue specialist" means a member of a public or private rescue agency, whether that person is a volunteer or receives compensation for services rendered as such rescue specialist. "Emergency medical service provider " means a member of a public or private emergency medical service agency, whether that person is a volunteer or receives compensation for services rendered as an emergency medical service provider.

Section 3. That subsection (b) of section 75-240, “Possession of marijuana,” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

(b) It shall be unlawful for any person to possess one (1) ounce or less more than two (2) ounces of marijuana or marijuana products unless such person is twenty-one (21) years of age or older or otherwise permitted by law to possess marijuana or marijuana products.

Section 4. That the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by adding a section in Chapter 75, to be numbered section 75-241, which section reads as follows:

Sec. 75-241 – Unlawful use of a controlled substance.
Except as is otherwise provided for offenses concerning marijuana and marijuana concentrate as set forth in sections 18-18-406 and 406.5, C.R.S., it shall be unlawful for any person to use any controlled substance, as defined by section 18-18-102 (5), C.R.S., except when it dispensed by or under the direction of a person licensed or authorized by law to prescribe, administer, or dispense the controlled substance for bona fide medical needs.

Section 5. That the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by adding a section in Chapter 75, to be numbered section 75-241.5, which section reads as follows:

Sec. 75-241.5 - Unlawful possession of a controlled substance.
Except as authorized by part 1 or 3 of article 280 of title 12, C.R.S., part 2 of article 80 of title 27, C.R.S., section 18-18-428(1)(b), C.R.S., or part 2 of article 18, C.R.S., it is unlawful for any person to knowingly possess any material, compound, mixture, or preparation that contains not more than four grams of a controlled substance listed in schedule I or II of part 2 of article 18, C.R.S., or any quantity of a controlled substance listed in schedule III, IV, or V of part 2 of article 18, C.R.S., except as to possession of flunitrazepam, gamma hydroxybutyrate, or ketamine, or where possession of such substances constitutes a fourth or subsequent violation of this offense.

Section 6. If any article, 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 passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.
Section 7. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 8. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 9. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 10. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section 11. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 17TH DAY OF MAY, 2022.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 7TH DAY OF JUNE, 2022.

CITY OF LAFAYETTE, COLORADO

Jaideep Mangat, Mayor

ATTEST:

Lynnette Beck, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney
Executive Summary
This is second reading of Ordinance No. 15, Series 2022, repealing and reenacting Chapter 10, “Alcoholic Beverages,” of the Code to establish a hearing officer to serve as the Local Licensing Authority for all local alcohol beverage licensing matters and hearings. The ordinance also updates terminology in the Code to be consistent with the Colorado Liquor, Beer, and Special Event Liquor Permits Codes, reorganizes Chapter 10 overall, updates provisions pertaining to enforcement, and generally modernizes the language used in the Code.

At first reading on May 17, 2022, City Council approved the ordinance 7-0 with no amendments. There were no Council questions.

City Council Strategic Outcome (most applicable): Excellent City Services and Infrastructure

Background Information
The City Council has historically served as the City’s “local licensing authority” (LLA) for alcohol beverage licensing and permitting under the Colorado Liquor, Beer, and Special Event Liquor Permits Codes (Articles 3, 4, and 5 of Title 44, C.R.S.). In 2015, Council enacted Ordinance No. 22, Series 2015, amending the City’s Code to provide for appointment of a hearing officer to preside over certain licensing matters—specifically, license and permit suspension and revocation hearings, renewal hearings, and contested applications for new alcohol beverage licenses. The City Council has continued to serve as the local licensing authority for uncontested new license hearings, transfers of ownership, and changes of location.
The City Council directed the City Attorney to prepare an ordinance to transition all alcohol beverage licensing matters to a hearing officer, who shall serve as the local licensing authority. This is permitted under the Colorado Liquor Code, which provides that the governing body of a municipality may, by ordinance, designate “any authority” to serve as the local licensing authority, including a hearing officer.

Some of the benefits of designating a hearing officer to serve as the local licensing authority for alcohol beverage licensing matters include:

- Increased administrative efficiencies for the City with respect to its administrative licensing duties—a hearing officer will be proficient in the applicable codes and regulations and will be able to efficiently and fairly process or preside over licensing matters;
- Increased efficiencies and convenience for applicants and licensees—all matters will be handled by the City Clerk’s Office and the hearing officer, and any hearings will be held during daytime business hours, which are usually less busy hours for most applicants and licensees (daytime business hours are also usually more convenient for their attorneys or consultants);
- Increased efficiencies for City Council, freeing up meeting time to focus on larger initiatives and policies;
- Assurance of proper and consistent enforcement of violations, suspensions, or revocations;
- Applicants and licensees will not need to attend evening City Council meetings or to wait through other agenda items for their matters to be heard; and
- The City Attorney’s Office will be able serve as the City’s representative and prosecutor for contested applications and for show cause, renewal, suspension, and revocation hearings—the City Attorney’s Office already has experience prosecuting alcohol beverage licensing matters and litigating appeals for local licensing authorities in other municipalities.

Appointment of an Independent Hearing Officer
The composition of local licensing authorities in Colorado varies—the LLA can be the governing body of a municipality, an appointed board of 3 to 5 residents, the municipal judge, or an independent hearing officer who is typically an attorney with experience enforcing the Colorado Liquor and Beer Codes or a municipal judge from a different jurisdiction.

Ordinance No. 15 allows the City Council to appoint the City’s municipal judge as the LLA hearing officer or to appoint another qualified individual to serve as the LLA hearing officer. Appointing an independent hearing officer (an individual other than the municipal judge) does have certain advantages. In particular, while a municipal judge can lawfully preside over related LLA and municipal court matters with impartiality and fairness, there is the potential that licensees and defendants may not understand the distinction between the two roles when appearing, on the one hand, before the LLA hearing officer in a licensing matter
and, on the other hand, before the municipal court judge for a related code violation. Again, this is both permissible and legally defensible, but appointment of a hearing officer who is independent from the municipal judge would avoid any perception by licensees or defendants of bias or partiality, even if those concerns are unfounded.

At first reading, the City Clerk outlined the process for appointing another qualified individual as the hearing officer. A staff review committee is in the process of screening and interviewing qualified hearing officer applicants and will recommend a final candidate for Council’s approval at a meeting in July.

Other Matters Addressed in Ordinance No. 15, Series 2022
In addition to establishing a hearing officer as the City’s local licensing authority, Ordinance No. 15, Series 2022, will also do the following:

- Repeals, reenacts, and reorganizes the entirety of Chapter 10 of the Code;
- Renames Chapter 10 from “Alcoholic Beverages” to “Alcohol Beverage Licensing and Special Event Permits” to more accurately describe the purpose of the Chapter and to reflect the terminology used in the Colorado Liquor, Beer, and Special Event Liquor Permits Codes;
- Updates the terminology used throughout Chapter 10 to be consistent with terminology used in the Colorado Liquor, Beer, and Special Event Liquor Permits Codes;
- Makes it unlawful to sell or manufacture alcohol beverages within the City without first obtaining a license or permit from the local licensing authority or, for those licenses solely issued by the state, without first obtaining a license from the state licensing authority;
- Preserves the delegation of authority to the City Clerk’s Office to process and approve certain applications and to issue certain permits;
- Provides that the municipal court shall have the authority to enforce subpoenas issued by the hearing officer, including the power to compel witnesses to attend licensing hearings or to produce documents, and to impose penalties for failing to comply with the court’s orders, such as fines or contempt.
- Empowers the hearing officer to adopt rules of procedure and regulations concerning the matters and hearings that come before the local licensing authority;
- Designates the City Clerk or the City Clerk’s designee as the secretary of the authority and provides that the City Clerk’s Office shall be responsible for posting and publishing notices required by the Colorado Liquor, Beer, and Special Event Liquor Permits Codes;
- Designates the City Attorney or the City Attorney’s designee to represent the City at hearings to show cause and on contested applications or renewals, and in any appeal of a decision of the authority (such appeals go directly to Boulder County district court, not the City Council);

1 A commonly occurring example would be a licensee’s employee serving an underage person. That would result in two separate enforcement actions: (1) on the licensing side, a show cause hearing and potential suspension of the license ordered by the hearing officer; and (2) a municipal court citation to the employee for serving an underage person, with the verdict and sentence decided by the municipal court judge.
• Clarifies and strengthens the requirement that licensees immediately report to the Lafayette Police Department any disturbances or unlawful conduct that occurs on a licensed premises;
• Preserves the abolishment of distance restrictions in the Colorado Liquor Code for “hotel and restaurant license” applications;
• Preserves the Optional Premises License and Tastings Permit provisions, which were updated in 2018 after significant changes in state law;
• Preserves the “Fine in lieu of suspensions” provisions in Chapter 10; and
• Moves sections 10-10 through 10-14, which impose an occupation tax on nude entertainment businesses originally enacted in 1980 (Ord. 883) to a new Article II in Chapter 10.

Next Steps
If passed on second reading, the Ordinance will be effective June 17, 2022.

A staff review committee is in the process of screening and interviewing qualified hearing officer applicants and will recommend a final candidate for Council's approval at a meeting in July.

Thereafter, staff will execute a contract with the successful candidate, clarify roles and responsibilities, and establish rules of procedure and regulations for hearings and licensing matters. Staff anticipates the first meeting before the new licensing authority will be held in July or August.

Recommendation
Staff recommends approval of this ordinance.

Proposed Motion Language

Attachment(s)
A: Ordinance No. 15, Series 2022
CITY OF LAFAYETTE

ORDINANCE NO. 15, Series 2022
INTRODUCED BY: Councilor Nicole Samson


WHEREAS, in accordance with Articles 3 (Colorado Liquor Code), 4 (Colorado Beer Code), and 5 (Colorado Special Event Liquor Permits Code) of Title 44 of the Colorado Revised Statutes, the City Council of the City of Lafayette serves as the Local Licensing Authority (the “Authority”); and

WHEREAS, in 2015, the City Council enacted Ordinance No. 22, Series 2015, amending the City’s Code of Ordinances to provide for the appointment of a hearing officer to preside over certain licensing matters—specifically, show cause hearings for license and permit suspensions, revocations, renewal hearings, and contested license applications for alcohol beverage licenses; and

WHEREAS, since the enactment of Ordinance No. 22, Series 2015, the City Council, as the Authority, has continued to preside over hearings for new licenses, transfers of ownership, and changes of location; and

WHEREAS, the Colorado Liquor, Beer, and Special Event Liquor Permits Codes permit the City Council to designate, by ordinance, a hearing officer to serve as the Local Licensing Authority; and

WHEREAS, the City Council desires to repeal and reenact Chapter 10 of the Code of Ordinances to provide for a Local Licensing Authority composed solely of a hearing officer who shall be responsible for handling all administrative licensing matters and hearings under the Colorado Liquor, Beer, and Special Event Liquor Permits Codes, except as otherwise delegated to the City Clerk; and

WHEREAS, the City Council also desires to update terminology in Chapter 10 to be consistent with terms used in the Colorado Liquor, Beer, and Special Event Liquor Permits Codes, and to update provisions in Chapter 10 pertaining to violations, reporting of disturbances, distance restriction on hotel and restaurant licenses, and other matters; and

WHEREAS, the City Council believes that changing the composition of the Authority to consist solely of a hearing officer for all matters pertaining to alcohol beverage licensing and special event permitting will increase administrative efficiencies with respect to the City’s administrative licensing duties, ensure prompt resolution of licensing matters for the convenience of applicants and licensees, and promote the best interest of the City and protect the public health, safety, and welfare by ensuring proper enforcement and administration of the Colorado Liquor, Beer, and Special Event Liquor Permits Codes.
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. That Chapter 10, Alcoholic Beverages, of the Code of Ordinances, City of Lafayette, Colorado, is hereby repealed in its entirety and reenacted to provide as follows:

CHAPTER 10 – ALCOHOL BEVERAGE LICENSING AND SPECIAL EVENT PERMITS

ARTICLE I. LICENSING AND PERMITTING IN GENERAL

Sec. 10-1. Definitions.
Those terms that are defined in the Colorado Liquor Code, the Colorado Beer Code, and the Colorado Special Event Liquor Permits Code (Articles 3, 4, and 5 of Title 44, C.R.S., respectively, as amended) shall have the same meaning when used in this Chapter, unless the context otherwise requires.

For purposes of this chapter, the word “licensee” shall mean any person duly licensed to sell or manufacture alcohol beverages in the city, or any agent, owner, manager, or employee of such licensee. “Licensee” shall include the holder of a special event permit or any agent, owner, manager, or employee of such permit holder.

Sec. 10-2. License Required; State Statutes.
(a) It shall be unlawful for any person to sell or manufacture alcohol beverages within the City of Lafayette without first obtaining a license or permit pursuant to this chapter or, for licenses other than those listed in section 44-3-309, C.R.S., without first obtaining a license from the state licensing authority.

(b) The Colorado General Assembly has declared that the licensing and regulation of the sale of fermented malt beverages and alcohol beverages is a matter of statewide concern. All licensing requirements and regulations specified in the Colorado Liquor Code, Colorado Beer Code, Colorado Special Event Liquor Permits Code (Articles 3, 4, and 5, of Title 44, C.R.S., as amended), and Colorado Code of Regulations (1 CCR. 203-2, as amended), shall be enforced in the local licensing process and shall control in the event that inconsistent requirements are set forth in this Chapter.

Sec. 10-3. Establishment of authority; duties and powers; delegation to city clerk.
(a) Local licensing authority. The local licensing authority (“authority”) shall have all powers and duties granted to local licensing authorities as set forth in Articles 3, 4, and 5, of Title 44, C.R.S., as amended. The authority shall have the duty and authority to grant or refuse licenses for the possession, sale, and offering for sale of alcohol beverages as provided by law, to conduct investigations as are required by law and to levy penalties against licensees in the manner provided by law.

(b) Composition, appointment, removal, and compensation. Subject to the delegation of authority to the city clerk set forth in subsection (g) below, the authority shall consist of a sole
hearing officer who shall serve at the pleasure of city council. The hearing officer shall be appointed by the city council by resolution and may be removed with or without cause by a majority vote of city council. City council shall establish compensation for the hearing officer. City council may, in its discretion, appoint an alternate hearing officer who may serve in the event that the appointed hearing officer is unavailable. The term "hearing officer" shall be synonymous with “local licensing authority” or “authority” as used throughout this Chapter 10.

(c) **Qualifications of hearing officer.** The hearing officer shall be an individual over the age of 21 years and with sufficient knowledge and expertise to apply and enforce the Colorado Liquor Code, Colorado Beer Code, Colorado Special Event Liquor Permits Code (Articles 3, 4, and 5, of Title 44, C.R.S.), and applicable Colorado Code of Regulations (1 CCR. 203-2). The hearing officer shall not hold any other city office, appointment, or position, except that city council may appoint the municipal court judge as the hearing officer. Additionally, the hearing officer shall not have any financial or ownership interest, employment relationship, or contractual relationship with any applicant or holder of a local alcohol beverage license or local licensed establishment, or in the operation of any business located or operating in the city that holds a license pursuant to the Colorado Liquor Code or Colorado Beer Code.

(d) **Rules of procedure; conduct of hearings.** In conformity with applicable statutes and the Lafayette Code of Ordinances, the authority shall have the power to adopt rules of procedure and regulations concerning the matters and hearings that come before it and the presentation of evidence at such hearings. All hearings before the authority shall be public and shall be conducted in accordance with the rules and regulations concerning the procedures for hearings adopted by the authority. In the conduct of any hearing, the authority shall have the power to administer oaths, issue subpoenas, decide discovery issues, regulate the course of the hearing, grant continuances, decide motions, and exclude incompetent or unduly repetitious testimony or evidence.

(e) **Subpoena power; violations.** The local licensing authority shall have the power to issue subpoenas to require the presence of persons and the production of documents, data compilations, and other evidence at any hearing before the authority. A subpoena shall be served in the same manner as a subpoena issued by a district court of the State of Colorado. It shall be unlawful for any person to fail to comply with any subpoena or order to produce documents, data compilations, or other evidence issued by the authority. The municipal court shall enforce the subpoenas of the authority and, upon good cause shown, shall enter orders compelling witnesses to attend and testify or produce documents, data compilations, or other evidence, and shall impose penalties or punishment for contempt in case of failure to comply with such orders.

(f) **Meetings.** The authority shall hold a regular meeting once each calendar month, unless there is no business to conduct. The authority may unilaterally call special meetings upon and after consultation with the city clerk or the city’s clerk’s designee.

(g) **Delegation of authority to city clerk.** The city clerk or the city clerk’s designee is authorized to act as the local licensing authority for the following licensing and permitting functions under the Colorado Liquor Code, Colorado Beer Code, and Colorado Special Event Liquor Permits Code (Articles 3, 4, and 5, of Title 44, C.R.S., as amended):
(1) Annual Colorado Liquor Code and Colorado Beer Code license renewals, provided that the licensee has not violated any provisions of the Colorado Liquor or Beer Codes or associated regulations during the preceding year.

(2) Changes in shareholders, officers, directors, or trade names of a licensee, provided that any investigation conducted by the city does not reveal information that may reasonably form the basis of a determination that the applicant is not qualified to hold the respective license.

(3) Changes in registered manager of a licensee, provided that any investigation conducted by the city does not reveal information that may reasonably form the basis of a determination that the proposed manager is not qualified to hold the position.

(4) The issuance of temporary permits pertaining to a transfer of ownership application, pursuant to and in compliance with the provisions of section 44-3-303, C.R.S., as amended.

(5) For new alcohol beverage licenses or for changes of location of an alcohol beverage licensed establishment:

(i) Upon receipt by the city clerk of a complete application for a new license or for a change of location of a licensed establishment, the city clerk shall establish the boundaries of the neighborhood to be served by the proposed or relocated licensed establishment, and shall set the date and time for the public hearing on the application. The city clerk shall provide written notice to the applicant of the boundaries of the neighborhood and of the date and time of the public hearing.

(ii) If the applicant objects to the neighborhood boundaries set by the city clerk, the applicant shall file with the city clerk a written request that the local licensing authority establish the boundaries of the neighborhood. The applicant shall file such request not more than ten (10) days after the date of the city clerk’s notice to the applicant of the boundaries of the neighborhood. At its next meeting, the local licensing authority shall set the boundaries of the neighborhood, and shall reschedule the date for the public hearing on the application.

(6) Processing, approval, and denial of applications for modification or alteration of the licensed premises.

(7) Processing, approval, denial, and renewal of tasting permits.

(8) Processing, and approval or disapproval, of applications for special event permits, issuance of approved special event permits, and reporting of issued special event permits to the State Liquor Enforcement Division, in accordance with Article 5 of Title 44, C.R.S., as amended.

(9) Processing, approval, and denial of art gallery permits.
(10) The city clerk may refer any licensing decision authorized under this subsection (g) to the authority if, in the clerk’s discretion, the matter should be presented to the authority.

(h) **City staff duties.**

(1) **City clerk.** In addition to the duties and authority set forth in subsection (g), the city clerk or the city clerk’s designee shall:

   (i) Receive all license applications and issue those licenses granted by the local licensing authority upon receipt of such license fees as are required by law;

   (ii) Attend all meetings of the local licensing authority and serve as the secretary of the authority;

   (iii) Establish a calendar of regular meetings for the local licensing authority, which calendar may be modified by the authority;

   (iv) Post and publish all required notices in conformance with Title 44, Articles 3, 4, and 5, C.R.S., as amended, and the regulations that may from time to time be adopted by the state licensing authority.

(2) **City attorney.** The city attorney or the city attorney’s designee shall represent the city at hearings to show cause and at hearings on applications or renewals that are contested by the city, and shall present matters into evidence before the authority. The city attorney or the city attorney’s designee shall also represent the city and the authority in the event of an appeal of any decision of the authority.

**Sec. 10-4. Applications; application fees.**

All applicants shall pay an application fee in an amount as set forth in the Colorado Liquor Code (C.R.S. §§ 44-3-101 *et seq.*), Colorado Beer Code (C.R.S. §§ 44-4-101 *et seq.*), or Colorado Special Event Liquor Permit Code (C.R.S. §§ 44-5-101 *et seq.*), or as determined by resolution of city council. The city clerk may reject an application if it is incomplete.

**Sec. 10-5. Prohibited acts; reporting of disturbances required.**

(a) **Definitions.** As used within this section the following words shall mean:

   - *Assault* as defined in section 75-140, Lafayette Code of Ordinances;
   - *Criminal mischief* as defined in section 75-162, Lafayette Code of Ordinances;
   - *Disorderly conduct* as defined in section 75-180, Lafayette Code of Ordinances;
   - *Harassment* as defined in section 75-143, Lafayette Code of Ordinances;
   - *Menacing* as defined in section 75-141, Lafayette Code of Ordinances;
   - *Public indecency* as defined in section 75-220, Lafayette Code of Ordinances;
   - *Reckless endangerment* as defined in section 75-142, Lafayette Code of Ordinances;
   - *Trespass* as defined in section 75-165, Lafayette Code of Ordinances;
Licensed premises includes a “licensed premises” as defined in section 44-4-103(24), C.R.S., an “alternating proprietor licensed premises” as defined in section 44-3-103(3), C.R.S., or the specific location for which a special event permit has been issued under article 5 of Title 44, C.R.S.

(b) Prohibited acts.

(1) It shall be unlawful for any licensee or permit holder or any agent, owner, manager, or employee thereof to permit the occurrence of any of the offenses set forth within subsection (a) of this section, or to permit any other disturbance or unlawful or disorderly act or conduct to be committed by any person or group of persons upon the licensed premises.

(2) It shall be unlawful for a licensee or permit holder or any agent, owner, manager, or employee thereof, in any manner to encourage or participate in the occurrence of any of the offenses set forth within subsection (a) of this section, or to permit any other disturbance or unlawful or disorderly act or conduct upon the licensed premises; provided, however, that such licensee or permit holder may use such lawful means as may be proper to protect person or property from damage or injury.

(c) Reporting required. It shall be unlawful for any licensee or permit holder or any agent, owner, manager, or employee thereof to fail to immediately report to the Lafayette Police Department the occurrence of any of the offenses set forth within subsections (a) or (b) of this section, which take place within or upon the licensed premises.

(d) Prosecution. It shall not be a defense to the prosecution of a licensee or permit holder for a violation of subsection (c) of this section that such person was not upon the licensed premises at the time of such disturbance.

(e) Posting required. Each licensee or permit holder shall post and keep at all times visible to the public, in a conspicuous place on the premises, a sign to be obtained from the city clerk’s office. Such sign shall contain the following language:

WARNING
THE LAFAYETTE POLICE DEPARTMENT MUST BE IMMEDIATELY NOTIFIED OF ALL DISTURBANCES, DISORDERLY CONDUCT, OR OTHER CRIMINAL ACTIVITY THAT TAKES PLACE WITHIN OR UPON THE LICENSED PREMISES.

(f) Failure to comply. The local licensing authority may consider a person’s failure to comply with the requirements of this section in any action by the authority relating to the issuance, non-renewal, suspension, revocation, or cancellation of any license, temporary permit, or permit.

Sec. 10-6. Condition of license approval.
Compliance with all applicable provisions of this chapter shall be a condition of each license approved by the authority, for the sale of alcohol beverages.
Sec. 10-7. Distance restrictions for hotel and restaurant licenses.
All distance restrictions in section 44-3-313, C.R.S., for hotel and restaurant licenses only are abolished and, therefore, an application for same shall be received and acted upon if the building in which the alcohol beverages are to be sold is located within five hundred (500) feet of a public or parochial school or the principal campus of any college, university, or seminary. If the authority grants a hotel and restaurant license located less than five hundred (500) feet from any public or parochial school, or the principal campus of any college, university, or seminary, the authority may impose conditions including, but not limited to, approval by the authority of an acceptable traffic plan; and such other reasonable restrictions or conditions as the authority, in its discretion, may impose to protect any school children or college, university, or seminary students from the close presence of an alcohol beverage licensed establishment.

Sec. 10-8. Fines in lieu of license suspension.
(a) Prior to the operative date of any suspension, a licensee may petition the local licensing authority for permission to pay a fine in lieu of having the license suspended whenever the local licensing authority issues a final decision suspending a licensee’s license for fourteen (14) days or less.

(b) The local licensing authority may stay the proposed suspension, cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

(1) That the public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

(2) That the books and records of the licensee are kept in such a manner that the loss of sales of alcohol beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; and

(3) That the license has not had his or her license suspended or revoked or had any suspension stayed by payment of a fine during the two (2) years immediately preceding the date of the motion or complaint that resulted in a final decision to suspend the license.

(c) The fine accepted shall equal twenty (20) percent of the licensee’s estimated gross revenues from the sales of alcoholic beverages during the period of the proposed suspension, provided, however that such fine shall not be less than two hundred dollars ($200.00) nor more than five thousand dollars ($5,000.00). Payment shall be in the form of cash, certified check, or cashier's check.

(d) Upon payment of any fine, the local licensing authority shall enter its further order permanently staying the imposition of the suspension. Any money collected under this section 10-8 shall be paid into the general fund.

(e) Any stay granted under this section 10-8 is limited to such stay as is necessary for the local licensing authority to complete its investigation and make its findings and, if it makes such
findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

(f) If the local licensing authority does not make the findings required in subsection (b) of this section and does not order the suspension permanently stayed, the suspension shall go into effect on the date finally set by the local licensing authority.

Sec. 10-9. Optional premises license.
(a) An annually renewable optional premises license for the sale or service of alcohol beverages may be issued by the local licensing authority for any outdoor sports and recreational facility which charges a fee for the use of such facility so long as such facility is located on or adjacent to an existing or new hotel and restaurant licensed premises. Any optional premises license issued shall permit the licensee to sell or serve alcohol beverages only on the optional premises specified in the license.

(b) Except for the issuance of a special event permit pursuant to the Colorado Special Event Liquor Permits Code (Article 5 of Title 44, C.R.S., as amended), it shall be unlawful for any person to sell or dispense alcohol beverages at an outdoor sports and recreational facility without having first obtained a valid optional premises license to do so as provided by this section, or in violation of any provision, restriction or limitation of the license if one has been issued.

(c) The types of outdoor sports and recreational facilities which may be considered for an optional premises license include but are not limited to the following:

(1) Country club.

(2) Golf courses and driving ranges.

(d) Number of optional premises. There are no restrictions on the number of optional premises which any one licensee may have on his outdoor sports or recreational facility. However, any applicant requesting approval of more than one optional premises shall demonstrate the need for each optional premise in relationship to the outdoor sports or recreational facility and its guests.

(e) Submittal requirements. When submitting a request for the approval of an optional premises, an applicant shall also submit the following information:

(1) A map or other drawing illustrating the outdoor sports recreational facility boundaries and the approximate location of each optional premises requested.

(2) A legal description of the approximate area within which the optional premises shall be located.

(3) A description of the method which shall be used to identify the boundaries of the optional premises when it is in use.
(4) A description of the provisions which have been made for storing alcohol beverages in a secured area on or off the optional premises for the future use on the optional premises.

(f) An application for a new hotel and restaurant license with optional premises shall be processed in the same manner as any other hotel and restaurant license application. If an application to use optional premises is filed in connection with an existing hotel and restaurant license, then the application shall be processed in the same manner as an application to modify or expand licensed premises. No fee shall be required in connection with an application for an optional premises license relating to an existing hotel and restaurant license.

(g) No alcohol beverages may be served on the optional premises until the licensee has provided written notice to the state and local licensing authority forty-eight (48) hours prior to servicing alcohol beverages on the optional premises. Such notice must contain the specific days and hours on which the optional premises are to be used. In this regard, there is no limitation on the number of days which a license may specify in each notice.

(h) In addition to or in lieu of any enforcement actions which the local licensing authority takes against the adjacent hotel and restaurant license for violations of the Lafayette Code of Ordinances or the Colorado Liquor Code and regulations adopted pursuant thereto, the local licensing authority may decline to renew the optional premises license for good cause shown, subject to judicial review. In addition, the local licensing authority may suspend or revoke the optional premises license in accordance with the procedures specified in the Colorado Liquor Code (Article 3 of Title 44, C.R.S., as amended) and Colorado Liquor Rules (1 CCR 203-2, as amended).

(i) This section 10-9 shall be considered in addition to the Colorado Liquor Code (Article 3 of Title 44, C.R.S., as amended) regarding the issuance of licenses under the same for optional premises licenses.

Sec. 10-10. Tastings.

(a) Definitions. As used in this section, unless the context clearly requires otherwise, the following word and term shall have the meaning set forth in this section:

Tastings means the sampling of malt, vinous, or spirituous liquors that may occur on the premises of a retail liquor store licensee or liquor licensed drugstore licensee by adult patrons of the licensee pursuant to the provisions of this section.

(b) Permitting in general.

(1) The city hereby authorizes tastings to be conducted by retail liquor store or liquor licensed drugstore licensees in accordance with this section and pursuant to section 44-3-301, C.R.S., as amended. Within the city, it is unlawful for any person or licensee to conduct tastings unless a permit has been obtained in accordance with this section. The local licensing authority is authorized to issue tasting permits in accordance with the requirement of this section.
(2) A retail liquor store or liquor licensed drugstore licensee that desires to conduct tastings shall submit an application for an annual tastings permit to the city clerk. All applicants shall pay an application and application renewal fee in an amount determined by resolution of city council. The city clerk may reject the application if the applicant fails to establish that the licensee is able to conduct tastings without violating the provisions of this section or creating a public safety risk to the neighborhood.

(3) Tastings shall be subject to the following limitations:

   (i) Tastings shall be conducted only by a person who has completed a server training program that meets the standards established by the liquor enforcement division of the Colorado Department of Revenue and who is either a retail liquor store licensee or a liquor licensed drugstore licensee, an employee of a retail liquor store or liquor-licensed drugstore licenses licensee, or a representative, employee, or agent of the licensed wholesaler, brew pub, distillery pub, manufacturer, limited winery, importer, or vintner's restaurant promoting the alcohol beverages for the tasting, and only on a licensee's licensed premises.

   (ii) The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brew pub, or winery licensed pursuant to section 44-3-403, C.R.S., at a cost that is not less than the laid-in cost of such alcohol.

   (iii) The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor or one-half (½) of one (1) ounce of spirituous liquor.

   (iv) Tastings shall not exceed a total of five (5) hours in duration per day, which need not be consecutive.

   (v) Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcohol beverages, and in no case earlier than 11:00 a.m. or later than 9:00 p.m.

   (vi) The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.

   (vii) The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises destroy the samples immediately following the completion of the tasting, or store any open containers of unconsumed alcohol beverages in a secure area outside the sales area of the licensed premises for use at a tasting conducted at a later time or date.

   (viii) The licensee shall not serve a person who is under twenty-one (21) years of age or who is visibly intoxicated.
(ix) The licensee shall not serve more than four (4) individual samples to a patron during a tasting.

(x) Alcohol samples shall be in open containers and shall be provided to a patron free of charge.

(xi) The licensee may conduct tastings on no more than one hundred fifty-six (156) days per year.

(xii) No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The retail liquor store or liquor-licensed drugstore licensee bears the financial and all other responsibility for a tasting conducted on its licensed premises.

(xiii) The applicant for a tastings permit shall certify on the application that all persons serving alcohol at tastings have completed a server training program that meets the standards established by the liquor enforcement division of the Colorado Department of Revenue. The applicant for a tastings permit shall state on the application the days and times that tastings will occur.

(4) The city recommends that permittees, without charge to their patrons, have available for consumption sandwiches and light snacks for all patrons who are served samples.

(5) A violation of a limitation specified in this section by a retail liquor store or liquor licensed drugstore licensee, whether by the licensee's employees, agents, or otherwise, or by a representative, employee, or agent of the licensed wholesaler, brew pub, distillery pub, manufacturer, limited winery, importer, or vintner's restaurant that promoted the alcohol beverages for the tasting, shall be the responsibility of, and section 44-3-801, C.R.S., as amended, applies to, the retail liquor store or liquor licensed drugstore licensee that conducted the tasting.

(6) A retail liquor store or liquor licensed drugstore licensee conducting a tasting shall be subject to the same revocation, suspension, and enforcement provisions as otherwise apply to the licensee and are imposed by the local licensing authority.

ARTICLE II. OCCUPATION TAX - NUDE ENTERTAINMENT BUSINESSES SELLING ALCOHOL BEVERAGES

Sec. 10-20. Occupation Tax—Levied.
There is hereby levied and assessed for each year an annual occupation tax upon those businesses located within the city which sell malt, vinous or spirituous liquors and further provide nude entertainment or allow nude entertainment for the customers of said businesses, in the sum of five thousand dollars ($5,000.00) per year.

Sec. 10-21. Same—Definition.
For the purpose of sections 10-20—10-24, nude entertainment shall mean the displaying of pubic hair, anus, vulva or genitals; nude entertainment shall also be defined as the displaying of the post-pubertal human female breast below a point immediately above the top of the areola, or the displaying of the post-pubertal human female breast where the nipple only or the nipple and areola only are covered.

Sec. 10-22. Same—Payment.
(a) The occupational tax levied in section 10-20 shall be due and payable to the director of finance on January 1 of each year and shall be delinquent on February 15 of the same year. Upon receipt of the tax, the director of finance shall execute and deliver to the licensee paying the tax a receipt showing the name of the licensee, the date of payment, the annual period for which such taxes paid and the place at which said licensee conducts business. All persons who pay the above-mentioned occupational tax shall, at all times, post a receipt of payment in a conspicuous place in the place of business stated in the receipt.

(b) Whenever any new licensee begins business with a new license subsequent to January 1 of any year, the occupational tax required herein shall be pro-rated on a monthly basis for the remaining portion of the year; no refund shall be made to any person who has discontinued business under a license prior to the expiration of the period covered by the occupational tax.

(c) All licenses issued hereunder shall be nontransferable.

Sec. 10-23. Same—Purpose.
The purpose of the occupational tax levied in section 10-20 is for revenue purposes.

Sec. 10-24. Same—Violations.
It shall be unlawful for any person to operate any business selling malt, vinous or spirituous liquors which business also provides or allows nude entertainment as defined in section 10-21 for customers within the city limits of the city without paying the tax imposed by section 10-20; and any person doing so shall be guilty of a violation of such section and upon conviction of such

1 Sections 10-20 through 10-24 set forth in this new Article II. of Chapter 10 were previously codified in sections 10-10 through 10-14 of Article I. of Chapter 10 prior to enactment of this ordinance.
offense in the municipal court shall be fined in a sum not exceeding, at the time of the commission of the offense, the maximum fine established by the state for municipal ordinance violations. This offense is not punishable by imprisonment.

Section 2. If any article, 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 passed 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. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 5. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 6. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section 7. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.
INTRODUCED AND PASSED ON FIRST READING THE 17TH DAY OF MAY, 2022.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 7TH DAY OF JUNE, 2022.

CITY OF LAFAYETTE, COLORADO

____________________________________
Jaideep Mangat, Mayor

ATTEST:

____________________________________
Lynnette Beck, City Clerk

APPROVED AS TO FORM:

____________________________________
Mary Lynn Macsalka, City Attorney
Executive Summary
This memo presents the second reading of an ordinance vacating an existing waterline easement across 712 S. Cherryvale Road.

City Council Strategic Outcome (most applicable): Excellent City Services and Infrastructure

Background Information
The existing utility easement located at 712 S. Cherryvale Road is used for the location, operation, and maintenance of a potable waterline that has been in place since at least the 1950s. The easement diagonally bisects the owner’s property, which is a residential lot in unincorporated Boulder County.

The property owner has proposed to relocate the waterline within the lot to a new easement that runs along the east and south property lines. Approval and acceptance of the new easement was granted with Resolution No. 2022-28. Council’s acceptance of the new easement allows the property owner to construct and connect the new waterline within the new easement.

Once the new waterline is constructed and connected within the new easement, the City will no longer need the existing waterline easement that bisects the property. Ordinance No. 17, Series 2022, will vacate the existing waterline easement conditioned upon the completion of the new waterline. Per Code Section 26-14-20, “Vacation of roadways and easements,” the ordinance includes a finding that the existing waterline easement will no longer be necessary for the public use and convenience upon the completion of the new waterline within the new easement accepted by the City Council in Resolution No. 2022-28.
Next Steps
None

Recommendation
Staff recommends approval of this ordinance.

Proposed Motion Language
Council motion to approve on second reading Ordinance No. 17, Series 2022, vacating a portion of a utility easement within certain real property located in Boulder County, commonly known as 712 South Cherryvale Road.

Attachment(s)
A: Ordinance No. 17, Series 2022
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, VACATING A PORTION OF A UTILITY EASEMENT WITHIN CERTAIN REAL PROPERTY LOCATED IN BOULDER COUNTY, COMMONLY KNOWN AS 712 SOUTH CHERRYVALE ROAD

WHEREAS, the City of Lafayette has an existing utility easement for a water line (the “Utility Easement”) within and upon the real property legally described as Lot 2, Block 1, Mesa Valley Subdivision, County of Boulder, State of Colorado, and commonly known by street address as 712 S. Cherryvale Road in unincorporated Boulder County (“Subject Property”), which Utility Easement is evidenced by the plat of the Mesa Valley Subdivision recorded on August 10, 1954, in Plat Book 6, Page 5 (Reception No. 90544055) in the records of the Boulder County Clerk and Recorder’s Office, for the operation and maintenance of a water pipeline (the “Waterline”); and

WHEREAS, the existing Utility Easement for the Waterline is legally described and depicted in Exhibit A, attached to this ordinance and incorporated herein by this reference; and

WHEREAS, by the City Council of the City of Lafayette’s adoption of Resolution No. 2022-28, the City has been granted and has accepted a new utility easement in which the Waterline will be relocated within the Subject Property (the “Revised Easement”); and

WHEREAS, the Waterline will be relocated within the Revised Easement and will serve the same public purposes as had been served by the Utility Easement described in the attached Exhibit A.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. Conditioned upon the completion of the relocation of the Waterline within the Revised Easement and at such time as the relocated Waterline is fully operational, the City Council finds and determines that the Utility Easement, as described and depicted in Exhibit A, attached hereto, is no longer necessary for the public use and convenience.

Section 2. Upon the fulfillment of the conditions in Section 1 of this ordinance, the Utility Easement, as depicted and described in Exhibit A, shall be vacated.

Section 3. Upon the fulfillment of the conditions in Section 1 of this ordinance, the City Clerk is directed to record this ordinance with the Boulder County Clerk and Recorder, which recording shall indicate the effective date of the easement vacation pursuant to this Ordinance No. 17, Series 2022.

Section 4. City Council further directs that a certified copy of this ordinance be filed with the City Clerk and further, the City Clerk index, file, and make the ordinance available to the public.
Section 5. If any article, 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 passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 6. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 7. The repeal or modification of any provision of the Code of Ordinances of Lafayette, Colorado by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 8. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 9. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following City acceptance of the new waterline within the Revised Easement.

INTRODUCED, PASSED ON FIRST READING THE 17TH DAY OF MAY, 2022.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 7TH DAY OF JUNE, 2022.

ATTEST: CITY OF LAFAYETTE, COLORADO

__________________________  ________________________
Lynnette Beck, City Clerk  Jaideep Mangat, Mayor

APPROVED AS TO FORM:

__________________________
Mary Lynn Macsalka, City Attorney
EXHIBIT "A"

LOT 2, BLOCK 1, MESA VALLEY SUBDIVISION,
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 SOUTH,
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO
712 S CHERRYVALE ROAD

A PORTION OF A WATER LINE EASEMENT UPON, OVER AND ACROSS A PORTION OF LOT 2,
BLOCK 1, MESA VALLEY SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 10,
TOWNSHIP 1 SOUTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF
COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE WEST LINE OF SAID LOT 2, BLOCK 1, MESA VALLEY SUBDIVISION TO BEAR
N00°10’21"W, 129.92 FEET BETWEEN A FOUND #5 REBAR WITH 1 1/2” ALUMINUM CAP
STAMPED "FLATIRONS SURV 19588” AND A FOUND #5 REBAR WITH 1 1/2” ALUMINUM CAP
STAMPED "FLATIRONS SURV 19588”, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE
THERETO.

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2; THENCE N00°10’21"W, 12.82 FEET TO
A POINT ON SAID WEST LINE; THENCE N56°57’03”E, 221.42 FEET TO A POINT ON THE EAST
LINE OF SAID LOT 2; THENCE S00°10’10”E, 29.77 FEET; THENCE S56°57’03”W, 189.21 FEET
TO A POINT ON THE SOUTH LINE OF SAID LOT 2; THENCE S88°41’21"W, 27.05 FEET TO THE
POINT OF BEGINNING

SAID PARCEL CONTAINING 5,306 SQ.FT. OR 0.12 ACRES, MORE OR LESS.

I, JAMES Z. GOWAN, A LAND SURVEYOR LICENSED IN THE STATE OF
COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS,
INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING
MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY
RESPONSIBLE CHARGE, ARE ACCURATE TO THE BEST OF MY
KNOWLEDGE, INFORMATION AND BELIEF, ARE IN ACCORDANCE WITH
APPLICABLE STANDARDS OF PRACTICE AND ARE NOT A GUARANTEE OR
WARRANTY, EITHER EXPRESSED OR IMPLIED. SAID PARCEL DESCRIPTION
AND EXHIBIT WERE PREPARED AT THE REQUEST OF THE CLIENT AND
ARE NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR
SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

JAMES Z. GOWAN
COLORADO P.L.S. #29038
VICE PRESIDENT, FLATIRONS, INC.

JOB NUMBER: 22–78245
DRAWN BY: W. BECKETT
DATE: MARCH 29, 2022

This is not a "land survey plat" or "improvement survey plat" and this exhibit is
not intended for purposes of transfer of title or subdivisions of land. Record
information shown hereon is based on information provided by client.

Flatirons, Inc.
Land Surveying Services
3825 Iris Ave., Ste 395
Boulder, CO 80301
Ph: (303) 443-7001
Fax: (303) 443-9830
www.FlatironsInc.com
MEETING DATE: June 7, 2022
AGENDA TITLE: Second Reading / Ordinance No. 18, Series 2022 / Amending Article XIV of Chapter 30, “Buildings and Building Regulations,” of the Code of Ordinances to Enact a New Section 30-406 Regarding Fee Waivers for Governmental Entities
PREPARED BY: Fritz Sprague, City Administrator
Jeff Brasel, Director of Planning and Development
Kevin Shulman, Building Official
Mary Lynn Macsalka, City Attorney

Executive Summary
Ordinance No. 18, Series 2022, will add a new section to Chapter 30 of the Code authorizing the City Administrator to waive building permit and plan check fees for other governmental entities.

City Council passed Ordinance No 18, Series 2022 on first reading on May 17, 2022

City Council Strategic Outcome (most applicable): Affordable, Attainable, and Just

Background Information
The residents, visitors, and businesses in Lafayette benefit from having local and convenient access to services provided by government entities within the City limits. This includes access to services provided by the City, the County, the State of Colorado, and even the federal government. For example, having local post offices (a federal service) is a huge convenience to City residents and businesses. As another example, Boulder County recently purchased a building in the City to provide a local “hub” for County services such as vehicle registration, Health and Human Services, Treasurer, Assessor, and County employee training/amenities. Having services like these available within the City is a significant convenience and benefit to Lafayette residents, who would otherwise have to leave the City to obtain or utilize such services.

The attached ordinance would authorize the City Administrator or his designee to waive building, electrical, plumbing, mechanical, and fire code permit and plan check fees for governmental entities for facilities providing governmental services. These fees can add up to tens of thousands of dollars depending on the size of the project. By giving the City
Administrator the ability to waive these fees for facilities in the City that will provide governmental services, other government entities will be encouraged to locate their facilities in the City. Moreover, having such facilities in the City will provide employment opportunities and employees of government facilities are likely to shop and patronize Lafayette businesses. Overall, encouraging other governmental entities to locate their facilities and provide their services within Lafayette will enhance the accessibility, availability, and convenience of obtaining and utilizing such services by the residents, visitors, and businesses in Lafayette.

Next Steps
If the ordinance passes on second reading, no further action will be required.

Recommendation
Staff recommends approval of this ordinance.

Proposed Motion Language

Attachment(s)
A: Ordinance No. 18, Series 2022
CITY OF LAFAYETTE

ORDINANCE NO. 18, Series 2022
INTRODUCED BY: Mayor Pro Tem Brian Wong

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING ARTICLE XIV OF CHAPTER 30, “BUILDINGS AND BUILDING REGULATIONS,” OF THE CODE OF ORDINANCES TO ENACT A NEW SECTION 30-406 REGARDING CERTAIN FEE WAIVERS FOR GOVERNMENTAL ENTITIES

WHEREAS, the residents of the City of Lafayette benefit from having county, state, and federal services located within the city limits, in terms of accessibility and convenience; and

WHEREAS, to encourage the location of governmental services and associated employment opportunities within the City of Lafayette, the City Council desires to amend the Lafayette Code of Ordinances to authorize the City Administrator to waive building permit and plan check fees when a building permit applicant is the United States or the State of Colorado or any of their departments, agencies, or political subdivisions; and

WHEREAS, the City Council finds that authorizing the City Administrator to waive such fees for other governmental entities will directly benefit the health, safety, and welfare by encouraging other governmental entities to locate their facilities and provide their services within Lafayette, enhancing the accessibility, availability, and convenience of obtaining and utilizing such services by the residents, visitors, and businesses in Lafayette.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. That Article XIV, “Deferral or Waiver of Fee Payment and Activity Deadlines and Exemptions from Certain Use Taxes,” of Chapter 30, “Buildings and Building Regulations,” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by adding a section to be numbered 30-406, which section reads as follows:

Sec. 30-406. Waiver of fees for governmental entities.
To encourage the location of governmental services and employment opportunities in the city, the city administrator or designee shall waive the payment of building, electrical, plumbing, mechanical, and fire code permit and plan check fees, if the applicant is the United States or the State of Colorado or any of their departments, agencies, or political subdivisions.

Section 2. If any article, 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 passed 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. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 5. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 6. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 17TH DAY OF MAY, 2022.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 7TH DAY OF JUNE, 2022.

CITY OF LAFAYETTE, COLORADO

Jaideep Mangat, Mayor

ATTEST:

Lynnette Beck, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney
CITY COUNCIL AGENDA MEMO

MEETING DATE: June 7, 2022
AGENDA TITLE: Resolution No. 2022-25 / Establishing the Boulder County Region Opioid Council
PREPARED BY: Fritz Sprague, City Administrator
Kady Doelling, Deputy City Administrator
Mary Lynn Macsalka, City Attorney

Executive Summary
On October 1, 2021, the City Attorney’s Office received a request for the City of Lafayette to execute and return the Colorado Opioids Settlement Memorandum of Understanding (MOU) and related supporting documents before a deadline of November 5, 2021, which was subsequently passed by City Council on November 1, 2021. The resolution and MOU ensures that the State of Colorado, the City of Lafayette, and other Colorado local governments receive the maximum possible proceeds from a settlement reached in nationwide litigation against various pharmaceutical companies for their role in causing the opioid epidemic in Colorado.

Since the passage of the MOU, staff have been coordinating with Boulder County partners on the establishment of the Regional Council to develop and implement regional allocation strategies, including assessment of needs and gaps, allocation mechanisms, sustained oversight, and evaluation of impact and outcomes of investments.

The “Boulder County Region Opioid Council Intergovernmental Agreement” attached to Resolution No. 2022-25 will establish (1) establish the Boulder County Region Opioid Council as the Regional Council for Region 6, (2) designate a fiscal agent, and (3) request and administer Opioid Funds allocated to Region 6 in a manner consistent with the Colorado MOU.

City Council Strategic Outcome (most applicable): Safe, Welcoming, and Inclusive

Background Information
The State of Colorado and several Colorado local governments sued various pharmaceutical companies for their role in causing the opioid epidemic in Colorado as part of national multi-district litigation, specifically, In Re: National Prescription Opiate Litigation, MDL 2804 (N.D. Ohio), in the United States District Court for the Northern District of Ohio, Eastern Division. The lawsuit alleges pharmaceutical manufacturers and distributors contributed to the opioid
epidemic through the practices the companies followed while marketing opioids, and sought damages to be used to support drug treatment and recovery programs.

Nationwide settlements have been reached with the “Big 3” distributors (McKesson, Cardinal Health, and AmerisourceBergen) and manufacturer Johnson & Johnson. The Colorado Attorney General’s Office and Colorado local governments that participated directly in the litigation have agreed to a framework for distributing and sharing the settlement proceeds to communities throughout Colorado, regardless of whether or not such communities participated in the litigation, through the “Colorado Opioids Settlement Memorandum of Understanding” (“MOU”).

In accordance with the MOU, Boulder County and the municipalities within the county have drafted an intergovernmental agreement (IGA) creating the Boulder County Region Opioid Council (“BCROC”). The BCROC consists of representatives appointed by the Boulder participating local governments (PLGs), to oversee procedures leading to a request of Opioid Funds and procedures for allocating the region’s share.

Per the BCROC IGA, Boulder County PLGs will collaborate to appoint Regional Council members who will be selected as follows:

- 1 county commissioner
- 1 representative appointed from the county community services department
- 1 representative appointed from the public health department
- 1 representative appointed from the county human services department
- 1 representative appointed from law enforcement within region (sheriff, police, district attorney, etc.)
- 1 representative appointed from a county court system within the Boulder Region
- 3 representatives (total) appointed by cities within the county, at least one of which shall be from a city with a population of less than 10,000 residents.

The BCROC IGA also calls for the establishment of an Operations Board to make funding and policy recommendations to the BCROC. Members of this Board will be nominated by the Director of Boulder County Community Services for consideration by the BCROC. The Operations Board will consist of broad County and municipal representation; subject matter experts working in treatment, recovery, and harm reduction service areas; health care professionals; and community members, including those with lived experience. The Operations Board will work with and on behalf of the BCROC to conduct research, provide recommendations, and create a draft two-year plan for approval by BCROC.

The Cities of Longmont and Boulder are each granted one seat on the BCROC and are solely responsible for appointing their respective members. Duties of all members include: ongoing engagement with the State Abatement Council, requesting funds through the development of a two-year plan, participation in monthly BCROC meetings, providing guidance to Operations Board efforts and reviewing emerging findings and recommendations, voting on recommendations, monitoring and modifying implementation efforts, assisting with ongoing efforts to oversee and review funded efforts, and providing the Abatement Council with data through its fiscal agent regarding Opioid Fund expenditures.
Each state will receive its share of approximately $26 billion over a period of 9 to 18 years. Because some litigation is still settling and yet to be finalized, the exact amount of funds to be shared across Colorado is not firm. However, it is estimated Colorado is likely to receive approximately $400 million over 18 years for addiction treatment, recovery, and prevention programs beginning in 2022.

Next Steps
The board will begin meeting and developing policy recommendations for allocation of funds.

Recommendation
Staff recommends approval of resolution.

Proposed Motion Language
Council motion to approve Resolution No. 2022-25 approving the Boulder County Region Opioid Council Intergovernmental Agreement.

Supplemental Materials
November 1, 2021 City Council Packet

Attachment(s)
A: Resolution No. 2022-25 including the IGA
CITY OF LAFAYETTE
RESOLUTION NO. 2022-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, APPROVING THE BOULDER COUNTY REGION OPIOID COUNCIL INTERGOVERNMENTAL AGREEMENT

WHEREAS, in late 2021, the State of Colorado and Participating Local Governments, including the City of Lafayette, executed the Colorado Opioids Settlement Memorandum of Understanding (the “Colorado MOU”), establishing the manner in which opioid settlement proceeds (“Opioid Funds”) shall be divided and distributed within the State of Colorado; and

WHEREAS, the Colorado MOU provides that Opioid Funds will be allocated to established regions of the State, and that each region shall create its own “Regional Council” to determine what “Approved Purposes” (as defined in the Colorado MOU) will be funded with that region’s allocation; and

WHEREAS, all aspects of the creation, administration, and operation of each Regional Council must proceed in accordance with the provisions of the Colorado MOU; and

WHEREAS, each Regional Council, once established, must designate a fiscal agent from a county or municipal government within that Region; and

WHEREAS, each Regional Council, once established, is required submit a two-year plan to the statewide “Abatement Council” that identifies the Approved Purposes for which allocated Opioid Funds will be used in the region, and the Regional Council’s fiscal agent must provide data and a certification to the Abatement Council regarding compliance with the two-year plan on an annual basis; and

WHEREAS, per the Colorado MOU, the City of Lafayette is located within Region 6, which consists of and is coterminous with Boulder County; and

WHEREAS, representatives of Boulder County, the City of Boulder, the Town of Erie, the Town of Jamestown, the City of Lafayette, the City of Longmont, the City of Louisville, the Town of Lyons, the Town of Nederland, the City of Superior, and the Town of Ward (collectively, the “Boulder Participating Local Governments,” or “Boulder PLGs”) have cooperated to organize and establish a “Boulder County Region Opioid Council” (“BCROC”) to be eligible to receive the Region 6 share of Opioid Funds in accordance with the terms of the Colorado MOU; and

WHEREAS, the “Boulder County Region Opioid Council Intergovernmental Agreement” attached to this resolution will establish the procedures for the Boulder PLGs to (1) establish the BCROC as the Regional Council for Region 6, (2) designate a fiscal agent, and (3) request and administer Opioid Funds allocated to Region 6 in a manner consistent with the Colorado MOU; and
WHEREAS, the City Council of the City of Lafayette desires to enter into the Boulder County Region Opioid Council Intergovernmental Agreement, in substantially the same form as attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lafayette, Colorado, as follows:

1. The Boulder County Region Opioid Council Intergovernmental Agreement between the County of Boulder, the City of Boulder, the Town of Erie, the Town of Jamestown, the City of Lafayette, the City of Longmont, the City of Louisville, the Town of Lyons, the Town of Nederland, the City of Superior, and the Town of Ward is hereby approved in substantially the same form as attached to this resolution. The Mayor is authorized the execute the agreement on behalf of the City of Lafayette.

RESOLVED AND PASSED THIS 17TH DAY OF MAY, 2022.

CITY OF LAFAYETTE, COLORADO

_________________________________
Jaideep Mangat, Mayor

ATTEST:

_________________________________
Lynnette Beck, City Clerk

APPROVED AS TO FORM:

_________________________________
Mary Lynn Macsalka, City Attorney
BOULDER COUNTY REGION OPIOID COUNCIL
INTERGOVERNMENTAL AGREEMENT

THIS BOULDER COUNTY REGION OPIOID COUNCIL INTERGOVERNMENTAL AGREEMENT (the “Regional Agreement”) is made between the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic, and the City of Boulder, Town of Erie, Town of Jamestown, City of Lafayette, City of Longmont, City of Louisville, Town of Lyons, Town of Nederland, City of Superior, and the Town of Ward, the Participating Local Governments in the Boulder County Region, referred to individually as a “Boulder PLG” and collectively the “Boulder PLGs.”

RECITALS

A. The State of Colorado and Participating Local Governments have executed the Colorado Opioids Settlement Memorandum of Understanding (the “Colorado MOU”), establishing the manner in which Opioid Funds shall be divided and distributed within the State of Colorado;

B. The Regional Agreement assumes and incorporates the definitions and provisions contained in the Colorado MOU, and the Regional Agreement shall be construed in conformity with the Colorado MOU;

C. All Opioid Funds, regardless of allocation, shall be used for Approved Purposes;

D. Participating Local Governments shall organize themselves into Regions, as further depicted in Exhibit C to the Colorado MOU;

E. Regions may consist of Single-County Regions, Multi-County Regions, or Single County-Single City Regions (Denver and Broomfield);

F. There shall be a 60% direct allocation of Opioid Funds to Regions through a Regional Share;

G. Each Region shall be eligible to receive a Regional Share according to Exhibit F to the Colorado MOU;

H. The Colorado MOU establishes the procedures by which each Region shall be entitled to Opioid Funds from the Abatement Council and administer its Regional Share allocation;

I. The procedures established by the Colorado MOU include a requirement that each Region shall create its own Regional Council;

J. All aspects of the creation, administration, and operation of the Regional Council shall proceed in accordance with the provisions of the Colorado MOU;

K. Each such Regional Council shall designate a fiscal agent from a county or municipal government within that Region;
L. Each such Regional Council shall submit a two-year plan to the Abatement Council that identifies the Approved Purposes for which the requested funds will be used, and the Regional Council’s fiscal agent shall provide data and a certification to the Abatement Council regarding compliance with its two-year plan on an annual basis;

M. The Regional Agreement pertains to the procedures for the Boulder PLGs to establish a Regional Council, designate a fiscal agent, and request and administer Opioid Funds in a manner consistent with the Colorado MOU;

N. The Boulder PLGs agree to organize the Boulder County Region Opioid Council (BCROC) to be eligible to receive the Regional Share according to Exhibit F of the Colorado MOU.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Boulder PLGs incorporate these recitals and agree as follows:

1. DEFINITIONS. The defined terms used in this Regional Agreement shall have the same meanings as in the Colorado MOU. Capitalized terms used herein and not otherwise defined within the Regional Agreement or in the Colorado MOU shall have the meanings ascribed to them in the body of the Regional Agreement.

2. OBLIGATIONS OF THE BOULDER PLGS. The Boulder PLGs shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated by reference.

3. REGIONAL COUNCIL.

   3.1 Purpose: In accordance with the Colorado MOU, the Boulder PLGs agree to create the Boulder County Region Opioid Council (“BCROC” or Regional Council), consisting of representatives appointed by the Boulder PLGs, to oversee the procedures by which the Boulder County Region may request Opioid Funds from the Abatement Council and the procedures by which the allocation of its Region’s Share of Opioid Funds are administered.

   3.2 Participation: The Boulder PLGs shall collaborate to appoint Regional Council members and to the extent practicable, Members shall be selected from different cities within the region. No single city should dominate the make-up of the Regional Council. Members shall be selected as follows:
(i) 1 county commissioner

(ii) 1 representative appointed from the county community services department

(iii) 1 representative appointed from the county public health department

(iv) 1 representative from the county human services department

(v) 1 representative appointed from law enforcement within region (sheriff, police, district attorney, etc.)

(vi) 1 representative appointed from a county court system within the Boulder Region

(vii) 3 representatives (total) appointed by cities and towns within the county, at least one of which shall be from a city or town with a population of less than 10,000 residents.

3.3 **Chair:** BCROC Members shall appoint one Member to serve as Chair of BCROC. The Chair’s primary responsibilities shall be to schedule and preside over periodic meetings and votes as needed and to serve as the point of contact for disputes within the Region. The Chair must be either a Member from a county within a Region, such as a county commissioner or their designee, or a Member from a city or town within a Region, such as a mayor or city or town council member or their designee.

3.4 **Terms:** BCROC shall be established within ninety (90) days of the first Settlement being entered by a court of competent jurisdiction, including any bankruptcy court. Members shall be appointed in accordance with Section 3.2 and shall serve two-year terms. Following the expiration of that two-year term, the Boulder PLGs, working in concert, shall reappoint that Member, or appoint a new Member according to Section 3.2.

(i) If a Member resigns or is otherwise removed from the BCROC prior to the expiration of their term, a replacement Member shall be appointed within sixty (60) days in accordance with Section 3.2 (a) to serve the remainder of the term. If the Boulder PLGs are unable to fill a Member vacancy within sixty (60) days, the existing Members of the BCROC at the time of the vacancy shall work collectively to appoint a replacement Member in accordance with Section 3.2. At the end of his or her term, the individual serving as that replacement Member may be reappointed by the Boulder PLGs to serve a full term consistent with this Section.

(ii) The purpose of the two-year term is to allow Boulder PLGs an increased opportunity to serve on the BCROC. However, BCROC
Members who have already served on the BCROC may be appointed more than once and may serve consecutive terms if appointed to do so by the Boulder PLGs.

3.5 **BCROC Operations Board:** The BCROC will use an Operations Board to make funding and policy recommendations to the BCROC. Members of the Operations Board are not members of BCROC unless separately appointed to BCROC as provided for in subsection (b) above. Members of the operations Board will be nominated by the Director of Boulder County Community Services for consideration by the BCROC. The BCROC Operations Board may be comprised of all or some of the following, not to include potential recipients of Opioid Funds:

(i) Representatives from behavioral health providers.

(ii) Representatives from health care providers.

(iii) Recovery/treatment experts.

(iv) Other county or city representatives with relevant experience.

(v) A representative from the Attorney General’s Office.

(vi) Community representative(s), preferably those with lived experience with the opioid crisis.

(vii) Harm reduction experts.

3.6 **Duties:** The BCROC is primarily responsible for engaging with the Abatement Council on behalf of the Region and following the procedures outlined in the Colorado MOU for requesting Opioid Funds from the Regional Share, which shall include developing 2-year plans, amending those plans as appropriate, and providing the Abatement Council with data through its fiscal agent regarding Opioid Fund expenditures. Upon request from the Abatement Council, the BCROC may also be subject to an accounting from the Abatement Council.

3.7 **Governance:** The BCROC may establish its own procedures through adoption of bylaws if needed. Any governing documents must be consistent with the other provisions in this section and the Colorado MOU.

3.8 **Authority:** The terms of the Colorado MOU control the authority of the BCROC and the BCROC shall not stray outside the bounds of the authority and power vested by the Colorado MOU. Should the BCROC require legal assistance in determining its authority, it may seek guidance from the legal counsel of the county or municipal government of the BCROC’s fiscal agent at the time the issue arises.
3.9 **Collaboration:** The BCROC shall facilitate collaboration between the State, Boulder PLGs, the Abatement Council, and other stakeholders within the Region for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado.

3.10 **Transparency:** The BCROC shall operate with reasonable transparency and abide by all Colorado laws relating to open records and meetings. To the extent the Abatement Council requests outcome-related data from the BCROC, the BCROC shall provide such data in an effort to determine best methods for abating the opioid crisis in Colorado.

3.11 **Conflicts of Interest:** Members shall abide by the conflict-of-interest rules applicable to local government officials under state law.

3.12 **Ethics Laws:** Members shall abide by their local ethics laws or, if no such ethics laws exist, by applicable state ethics laws.

3.13 **Decision Making:** The BCROC shall seek to make all decisions by consensus. In the event consensus cannot be achieved, the BCROC shall make decisions by a majority vote of its Members.

4. **REGIONAL FISCAL AGENT.**

4.1 **Purpose:** According to the Colorado MOU, the BCROC must designate a fiscal agent for the Region prior to the Region receiving any Opioid funds from the Regional Share. All funds from the Regional Share shall be distributed to the BCROC’s fiscal agent for the benefit of the entire Region. The fiscal agent shall ensure that full records of all financial transactions are maintained in an orderly manner for review by funding entities and the BCROC and ensure that maximum earnings and security are given to all organization funds.

4.2 **Designation:** The BCROC shall nominate and designate a fiscal agent for the Region by majority vote. Regional fiscal agents must be a board of county commissioners or a city or town council or executive department, such as a department of finance.

4.3 **Term:** A Regional fiscal agent must be appointed by the BCROC on an annual basis. A Regional fiscal agent may serve as long as the BCROC determines is appropriate, including the length of any Settlement that contemplates the distribution of Opioid Funds within Colorado.

4.4 **Duties:** The Regional fiscal agent shall receive, deposit, and make available Opioid Funds distributed from the Abatement Council and provide expenditure reporting data to the Abatement Council on an annual basis. In addition, the Regional fiscal agent shall perform certain recordkeeping duties outlined below.

a. **Opioid Funds:** The Regional fiscal agent shall receive all Opioid Funds as distributed by the Abatement Council. Upon direction by the BCROC,
the Regional fiscal agent shall make any such Opioid Funds available to the BCROC.

b. **Reporting:** On an annual basis, as determined by the Abatement Council, the Regional fiscal agent shall provide to the Abatement Council the BCROC’s expenditure data from their allocation of the Regional Share and certify to the Abatement Council that the BCROC’s expenditures were for Approved Purposes and complied with its 2-year plan.

c. **Recordkeeping:** The Regional fiscal agent shall maintain necessary records with regard the BCROC’s meetings, decisions, plans, and expenditure data.

4.5 **Authority:** The fiscal agent serves at the direction of the BCROC and in service to the entire Region. The terms of the Colorado MOU control the authority of a BCROC, and by extension, the Regional fiscal agent. A Regional fiscal agent shall not stray outside the bounds of the authority and power vested by the Colorado MOU.

5. **REGIONAL TWO-YEAR PLAN.**

5.1 **Purpose:** According to the Colorado MOU, as part of a Regional Council’s request to the Abatement Council for Opioid Funds from its Regional Share, the Regional Council must submit a 2-year plan identifying the Approved Purposes for which the requested funds will be used.

5.2 **Development of 2-Year Plan:** In developing a 2-year plan, the Regional Council shall solicit recommendations and information from all Boulder PLGs, the BCROC Operations Board, and other stakeholders within its Region for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado. At its discretion, the BCROC may seek assistance from the Abatement Council for purposes of developing a 2-year plan.

5.3 **Amendment:** At any point, the BCROC’s 2-year plan may be amended so long as such amendments comply with the terms of the Colorado MOU and any Settlement.

6. **DISPUTES WITH ABATEMENT COUNCIL.** If the BCROC disputes the amount of Opioid Funds it receives from its allocation of the Regional Share, the BCROC shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. However, the failure to alert the Abatement Council within this time frame shall not constitute a waiver of the BCROC’s right to seek recoupment of any deficiency in its Regional Share.

7. **RECORDKEEPING.** The Regional fiscal agent shall be responsible for maintaining records consistent with the Regional Agreement.
8. **AUTHORIZED REPRESENTATIVES.** Each Boulder PLGs’ representative designated below shall be the point of contact to coordinate the obligations in this Regional Agreement. The Boulder PLGs designate their authorized representatives under this Regional Agreement as follows:

8.1 Boulder County designates the County Administrator as its authorized representative.

8.2 City of Boulder designates the City Manager as its authorized representative.

8.3 Town of Erie designates the Town Administrator as its authorized representative.

8.4 Town of Jamestown designates the Town Clerk as its authorized representative.

8.5 City of Lafayette designates the City Administrator as its authorized representative.

8.6 City of Longmont designates the City Manager as its authorized representative.

8.7 City of Louisville designates the City Manager as its authorized representative.

8.8 Town of Lyons designates the Town Administrator as its authorized representative.

8.9 Town of Nederland designates the Town Administrator as its authorized representative.

8.10 Town of Superior designates the Town Manager as its authorized representative.

8.11 Town of Ward designates the Town Clerk as its authorized representative.

9. **OBLIGATIONS OF THE BOULDER PLGS.** The Boulder PLGs shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated by reference.

10. **TERM.** The Regional Agreement will commence on when fully executed and shall expire on the date the last action is taken by the Region, consistent with the terms of the Colorado MOU and any Settlement (the “Term”).

11. **INFORMATIONAL OBLIGATIONS.** Each Boulder PLG hereto will meet its obligations as set forth in § 29-1-205, C.R.S., as amended, to include information about this Regional Agreement in a filing with the Colorado Division of Local Government; however, failure to do so shall in no way affect the validity of this Regional Agreement or any remedies available to the Boulder PLGs hereunder.

12. **CONFIDENTIALITY.** The Boulder PLGs, for themselves, their agents, employees and representatives, agree that they will not divulge any confidential or proprietary information they receive from another Boulder PLG or otherwise have access to, except as may be
required by law. Nothing in this Regional Agreement shall in any way limit the ability of the Boulder PLGs to comply with any laws or legal process concerning disclosures by public entities. The Boulder PLGs understand that all materials exchanged under this Regional Agreement, including confidential information or proprietary information, may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S., (the “Act”). In the event of a request to a Boulder PLG for disclosure of confidential materials, the Boulder PLG shall advise the Boulder PLGs of such request in order to give the Boulder PLGs the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If a Boulder PLG objects to disclosure of any of its material, the Boulder PLG shall identify the legal basis under the Act for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Boulder PLG agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the Boulder PLGs may tender all material to the court for judicial determination of the issue of disclosure.

13. GOVERNING LAW; VENUE. This Regional Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action relating to this Regional Agreement will be in the District Court of Boulder County. Venue for any legal action relating to the Colorado MOU shall be in a court of competent jurisdiction where a Settlement or consent decree was entered, as those terms are described or defined in the Colorado MOU. If a legal action relates to both a Regional Agreement and the Colorado MOU, venue shall also be in a court of competent jurisdiction where a Settlement or consent decree was entered.

14. TERMINATION. The Boulder PLGs enter into this Regional Agreement to serve the public interest. If this Regional Agreement ceases to further the public interest, a Boulder PLG, in its discretion, may terminate their participation in the Regional Agreement, in whole or in part, upon written notice to the other Boulder PLGs. Each Boulder PLG also has the right to terminate the Regional Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the other Boulder PLGs. A Boulder PLG’s decision to terminate this Regional Agreement, with or without cause, shall have no impact on the other Boulder PLGs’ present or future administration of the Region’s Opioid Funds and the other procedures outlined in this Regional Agreement. Rather, a Boulder PLG’s decision to terminate this Regional Agreement shall have the same effect as non-participation.

15. NOTICES. “Key Notices” under this Regional Agreement are notices regarding default, disputes, or termination of the Regional Agreement. Key Notices shall be given in writing and shall be deemed received if given by confirmed electronic transmission that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and text messages when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission; certified mail, return receipt requested, postage prepaid, three business days after being deposited in the United States mail; or overnight carrier service or personal delivery, when received. For Key Notices, the Boulder PLGs will follow up any electronic transmission with a hard copy of the communication by the means described above. All other communications or notices between
the Boulder PLGs that are not Key Notices may be done via electronic transmission. The Boulder PLGs agree that any notice or communication transmitted by electronic transmission shall be treated in all manner and respects as an original written document; any such notice or communication shall be considered to have the same binding and legal effect as an original document. All Key Notices shall include a reference to the Regional Agreement.

16. GENERAL TERMS AND CONDITIONS.

16.1 Independent Entities. The Boulder PLGs enter into this Regional Agreement as separate, independent governmental entities and shall maintain such status throughout.

16.2 Assignment. This Regional Agreement shall not be assigned by any Boulder PLG without the prior written consent of all Boulder PLGs. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Regional Agreement.

16.3 Integration and Amendment. This Regional Agreement represents the entire agreement between the Boulder PLGs and terminates any oral or collateral agreement or understandings. This Regional Agreement may be amended only by a writing signed by the Boulder PLGs. If any provision of this Regional Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and the remaining provision of this Regional Agreement shall continue in full force and effect.

16.4 No Construction Against Drafting Party. The Boulder PLGs and their respective counsel have had the opportunity to review the Regional Agreement, and the Regional Agreement will not be construed against any Boulder PLG merely because any provisions of the Regional Agreement were prepared by a particular Boulder PLG.

16.5 Captions and References. The captions and headings in this Regional Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this Regional Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments within, attached to, or incorporated in this Regional Agreement unless otherwise noted.

16.6 Statutes, Regulations, and Other Authority. Any reference in this Regional Agreement to a statute, regulation, policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the execution of this Regional Agreement.

16.7 Conflict of Interest. No Boulder PLG shall knowingly perform any act that would conflict in any manner with said Boulder PLG’s obligations hereunder. Each Boulder PLG certifies that it is not engaged in any current project or
business transaction, directly or indirectly, nor has it any interest, direct or indirect, with any person or business that might result in a conflict of interest in the performance of its obligations hereunder. No elected or employed member of any Boulder PLG shall be paid or receive, directly or indirectly, any share or part of this Regional Agreement or any benefit that may arise therefrom.

16.8 **Inurement.** The rights and obligations of the Boulder PLGs to the Regional Agreement inure to the benefit of and shall be binding upon the Boulder PLGs and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Regional Agreement.

16.9 **Survival.** Notwithstanding anything to the contrary, the Boulder PLGs understand and agree that all terms and conditions of this Regional Agreement and any exhibits that require continued performance or compliance beyond the termination or expiration of this Regional Agreement shall survive such termination or expiration and shall be enforceable against a Boulder PLG if such Boulder PLG fails to perform or comply with such term or condition.

16.10 **Waiver of Rights and Remedies.** This Regional Agreement or any of its provisions may not be waived except in writing by a Boulder PLG’s authorized representative. The failure of a Boulder PLG to enforce any right arising under this Regional Agreement on one or more occasions will not operate as a waiver of that or any other right on that or any other occasion.

16.11 **No Third-Party Beneficiaries.** Enforcement of the terms of the Regional Agreement and all rights of action relating to enforcement are strictly reserved to the Boulder PLGs. Nothing contained in the Regional Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the Boulder PLGs receiving services or benefits pursuant to the Regional Agreement is an incidental beneficiary only.

16.12 **Records Retention.** The Boulder PLGs shall maintain all records, including working papers, notes, and financial records in accordance with their applicable record retention schedules and policies. Copies of such records shall be furnished upon request.

16.13 **Execution by Counterparts; Electronic Signatures and Records.** This Regional Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Boulder PLGs approve the use of electronic signatures for execution of this Regional Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101, et seq. The Boulder PLGs agree not to deny the legal effect or enforceability of the Regional Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Boulder PLGs agree not to object to the admissibility of the Regional Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing
an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

16.14 **Authority to Execute.** Each Boulder PLG represents that all procedures necessary to authorize such Boulder PLG’s execution of this Regional Agreement have been performed and that the person signing for such Boulder PLG has been authorized to execute the Regional Agreement.

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CITY OF LAFAYETTE, COLORADO

Jaideep Mangat, Mayor

ATTEST:

Lynnette Beck, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney
COLORADO OPIOIDS SETTLEMENT MEMORANDUM OF UNDERSTANDING
(“MOU”)
Thursday, August 26, 2021

August 25, 2021 Attorney General version

A. Definitions

As used in this MOU:

1. “Approved Purpose(s)” shall mean forward-looking strategies, programming, and services to abate the opioid epidemic as identified by the terms of any Settlement. If a Settlement is silent on Approved Purpose(s), then Approved Purpose(s) shall mean those forward-looking strategies to abate the opioid epidemic identified in Exhibit A or any supplemental forward-looking abatement strategies added to Exhibit A by the Abatement Council. Consistent with the terms of any Settlement, “Approved Purposes” shall also include the reasonable administrative costs associated with overseeing and administering Opioid Funds from each of the four (4) Shares described in Section (B)(2). Reimbursement by the State or Local Governments for past expenses are not Approved Purpose(s). “Approved Purposes” shall include attorneys’ fees and expenses incurred in the course of the opioid litigation that are paid through the process discussed below.

2. “County Area” shall mean a county in the State of Colorado plus the Local Governments, or portion of any Local Government, within that county.

3. “Effective Date” shall mean the date on which a court of competent jurisdiction, including any bankruptcy court, enters the first Settlement by order or consent decree. The Parties anticipate that more than one Settlement will be administered according to the terms of this MOU, but that the first entered Settlement will trigger the formation of the Abatement Council in Section (C) and the Regional Councils in Section (F)(5).¹

4. “General Abatement Fund Council,” or “Abatement Council,” shall have the meaning described in Section (C), below.

¹ For the avoidance of doubt, the McKinsey Settlement and any other Settlement that preceeds the finalization of drafting this MOU are not considered a trigger for purposes of the calculation of “Effective Date.”
5. "Local Government(s)" shall mean all counties in the State of Colorado and the municipalities, towns, and county and city municipal corporations that are listed in Exhibit B.

6. "National Opioid Settlement Administrative Fund" shall mean any fund identified by a Settlement for the national distribution of Opioid Funds.

7. "Opioid Funds" shall mean damage awards obtained through a Settlement.

8. "Opioid Settling Defendant" shall mean any person or entity, or its affiliates, that engages in or has engaged in the manufacture, marketing, promotion, distribution, or dispensing of licit opioids.

9. "Participating Local Government(s)" shall mean all Local Governments that sign this MOU, and if required under terms of a particular Settlement, who have executed a release of claims with the Opioid Settlement Defendant(s). For the avoidance of doubt, a Local Government must sign this MOU to become a "Participating Local Government." Local Governments may designate the appropriate individual from their entity to sign the MOU.

10. "Party" or "Parties" shall mean the State and/or Participating Local Government(s).

11. "Qualified Settlement Fund Account," or "QSF Account," shall mean an account set up as a qualified settlement fund, 468b fund, as authorized by Treasury Regulations 1.468B-1(c) (26 CFR § 1.468B-1).

12. "Regional Council" shall have the meaning described in Section (F)(5), below.

13. "Settlement" shall mean the negotiated resolution of legal or equitable claims against an Opioid Settling Defendant when that resolution has been jointly entered into by the State and the Participating Local Governments, or by any individual Party or collection of Parties that opt to subject their Settlement to this MOU. Unless otherwise directed by an order from a United States Bankruptcy Court, "Settlement" shall also include distributions from any liquidation under Chapter 7 of the United States Bankruptcy Code or confirmed plan under Chapter 11 of the United States Bankruptcy Code that treats the claims of the State and Local Governments against an Opioid Settling Defendant.

14. "The State" shall mean the State of Colorado acting through its Attorney General and the Colorado Department of Law.

B. Allocation of Settlement Proceeds

1. All Opioid Funds shall be held in accordance with the terms of any Settlement. If a Settlement allows Opioid Funds to be held in a National Opioid Settlement Administrative Fund, then Opioid Funds shall be held in such National Opioid Settlement Administrative Fund. If a Settlement does not allow for Opioid Funds
to be held in a National Opioid Settlement Administrative Fund, Opioid Funds shall be held in a Colorado-specific QSF Account or, under the following limited circumstances, in the State’s Custodial Account: 1) if at the time of a Settlement, a Colorado-specific QSF Account is not yet established, although in such case, the Opioid Funds shall be transferred to the Colorado-specific QSF Account once it is established or 2) where the Abatement Fund Council determines Opioids Funds cannot be legally held in a Colorado-specific QSF Account. Regardless of whether Opioid Funds are held in a National Administrative Fund, a Colorado-specific QSF Account, or in the State’s Custodial Account, the Abatement Council shall appoint one of its members to serve as the point of contact in accordance Section (C)(4)(b)(i), below.

2. All Opioid Funds, at the time of a Settlement or at the time designated in the Settlement documents, shall be divided and distributed as follows:

a. 10% directly to the State ("State Share") for Approved Purposes in accordance with Section (D), below;

b. 20% directly to Participating Local Governments ("LG Share") for Approved Purposes in accordance with Section (E), below;

c. 60% directly to Regions ("Regional Share") for Approved Purposes in accordance with Section (F), below; and

d. 10% to specific abatement infrastructure projects ("Statewide Infrastructure Share") for Approved Purposes in accordance with Section (G), below.

3. Distribution of the Shares in Section B(2)(a) – (d) shall be direct, meaning that funds held in accordance with Section B(1) shall be disbursed directly to the State, Participating Local Governments, Regions, and the Statewide Infrastructure Share according to the terms of this MOU.

4. All Opioid Funds, regardless of allocation, shall be used for Approved Purposes.

5. Participating Local Governments may elect to share, pool, or collaborate with their respective allocation of the LG or Regional Shares in any manner they choose, so long as such sharing, pooling, or collaboration is used for Approved Purposes and complies with the terms of this MOU and any Settlement.

C. General Abatement Fund Council

1. A General Abatement Fund Council (the "Abatement Council"), consisting of representatives appointed by the State and Participating Local Governments, shall

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2 This MOU treats multi-county health departments as county health departments for purposes of allocation and distribution of abatement proceeds and therefore multi-county health departments shall not receive any Opioid Funds directly. Third-Party Payors ("TPPs") are not Parties to this MOU.
be created to ensure the distribution of Opioid Funds complies with the terms of any Settlement and to provide oversight of the Opioid Funds in accordance with the terms of this MOU.

2. **Membership:** The Abatement Council shall consist of the following thirteen (13) members, who shall serve in their official capacity only.

   a. **State Members:** Seven (7) members shall be appointed by the State, as authorized volunteers of the State, as follows:

      (i) A Chair to serve as a non-voting member, except in the event of a tie;

      (ii) Two (2) members who are licensed professionals with significant experience in substance use disorders;

      (iii) Three (3) members who are professionals with significant experience in prevention, education, recovery, treatment, criminal justice, rural public health issues, or government administration related to substance use disorders; and

      (iv) One (1) member or family member affected directly by the opioid crisis.

   b. **Local Government Members:** Six (6) members shall be appointed by the Participating Local Governments. Local Government Members shall be a County Commissioner, Mayor, City or Town Council Member, or a professional with significant experience in prevention, education, recovery, treatment, criminal justice, rural public health issues, or governmental administration related to substance use disorders. A Participating Local Government may determine which Local Government Members are eligible (or ineligible) to serve on the General Abatement Fund Council. County Commissioners, City or Town Council Members, and/or Mayors from the Regions identified in **Exhibit C** shall collaborate to appoint Local Government Members as follows:

      (i) Two (2) Members from Regions 1, 5, 13, 14, 15, 17, 18;

      (ii) Two (2) Members from Regions 2, 6, 7, 8, 9, 10, 11, 12, 16; and

      (iii) Two (2) Members from Regions 3, 4, 19.

   c. **Terms:** The Abatement Council shall be established within ninety (90) days of the Effective Date. In order to do so, within sixty (60) days of the Effective Date, the State shall appoint the State Members in accordance with Section (C)(2)(a), and after conferral with the Local Governments, CCI and CML shall jointly appoint six (6) Local Government Members for an initial term not to exceed one year. Thereafter, Members shall be
appointed in accordance with this Section and Sections (C)(2)(a) and (b) and may serve no more than two (2) consecutive two-year terms, for a total of four (4) consecutive years. Except that, beginning in the second year only, two (2) State Members and two (2) Local Government members shall be appointed for a three-year term and may serve one consecutive two-year term thereafter. The Chair shall have no term but may be replaced at the State’s discretion.

(i) If a State or Local Government Member resigns or is otherwise removed from the Abatement Council prior to the expiration of their term, a replacement Member shall be appointed within sixty (60) days in accordance with Sections (C)(2)(a) and (b).

(ii) If a Local Government Member vacancy exists for more than sixty (60) days, the State shall appoint a replacement Local Government Member to serve until the vacancy is filled in accordance with Section (C)(2)(b).

3. **Duties:** The Abatement Council is primarily responsible for ensuring that the distribution of Opioid Funds complies with the terms of this MOU. The Abatement Council is also responsible for oversight of Opioid Funds from the Regional Share in accordance with Section (F), below, and for developing processes and procedures for the distribution and oversight of Opioid Funds from the Statewide Infrastructure Share in accordance with Section (G) below.

4. **Governance:** The Abatement Council shall draft its own bylaws or other governing documents, which must include appropriate conflict of interest and dispute resolution provisions, in accordance with the terms of this MOU and the following principles:

a. **Authority:** The Abatement Council does not have rulemaking authority. The terms of this MOU and any Settlement, as entered by any court of competent jurisdiction, including any bankruptcy court, control the authority of the Abatement Council and the Abatement Council shall not stray outside the bounds of the authority and power vested by this MOU and any Settlement.

b. **Administration:** The Abatement Council shall be responsible for an accounting of all Opioid Funds. The Abatement Council shall be responsible for releasing Opioid Funds in accordance with Section (B)(1) for the Regional and Statewide Infrastructure Shares in Sections (B)(2)(c) and (d) and shall develop policies and procedures for the release and oversight of such funds in accordance with Sections (F) and (G). Should the Abatement Council require assistance with providing an accounting of Opioid Funds, it may seek assistance from the State.
(i) The Abatement Council shall appoint one of its members to serve as a point of contact for the purpose of communicating with the entity holding Opioid Funds in accordance with Section (B)(1) and in that role shall only act as directed by the Abatement Council.

c. **Transparency:** The Abatement Council shall operate with all reasonable transparency and operate in a manner consistent with all Colorado laws relating to open records and meetings regardless of whether the Abatement Council is otherwise obligated to comply with them.

(i) The Abatement Council shall develop a centralized public dashboard or other repository for the publication of expenditure data from any Party or Regional Council that receives Opioid Funds in accordance with Sections (D)-(G).

(ii) The Abatement Council may also require outcome related data from any Party or Regional Council that receives Opioid Funds in accordance with Sections (D)-(G) and may publish such outcome related data in the centralized public dashboard or other repository described above. In determining which outcome related data may be required, the Abatement Council shall work with all Parties and Regional Councils to identify appropriate data sets and develop reasonable procedures for collecting such data sets so that the administrative burden does not outweigh the benefit of producing such outcome related data.

(iii) For purposes of funding the centralized public dashboard or other repository described above, the Abatement Council shall make good faith efforts to seek funding from outside sources first, otherwise the State shall provide such funding.

d. **Collaboration:** The Abatement Council shall facilitate collaboration between the State, Participating Local Governments, Regional Councils, and other stakeholders for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado.

e. **Decision Making:** The Abatement Council shall seek to make all decisions by consensus. In the event consensus cannot be achieved, unless otherwise required in this MOU, the Abatement Council shall make decisions by a majority vote of its Members. The Chair shall only vote in the event of a tie.

f. **Due Process:** The Abatement Council shall develop the due process procedures required by Section (G)(3)(d) for Parties to dispute or challenge remedial actions taken by the Abatement Council for Opioid Funds from the Statewide Infrastructure Share. The Abatement Council
shall also abide by the due process principles required by Section (F)(12)-(13) for Regions to dispute or challenge remedial actions taken by the Abatement Council for Opioid Funds from the Regional Share.

g. **Legal Status:** The Abatement Council shall not constitute a separate legal entity.

h. **Legal Representation:** To the extent permitted by law, the State shall provide legal counsel to State Members for all legal issues arising from those State Members’ work on the Abatement Council. At all times, Local Government Members of the Abatement Council are entitled to receive legal representation from their respective governmental entities. In the event of a conflict, the Abatement Council and its members may retain the services of other legal counsel.

i. **Compensation:** No member of the Abatement Council shall be compensated for their work related to the Abatement Council.

D. **State Share**

1. In accordance with Sections (B)(1) and (B)(2)(a), and the terms of any Settlement, the State Share shall be paid directly to the State in accordance with the terms of this Section (D).

2. The State maintains full discretion over distribution of the State Share anywhere within the State of Colorado, however, the State Share shall be used for Approved Purposes only. The State will work to reduce administrative costs as much as practicable.

3. On an annual basis, as determined by the Abatement Council, the State shall provide all expenditure data, including administrative costs, from the State Share to the Abatement Council for purposes of maintaining transparency in accordance with Section (C)(4)(c)(i). The Abatement Council may require the State to provide additional outcome-related data in accordance with Section (C)(4)(c)(ii) and the State shall comply with such requirements.

4. If the State disputes the amount of Opioid Funds it receives from the State Share, the State shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. Failure to alert the Abatement Council within this time frame shall not constitute a waiver of the State’s right to seek recoupment of any deficiency in its State Share.

E. **LG Share**

1. In accordance with Sections (B)(1) and (B)(2)(b), and the terms of any Settlement, the LG Share shall be paid directly to Participating Local Governments in accordance with the terms of this Section (E).
2. Allocations to Participating Local Governments from the LG Share shall first be determined using the percentages shown in Exhibit D.

3. The LG Share for each County Area shall then be allocated among the county and the other Participating Local Governments within it. Exhibit E reflects the default allocation that will apply unless the Participating Local Governments within a County Area enter into a written agreement providing for a different allocation. The Participating Local Governments may elect to modify the allocation for a County Area in Exhibit E, but such modification to the allocation in Exhibit E shall not change a County Area's total allocation under Section (E)(2).

4. A Local Government that chooses not to become a Participating Local Government will not receive a direct allocation from the LG Share. The portion of the LG Share that would have been allocated to a Local Government that is not a Participating Local Government will instead be re-allocated to the Regional Share for the Region where the Local Government is located, in accordance with Section (F), below.

5. In the event a Participating Local Government dissolves or ceases to exist during the term of any Settlement, the allocation for that Participating Local Government from the LG Share shall be re-allocated as directed by any Settlement, and if not specified, be re-allocated to the Regional Share for the Region in which the Participating Local Government was located, in accordance with Section (F). If a Participating Local Government merges with another Participating Local Government, the allocation for that Participating Local Government from the LG Share shall be re-allocated as directed by any Settlement, and if not specified, shall be re-allocated to the successor Participating Local Government's allocation of the LG Share. If a Participating Local Government merges with a Local Government that is not a Participating Local Government, the allocation for that Participating Local Government from the LG Share shall be re-allocated as directed by any Settlement, and if not specified, be re-allocated to the Region in which the merging Participating Local Government was located, in accordance with Section (F), below.

6. A Participating Local Government may forego its allocation of the LG Share and direct its allocation to the Regional Share for the Region where the Participating Local Government is located, in accordance with Section (F) below, by affirmatively notifying the Abatement Council on an annual basis of its decision to forego its allocation of the LG Share. A Participating Local Government's election to forego its allocation of the LG Share shall carry over to the following year unless the Participating Local Government notifies the Abatement Council otherwise. If a Participating Local Government elects to forego its allocation of the LG Share, the Participating Local Government shall be excused from the reporting requirements required by Section (E)(8).

7. Participating Local Governments maintain full discretion over the distribution of their allocation of the LG Share anywhere within the State of Colorado, however,
all Participating Local Governments shall use their allocation from the LG Share for Approved Purposes only. Reasonable administrative costs for a Participating Local Government to administer its allocation of the LG Share shall not exceed actual costs or 10% of the Participating Local Government’s allocation of the LG Share, whichever is less.

8. On an annual basis, as determined by the Abatement Council, all Participating Local Governments shall provide all expenditure data, including administrative costs, from their allocation of the LG Share to the Abatement Council for purposes of maintaining transparency in accordance with Section (C)(4)(c)(i). The Abatement Council may require Participating Local Governments to provide additional outcome related data in accordance with Section (C)(4)(c)(ii) and all Participating Local Governments shall comply with such requirements.

9. If any Participating Local Government disputes the amount of Opioid Funds it receives from its allocation of the LG Share, the Participating Local Government shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. Failure to alert the Abatement Council within this time frame shall not constitute a waiver of the Participating Local Government’s right to seek recoupment of any deficiency in its LG Share.

F. Regional Share

1. In accordance with Sections (B)(1) and (B)(2)(c), and the terms of any Settlement, the Regional Share shall be paid to the Regions in accordance with the terms of this Section (F).

2. Participating Local Governments shall organize themselves into the Regions depicted in Exhibit C. Municipalities located in multiple Regions may join all or some of the Regions in which they are located according to Exhibit C.

3. Allocations to Regions will be distributed according to Exhibit F. For multi-county Regions, each Region’s share listed in Exhibit F is calculated by summing the individual percentage shares listed in Exhibit D for the counties within that Region. The percentages in Exhibit F are based on the assumption that every Local Government in each Region becomes a Participating Local Government.

4. In the event a city, town, or other municipality that is a Participating Local Government merges, dissolves, or ceases to exist during the term of any Settlement, the allocation of the Regional Share owed to the Region in which that Participating Local Government existed shall be re-allocated as directed by any Settlement, and if not specified, shall not be modified from Exhibit F. If a county that is a Participating Local Government merges with another county within its Region, the allocation of the Regional Share owed to the Region in which that county existed shall be re-allocated as directed by any Settlement, and if not specified, shall not be modified from Exhibit F. If a county that is a Participating Local Government merges with a county in a different Region during the term of
any Settlement, the allocation of the Regional Share owed to the Region in which that county existed shall be re-allocated as directed by any Settlement, and if not specified, shall be re-allocated to the Region in which that Participating Local Government merged in accordance with Exhibit F.

5. Each Region must create its own Regional Council while giving consideration to the regional governance models illustrated in Exhibit G. The Regional Council must be formed by the Participating Local Governments within the Region and each Regional Council shall designate a fiscal agent for the Region. Regional fiscal agents shall be county or municipal governments only. All funds from the Regional Share shall be distributed to the Regional Council’s identified fiscal agent for the benefit of the entire Region.

a. Subject to this Section F(5), each Region may draft its own intra-regional agreements, bylaws, or other governing documents to determine how the Regional Council will operate. However, each voting member of a Regional Council shall be an employee or elected official of a Participating Local Government within the applicable Region. In the case of Denver, the voting members of its Regional Council shall be appointed by the Mayor. In the case of Broomfield, the voting members of its Regional Council shall be appointed by the Broomfield City and County Manager.

b. The Region shall not receive any Opioid Funds from the Regional Share until the Region certifies to the Abatement Council that its Regional Council has been formed and a fiscal agent has been designated. Such certification shall be in a simple form adopted by the Region and may be made via email, so long as it includes the names and affiliations of the Regional Council’s members and the designated fiscal agent.

c. If a Region does not form and certify its Regional Council and designate its fiscal agent within one-hundred and eighty (180) days of the Effective Date, the Abatement Council shall appoint members to the Region’s Regional Council. Regional Council members appointed by the Abatement Council shall serve until the Region certifies the formation of its Regional Council to the Abatement Council.

d. A Region shall submit a renewed certification required by Section (F)(5)(b), above, when its membership changes.

e. If a membership vacancy exists on a Regional Council for more than ninety (90) days and the Regional Council is unable to fill the vacancy by its regular procedures during that time, the Abatement Council shall appoint a replacement member to serve until the Region fills the vacancy.
6. A Local Government that chooses not to become a Participating Local Government shall not receive any Opioid Funds from the Regional Share or participate in the Regional Councils described in Section (F)(5) above.

7. Each Regional Council shall make requests to the Abatement Council for Opioid Funds from their allocation of the Regional Share. Each Regional Council’s request for Opioid Funds from the Regional Share shall be accompanied by a 2-year plan identifying the Approved Purposes for which the requested funds will be used by the Region anywhere within the State of Colorado. A Regional Council’s 2-year plan may be amended so long as such amendments comply with the terms of this MOU and any Settlement. Any Regional Council may seek assistance from the Abatement Council for purposes of developing its 2-year plan.

8. Reasonable administrative costs for a Regional Council to administer its Region’s allocation of the Regional Share shall not exceed actual costs or 10% of the Region’s allocation of the Regional Share, whichever is less.

9. The Abatement Council shall release funds requested by a Regional Council in accordance with Section (B)(1) if the Regional Council’s 2-year plan complies with the Approved Purposes, the terms of this MOU, and the terms of any Settlement. The Abatement Council shall not deny any funding request from a Regional Council on the basis that the Abatement Council does not approve or agree with the Approved Purposes for which a Regional Council requests Opioid Funds from the Regional Share. Nor may the Abatement Council hold up, delay, or make unreasonable requests for additional or supporting information of the Regional Council prior to releasing the requested Opioid Funds. The purpose of this MOU is to facilitate Opioid Funds to their intended recipients quickly and efficiently with minimal administrative procedure.

10. On an annual basis, as determined by the Abatement Council, each Regional Council’s fiscal agent shall provide to the Abatement Council the Regional Council’s expenditure data, including administrative costs, from their allocation of the Regional Share and certify to the Abatement Council that the Regional Council’s expenditures were for Approved Purposes and complied with its 2-year plan. The Regional Council shall subject itself to an accounting at the Abatement Council’s discretion.

a. The Abatement Council shall review a Regional Council’s expenditure data and certification to ensure compliance with the Regional Council’s 2-year plan, the Approved Purposes, and the terms of this MOU and any Settlement.

b. The Abatement Council shall publish the Regional Council’s expenditure data, including administrative costs, from the Regional Share in accordance with Section (C)(4)(c)(i). The Abatement Council may require Regional Councils to provide additional outcome related data in
accordance with Section (C)(4)(c)(ii) and all Regional Councils shall comply with such requirements.

11. If any Regional Council disputes the amount of Opioid Funds it receives from its allocation of the Regional Share, the Regional Council shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. Failure to alert the Abatement Council within this time frame shall not constitute a waiver of the Regional Council’s right to seek recoupment of any deficiency in its Regional Share.

12. If the Abatement Council has reason to believe a Region’s expenditure of its allocation of the Regional Share did not comply with the Region’s 2-year Plan, the Approved Purposes, the terms of this MOU or any Settlement, as described in this Section (F), or that the Region otherwise misused its allocation of the Regional Share, the Abatement Council may take remedial action against the alleged offending Region. Such remedial action is left to the discretion of the Abatement Council and may include but not be limited to, withholding future Opioids Funds owed to the offending Region or requiring the offending Region to reimburse improperly expended Opioid Funds to the Regional Share.

13. Within one hundred and twenty (120) days of the Abatement Council being formed, in accordance with Section (C)(2)(c) above, the Abatement Council shall develop and publish due process procedures for allowing a Region to challenge or dispute any remedial action taken by the Abatement Council, including timelines during which the Region may engage in such a challenge or dispute. Such due process procedures shall reflect, at a minimum, the following principles:

a. Upon learning of any conduct that may warrant remedial action against a Region, the Abatement Council shall first provide notice to the Region of the conduct at issue, provide the Region an opportunity to respond, and, if appropriate, cure the alleged offending conduct. If after providing the Region such notice and opportunities to respond and cure, the Abatement Council continues to believe remedial action is warranted, the Abatement Council may take such remedial action.

b. If the Abatement Council decides to take remedial action against an alleged offending Region, such action may only occur by a two-thirds supermajority vote of the Abatement Council. Thus, an Abatement Council made up of twelve (12) voting members requires a vote of eight (8) Members prior to taking remedial action against an alleged offending Region.

c. Prior to taking any remedial action against an alleged offending Region, the Abatement Council shall first provide notice to the alleged offending Region of the remedial action to be taken and the facts underlying such remedial action. The Abatement Council shall then provide the alleged
offending Region an opportunity to challenge or dispute the remedial action in accordance with, at a minimum, the principles below:

i. The alleged offending Region may request revisions or modifications to the proposed remedial action;

ii. The alleged offending Region may submit a written response to and/or request a hearing before the Abatement Council, or a third-party hearing officer,\(^3\) regarding the alleged offending conduct and proposed remedial action; and

iii. After such written responses are submitted and reviewed and/or a hearing is conducted, the alleged offending Region may submit an appeal to the Abatement Council of the decision to take remedial action.

d. Remedial actions taken by the Abatement Council, in accordance with the due process principles detailed above, shall be considered final non-appealable orders and offending Regions may not seek judicial relief from remedial action taken by the Abatement Council, except as provided in Section (H), below.

e. Subject to Section (H)(2), below, if any Party(ies) believes the Abatement Council violated the terms of this MOU, such Party(ies) may seek to enforce the terms of this MOU.

14. If the Abatement Council has reason to believe a Region’s conduct, or the conduct of any Participating Local Government or individual in that Region, amounts to a violation of any criminal law, the Abatement Council shall refer such matters to the appropriate authorities and may consider such conduct in its determination of any remedial action to be taken.

15. If the Abatement Council has reason to believe that an individual involved in the receipt or administration of Opioid Funds from the Regional Share has violated any applicable ethics rules or codes, the Abatement Council shall not attempt to adjudicate such a violation. In such instances, the Abatement Council shall lodge a complaint with the appropriate forum for handling such ethical matters, such as a local home rule municipality’s ethics board.

16. Costs associated with the Abatement Council’s distribution and oversight of the Regional Share, as described above in this Section (F), including costs associated with any remedial action by the Abatement Council, shall be paid from the Statewide

\(^3\) Only an alleged offending Region may request the appointment of a third-party hearing officer to review any written responses and conduct any requested hearings. If an alleged offending Region makes such a request, the Abatement Council has sole discretion to appoint the third-party hearing officer and the alleged offending Region shall bear the cost of such review and/or hearing by the third-party hearing officer.
Infrastructure Share. The Abatement Council shall make all good faith efforts to limit such costs to the greatest extent possible.

G. Statewide Infrastructure Share

1. In accordance with Sections B(1) and (B)(2)(d), and the terms of any Settlement, the Statewide Infrastructure Share shall be paid to any Party or Regional Council in accordance with this Section (G).

2. The purpose of the Statewide Infrastructure Share is to promote capital improvements and provide operational assistance for developing or improving the infrastructure necessary to abate the opioid crisis anywhere within the State of Colorado. The Statewide Infrastructure Share is intended to supplement Opioid Funds received by any Party or Region.

3. Prior to distributing any Opioid Funds from the Statewide Infrastructure Share, the Abatement Council shall establish and publish policies and procedures for the distribution and oversight of the Statewide Infrastructure Share, including processes for Parties or Regions to apply for Opioid Funds from the Statewide Infrastructure Share. The Abatement Council’s policies and procedures shall, at a minimum, reflect the following principles:

   a. Opioid Funds from the Statewide Infrastructure Share shall be used for Approved Purposes only;

   b. Opioid Funds from the Statewide Infrastructure Share shall be paid directly to the appropriate state agencies (including but not limited to the Colorado Department of Law), Regional fiscal agents, or Participating Local Governments only;

   c. Distribution and oversight of the Statewide Infrastructure Share shall comply with the terms of this MOU and any Settlement;

   d. Appropriate processes for remedial action will be taken against Parties or Regions that misuse Opioid Funds from the Statewide Infrastructure Share. Such processes shall include procedures for alleged offending Parties or Regions to challenge or dispute such remedial action; and

   e. Limitations on administrative costs to be expended by recipients for administering Opioid Funds received from the Statewide Infrastructure Fund, not to exceed actual costs expended by the recipient or 10% of the amount received, whichever is less.

4. The distribution and oversight policies and procedures developed by the Abatement Council, in accordance with Section (G)(3), shall be non-appealable orders and no Party or Region may seek judicial relief related to the distribution and oversight of the Statewide Infrastructure Share.
5. On an annual basis, as determined by the Abatement Council, any Party or Regional Council that receives funds from the Statewide Infrastructure Share shall provide all expenditure data, including administrative costs, related to any Opioid Funds it received from the Statewide Infrastructure Share and subject itself to an accounting as required by the Abatement Council. The Abatement Council shall publish all expenditure data from the Statewide Infrastructure Share in accordance with Section (C)(4)(c)(i). The Abatement Council may require the Parties or Regional Councils that receive funds from the Statewide Infrastructure Share to provide additional outcome related data in accordance with Section (C)(4)(c)(ii) and the Parties or Regional Councils shall comply with such requirements.

6. Costs associated with the Abatement Council’s distribution and oversight of the Statewide Infrastructure Share, as described in this Section (G), shall be paid for from the Statewide Infrastructure Share. The Abatement Council shall make all good faith efforts to limit such costs to the greatest extent possible.

H. General Terms

1. All Parties and Regional Councils shall maintain all records related to the receipt and expenditure of Opioid Funds for no less than five (5) years and shall make such records available for review by the Abatement Council, any other Party or Regional Council, or the public. Records requested by the public shall be produced in accordance with Colorado’s open records laws. Records requested by the Abatement Council or another Party or a Regional Council shall be produced within twenty-one (21) days of the date the record request was received. This requirement does not supplant any Party or Regional Council’s obligations under Colorado’s open records laws.

2. If any Party(ies) believes the Abatement Council has violated the terms of this MOU, the alleging Party(ies) may seek to enforce the terms of this MOU, provided the alleging Party(ies) first provides notice to the Abatement Council of the alleged violation and a reasonable opportunity to cure the alleged violation. In such an enforcement action, the alleging Party(ies) may only seek to enforce the terms of the MOU against the State and the Participating Local Governments from which the Local Government Members of the Abatement Council were appointed and may only seek declaratory and/or injunctive relief. In defense of such an enforcement action, the State’s Members of the Abatement Council shall be represented by the State and the Local Government Members shall be represented by the Participating Local Governments from which the Local Government Members were appointed. In the event of a conflict, the Abatement Council and its Members may seek outside representation to defend itself against such an enforcement action.

3. If any Party(ies) believes another Party(ies), not including the Abatement Council, violated the terms of this MOU, the alleging Party(ies) may seek to enforce the terms of this MOU in the court in which any applicable Settlement(s) was entered, provided the alleging Party(ies) first provide the alleged offending Party(ies)
notice of the alleged violation(s) and a reasonable opportunity to cure the alleged violation(s). In such an enforcement action, any alleging Party or alleged offending Party(ies) may be represented by their respective public entity in accordance with Colorado law.

4. Nothing in this MOU shall be interpreted to waive the right of any Party to seek judicial relief for conduct occurring outside the scope of this MOU that violates any Colorado law. In such an action, the alleged offending Party(ies), including the Abatement Council, may be represented by their respective public entities in accordance with Colorado law. In the event of a conflict, any Party, including the Abatement Council and its Members, may seek outside representation to defend itself against such an action.

5. If any Party(ies) believes another Party(ies), Region(s), or individual(s) involved in the receipt, distribution, or administration of Opioids Funds has violated any applicable ethics codes or rules, a complaint shall be lodged with the appropriate forum for handling such matters, such as a local home rule municipality’s ethics board.

6. If any Party(ies) believes another Party(ies), Region(s), or individual(s) involved in the receipt, distribution, or administration of Opioid Funds violated any Colorado criminal law, such conduct shall be reported to the appropriate criminal authorities.

7. Venue for any legal action related to this MOU shall be in a court of competent jurisdiction where any applicable Settlement(s) is entered.

8. Because recovery under the terms of different Settlement(s) may vary depending on the number of Parties required to effectuate a Settlement, the Parties may conditionally agree to sign on to the MOU through a letter of intent, resolution or similar written statement, declaration or pronouncement declaring their intent to sign on to the MOU if the threshold for Party participation in a specific Settlement is achieved.4

9. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this MOU. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101, et seq. The Parties agree not to deny the legal effect or enforceability of the MOU solely because it is in electronic form or

4 For instance, the July 21, 2021 “Distributor Settlement Agreement” includes a “Subdivision Settlement Agreement Form” that, once filled out and executed, is meant to indicate that Local Government’s (or Subdivision’s) election to participate in that Distributor Settlement and also, to require that Local Government to take steps to formally release any claim it may have against the Settling Distributors. With regard to the Distributor Settlement Agreement or any other Settlements that include a form similar to the Subdivision Settlement Agreement Form, the Parties may still conditionally agree to sign on to the MOU if, for instance, the threshold for Party participation in a specific Settlement is achieved.
because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the MOU in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

10. Each party represents that all procedures necessary to authorize such Party’s execution of this MOU have been performed and that the person signing for such Party has been authorized to execute the MOU.

I. Payment of Counsel and Litigation Expenses Through a Back-Stop Fund

1. Some Settlements, including the McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation ("Distributor") and Johnson & Johnson/Janssen ("J&J") settlements, may provide for the payment of all or a portion of the fees and litigation expenses owed by Participating Local Governments to counsel specifically retained to file suit in the opioid litigation. If any Settlement is insufficient to cover the fee obligations of the Participating Local Governments (as discussed and modified by Judge Polster’s Order of August 6 regarding fees for the Distributor and J&J settlements), the deficiencies will be covered as set forth in further detail below.

2. The Parties also recognize that, as in the Distributor and J&J settlements, certain Opioid Settling Defendants may offer premiums benefiting the entire state of Colorado when Participating Local Governments agree to the Settlement(s), thereby settling their claims in their on-going lawsuits. For example, below is the chart illustrating how Incentive Payment B (a 25% premium to the entire state) works in the Distributor Settlement at Section IV.F.2.b (p. 20):

<table>
<thead>
<tr>
<th>Percentage of Litigating Subdivision Population that is Incentive B Eligible Subdivision Population</th>
<th>Incentive Payment B Eligibility Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 85%</td>
<td>0%</td>
</tr>
<tr>
<td>85%+</td>
<td>30%</td>
</tr>
<tr>
<td>86%+</td>
<td>40%</td>
</tr>
<tr>
<td>91%+</td>
<td>50%</td>
</tr>
<tr>
<td>95%+</td>
<td>60%</td>
</tr>
<tr>
<td>99%+</td>
<td>95%</td>
</tr>
<tr>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

3. If the court in *In Re: National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio), or if a Settlement establishes a common benefit fund or similar device to compensate attorneys for services rendered and expenses incurred that have benefited plaintiffs generally in the litigation (the “Common Benefit Fund”),
and/or requires certain governmental plaintiffs to pay a share of their recoveries from defendants into the Common Benefit Fund ("Court-Ordered Common Benefit Fund Assessment"), then the Participating Local Governments shall be required to first seek to have their attorneys’ fees and expenses paid through the Common Benefit Fund.

4. For the Distributor and J&J settlements only, counsel for Participating Local Governments shall have their expenses otherwise recoverable from Colorado Participating Local Governments compensated only through the Common Benefit Fund(s) established in those settlement(s). For the avoidance of doubt, counsel for Participating Local Governments may recover their attorneys’ fees through the Distributor and J&J settlements and through the other applicable provisions of this Section (I).

5. In addition, as a means of covering any deficiencies in paying counsel for Participating Local Governments, a supplemental Colorado Attorney Fee Back-Stop Fund shall be established. The Colorado Attorney Fee Back-Stop Fund is to be used to compensate counsel for Participating Local Governments that filed an initial complaint in the opioid litigation by September 1, 2020 ("Litigating Participating Local Governments").

6. Payments out of the Colorado Attorney Fee Back-Stop Fund shall be determined by a committee (the "Opioid Fee and Expense Committee"). The Opioid Fee and Expense Committee shall consist of the following five (5) members:

   a. One (1) member appointed by CCI from a litigating county or from a litigating county and city municipal corporation;

   b. One (1) member appointed by CML from a litigating city;

   c. One (1) member appointed jointly by CCI and CML from a non-litigating county or city;

   d. One (1) member appointed by the Attorney General’s Office; and

   e. One (1) neutral member jointly appointed by all of the other members listed above.

7. The Colorado Attorney Fee Back-Stop Fund shall be funded as follows from any Settlement, excluding settlements involving McKinsey and payments resulting from the Purdue or Mallinckrodt bankruptcy. For purposes only of calculating the funding of the Colorado Attorney Fee Back-Stop Fund, the Parties deem 58% of the total LG Share and Regional Share to be attributable to the Litigating Local Governments. The Colorado Attorney Fee Back-Stop Fund shall be funded by 8.7% of the total LG Share and 4.35% of the total Regional Share at the time such funds are actually received. No funds deposited into the Colorado Attorney Fee Back-Stop Fund will be taken from the Statewide Infrastructure Share or State Share.
8. Counsel for Litigating Participating Local Governments may apply to the Colorado Attorney Fee Back-Stop Fund only after applying to the Common Benefit Fund.

9. Counsel for Litigating Participating Local Governments may apply to the Colorado Attorney Fee Back-Stop Fund for only a shortfall – that is, the difference between what their fee agreements would entitle them to (as limited by this Section (I)) minus what they have already collected from the Common Benefit Fund (including both the “common benefit” and “contingency fee” calculations, if any). If they receive fees/costs for common benefit work in the national fee fund, these fees/costs will be allocated proportionately across all their local government opioid clients based on the allocation model used in the Negotiation Class website to allocate the appropriate portion to Colorado clients.

10. Counsel for Litigating Participating Local Governments are limited to being paid, at most, and assuming adequate funds are available in any Common Benefit Fund and Colorado Attorney Fee Back-Stop Fund, fees in an amount equal to 15% of the LG Share and 7.5% of the Regional Share attributable to their Colorado clients.

11. Any funds remaining in the Colorado Attorney Fee Back-Stop Fund in excess of the amounts needed to cover the fees and litigation expenses owed by Litigating Participating Local Governments to their respective counsel shall revert to the Participating Local Governments according to the allocations described in Sections (E) and (F). Every two years, the Opioid Fee and Expense Committee shall assess the amount remaining in the Colorado Attorney Fee Back-Stop Fund to determine if it is overfunded.

12. Despite the fact that a litigating entity bonus benefits the entire state, no portion of the State Share shall be used to fund the Colorado Attorney Fee Back-Stop Fund or in any other way to fund any Participating Local Government’s attorneys’ fees and expenses. Because the state did not hire outside counsel, any funds for attorneys fees that the state receives from the J&J and Distributor settlement will be deposited into the State Share.

13. To participate in the Colorado Attorney Fee Back-Stop Fund, counsel must follow the requirements of C.R.S. § 13-17-304.
This Colorado Opioids Settlement Memorandum of Understanding is signed this 26 day of August, 2021 by:

[Signature]

Colorado Attorney General Philip J. Weiser
This **Colorado Opioids Settlement Memorandum of Understanding** is signed this 26th day of **October**, 2021 by:

![Signature]

**Matt Jones**

Name & Title **Matt Jones, Chair, Board of Commissioners**

On behalf of **Boulder County, Colorado**
Exhibit A
POTENTIAL OPIOID ABATEMENT APPROVED PURPOSES

I. TREATMENT

A. TREATMENT OF OPIOID USE DISORDER AND ITS EFFECTS

1. Expand availability of treatment, including Medication-Assisted Treatment (MAT), for Opioid Use Disorder (OUD) and any co-occurring substance use or mental health issues.

2. Supportive housing, all forms of FDA-approved MAT, counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it.

3. Treatment of mental health trauma issues that resulted from the traumatic experiences of the opioid user (e.g., violence, sexual assault, human trafficking) and for family members (e.g., surviving family members after an overdose or overdose fatality).

4. Expand telehealth to increase access to OUD treatment, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.

5. Fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.


7. Clinicians to obtain training and a waiver under the federal Drug Addiction Treatment Act to prescribe MAT for OUD.

8. Training for health care providers, students, and other supporting professionals, such as peer recovery coaches/recovery outreach specialists, including but not limited to training relating to MAT and harm reduction.

9. Dissemination of accredited web-based training curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service-Opioids web-based training curriculum and motivational interviewing.

10. Development and dissemination of new accredited curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service Medication-Assisted Treatment.

11. Development of a multistate/nationally accessible database whereby health care providers can list currently available in-patient and out-patient OUD treatment services that are accessible on a real-time basis.
12. Support and reimburse services that include the full American Society of Addiction Medicine (ASAM) continuum of care for OUD.

13. Improve oversight of Opioid Treatment Programs (OTPs) to assure evidence-informed practices such as adequate methadone dosing.

B. INTERVENTION

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer, if necessary) a patient for OUD treatment.

2. Fund Screening, Brief Intervention and Referral to Treatment (SBIRT) programs to reduce the transition from use to disorder.

3. Training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on the late adolescence and young adulthood when transition from misuse to opioid disorder is most common.

4. Purchase automated versions of SBIRT and support ongoing costs of the technology.

5. Training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management and/or support services.

6. Support work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.

7. Create school-based contacts whom parents can engage to seek immediate treatment services for their child.

8. Develop best practices on addressing OUD in the workplace.

9. Support assistance programs for health care providers with OUD.

10. Engage non-profits and faith community as a system to support outreach for treatment.

C. CRIMINAL-JUSTICE-INVOLVED PERSONS

1. Address the needs of persons involved in the criminal justice system who have OUD and any co-occurring substance use disorders or mental health (SUD/MH) issues.
2. Support pre-arrest diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH issues, including established strategies such as:

   a. Self-referral strategies such as Angel Programs or the Police Assisted Addiction Recovery Initiative (PAARI);

   b. Active outreach strategies such as the Drug Abuse Response Team (DART) model;

   c. “Naloxone Plus” strategies, which work to ensure that individuals who have received Naloxone to reverse the effects of an overdose are then linked to treatment programs;

   d. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (LEAD) model; or

   e. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network.

3. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH issues to evidence-informed treatment, including MAT, and related services.

4. Support treatment and recovery courts for persons with OUD and any co-occurring SUD/MH issues, but only if they provide referrals to evidence-informed treatment, including MAT.

5. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH issues who are incarcerated, on probation, or on parole.

6. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate re-entry services to individuals with OUD and any co-occurring SUD/MH issues who are leaving jail or prison or who have recently left jail or prison.

7. Support critical time interventions (CTI), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.

D. WOMEN WHO ARE OR MAY BECOME PREGNANT

1. Evidence-informed treatment, including MAT, recovery, and prevention services for pregnant women or women who could become pregnant and have OUD.

2. Training for obstetricians and other healthcare personnel that work with pregnant women and their families regarding OUD treatment.
3. Other measures to address Neonatal Abstinence Syndrome, including prevention, care for addiction and education programs.

4. Child and family supports for parenting women with OUD.

5. Enhanced family supports and child care services for parents receiving treatment for OUD.

**E. PEOPLE IN TREATMENT AND RECOVERY**

1. The full continuum of care of recovery services for OUD and any co-occurring substance use or mental health issues, including supportive housing, residential treatment, medical detox services, peer support services and counseling, community navigators, case management, and connections to community-based services.

2. Identifying successful recovery programs such as physician, pilot, and college recovery programs, and providing support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.

3. Training and development of procedures for government staff to appropriately interact and provide social and other services to current and recovering opioid users, including reducing stigma.

4. Community-wide stigma reduction regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.

5. Engaging non-profits and faith community as a system to support family members in their efforts to help the opioid user in the family.

**II. PREVENTION**

**F. PRESCRIBING PRACTICES**

1. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.


3. Continuing Medical Education (CME) on prescribing of opioids.

4. Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.

5. Fund development of a multistate/national prescription drug monitoring program (PDMP) that permits information sharing while providing appropriate safeguards on sharing of private information, including but not limited to:
a. Integration of PDMP data with electronic health records, overdose episodes, and decision support tools for health care providers relating to OUD.

b. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation’s Emergency Medical Technician overdose database.

6. Educating dispensers on appropriate opioid dispensing.

G. MISUSE OF OPIOIDS

1. Corrective advertising/affirmative public education campaigns.

2. Public education relating to drug disposal.

3. Drug take-back disposal or destruction programs.

4. Fund community anti-drug coalitions that engage in drug-abuse prevention efforts.

5. School-based programs that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.

6. Support community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction – including staffing, educational campaigns, or training of coalitions in evidence-informed implementation.

7. School and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.

8. Engaging non-profits and faith community as a system to support prevention.

H. OVERDOSE DEATHS AND OTHER HARMs

1. Increasing availability and distribution of naloxone and other drugs that treat overdoses to first responders, overdose patients, opioid users, families and friends of opioid users, schools, community navigators and outreach workers, drug offenders upon release from jail/prison, and other members of the general public.

2. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, and other members of the general public.
3. Developing data tracking software and applications for overdoses/naloxone revivals.
4. Public education relating to emergency responses to overdoses.
5. Free naloxone for anyone in the community.
6. Public education relating to immunity and Good Samaritan laws.
7. Educating first responders regarding the existence and operation of immunity and Good Samaritan laws.
8. Syringe service programs, including supplies, staffing, space, peer support services, and the full range of harm reduction and treatment services provided by these programs.
9. Expand access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.

III. ADDITIONAL AREAS

I. SERVICES FOR CHILDREN

1. Support for children’s services: Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

J. FIRST RESPONDERS

1. Law enforcement expenditures relating to the opioid epidemic.
2. Educating first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.
3. Increase electronic prescribing to prevent diversion and forgery.

K. COMMUNITY LEADERSHIP

1. Regional planning to identify goals for opioid reduction and support efforts or to identify areas and populations with the greatest needs for treatment intervention services.
2. Government dashboard to track key opioid-related indicators and supports as identified through collaborative community processes.
L. STAFFING AND TRAINING

1. Funding for programs and services regarding staff training and networking to improve staff capability to abate the opioid crisis.

2. Support infrastructure and staffing for collaborative cross-systems coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD (e.g., health care, primary care, pharmacies, PDMPs, etc.).

M. RESEARCH

1. Funding opioid abatement research.

2. Research improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to OUD.

3. Support research for novel harm reduction and prevention efforts such as the provision of fentanyl test strips.

4. Support for innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.

5. Expanded research for swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (e.g. Hawaii HOPE and Dakota 24/7).

6. Research expanded modalities such as prescription methadone that can expand access to MAT.

N. OTHER

1. Administrative costs for any of the approved purposes on this list.
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*This list includes all 64 Colorado counties and all 271 municipalities listed in the 2019 Census. Cities located in multiple counties are listed under each corresponding county subheading. City and County of Denver and City and County of Broomfield are counted in both the city and county totals. The City of Carbonate is not included in this list, as there was no population in the 2019 Census data.

This list will be reconciled as necessary to be consistent with the terms of Settlement(s) with Opioid Settling Defendant(s)
Exhibit C
Regions for the distribution of opioid settlement funds

Region 1  Region 5  Region 9  Region 13  Region 17
Region 2  Region 6  Region 10  Region 14  Region 18
Region 3 (Broomfield)  Region 11 (Denver)  Region 15  Region 19
Region 4  Region 8  Region 12  Region 16
Exhibit D
### Exhibit D - Allocations to Colorado County Areas

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<tr>
<th>County</th>
<th>Percentage of LG Share</th>
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<td>Adams</td>
<td>9.4247%</td>
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<tr>
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<td>0.5081%</td>
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<td>Arapahoe</td>
<td>10.8071%</td>
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</tr>
<tr>
<td>Baca</td>
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</tr>
<tr>
<td>Bent</td>
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</tr>
<tr>
<td>Boulder</td>
<td>5.7936%</td>
</tr>
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<td>Broomfield</td>
<td>1.0014%</td>
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<td>Chaffee</td>
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Exhibit E
Exhibit E - Intracounty Allocations

The below chart depicts the default percentage that each Local Government will receive from the LG Share amount attributed to its County Area, as described in Section (E)(3) of the MOU. The chart assumes full participation by all Local Governments.

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<td>Federal Heights</td>
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<td>Thornton (2 Counties)</td>
<td>10.6435%</td>
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<tr>
<td>Westminster (2 Counties)</td>
<td>6.5342%</td>
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</table>

| Alamosa County         | 85.3075%          |
| Alamosa                | 14.6818%          |
| Hooper                 | 0.0108%           |

| Arapahoe County        | 42.7003%          |
| Aurora (3 Counties)    | 35.5997%          |
| Bennett (2 Counties)   | 0.0324%           |
| **Bow Mar (2 Counties)**| **0.0159%**      |
| Centennial             | 0.4411%           |
| Cherry Hills Village   | 0.6685%           |
| Columbine Valley       | 0.1601%           |
| Deer Trail             | 0.0003%           |
| Englewood              | 5.5850%           |
| Foxfield               | 0.0372%           |
| Glendale               | 1.2289%           |
| Greenwood Village      | 2.8305%           |
| **Littleton (3 Counties)**| **8.5654%**      |
| Sheridan               | 2.1347%           |

| Archuleta County       | 90.0864%          |
| Pagosa Springs         | 9.9136%           |

<p>| Baca County            | 85.9800%          |
| Campo                 | 2.4443%           |
| Pritchett             | 1.5680%           |
| Springfield           | 7.0100%           |</p>
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1 These allocations are based on the allocation model used in the Negotiation Class website. The allocation model is the product of prolonged and intensive research, analysis, and discussion by and among members of the court-appointed Plaintiffs’ Executive Committee and Settlement Committee and their retained public health and health economics experts, as well as a series of meetings with scores of cities, counties and subdivisions. Additional information about the allocation model is available on the Negotiation Class website.

The allocations in the Negotiation Class website use two different methodologies:

**County-Level Allocation**

The allocation model uses three factors, based on reliable, detailed, and objective data collected and reported by the federal government, to determine the share of a settlement fund that each county will receive. The three factors are: (1) the amount of opioids shipped to the county, (2) the number of opioid deaths in that county, and (3) the number of people who suffer opioid use disorder in that county.

**County/Municipal-Level Allocation**

The county/municipal-level allocation is a default allocation to be used if another agreement is not reached between the county and its constituent cities. The formula uses U.S. Census Bureau data on local government spending. This data covers cities and counties for 98% of the U.S. population. If a jurisdiction lacked this data, it was extrapolated based on available data.

2 The municipalities of Bow Mar, Johnstown, and Timnath were not reflected as being in multiple counties in the Negotiation Class website. The estimated allocations to those cities are based on the same methodology used in the website, in consultation with the expert. For cities in multiple counties, please see each county in which that city lies.
Exhibit F
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<th>Region Number</th>
<th>Region Description</th>
<th>Total State Share</th>
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<tr>
<td><strong>Total</strong></td>
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Exhibit G
Regional Governance Models

A. Membership Structure

Single-County Regions

1. Voting Members (Recommended List: Participating Local Governments to Decide)
   - 1 or 2 representatives appointed by the county (can be commissioners)
   - 1 representative appointed from the public health department
   - 1 representative from the county human services department
   - 1 representative appointed from law enforcement within region (sheriff, police, local city or town district attorney, etc.)
   - 1 representative appointed from a municipal or county court system within region
   - 1-3 representatives (total) appointed by the cities within the county (or other city or cities agreed upon) (can be councilmembers and mayors)
   - Such other representatives as participating counties/cities agree on (not to include providers who may be recipients of funds)

2. Non-Voting Members (Optional but strongly encouraged)
   - Representatives from behavioral health providers
   - Representatives from health care providers
   - Recovery/treatment experts
   - Other county or city representatives
   - A representative from the Attorney General’s Office
   - Community representative(s), preferably those with lived experience with the opioid crisis
   - Harm reduction experts

Multi-County Regions

1. Voting Members (Recommended List: Participating Local Governments to Decide)
   - 1 representative appointed by each county (can be commissioners)
   - 1 representative appointed by a rotating city within each county (or other city agreed upon) (can be councilmembers and mayors)
   - 1 representative from each public health department within the region
   - 1 representative from a county human services department
   - At least 1 representative appointed from law enforcement within region (sheriff, police, local city or town district attorney, etc.)
   - 1 representative from a municipal or county court system within region
   - Such other representatives as participating counties/cities agree on (not to include providers who may be recipients of funds)

2. Non-Voting Members (Optional)
   - Representatives from behavioral health providers
• Representatives from health care providers
• Recovery/treatment experts
• Other county or city representatives
• A representative from the Attorney General’s Office
• Community representative(s), preferably those with lived experience with the opioid crisis.
• Harm reduction experts

Single-County Single-City Regions (Denver & Broomfield)

1. Voting Members (Recommended List: Participating Local Government to Decide)¹

• 1 representative appointed by the city and county
• 1 representative appointed from the public health department
• 1 representative from the county human services department
• 1 representative appointed from law enforcement within region (sheriff, police, district attorney, etc.)
• 1 representative appointed from a municipal or county court system within region
• Such other representatives as participating counties/cities agree on (not to include providers who may be recipients of funds)

2. Non-Voting Members (Optional)

• Representatives from behavioral health providers
• Representatives from health care providers
• Recovery/treatment experts
• Other county or city representatives
• A representative from the Attorney General’s Office
• Community representative(s), preferably those with lived experience with the opioid crisis.
• Harm reduction experts

B. Member Terms

• Regions may establish terms of appointment for members. Appointment terms may be staggered.

C. Procedures

• Regions will be governed by an intergovernmental agreement (“IGA”) or memorandum of understanding (“MOU”).
• Regions may adopt the Model Colorado Regional Opioid Intergovernmental Agreement, attached here as Exhibit G-1, in its entirety or alter or amend it as they deem appropriate.

¹ In Denver, the Mayor shall make voting member appointments to the Regional Council. In Broomfield, the City and County Manager shall make voting member appointments to the Regional Council.
Regions may establish their own procedures through adoption of bylaws (model bylaws to be made available).

Meetings of regional board/committee shall be open to the public and comply with the Colorado Open Meetings Law (including requirement to keep minutes).

D. Financial Responsibility/Controls
- A local government entity shall nominate and designate a fiscal agent for the Region.
- A Regional fiscal agent must be appointed by the Regional Council on an annual basis. A Regional fiscal agent may serve as long as the Regional Council determines is appropriate, including the length of any Settlement that contemplates the distribution of Opioid Funds within Colorado. However, the Regional fiscal agent also can change over time.
- Regional fiscal agents must be a board of county commissioners or a city or town council or executive department, such as a department of finance.
- Yearly reporting by fiscal agent (using standard form) to the Abatement Council.
- All documents subject to CORA.

E. Conflicts of Interest
- Voting members shall abide by the conflict-of-interest rules applicable to local government officials under state law.

F. Ethics Laws
- Voting members shall abide by applicable state or local ethics laws, as appropriate.

G. Authority
- The Regional Council for each region shall have authority to decide how funds allocated to the region shall be distributed in accordance with the Colorado MOU and shall direct the fiscal agent accordingly.
- Any necessary contracts will be entered into by the fiscal agent, subject to approval by the Regional Council.

H. Legal Status
- The region shall not be considered a separate legal entity, unless the Participating Local Governments decide, through an IGA, to create a separate governmental entity.
Exhibit G-1
MODEL COLORADO REGIONAL OPIOID INTERGOVERNMENTAL AGREEMENT

THIS MODEL COLORADO REGIONAL OPIOID INTERGOVERNMENTAL AGREEMENT (the “Regional Agreement”) is made between _________________, a Participating Local Government, as defined in the Colorado MOU, in the ______________ Region (“____________”) and _________________, a Participating Local Government in the __________ Region, (“_____________”), individually herein a “Regional PLG” and collectively the “Regional PLGs.”

RECITALS

WHEREAS, the State of Colorado and Participating Local Governments executed the Colorado Opioids Summary Memorandum of Understanding on ______ 2021 (the “Colorado MOU”), establishing the manner in which Opioid Funds shall be divided and distributed within the State of Colorado;

WHEREAS, the Regional Agreement assumes and incorporates the definitions and provisions contained in the Colorado MOU, and the Regional Agreement shall be construed in conformity with the Colorado MOU;

WHEREAS, all Opioid Funds, regardless of allocation, shall be used for Approved Purposes;

WHEREAS, Participating Local Governments shall organize themselves into Regions, as further depicted in Exhibit E to the Colorado MOU;

This Model Regional Agreement is meant to serve as an example for the various Regions and to facilitate the flow of Opioid Funds to their intended purposes. Regions are free to adopt this Regional Agreement in its entirety or alter or amend it as they deem appropriate.

When drafting agreements like this Regional Agreement, Regional PLGs should be conscious of the definitions used therein so as not to confuse such definitions with those used in the Colorado MOU. The Definitions in the Colorado MOU shall supersede any definitions used by Regional PLGs in a Regional Agreement.
WHEREAS, Regions may consist of Single-County Regions, Multi-County Regions, or Single County-
Single City Regions (Denver and Broomfield).

WHEREAS, there shall be a 60% direct allocation of Opioid Funds to Regions through a Regional
Share;

WHEREAS, each Region shall be eligible to receive a Regional Share according to Exhibit C to the
Colorado MOU;

WHEREAS, the Colorado MOU establishes the procedures by which each Region shall be entitled
to Opioid Funds from the Abatement Council and administer its Regional Share allocation;

WHEREAS, the procedures established by the Colorado MOU include a requirement that each
Region shall create its own Regional Council;

WHEREAS, all aspects of the creation, administration, and operation of the Regional Council
shall proceed in accordance with the provisions of the Colorado MOU;

WHEREAS, each such Regional Council shall designate a fiscal agent from a county or municipal
government within that Region;

WHEREAS, each such Regional Council shall submit a two-year plan to the Abatement Council
that identifies the Approved Purposes for which the requested funds will be used, and the Regional
Council’s fiscal agent shall provide data and a certification to the Abatement Council regarding
compliance with its two-year plan on an annual basis;

WHEREAS, the Regional Agreement pertains to the procedures for the Regional PLGs to
establish a Regional Council, designate a fiscal agent, and request and administer Opioid Funds in a
manner consistent with the Colorado MOU;
NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Regional PLGs incorporate the recitals set forth above and agree as follows:

1. **DEFINITIONS.** The defined terms used in this Regional Agreement shall have the same meanings as in the Colorado MOU. Capitalized terms used herein and not otherwise defined within the Regional Agreement or in the Colorado MOU shall have the meanings ascribed to them in the body of the Regional Agreement.

2. **OBLIGATIONS OF THE REGIONAL PLGS.** The Regional PLGs shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated herein by reference.

3. **REGIONAL COUNCIL.**
   
   3.1. **Purpose:** In accordance with the Colorado MOU, a Regional Council, consisting of representatives appointed by the Regional PLGs, shall be created to oversee the procedures by which a Region may request Opioid Funds from the Abatement Council and the procedures by which the allocation of its Region’s Share of Opioid Funds are administered.

   3.2. **Membership:** The Regional Council of a Multi-County or Single County Region shall consist of the following:

   a. **Multi-County Region:**

   (i) **Voting Members.** Voting Members shall be appointed by the Regional PLGs. The Regional PLGs shall collaborate to appoint Regional Council members and to the extent practicable, Voting Members shall be selected from different counties and cities. No single county or city should dominate the make-up of the Regional Council. Voting Members shall be selected as follows:

   (1) 1 representative appointed by each county (can be commissioners).

   (2) 1 representative appointed from a rotating city within each county (or other city agreed upon) (can be councilmembers and mayors). A rotating city member shall be selected by majority vote of the cities within each county who do not have a Voting Member currently sitting on the Regional Council.

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4 See FN 2, supra.
(3) 1 representative from each public health department within the region.

(4) 1 representative from a county human services department.

(5) At least 1 representative appointed from law enforcement within the region (sheriff, police, local city or town district attorney, etc.).

(6) 1 representative from a municipal or county court system within the region.

b. Single-County Region:

(i) Voting Members. Voting Members shall be appointed by the Regional PLGs. The Regional PLGs shall collaborate to appoint Regional Council members and to the extent practicable, Voting Members shall be selected from different cities within the region. No single city should dominate the make-up of the Regional Council. Voting Members shall be selected as follows:

(1) 1 or 2 representatives appointed by the county (can be commissioners)

(2) 1 representative appointed from the public health department

(3) 1 representative from the county human services department

(4) 1 representative appointed from law enforcement within region (sheriff, police, local city or town district attorney, etc.)

(5) 1 representative appointed from a municipal or county court system within region

(6) 1-3 representatives (total) appointed by rotating cities within the county (or other city or cities agreed upon) (can be councilmembers and mayors). Rotating city members shall be selected by majority vote of the cities who do not have a Voting Member currently sitting on the Regional Council.

(7) Such other representatives as participating counties/cities agree on (not to include providers who may be recipients of
funds)

c. **Non-Voting Members.** For both Multi-County and Single County Regions, Non-Voting Members are optional but are strongly encouraged. Non-voting members shall serve in an advisory capacity. Any Non-Voting Members shall be appointed by the Regional PLGs and may be comprised of all or some of the following, not to include potential recipients of funds:

(i) Representatives from behavioral health providers.

(ii) Representatives from health care providers.

(iii) Recovery/treatment experts.

(iv) Other county or city representatives.

(v) A representative from the Attorney General’s Office.

(vi) Community representative(s), preferably those with lived experience with the opioid crisis.

(vii) Harm reduction experts.

d. **Acting Chair:** The Voting Members for both Multi-County and Single-County Regions shall appoint one member to serve as Acting Chair of the Regional Council. The Acting Chair’s primary responsibilities shall be to schedule periodic meetings and votes of the Regional Council as needed and to serve as the point of contact for disputes within the Region. The Acting Chair must be either a Member from a county within a Region, such as a county commissioner or their designee, or a Member from a city or town within a Region, such as a mayor or city or town council member or their designee.

e. **Non-Participation:** A Local Government that chooses not to become a Participating Local Government in the Colorado MOU shall not receive any Opioid Funds from the Regional Share or participate in the Regional Council.

f. **Terms:** The Regional Council shall be established within ninety (90) days of the first Settlement being entered by a court of competent jurisdiction, including any bankruptcy court. In order to do so, within sixty (60) days of the first Settlement being entered, CCI and CML shall jointly recommend six (6) Voting Members, and so long as such recommendations comply with the terms of Section 3.2 (a) or (b), the Regional Council shall consist of CCI/CML’s recommended Members for
an initial term not to exceed one year.\textsuperscript{5} Thereafter, Voting Members shall be appointed in accordance with Section 3.2 (a) or (b) and shall serve two-year terms. Following the expiration of that two-year term, the Regional PLGs, working in concert, shall reappoint that Voting Member, or appoint a new Voting Member according to Section 3.2 (a) or (b).

(i) If a Voting Member resigns or is otherwise removed from the Regional Council prior to the expiration of their term, a replacement Voting Member shall be appointed within sixty (60) days in accordance with Section 3.2 (a) or (b) to serve the remainder of the term. If the Regional PLGs are unable to fill a Voting Member vacancy within sixty (60) days, the existing Voting Members of the Regional Council at the time of the vacancy shall work collectively to appoint a replacement Voting Member in accordance with Section 3.2 (a) or (b). At the end of his or her term, the individual serving as that replacement Voting Member may be reappointed by the Regional PLGs to serve a full term consistent with this Section.

(ii) The purpose of the two-year term is to allow Regional PLGs an increased opportunity to serve on the Regional Council. However, Regional Council members who have already served on the Regional Council may be appointed more than once and may serve consecutive terms if appointed to do so by the Regional Council.

3.3. **Duties:** The Regional Council is primarily responsible for engaging with the Abatement Council on behalf of its Region and following the procedures outlined in the Colorado MOU for requesting Opioid Funds from the Regional Share, which shall include developing 2-year plans, amending those plans as appropriate, and providing the Abatement Council with data through its fiscal agent regarding Opioid Fund expenditures. Upon request from the Abatement Council, the Regional Council may also be subject to an accounting from the Abatement Council.

3.4. **Governance:** A Regional Council may establish its own procedures through adoption of bylaws if needed. Any governing documents must be consistent with the other provisions in this section and the Colorado MOU.

3.5. **Authority:** The terms of the Colorado MOU control the authority of a Regional Council and a Regional Council shall not stray outside the bounds of the authority and power vested by the Colorado MOU. Should a Regional Council require legal assistance in determining its authority,

\textsuperscript{5} Local Governments within Multi-County or Single County Regions may decide to select initial Voting Members of the Regional Council between themselves and without CCI and CML involvement. However, the Regional Council must be established within ninety (90) days of the first Settlement being entered by a court of competent jurisdiction, including any bankruptcy court.
it may seek guidance from the legal counsel of the county or municipal government of the Regional Council’s fiscal agent at the time the issue arises.

3.6. **Collaboration:** The Regional Council shall facilitate collaboration between the State, Participating Local Governments within its Region, the Abatement Council, and other stakeholders within its Region for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado.

3.7. **Transparency:** The Regional Council shall operate with all reasonable transparency and abide by all Colorado laws relating to open records and meetings. To the extent the Abatement Council requests outcome-related data from the Regional Council, the Regional Council shall provide such data in an effort to determine best methods for abating the opioid crisis in Colorado.

3.8. **Conflicts of Interest:** Voting Members shall abide by the conflict-of-interest rules applicable to local government officials under state law.

3.9. **Ethics Laws:** Voting Members shall abide by their local ethics laws or, if no such ethics laws exist, by applicable state ethics laws.

3.10. **Decision Making:** The Regional Council shall seek to make all decisions by consensus. In the event consensus cannot be achieved, the Regional Council shall make decisions by a majority vote of its Members.

4. **REGIONAL FISCAL AGENT**

4.1. **Purpose:** According to the Colorado MOU, the Regional Council must designate a fiscal agent for the Region prior to the Region receiving any Opioid funds from the Regional Share. All funds from the Regional Share shall be distributed to the Regional Council’s fiscal agent for the benefit of the entire Region.

4.2. **Designation:** The Regional Council shall nominate and designate a fiscal agent for the Region by majority vote. Regional fiscal agents must be a board of county commissioners or a city or town council or executive department, such as a department of finance.

4.3. **Term:** A Regional fiscal agent must be appointed by the Regional Council on an annual basis. A Regional fiscal agent may serve as long as the Regional Council determines is appropriate, including the length of any Settlement that contemplates the distribution of Opioid Funds within Colorado.

4.4. **Duties:** The Regional fiscal agent shall receive, deposit, and make available Opioid Funds distributed from the Abatement Council and provide expenditure reporting data to the
Abatement Council on an annual basis. In addition, the Regional fiscal agent shall perform certain recordkeeping duties outlined below.

a. **Opioid Funds:** The Regional fiscal agent shall receive all Opioid Funds as distributed by the Abatement Council. Upon direction by the Regional Council, the Regional fiscal agent shall make any such Opioid Funds available to the Regional Council.

b. **Reporting:** On an annual basis, as determined by the Abatement Council, the Regional fiscal agent shall provide to the Abatement Council the Regional Council’s expenditure data from their allocation of the Regional Share and certify to the Abatement Council that the Regional Council’s expenditures were for Approved Purposes and complied with its 2-year plan.

c. **Recordkeeping:** The Regional fiscal agent shall maintain necessary records with regard the Regional Council’s meetings, decisions, plans, and expenditure data.

4.5. **Authority:** The fiscal agent serves at the direction of the Regional Council and in service to the entire Region. The terms of the Colorado MOU control the authority of a Regional Council, and by extension, the Regional fiscal agent. A Regional fiscal agent shall not stray outside the bounds of the authority and power vested by the Colorado MOU.

5. **REGIONAL TWO-YEAR PLAN**

5.1. **Purpose:** According to the Colorado MOU, as part of a Regional Council’s request to the Abatement Council for Opioid Funds from its Regional Share, the Regional Council must submit a 2-year plan identifying the Approved Purposes for which the requested funds will be used.

5.2 **Development of 2-Year Plan:** In developing a 2-year plan, the Regional Council shall solicit recommendations and information from all Regional PLGs and other stakeholders within its Region for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado. At its discretion, a Regional Council may seek assistance from the Abatement Council for purposes of developing a 2-year plan.

5.3 **Amendment:** At any point, a Regional Council’s 2-year plan may be amended so long as such amendments comply with the terms of the Colorado MOU and any Settlement.

6. **DISPUTES WITHIN REGION.** In the event that any Regional PLG disagrees with a decision of the Regional Council, or there is a dispute regarding the appointment of Voting or Non-Voting Members to the Regional Council, that Regional PLG shall inform the Acting Chair of its dispute at the earliest
possible opportunity. In Response, the Regional Council shall gather any information necessary to resolve the dispute. Within fourteen (14) days of the Regional PLG informing the Acting Chair of its dispute, the Regional Council shall issue a decision with respect to the dispute. In reaching its decision, the Regional Council may hold a vote of Voting Members, with the Acting Chair serving as the tie-breaker, or the Regional Council may devise its own dispute resolution process. However, in any disputes regarding the appointment of a Voting Member, that Voting Member will be recused from voting on the dispute. The decision of the Regional Council is a final decision.

7. **DISPUTES WITH ABATEMENT COUNCIL.** If the Regional Council disputes the amount of Opioid Funds it receives from its allocation of the Regional Share, the Regional Council shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. However, the failure to alert the Abatement Council within this time frame shall not constitute a waiver of the Regional Council’s right to seek recoupment of any deficiency in its Regional Share.

8. **RECORDKEEPING.** The acting Regional fiscal agent shall be responsible for maintaining records consistent with the Regional Agreement.

9. **AUTHORIZED REPRESENTATIVES.** Each Regional PLGs’ representative designated below shall be the point of contact to coordinate the obligations as provided herein. The Regional PLGs designate their authorized representatives under this Regional Agreement as follows:

   9.1. _____ designates the ____ of the ________ or their designee(s).

   9.2. _____ designates the ____ of the ________ or their designee(s).

10. **OBLIGATIONS OF THE REGIONAL PLGS.** The Regional PLGs shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated herein by reference.

11. **TERM.** The Regional Agreement will commence on _______, and shall expire on the date the last action is taken by the Region, consistent with the terms of the Colorado MOU and any Settlement. (the “Term”).

12. **INFORMATIONAL OBLIGATIONS.** Each Regional PLG hereto will meet its obligations as set forth in § 29-1-205, C.R.S., as amended, to include information about this Regional Agreement in a filing with the Colorado Division of Local Government; however, failure to do so shall in no way affect the validity of this Regional Agreement or any remedies available to the Regional PLGs hereunder.

13. **CONFIDENTIALITY.** The Regional PLGs, for themselves, their agents, employees and representatives, agree that they will not divulge any confidential or proprietary information they receive from another Regional PLG or otherwise have access to, except as may be required by law. Nothing in this Regional
Agreement shall in any way limit the ability of the Regional PLGs to comply with any laws or legal process concerning disclosures by public entities. The Regional PLGs understand that all materials exchanged under this Regional Agreement, including confidential information or proprietary information, may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S., (the “Act”). In the event of a request to a Regional PLG for disclosure of confidential materials, the Regional PLG shall advise the Regional PLGs of such request in order to give the Regional PLGs the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If a Regional PLG objects to disclosure of any of its material, the Regional PLG shall identify the legal basis under the Act for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Regional PLG agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the Regional PLGs may tender all material to the court for judicial determination of the issue of disclosure.

14. GOVERNING LAW; VENUE. This Regional Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action relating solely to this Regional Agreement will be in the applicable District Court of the State of Colorado for the county of the Region’s fiscal agent. Venue for any legal action relating to the Colorado MOU shall be in a court of competent jurisdiction where a Settlement or consent decree was entered, as those terms are described or defined in the Colorado MOU. If a legal action relates to both a Regional Agreement and the Colorado MOU, venue shall also be in a court of competent jurisdiction where a Settlement or consent decree was entered.

15. TERMINATION. The Regional PLGs enter into this Regional Agreement to serve the public interest. If this Regional Agreement ceases to further the public interest, a Regional PLG, in its discretion, may terminate their participation in the Regional Agreement, in whole or in part, upon written notice to the other Regional PLGs. Each Regional PLG also has the right to terminate the Regional Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the other Regional PLGs. A Regional PLG’s decision to terminate this Regional Agreement, with or without cause, shall have no impact on the other Regional PLGs present or future administration of its Opioid Funds and the other procedures outlined in this Regional Agreement. Rather, a Regional PLG’s decision to terminate this Regional Agreement shall have the same effect as non-participation, as outlined in Section 3.2 (e).

16. NOTICES. “Key Notices” under this Regional Agreement are notices regarding default, disputes, or termination of the Regional Agreement. Key Notices shall be given in writing and shall be deemed
received if given by confirmed electronic transmission that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission; certified mail, return receipt requested, postage prepaid, three business days after being deposited in the United States mail; or overnight carrier service or personal delivery, when received. For Key Notices, the Regional PLGs will follow up any electronic transmission with a hard copy of the communication by the means described above. All other communications or notices between the Regional PLGs that are not Key Notices may be done via electronic transmission. The Regional PLGs agree that any notice or communication transmitted by electronic transmission shall be treated in all manner and respects as an original written document; any such notice or communication shall be considered to have the same binding and legal effect as an original document. All Key Notices shall include a reference to the Regional Agreement, and Key Notices shall be given to the Regional PLGs at the following addresses:

_____________________________
_____________________________

17. GENERAL TERMS AND CONDITIONS

17.1. Independent Entities. The Regional PLGs enter into this Regional Agreement as separate, independent governmental entities and shall maintain such status throughout.

17.2. Assignment. This Regional Agreement shall not be assigned by any Regional PLG without the prior written consent of all Regional PLGs. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Regional Agreement.

17.3. Integration and Amendment. This Regional Agreement represents the entire agreement between the Regional PLGs and terminates any oral or collateral agreement or understandings. This Regional Agreement may be amended only by a writing signed by the Regional PLGs. If any provision of this Regional Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and the remaining provision of this Regional Agreement shall continue in full force and effect.
17.4. **No Construction Against Drafting Party.** The Regional PLGs and their respective counsel have had the opportunity to review the Regional Agreement, and the Regional Agreement will not be construed against any Regional PLG merely because any provisions of the Regional Agreement were prepared by a particular Regional PLG.

17.5. **Captions and References.** The captions and headings in this Regional Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this Regional Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

17.6. **Statutes, Regulations, and Other Authority.** Any reference in this Regional Agreement to a statute, regulation, policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the execution of this Regional Agreement.

17.7. **Conflict of Interest.** No Regional PLG shall knowingly perform any act that would conflict in any manner with said Regional PLG’s obligations hereunder. Each Regional PLG certifies that it is not engaged in any current project or business transaction, directly or indirectly, nor has it any interest, direct or indirect, with any person or business that might result in a conflict of interest in the performance of its obligations hereunder. No elected or employed member of any Regional PLG shall be paid or receive, directly or indirectly, any share or part of this Regional Agreement or any benefit that may arise therefrom.

17.8. **Inurement.** The rights and obligations of the Regional PLGs to the Regional Agreement inure to the benefit of and shall be binding upon the Regional PLGs and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Regional Agreement.

17.9. **Survival.** Notwithstanding anything to the contrary, the Regional PLGs understand and agree that all terms and conditions of this Regional Agreement and any exhibits that require continued performance or compliance beyond the termination or expiration of this Regional Agreement shall survive such termination or expiration and shall be enforceable against a Regional PLG if such Regional PLG fails to perform or comply with such term or condition.

17.10. **Waiver of Rights and Remedies.** This Regional Agreement or any of its provisions may not be waived except in writing by a Regional PLG’s authorized representative. The failure of a
Regional PLG to enforce any right arising under this Regional Agreement on one or more occasions will not operate as a waiver of that or any other right on that or any other occasion.

17.11. **No Third-Party Beneficiaries.** Enforcement of the terms of the Regional Agreement and all rights of action relating to enforcement are strictly reserved to the Regional PLGs. Nothing contained in the Regional Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the Regional PLGs receiving services or benefits pursuant to the Regional Agreement is an incidental beneficiary only.

17.12. **Records Retention.** The Regional PLGs shall maintain all records, including working papers, notes, and financial records in accordance with their applicable record retention schedules and policies. Copies of such records shall be furnished to the Parties request.

17.13. **Execution by Counterparts; Electronic Signatures and Records.** This Regional Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Regional PLGs approve the use of electronic signatures for execution of this Regional Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101, et seq. The Regional PLGs agree not to deny the legal effect or enforceability of the Regional Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Regional PLGs agree not to object to the admissibility of the Regional Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

17.14. **Authority to Execute.** Each Regional PLG represents that all procedures necessary to authorize such Regional PLG’s execution of this Regional Agreement have been performed and that the person signing for such Regional PLG has been authorized to execute the Regional Agreement.

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MEETING DATE: June 7, 2022
AGENDA TITLE: Resolution No. 2022-29 / Appointing an Interim Local Licensing Authority Hearing Officer
PREPARED BY: Fritz Sprague, City Administrator
Lynnette Beck, City Clerk

Executive Summary
Resolution No. 2022-29 will appoint Amanda L. Bailhache to serve as the Local Licensing Authority (LLA) Hearing Officer on an interim basis until City Council either appoints a new LLA hearing officer or appoints Ms. Bailhache as LLA hearing officer on a permanent basis.

City Council Strategic Outcome (most applicable): Excellent City Services and Infrastructure

Background Information
On June 7, 2022, City Council will consider Ordinance No. 15, Series 2022, on second reading. If enacted, the ordinance will repeal and reenact Chapter 10, “Alcoholic Beverages,” of the Code of Ordinances, and provide for the appointment of a sole hearing officer to serve as the City of Lafayette’s Local Licensing Authority (LLA) for alcohol beverage licensing matters.

In May 2022, the City Clerk’s Office issued a solicitation for LLA hearing officer services, and the application and review process is underway. However, that process will not be completed until after the effective date of Ordinance No. 15, and it is unknown at this time whether and when staff will have a candidate to recommend to the City Council for appointment to the newly expanded LLA hearing officer position. Moreover, there are pending alcohol beverage license applications that will require a hearing or decision before Council will be able to consider whether to appoint a new LLA hearing officer in accordance with Ordinance No. 15.

Amanda L. Bailhache, who also serves as the City’s Municipal Court Judge, was appointed in 2021 to serve as the Local Licensing Authority hearing officer for certain alcohol beverage licensing matters that had been previously delegated to a hearing officer under Ordinance No. 22, Series 2015. Ms. Bailhache is both qualified and willing to serve as the LLA hearing officer in accordance with newly defined hearing officer role in Ordinance No. 15, Series 2022, on an interim basis until a new LLA hearing officer is appointed, if any, pursuant to the pending solicitation.
Resolution No. 2022-29 will appoint Ms. Bailhache to serve as the LLA hearing officer on an interim basis, commencing on the effective date of Ordinance No. 15, Series 2022, which is anticipated to be June 17, 2022. Ms. Bailhache will serve at the pleasure of City Council and will continue in the LLA hearing officer role unless and until City Council appoints a new LLA hearing officer later this year or appoints Ms. Bailhache on a permanent basis to the LLA hearing officer position.

The City and Ms. Bailhache previously executed an “Agreement for Local Liquor Licensing Authority Hearing Officer Services” dated January 13, 2021, and effective as of February 1, 2021. Pursuant to Resolution No. 2022-29, that agreement will continue in full force and effect in accordance with its terms for purposes of this interim appointment, and the rate of for her services will remain the same at $205.17 per hour.

Next Steps
If Council approves Resolution No. 2022-29, Ms. Bailhache will serve as the LLA hearing officer commencing on the effective date of Ordinance No. 15, Series 2022, anticipated to be June 17, 2022. Ms. Bailhache will preside over LLA hearings and administrative licensing matters until a new LLA hearing officer is appointed, if any, later this year.

Recommendation
Staff recommends approval of this resolution.

Proposed Motion Language
Council motion to approve Resolution No. 2022-29 appointing an interim Local Licensing Authority hearing officer.

Attachment(s)
A: Resolution No. 2022-29
CITY OF LAFAYETTE  
RESOLUTION NO. 2022-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE,  
COLORADO, APPOINTING AN INTERIM LOCAL LICENSING AUTHORITY  
HEARING OFFICER

WHEREAS, pursuant to Articles 3, 4, and 5 of Title 44 of the Colorado Revised Statutes, the City Council of the City of Lafayette is authorized to designate, by ordinance, a hearing officer to serve as the Local Licensing Authority for the City of Lafayette; and

WHEREAS, the City Council has passed Ordinance No. 15, Series 2022, on second reading on June 7, 2022, repealing and reenacting Chapter 10, “Alcoholic Beverages,” of the Code of Ordinances, and providing for the appointment of a sole hearing officer to serve as the City of Lafayette’s Local Licensing Authority for alcohol beverage licensing matters; and

WHEREAS, Amanda L. Bailhache was appointed to serve as the Local Licensing Authority hearing officer, commencing on February 1, 2021, for certain alcohol beverage licensing matters delegated to a hearing officer under previous Ordinance No. 22, Series 2015; and

WHEREAS, Amanda L. Bailhache is qualified and willing to serve as the Local Licensing Authority hearing officer pursuant to Ordinance No. 15, Series 2022, on an interim basis until a new hearing officer is appointed, if any, pursuant to the pending solicitation for a Local Licensing Authority hearing officer issued by the City in May 2022; and

WHEREAS, the City Council finds that Amanda L. Bailhache has the requisite knowledge and expertise to apply and enforce the Colorado Liquor Code, Colorado Beer Code, Colorado Special Event Liquor Permits Code, and the Colorado Liquor Rules, and is qualified to serve as the Local Licensing Authority hearing officer.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lafayette, Colorado, as follows:

1. Subject to the City Council’s enactment of Ordinance No. 15, Series 2022, the City Council hereby appoints Amanda L. Bailhache to serve as the City of Lafayette Local Licensing Authority hearing officer pursuant to the provisions of the Ordinance No. 15, Series 2022, commencing on the effective date of Ordinance No. 15, Series 2022. Ms. Bailhache shall serve at the pleasure of City Council, and such appointment shall be on an interim basis until the City Council either appoints a new Local Licensing Authority hearing officer or appoints Ms. Bailhache as the Local Licensing Authority hearing officer on a permanent basis.

2. The executed “Agreement for Local Liquor Licensing Authority Hearing Officer Services” dated January 13, 2021, and effective as of February 1, 2021, between the City of Lafayette and Amanda L. Bailhache shall continue in full force and effect in accordance with its terms for purposes of this appointment. In accordance with that agreement, Ms. Bailhache shall be compensated for such services at the rate of $205.17 per hour.
RESOLVED AND PASSED THIS 7TH DAY OF JUNE, 2022.

CITY OF LAFAYETTE, COLORADO

Jaideep Mangat, Mayor

ATTEST:

Lynnette Beck, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney
MEETING DATE: June 7, 2022
AGENDA TITLE: Resolution No. 2022-30 / Subordination of Deeds of Trust for 900 S. U.S. Highway 287 (JAX Outdoor) and 400 W. South Boulder Road (JAX Home and Garden)
PREPARED BY: Fritz Sprague, City Administrator
Mary Lynn Macsalka, City Attorney
Devin Billingsley, Interim Finance Director

Executive Summary
Resolution No. 2022-30 authorizes the City’s Finance Director to sign Subordination Agreements with Wells Fargo, N.A. placing the City’s security interest in the properties located at 900 S. U.S. Highway 287 (JAX Outdoor) and 400 W. South Boulder Road (JAX Farm and Ranch) in second position to a new loan being secured by the properties as part of a refinancing that the property owner is pursuing.

The city’s security interests in the properties relate to promissory notes created in connection with economic development agreements that were signed in 2019 promoting JAX Outdoor and JAX Farm and Ranch’s continued retail presence at those locations. Under the agreements, JAX, Inc. is being provided with sales tax rebates for specified periods at each property subject to claw-back should JAX, Inc. cease operations and/or break their leases before the end of the terms. The promissory notes establish the maximum amounts that could be owed back to the city and these liabilities are secured by second deeds on the properties.

City Council Strategic Outcome (most applicable): Economic Prosperity

Background Information
In 2010, the City entered into an economic development agreement with JAX Lafayette Property, LLC and JAX, Inc., dba JAX Mercantile Co. for the purchase and remodel of the former Ace Hardware Store located at 900 S. US Highway 287. This property is currently operated as JAX Outdoor. An updated economic development agreement was signed in 2019 to provide JAX, Inc. a sales tax rebate incentive of 25% of the city’s unrestricted sales tax (3% rate) collected at the store between January 1, 2020 and December 31, 2029 up to a maximum amount of $375,000. To receive this rebate, JAX, Inc. must continue to occupy the property and operate it as the JAX Outdoor retail store for the full length of its 17-year lease ending on December 31, 2037. Should JAX, Inc. cease operations and/or break the
lease before the end of the lease term, it is obligated to repay the city the full amount of sales tax rebates it received up to that point up to a maximum of $320,000. The promissory note amount was reduced from an original amount of $375,000 when JAX, Inc. satisfied a stated milestone of being in operation as of January 1, 2021. The city secured this repayment arrangement with a promissory note that was secured by a second deed on property. The owner of the property is seeking to refinance and the new lender, Wells Fargo, wants to memorialize, through a Subordination Agreement, that the city’s security interest in the property is of a lower priority than that of the new loan they are providing that is also secured by the property.

In 2012, the City entered into an economic development agreement with Lafayette Plaza, LLC and JAX, Inc., dba JAX Home & Ranch and/or JAX Farm and Ranch for the purchase and remodel of the property located at 400 W. South Boulder Road. This property is currently operated as JAX Farm and Ranch. An updated economic development agreement was signed in 2019 that provides JAX, Inc. with a sales tax rebate incentive of 40% of the city’s unrestricted sales tax (3% rate) collected at the store between January 1, 2020 and December 31, 2032 up to a maximum amount of $80,000 per year and $800,000 total. The rebate amount increased to 50% of sales tax collected when JAX, Inc.’s installed solar panels on the roof in 2020 per the agreement. To receive the rebate, JAX, Inc. must continue to occupy the property and operate it as a retail store for the full length of its 19-year lease ending on December 31, 2039. Should JAX, Inc. cease operations and/or break its lease it would be obligated to repay the city the full amount of sales tax rebates it received up to that point up to a maximum of $960,000 (inclusive of prior sales tax rebates from earlier agreements). The city secured this repayment arrangement with a promissory note that was secured by a second deed on the property. The property owner is seeking to refinance and the new lender, Wells Fargo, wants to memorialize, through a Subordination Agreement, that the city’s security interest in the property is of a lower priority than that of new loan they are providing that is also secured by the property.

Next Steps
If Council approves Resolution No. 2022-30, the Finance Director will sign the Subordination Agreements placing the City’s security interest in the properties located at 900 S. U.S. Highway 287 and 400 W. South Boulder Road subordinate to, and of a lower priority, than that of the new loan being provided by Wells Fargo that is also secured by the properties.

Recommendation
Staff recommends approval of this resolution.

Proposed Motion Language
Council motion to approve Resolution No. 2022-XX authorizing the Finance Director to sign Subordination Agreements with Wells Fargo, N.A. relating to the properties located at 900 S. U.S. Highway 287 and 400 W. South Boulder Road.

Supplemental Materials

Attachment(s)
A: Resolution No. 2022-30
B: Draft Subordination Agreements (not sure if we want to include these. Might be too much detail)
CITY OF LAFAYETTE
RESOLUTION NO. 2022-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE,
COLORADO, AUTHORIZING A SUBORDINATION OF THE DEEDS OF
TRUST FOR 900 S. US HWY 287 AND 400 W. SOUTH BOULDER ROAD

WHEREAS, the City of Lafayette (“City”) and JAX Lafayette Property, LLC and JAX, Inc. dba JAX Mercantile (“JAX Mercantile”) entered into an economic development agreement (the “JAX Outdoor EDA”) for the development of property located at 900 South US Highway 287, Lafayette, Colorado (“Waneka Marketplace”), which provided for certain economic benefits to JAX Mercantile in exchange for the continued operation of a JAX Outdoor at Waneka Marketplace for a period of time and JAX Mercantile’s performance of other operational warranties; and

WHEREAS, pursuant to the JAX Outdoor EDA, JAX Lafayette Property, LLC granted the City a second deed of trust on Waneka Marketplace to secure JAX Mercantile’s performance of the JAX Outdoor EDA warranties; and

WHEREAS, the City of Lafayette (“City”) and Lafayette Plaza, LLC (“JAX Lafayette”) and JAX, Inc. dba JAX Home & Ranch (“JAX Home & Ranch”) entered into an economic development agreement (the “JAX Farm & Ranch EDA”) for the development of property located at 400 W. South Boulder Road, Lafayette, Colorado (“Coal Creek Shopping Center”), which provided for certain economic benefits to JAX Inc. in exchange for the continued operation of a JAX Farm & Ranch at the Coal Creek Shopping Center for a period of time and JAX Home & Ranch’s performance of other warranties; and

WHEREAS, pursuant to the JAX Farm & Ranch EDA, Lafayette Plaza, LLC granted the City a second deed of trust on the Coal Creek Shopping Center property to secure JAX Home & Ranch’s performance of the JAX Farm & Ranch EDA warranties; and

WHEREAS, JAX Lafayette Property, LLC and Lafayette Plaza, LLC plan to refinance the prior existing first deeds of trust on the Waneka Marketplace and Coal Creek Shopping Center properties, respectively, through Wells Fargo Bank, N.A. and has requested that the City consent to the subordination of the JAX Outdoor EDA deed of trust and JAX Farm & Ranch EDA deed of trust to the new first deeds of trust to be held by Wells Fargo, and to the filing of a deed of trust that would remove the City deeds of trust priority to second by executing a subordination agreement; and

WHEREAS, this request is consistent with the terms of both the JAX Outdoor and JAX Farm & Ranch EDA’s.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lafayette, Colorado, as follows:

1. That the City’s lien interest in the Waneka Marketplace by reason of the deed of trust executed pursuant to the JAX Outdoor EDA shall be and is hereby made, subordinate, subject
and inferior only to a new lien interest created by reason of a new deed of trust that will be conveyed by Wells Fargo to secure a loan of $26,725,000.00 from Wells Fargo to JAX Lafayette Property, LLC.

2. That the City’s lien interest in the Coal Creek Shopping Center by reason of the deed of trust executed pursuant to the JAX Farm & Ranch EDA shall be and is hereby made, subordinate, subject and inferior only to a new lien interest created by reason of a new deed of trust that will be conveyed by Wells Fargo to secure a loan of $26,725,000.00 from Wells Fargo to Lafayette Plaza, LLC.

3. City Council authorizes the Finance Director to execute a subordination agreement on behalf of the City of Lafayette in a form approved by the City Attorney’s Office, which is consistent with the purposes of this resolution.

4. The Finance Director is authorized to execute any other documents and to undertake all other acts as may be required to effectuate the purposes of this resolution or to implement the subordination agreement.

RESOLVED AND PASSED THIS 7th DAY OF JUNE, 2022.

CITY OF LAFAYETTE, COLORADO

____________________________
Jaideep Mangat, Mayor

ATTEST:

____________________________
Lynnette Beck, City Clerk

APPROVED AS TO FORM:

____________________________
Mary Lynn Macsalka, City Attorney
Executive Summary
Each year City Council celebrates and honors LGBTQ+ communities by approving a proclamation recognizing June as Lesbian, Gay, Bisexual, Transgender, and Queer+ Pride Month.

City Council Strategic Outcome (most applicable): Safe, Welcoming, and Inclusive

Background Information
On April 20, 2022, Out Boulder County Special Events Coordinator Kiar Rickert requested that Lafayette City leaders support the LGBTQ+ community by reading a proclamation recognizing June 2022 as Lesbian, Gay, Bisexual, Transgender, and Queer+ Pride month.

Once again this year, the City will display a “Progress” Pride Flag designed by Daniel Quasar, a multimedia designer based in Portland. The original flag, created in 1978 by San Francisco-based artist Gilbert Baker, had eight colors, each representing something different: pink for sex, red for life, orange for healing, yellow for sunlight, green for nature, turquoise for magic, indigo for harmony, and violet for spirit. The flag has evolved over the years, with other colors being added to make it more inclusive of People of Color and additional LGBTQ+ identities. Quasar sought to incorporate the variations into one flag design.
Next Steps
Approval of this proclamation is the only Council action needed.

Recommendation
Staff recommends approval of the proclamation.

Proposed Motion Language
Council motion to approve a proclamation recognizing June 2022 as Lesbian, Gay, Bisexual, Transgender, and Queer+ Pride Month and authorizing rainbow flags to be flown at City facilities during the month of June.

Attachment(s)
A: Proclamation
Lesbian, Gay, Bisexual, Transgender and Queer Pride Month
June 2022

WHEREAS, all residents deserve the right to live in a town that respects their dignity, safety, and overall well-being by supporting equality and fair treatment for all; and

WHEREAS, the City of Lafayette has a diverse LGBTQ+ community that includes people of many backgrounds, identities, and philosophies; and

WHEREAS, diversity is a community asset that enhances and enriches the lives of all community members; and

WHEREAS, LGBTQ+ community members have made, and continue to make, great and lasting contributions to strengthen the fabric of our community; and

WHEREAS, during the month of June, residents of the City of Lafayette are encouraged to honor the history, diversity, and the resilience of the LGBTQ+ communities; and

WHEREAS, the City of Lafayette honors its commitment to the promotion and protection of the human rights of LGBTQ+ residents.

NOW, THEREFORE, the Mayor and City Council of the City of Lafayette, Colorado, do hereby proclaim June 2022 to be LGBTQ+ Pride Month and urge all residents to respect and honor our diverse community and celebrate and build a culture of inclusiveness and acceptance.
BE IT FURTHER RESOLVED that City departments wishing to do so, may fly the rainbow flag for the month of June.

PASSED AND ADOPTED THIS 7TH DAY OF JUNE, 2022.

CITY OF LAFAYETTE, COLORADO

By: _______________________________________
   Jaideep Mangat, Mayor

ATTEST:

_____________________________________
Lynnette Beck, City Clerk
Executive Summary
Each year City Council celebrates and honors June 19 as Juneteenth Independence Day.

City Council Strategic Outcome (most applicable): Safe, Welcoming, and Inclusive

Background Information
On January 1, 1863, Abraham Lincoln signed the Emancipation Proclamation, declaring slaves in the Confederate territory free. News of the end of slavery did not reach particular areas in the country, namely the Southern and Southwestern state, for more than two and a half years. Juneteenth is the oldest known celebration, commemorating the abolition of slavery in the United States and emancipation of African American slaves throughout the Confederate south.

This proclamation is a reminder of our history in slavery and also recognizes the continued discrimination that exists today with commitments to work to overcome injustices.

Next Steps
Approval of this proclamation is the only Council action needed.

Recommendation
Staff recommends approval of this proclamation.

Proposed Motion Language
Council motion to approve a proclamation designating June 19, 2022 to be Juneteenth Independence Day in Lafayette.

Attachment(s)
A: Proclamation
This proclamation declares June 19, 2022, to be Juneteenth Independence Day in the City of Lafayette, Colorado as a reminder of our history in slavery and to celebrate the intent of the Emancipation Proclamation as well as commit to actions that overcome the continued discrimination that exists still in the United States.

WHEREAS, President Abraham Lincoln signed the Emancipation Proclamation on January 1, 1863, declaring the slaves in the Confederate territory free; and

WHEREAS, news of the end of slavery did not reach the frontier areas of the United States, and in particular the Southern and Southwestern States, for more than two and a half years; and

WHEREAS, June 19 has a special meaning to African Americans, and is called “Juneteenth,” combining the words June and nineteenth; and

WHEREAS, Juneteenth is the oldest known celebration, commemorating the abolition of slavery in the United States and the emancipation of African American slaves throughout the Confederate South; and

WHEREAS, the United States Senate and House of Representatives passed a resolution in 1997 to honor and recognize Juneteenth Independence Day; and
WHEREAS, recent events demonstrate, more than 150 years after the abolition of slavery in the United States, there are still acts of violence, prejudice, and discrimination against people of color every day; and

WHEREAS, we do not, and will not, tolerate acts of racism, oppression, intimidation, harassment, prejudice, or racial profiling toward another individual; and

WHEREAS, as your elected City Council members, we acknowledge and embrace the honor, responsibility, and influence of our positions. Required by the oath when seated, this allows us to effect and influence positive change for our community and all Lafayette residents regardless of race; and

WHEREAS, the City of Lafayette is committed to building a community of diversity and inclusiveness through our actions, our words, our activities and our policies.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Council of the City of Lafayette, Colorado, do hereby declare June 19, 2022, to be Juneteenth Independence Day. We encourage all residents to support and recognize our diverse and inclusive community where everyone can feel safe.

PASSED AND ADOPTED THIS 7th DAY OF JUNE, 2022.

ATTEST:

Lynnette Beck, City Clerk

Jaideep Mangat, Mayor

CITY OF LAFAYETTE, COLORADO
Executive Summary
On May 17, 2022, Peggy Darrah, Co-Lead of East Boulder County Moms Demand Action, requested that City Council issue a proclamation recognizing June 3, 2022 as National Gun Violence Awareness Day.

City Council Strategic Outcome (most applicable): Safe, Welcoming, and Inclusive

Background Information
The first weekend of June every year, Moms Demand Action for Gun Sense in America launches its Wear Orange campaign to raise awareness about gun violence. Lafayette has traditionally participated by issuing a proclamation declaring National Gun Violence Awareness Day.

Next Steps
Approval of this proclamation is the only Council action needed.

Recommendation
Staff recommends approval of this proclamation.

Proposed Motion Language
Council motion to approve a proclamation designating June 3, 2022 as National Gun Violence Awareness Day.

Attachment(s)
A: Proclamation
This proclamation declares June 3, 2022 to be National Gun Violence Awareness Day in the City of Lafayette, Colorado to honor and remember all victims and survivors of gun violence and to declare that we as a country must do more to reduce gun violence.

WHEREAS, every day, 100 Americans are killed by gun violence and more than 300 have sustained non-fatal firearm injuries over the last 5 years; and

WHEREAS, Americans are 25 times more likely to be killed with guns than people in other developed countries; and

WHEREAS, protecting public safety in the communities they serve is a mayor’s highest responsibility; and

WHEREAS, mayors and law enforcement officers know their communities best, are the most familiar with local criminal activity and how to address it, and are best positioned to understand how to keep their residents safe; and

WHEREAS, June 2, 2022 would have been the 25th birthday of Hadiya Pendleton, a teenager who marched in President Obama’s second inaugural parade and was tragically shot and killed just weeks later; and

WHEREAS, to help honor Hadiya – and the 100 Americans whose lives are cut short and the countless survivors who are injured by shootings every day – a national coalition of organizations has designated June 3, 2022, as National Gun Violence Awareness Day; and

WHEREAS, the idea was inspired by a group of Hadiya’s friends, who asked their classmates to commemorate her life by wearing orange; they chose this color because hunters wear orange to announce themselves to other hunters when out in the woods and orange is a color that symbolizes the value of human life; and

WHEREAS, anyone can join this campaign by pledging to Wear Orange on June 3rd to help raise awareness about gun violence; and

WHEREAS, by wearing orange on June 3rd, Americans will raise awareness about gun violence and honor the lives and lost human potential of Americans stolen by gun violence; and

WHEREAS, we renew our commitment to reduce gun violence and pledge to do all we can to keep firearms out of the wrong hands and encourage responsible gun ownership to help keep our children safe.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Council of the City of Lafayette, Colorado, do hereby declare June 3, 2022 to be National Gun Violence Awareness Day. We encourage all residents to support community efforts to prevent the tragic effects of gun violence and to honor and value all human lives.

PASSED AND ADOPTED THIS 7TH DAY OF JUNE, 2022.

ATTEST: CITY OF LAFAYETTE, COLORADO
Lynnette Beck, City Clerk
Jaideep Mangat, Mayor
MEETING DATE: June 7, 2022
AGENDA TITLE: Items Pertaining to Firearm Regulations

- Resolution No. 2022-33 / Expressing the City Council’s Strong Support for Colorado Local Governments Enacting and Enforcing Local Firearms Regulations, and Imploring the Colorado General Assembly to Enact Statewide Laws to Address Gun Violence and Prevention
- First Reading / Ordinance No. 20, Series 2022 / Amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to Regulate the Possession of Unfinished Frames and Receivers and Unserialized Firearms
- First Reading / Ordinance No. 21, Series 2022 / Amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to Require All Firearm Dealers to Post Signs at All Locations Where Firearm Transfers Take Place
- First Reading / Ordinance No. 22, Series 2022 / Amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to Prohibit the Open Carrying of Firearms in Public Places
- First Reading / Ordinance No. 23, Series 2022 / Amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to Prohibit the Carrying of Firearms on City Property

PREPARED BY: Fritz Sprague, City Administrator
              Mary Lynn Macsalka, City Attorney

Executive Summary
The purpose of these agenda items is to address the regulation of firearms following the Colorado General Assembly’s passage of Senate Bill 21-256, which partially removed state preemption of local firearms regulations. Resolution No. 2022-33 expresses City Council’s strong support for Colorado local governments enacting and enforcing local firearms regulations, and implores the Colorado legislature to enact statewide laws to address gun
violence and prevention. If adopted, Ordinance Nos. 20, 21, 22, and 23 will enact new firearms regulations in the Lafayette Code of Ordinances in the following ways:

- Prohibiting possession of unfinished frames and receivers and unserialized firearms (a/k/a “ghost guns”);
- Requiring firearms dealers to post signage at points-of-sale warning of the risks of having a firearm in the home;
- Prohibiting open carrying of firearms in public places throughout the City; and
- Prohibiting the open or concealed carrying of firearms on public property.

These ordinances are intended to expand Lafayette’s ability to prevent gun violence within the community.

City Council Strategic Outcome (most applicable): Safe, Welcoming, and Inclusive

Background Information

Senate Bill 21-256
On March 22, 2021, a shooter armed with a semi-automatic pistol killed 10 people at the King Soopers on Table Mesa Drive in Boulder. In response to this shooting and a Colorado district court ruling that certain City of Boulder ordinances impermissibly conflicted with state law, the Colorado legislature passed Senate Bill 21-256, partially repealing state preemption of local firearm regulations. Colorado local governments are now permitted to enact regulations governing or prohibiting the sale, purchase, transfer, or possession of a firearm, ammunition, or firearm component or accessory, as long as the regulations are as strict or stricter than state law. Under SB21-256, criminal penalties for a violation of a local regulation may only be imposed upon a person who knew or reasonably should have known that their conduct was prohibited.

In addition, SB21-256 permits a local government to enact an ordinance that prohibits a concealed carry permit holder from carrying a concealed handgun in a building or specific area within the local government's jurisdiction. Previously, state law preempted local government laws restricting where permit holders could carry a concealed handgun. Under SB21-256, a permit holder who violates a local law prohibiting the carrying of a concealed handgun may only be punished by a civil penalty (i.e., a fine, but not imprisonment) and the maximum fine that may be imposed for a first offense is $50. However, if a permit holder does not leave the premises when required can be subjected to criminal penalties (i.e., a fine up to the maximum amount under state law for municipal code violations, or imprisonment, or both).

Resolution No. 2022-33
Resolution No. 2022-33 was drafted at the request of City Council for the purpose of expressing the City’s strong support for other Colorado local governments enacting and enforcing local firearm regulations following SB21-256. Over the last several months, regional discussions have been taking place among certain Boulder County local governments and surrounding jurisdictions regarding potential coordinated efforts to pass similar ordinances addressing the regulation of firearms. City Council desires to formally
express its strong support for the efforts of other local governments to address gun violence and prevention.

In addition, the City Council desires to send a strong message to the Colorado legislature that stronger statewide firearms regulations are needed to ensure a meaningful impact on gun violence across Colorado. The resolution expresses the City’s concerns that a patchwork of differing local regulations is likely to cause confusion and unlikely to prevent bad actors from purchasing a firearm or ammunition in a jurisdiction with less restrictive regulations. The resolution implores the Colorado legislature to enact statewide regulations that will prevent gun violence and impose effective regulations on the purchase, transfer, and possession of assault weapons, high-capacity magazines, and firearm components and accessories.

Ordinance No. 20, Series 2022 – Prohibiting Unserialized Firearms a/k/a “Ghost Guns”
Federal law requires that all firearms manufactured after October 22, 1968, bear a serial number. In recent years, the practice of assembling firearms without serial numbers from parts and kits or using 3-D printer technology has become widespread.¹ These firearms without serial numbers are colloquially referred to as “ghost guns.” In addition to being untraceable, ghost guns can potentially be assembled by persons who cannot legally obtain a firearm. In April 2022, new regulations were enacted on the federal level to address the proliferation of ghost guns in recent years.

The United States Department of Justice implemented a regulatory change to require serial numbers on parts in gun assembly kits and on 3-D printed firearms, and requiring federally licensed manufacturers and dealers to add serial numbers to kits and run background checks prior to sale, just like they have to do with other commercially-made firearms.

Ordinance No. 20, Series 2022 will add a new section 75-266 to the Code prohibiting any person from possessing a firearm that has not been identified with a serial number by a federally licensed firearms dealer, manufacturer, or importer.

Ordinance No. 21, Series 2022 – Requiring All Firearm Dealers to Post Signs at All Locations Where Firearm Transfers Take Place
Ordinance No. 21, Series 2022 is intended to educate purchasers of firearms about the risks of suicide and death and injuries to children and family members that may arise out of the possession of firearms in the home. It also requires gun dealers to post signage in English and Spanish regarding the dangers of firearms possession.

Ordinance No. 22, Series 2022 - Prohibiting the Open Carrying of Firearms in Public Places
Ordinance No. 22, Series 2022 will add a new section 75-262.5 to the Code to prohibit the open carrying of firearms in all public places within the City. “Public place” is defined in existing section 75-100 of the Code as “a place to which the public or a substantial number of the public has access, and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of

public and private buildings and facilities." This prohibition on the open carrying of firearms will apply to all publicly accessible places within the City, as well as to private property when and where a substantial number of the public has access.

It is important to note that current Code section 75-262 prohibits the open carrying of "deadly weapons" within or upon city buildings, facilities, parks, trails, golf courses, athletic fields, campgrounds, aquatic centers, recreation areas, or open spaces. "Deadly weapon" is defined in Sec. 75-100 to include “any firearm,” but also includes a "knife, bludgeon, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury." Thus, section 75-262 applies more broadly to weapons other than firearms, while also applying more narrowly only to City properties and facilities. As a policy matter, it is important to retain this broader prohibition on the open carrying of “deadly weapons” other than firearms on City property. Therefore, there are no proposed changes to Sec. 75-262.

Ordinance No. 23, Series 2022 - Prohibiting the Carrying of Firearms on City Property

Finally, Ordinance No. 23, Series 2022 proposes adding a new section 75-263.5 to the Code, which would prohibit any person from carrying a “firearm,” whether in an open or concealed manner, on all City-owned or -operated property. Previously, before the passage of SB21-256, cities were not permitted to restrict concealed carry permit holders from carrying a concealed handgun within their jurisdictions. Under SB21-256, the City may now prohibit the concealed carrying of a firearm, including by concealed carry permit holders, in a building or specific area within City’s jurisdiction.

The effect of Ordinance No. 23, Series 2022 will be to ban the carrying of a firearm, whether openly or concealed, within or upon all City property, as well as within 500-feet of polling places on the day of an election or at any place designated for the counting of ballots or for conducting activities related to a federal, state, or municipal election. It will not be a defense if the person carrying a firearm on City property in violation of proposed section 75-263.5 holds a valid concealed carry permit issued pursuant to state law.

Note that existing Code section 75-263 also prohibits the concealed carrying of firearms by a person without a concealed carry permit, as well as the concealed carrying of “knives,” throughout the entire city, not only on City property, as under proposed section 75-263.5, which applies only to firearms. Moreover, existing section 75-263 prohibits the possession of “any explosive, incendiary, or other dangerous device” in Council chambers, city offices, or any building in which a Council hearing or meeting is or will be conducted. It is important to keep existing section 75-263 in place with its broader prohibitions on the carrying of concealed knives and the possession of dangerous devices other than firearms in Council chambers and city offices, to maximize the safety of Council meetings and City operations for City officials and employees, as well as the general public visiting City Hall.

Lastly, because existing section 75-263 contains an exception for concealed carry permit holders carrying a handgun on City property, section 75-263 in Ordinance No. 23, Series 2022 will be amended to clarify that it will be an offense even for a concealed carry permit holder to carry a firearm on City property in violation of new section 75-263.5. In addition,
Ordinance No. 23, Series 2022 makes a couple of technical updates to section 75-263 to conform with language in the companion statute in state law.

**Next Steps**
If Council approves the ordinances on first reading, the ordinances will be placed on Council’s consent agenda for approval on second reading on June 21.

**Recommendation**
Staff recommends approval of Resolution No. 2022-33 and Ordinance Nos. 20, 21, 22, and 23, Series 2022.

**Proposed Motion Language**
Council motion to approve Resolution No. 2022-33 expressing the City Council’s strong support for Colorado local governments enacting and enforcing local firearms regulations, and imploring the Colorado General Assembly to enact statewide laws to address gun violence and prevention.

AND

Council motion to approve on first reading Ordinance No. 20, Series 2022, amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to regulate the possession of unfinished frames and receivers and unserialized firearms.

AND

Council motion to approve on first reading Ordinance No. 21, Series 2022, amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to require all firearm dealers to post signs at all locations where firearm transfers take place.

AND

Council motion to approve on first reading Ordinance No. 22, Series 2022, amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to prohibit the open carrying of firearms in public places.

AND

Council motion to approve on first reading Ordinance No. 23, Series 2022, amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to prohibit the carrying of firearms on city property.

**Attachment(s)**
A: Resolution No. 2022-33
B: Ordinance No. 20, Series 2022
C: Ordinance No. 21, Series 2022
D: Ordinance No. 22, Series 2022
E: Ordinance No. 23, Series 2022
CITY OF LAFAYETTE
RESOLUTION NO. 2022-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, EXPRESSING THE CITY COUNCIL’S STRONG SUPPORT FOR COLORADO LOCAL GOVERNMENTS ENACTING AND ENFORCING LOCAL FIREARMS REGULATIONS, AND IMPLORING THE COLORADO GENERAL ASSEMBLY TO ENACT STATEWIDE LAWS TO ADDRESS GUN VIOLENCE AND PREVENTION

WHEREAS, in Colorado, someone is killed with a gun every 10 hours on average; there are 850 gun deaths per year; has the 21st highest gun death rate in the US; and experiences a gun death rate of 14.5 deaths per 100,000 residents (https://giffords.org/lawcenter/gun-violence-statistics/); and

WHEREAS, more Americans died of gun-related injuries in 2020 than in any other year on record, according to recently published statistics from the Centers for Disease Control and Prevention (CDC). These figures include a record number of gun murders, as well as a near-record number of gun suicides. The 2020 statistics represent a 14% increase from 2019, a 25% increase from 2015, and a 43% increase from 2010; and

WHEREAS, in 2020, there were 45,222 firearm-related deaths in the United States, which equates to approximately 124 people dying from a firearm-related injury each day. More than half of firearm-related deaths were suicides and more than 4 out of every 10 were firearm homicides (https://www.cdc.gov/violenceprevention/firearms/fastfact.html); and

WHEREAS, in 2020, firearm-related injuries were among the five leading causes of death for people ages 1 to 44 in the United States; and

WHEREAS, the firearm homicide rate in the United States is nearly 25 times higher than other high-income countries (Grinshteyn E & Hemenway D. (2019). Violent Death Rates in the US Compared to Those of the Other High-income Countries, 2015. Preventive Medicine); firearm homicide rates are highest among teens and young adults 15-34 years of age and among Black or African American, American Indian, or Alaska Native, and Hispanic or Latino populations; and

WHEREAS, the firearm suicide rates in the United States is nearly 10 times that of other high-income countries (https://efsgv.org/learn/type-of-gun-violence/gun-violence-in-the-united-states/), and firearm suicide rates are highest among adults 75 years of age and older and among American Indian or Alaska Native and non-Hispanic white populations; and

WHEREAS, the mental health effects of firearm violence extend beyond victims and their families. Shooting incidents, including those in homes, schools, houses of worship, workplaces, shopping areas, on the street, or at community events can affect the sense of safety and security of entire communities, cause undue pain and trauma, and impact everyday decisions; and
WHEREAS, gun access triples suicide risk; the majority of suicides, 59%, involve a gun (https://giffords.org/lawcenter/gun-violence-statistics/); and

WHEREAS, three million children are directly exposed to gun violence each year, resulting in death, injury, and lasting trauma (https://giffords.org/lawcenter/gun-violence-statistics/); and

WHEREAS, the economic impact of firearm violence is also substantial; firearm violence costs the United States tens of billions of dollars each year in medical and lost productivity costs; and

WHEREAS, the City Council of the City of Lafayette expresses its very serious concerns with the impacts of gun violence in the local community, statewide, and across the United States; and

WHEREAS, the City Council finds and determines that gun violence is not only a social and economic problem in the United States, but is also a preventable public health tragedy, as indicated in the foregoing recitals (https://efsgv.org/learn/type-of-gun-violence/gun-violence-in-the-united-states/); and

WHEREAS, in 2021, the Colorado General Assembly passed Senate Bill 21-256 to allow cities in Colorado to enact individual firearm regulations that are at least as restrictive as state laws; and

WHEREAS, while Senate Bill 21-256 acknowledges that local governments are uniquely equipped to determine what firearm regulations are appropriate in their local jurisdictions, the City Council finds that gun violence does not stop at city limits, nor is it confined to certain jurisdictions; and

WHEREAS, as plainly shown by recent events in Buffalo, New York, and Uvalde Texas, and last year in Boulder, Colorado, it is clear that gun violence is not just a local issue, but also a statewide and national issue; and

WHEREAS, the City Council finds that empowering local governments to make individual regulations within their local jurisdictions is an important step, but the City Council also finds that individual municipalities legislating to prevent gun violence is likely to create a patchwork of inconsistent local laws regulating, and that inconsistent local laws may cause confusion among the public; and

WHEREAS, the City Council strongly believes that statewide laws enacted by the Colorado General Assembly and federal laws enacted by the United States Congress are far more likely to have a meaningful impact on preventing gun violence in Colorado and across the nation than a patchwork of local firearm regulations, under which a bad actor can simply go to a
jurisdiction with less restrictive regulations to obtain firearms or ammunition they could not otherwise purchase in another community with more restrictive regulations; and

WHEREAS, moreover, the City Council finds that state and federal agencies have more resources and are better equipped to enforce regulations that will meaningfully prevent gun violence than local governments of various sizes and different resources; and

WHEREAS, the City Council strongly supports the efforts of Colorado local governments to enact and enforce local firearm regulations in the wake of Senate Bill 21-256; and

WHEREAS, the City Council strongly implores the Colorado General Assembly to take seriously its responsibility to address the health, safety, and welfare of people across Colorado by enacting statewide regulations that will meaningfully address gun violence on a statewide basis; and

WHEREAS, the City Council finds that the Colorado General Assembly, by relying on individual local governments to address gun violence and prevention on a local level, has shirked its duty to provide for effective gun violence prevention laws that would be enforceable across the state; and

WHEREAS, the City Council desires to pass this resolution to express its support for other local governments considering ordinances to prevent gun violence and also to implore the Colorado General Assembly to address gun violence and firearms regulations on a statewide basis.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lafayette, Colorado, as follows:

1. The City Council of the City of Lafayette, Colorado, expresses its strong support for all Colorado local governments that have enacted or are considering enacting and enforcing local firearms regulations in accordance with Senate Bill 21-256.

2. The City Council of the City of Lafayette, Colorado, strongly implores the Colorado General Assembly to enact meaningful and effective statewide regulations to prevent gun violence and to impose effective regulations and restrictions on the purchase, transfer, and possession of assault weapons, high-capacity magazines, and firearm components and accessories.
RESOLVED AND PASSED THIS 7TH DAY OF JUNE, 2022.

CITY OF LAFAYETTE, COLORADO

_________________________________
Jaideep Mangat, Mayor

ATTEST:

_______________________________
Lynnette Beck, City Clerk

APPROVED AS TO FORM:

_____________________________
Mary Lynn Macsalka, City Attorney
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING CHAPTER 75, ARTICLE IX, OF THE LAFAYETTE CODE OF ORDINANCES TO REGULATE THE POSSESSION OF UNFINISHED FRAMES AND RECEIVERS, AND UNSERIALIZED FIREARMS

WHEREAS, there are gaps in our current law that make it easy for people with dangerous histories to purchase widely available firearms parts without a background check and easily convert them into firearms without a serial number; and

WHEREAS, untraceable and unserialized firearms, commonly known as “ghost guns,” are a public safety risk because they allow people with dangerous histories to avoid background check requirements and assemble guns without serial numbers that cannot be traced by law enforcement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. That the definition of “firearm” in section 75-260, “Definitions,” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended as follows:1

Sec. 75-260. Definitions.

(a) As used in this article, the following shall mean as defined herein unless otherwise specifically provided:

(3) Firearm means any handgun, revolver, pistol, rifle, shotgun or other instrument or device capable or intended to be capable of discharging any shot, bullet, cartridge, missile, or other explosive charge, including without limitation any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver; any firearm muffler or firearm silencer; any “firearm component or accessory” as that term is defined in C.R.S. § 29-11.7-101.5; and any “firearm” as that term is defined in 18 U.S.C.§ 921, as amended.

1 Additions to the existing Code are indicated by underlining, and deletions are indicated by strikethrough.
Section 2. That section 75-260, “Definitions,” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by the addition of the following definitions, to be inserted alphabetically:

Sec. 75-260. Definitions.

(a) As used in this article, the following shall mean as defined herein unless otherwise specifically provided:

(____) Federal licensee means any person who is a federally licensed firearms manufacturer, importer, or dealer licensed pursuant to 18 U.S.C. 923, as amended, or other federal licensee authorized to identify firearms with serial numbers.

(____) Frame or receiver means the part of a firearm that, when the complete weapon is assembled, is visible from the exterior and provides the housing or structure designed to hold or integrate one or more fire control components, even if pins or other attachments are required to connect those components to the housing or structure. For models of firearms in which multiple parts provide such housing or structure, the part or the parts that the Director of the federal Bureau of Alcohol, Tobacco, Firearms & Explosives has determined are a frame or receiver constitute the frame or receiver. For the purposes of this definition, the term “fire control component” means a component necessary for the firearm to initiate, complete, or continue the firing sequence, and includes a hammer, bolt, bolt carrier, breechblock, cylinder, trigger mechanism, firing pin, striker, or slide rails.

(____) Unfinished frame or receiver means any forging, casting, printing, extrusion, machined body, or similar article that:

(i) has reached a stage in manufacture where it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm; or

(ii) is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted.

For the purposes of this definition, the term “assemble” means to fit together component parts. In determining whether a forging, casting, printing, extrusion, machined body, or similar article may be readily completed, assembled, or converted to a functional state, the city administrator or designee may consider any available instructions, guides, templates, jigs, equipment, tools, or marketing materials. The city administrator or designee may, in their sole discretion, consult a federal licensee to assist the city administrator or designee in making such a determination.
Section 3. That the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by adding a section to be numbered 75-266, which section reads as follows:

Sec. 75-266. Serial numbers required.

(a) Except as provided in subsection (d), it shall be a noncriminal offense for any person to possess any firearm that has not been identified with a serial number by a federal licensee.

(b) A first violation of the prohibition in subsection (a) shall result in a fine of $250. A second or subsequent violation of the prohibition in subsection (a) shall be a criminal offense.

(c) A violation of subsection (a) that includes a finding that the person possessed one or more firearms that have not been identified with a serial number by a federal licensee with an intent to sell or distribute the firearms unlawfully is a criminal offense.

(d) Subsection (a) shall not apply to:

(1) a federal licensee;

(2) any firearm made before October 22, 1968, unless remanufactured after that date; or

(3) A local, state, or federal law enforcement officer who possesses a firearm pursuant to their official duties.

Section 4. If any article, 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 passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 6. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.
Section 7. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 8. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section 9. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 7TH DAY OF JUNE, 2022.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE _______ DAY OF __________________, 2022.

CITY OF LAFAYETTE, COLORADO

______________________________
Jaideep Mangat, Mayor

ATTEST:

______________________________
Lynnette Beck, City Clerk

APPROVED AS TO FORM:

______________________________
Mary Lynn Macsalka, City Attorney
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING CHAPTER 75, ARTICLE IX, OF THE LAFAYETTE CODE OF ORDINANCES TO REQUIRE ALL FIREARM DEALERS TO POST SIGNS AT ALL LOCATIONS WHERE FIREARM TRANSFERS TAKE PLACE

WHEREAS, according to the Centers for Disease Control and Prevention’s (CDC’s) Fatal Injury Reports for 2015 through 2019, on average 38,826 people die in the United States as a result of firearms every year. Of these firearm deaths, 38 percent (14,583) are homicides and 60 percent (23,437) are suicides. An additional 483 deaths annually result from unintentional shootings. Firearms are the leading cause of death for children and teens in the United States; and

WHEREAS, an analysis of the National Emergency Department Sample indicates that there are twice as many gun injuries as gun deaths, an average of 76,127 nonfatal firearms injuries occur per year in the United States; and

WHEREAS, a meta-analysis published in the Annals of Internal Medicine found that access to a gun doubles a person’s risk of death by firearm homicide, and triples a person’s risk of death by firearm suicide; and

WHEREAS, a study published in the American Journal of Public Health concluded that access to a firearm during an incident of domestic violence leads to a five-fold risk of homicide to women by their intimate partner; and

WHEREAS, a study published in the American Journal of Preventive Medicine found that higher firearm ownership rates are associated with higher domestic firearm homicide rates among both female and male victims. States in the highest quartile of firearms ownership had a 65 percent higher domestic firearm homicide rate than states in the lowest quartile; and

WHEREAS, a study published in the American Journal of Public Health found a positive and significant association between gun ownership and non-stranger firearm homicide rates, indicating that gun ownership is associated with an increased likelihood of being shot and killed by a family member or acquaintance; and

WHEREAS, a study published in the Journal of the American Medical Association found that households that locked both firearms and ammunition were associated with a 78 percent lower risk of self-inflicted firearm injuries and an 85 percent lower risk of unintentional firearm injuries among children, compared to those that locked neither; and

WHEREAS, a study published in the New England Journal of Medicine of more than
26 million California residents found that women who own a handgun are 35 times more likely to die by firearm suicide than women who do not own one. Men who own a handgun are nearly 8 times more likely to die by firearm suicide than men who do not own a handgun. The study also found that the risk of firearm suicide is most pronounced in the year following a person’s first acquisition of a handgun but remains elevated for at least 12 years thereafter; and

WHEREAS, a study published in the Journal of the American Medical Association found that in King County, Washington, using data from 2011 to 2018, for every self-defense homicide, there were 44 suicides, seven criminal homicides, and one unintentional death; and

WHEREAS, research published in the Annals of Internal Medicine found that only 15 percent of Americans believe that having a firearm in the home increases the risk of suicide, and fewer than 10 percent of gun owners with children believe that household firearms increase suicide risk; and

WHEREAS, research published in the American Journal of Preventive Medicine found that nearly six-in-ten (57.6 percent) gun owners believe that a firearm makes their home safer, while only 2.5 percent believe that guns make their home more dangerous. The same study found that nearly four-in-ten (39.2 percent) gun owners who believe that guns increase safety store their household firearm(s) loaded and unlocked; and

WHEREAS, research published in Injury Prevention found that people living in households with firearms misperceive their risk of firearm injury as compared to people living in households without firearms. Firearms owners, and non-owners living with firearm owners, are 60 percent and 46 percent (respectively) less likely to worry about firearm injury as compared to respondents without guns in the home, despite evidence that firearm access in the home is a strong risk factor for firearm injury; and

WHEREAS, a report by the Pew Research Center on Americans’ attitudes towards firearms found that three quarters (75 percent) of American gun owners say they feel safer with a gun in their household than they would without a gun. The same study found that two-thirds (67 percent) of gun owners cite protection as a major reason for owning a gun; and

WHEREAS, a study published in the Russell Sage Foundation Journal of the Social Sciences found that almost two out of three-gun owners (63 percent) report that a primary reason they own their gun is for protection against people. Among handgun owners, more than three quarters (76 percent) cite protection against people as a major reason for owning their firearm(s); and

WHEREAS, the firearms industry actively promotes the misleading message to gun owners and potential consumers that ownership and possession of a firearm makes a person and his or her family safer; and

WHEREAS, the firearms industry’s print and online media frequently cites a 25-year-old study estimating that Americans use firearms for self-protection approximately 2.5 million
times per year. This research has been the subject of widespread criticism that it is methodologically unsound and that its conclusions do not square with measurable public health outcomes such as hospital visits. Notwithstanding, the firearms industry uses this debunked research and a wide range of other claims in advertising and online and other promotional materials to advance a misleading narrative that defensive firearms use is widespread and that firearms are an effective means of ensuring personal safety; and

WHEREAS, research by David Yamane, et al.,¹ identified a marked increase over time in print media marketing of firearms and firearm-related products specifically for personal protection, home defense, and concealed carry. In these advertisements, firearms and related products are misleadingly marketed and portrayed as effective or important means of home, family, or self-defense. Yamane, et al., concluded that this marketing strategy is not only pervasive but is now the dominant method by which firearms and related accessories are marketed in print media to prospective purchasers; and

WHEREAS, the efficacy of point-of-sale messaging on consumer behavior is well known and well documented. For example, several meta-analyses have found significant evidence that exposure to point-of-sale tobacco marketing leads to increased smoking behavior. Studies have also found a strong correlation between point-of-sale health warnings and consumer perception and behavior. For example, one study found that point-of-sale tobacco health warnings in retail establishments had a significant impact on consumer awareness of tobacco health risks and on consumer behavior—namely, thoughts of quitting smoking. Another study found that calorie labels on menus have a significant impact on ordering behavior, in particular for diners who are the least health conscious. A third study found that point of sale health warnings about sugar sweetened beverages significantly lowered consumption; and

WHEREAS, the City Council of the City of Lafayette desires to adopt this ordinance to require licensed firearm dealers to post warning signs at the point-of-sale informing individuals of the increased risks of suicide, death during domestic violence disputes, and the unintentional death of children, household members, or others presented by having access to a firearm in the home.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. That section 75-260, “Definitions,” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by the addition of the following definitions, to be inserted alphabetically:

Sec. 75-260. Definitions.

(a) As used in this article, the following shall mean as defined herein unless otherwise specifically provided:

(__) **Licensed firearms dealer** means any person who is a licensed importer, manufacturer, or dealer licensed pursuant to 18 U.S.C. 923, as amended, as a federally licensed firearms dealer and has obtained all necessary state and local licenses to sell firearms in the state.

(__) **Sale** means the actual approval of the delivery of a firearm in consideration of payment or promise of payment.

(__) **Site** means the facility or location where a sale or transfer of firearms is conducted.

(__) **Transfer** means the intended delivery of a firearm from a dealer to another person without consideration of payment or promise of payment including, but not limited to, gifts and loans. “Transfer” does not include the delivery of a firearm owned or leased by an entity licensed or qualified to do business in Colorado to, or return of such firearm by, any of that entity’s employees or agents for lawful purposes in the ordinary course of business.

Section 2. That the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by adding a section to be numbered 75-267, which section reads as follows:

**Sec. 75-267. Disclosure by firearms dealers.**

(a) At any site where firearm sales or transfers are conducted in the city, a licensed firearms dealer shall conspicuously display a sign containing the information set forth in subsection (b) in any area where the sales or transfers occur. Such signs shall be posted in a manner so that they can be easily viewed by persons to whom firearms are sold or transferred, and shall not be removed, obscured, or rendered illegible. If the site where the sales or transfers occur are the premises listed on the licensed firearms dealer’s federal license(s), an additional such sign shall be placed at or near the entrance.

(b) Each informational sign shall be at least eight and one-half inches high by eleven inches wide and feature black text against a white background and letters that are at least one-half inch high. The signs shall not contain other statements or markings other than the following text:

WARNING: The presence of a firearm in the home significantly increases the risk of suicide, unintentional deaths and injuries to children and family members, and death during domestic violence disputes. If you or a loved one is experiencing distress and/or depression, call 1-844-493-8255.
Posted pursuant to Section 75-267, L.C.O.

(c) The city shall make available a downloadable sign as described in subsection (b) in English and Spanish and make such sign available on the city’s website.

(d) The police department is authorized to enforce this chapter consistent with subsection (e) of this section.

(e) When violations of this section occur, a warning shall first be given to the licensed firearms dealer or other person in charge of the site. Any subsequent violation is subject to a fine of up to $500. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

Section 3. If any article, 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 passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 5. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 6. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 7. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section 8. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.
INTRODUCED AND PASSED ON FIRST READING THE 7TH DAY OF JUNE, 2022.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THE _______ DAY OF _____________________, 2022.

CITY OF LAFAYETTE, COLORADO

_____________________________________
Jaideep Mangat, Mayor

ATTEST:

__________________________________
Lynnette Beck, City Clerk

APPROVED AS TO FORM:

__________________________________
Mary Lynn Macsalka, City Attorney
CITY OF LAFAYETTE

ORDINANCE NO. 22, Series 2022
INTRODUCED BY: Councilor ____________

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING CHAPTER 75, ARTICLE IX, OF THE LAFAYETTE CODE OF ORDINANCES TO PROHIBIT THE OPEN CARRYING OF FIREARMS IN PUBLIC PLACES

WHEREAS, the City Council of the City of Lafayette finds the open carrying of firearms in public places is a dangerous activity that leads to confusion amongst the public and makes law enforcement’s job more difficult; and

WHEREAS, the open carrying of firearms has been used to usurp the role of law enforcement or participate in unsanctioned and illegal militias. Open carrying has also been used to intimidate and infringe on the First Amendment rights and political participation of others; and

WHEREAS, the open carrying of firearms has enabled gun rampages in Colorado and elsewhere. In Colorado Springs, a resident reported to police that a suspicious person was open carrying a rifle, but because state law does not prohibit open carry, police were unable to take action until the gun carrier shot and killed three people; and

WHEREAS, even when open-carry incidents do not end in shootouts as in Colorado Springs, the confusion they cause threatens public safety by diverting law enforcement resources and interfering with police responses to true emergencies; and

WHEREAS, a visible gun has been found to make people more aggressive; therefore, open carry makes it more likely that ordinary disagreements will turn into violent or lethal conflicts; and

WHEREAS, Colorado state law is currently silent regarding the open carrying of handguns and rifles and shotguns; and

WHEREAS, Colorado respects the ability of law-abiding citizens to carry firearms in public by allowing them to carry a concealed handgun in places where they are licensed and permitted to do so; and

WHEREAS, the City Council finds it necessary to prohibit the open carrying of firearms in order to protect the safety of Lafayette residents, conserve law enforcement resources and deter illegal violence, and ensure that people are able to vote and exercise First Amendment rights without fear of intimidation.
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. That the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by adding a section to be numbered 75-262.5, which section reads as follows:

Sec. 75-262.5. Open carrying of firearms in public places prohibited.

(a) No person shall openly carry a firearm on or about their person in a public place. As is used in this section, “public place” shall have the meaning in section 75-100 of the code.

(b) This subsection shall not apply to:

(1) Any federal, state, or local law enforcement officer when engaged in official duties.

(2) Any member of the United States Armed Forces or Colorado National Guard when engaged in official duties.

(3) A person carrying a firearm when engaged in target shooting or when engaged in lawful hunting activity.

(4) A person with or upon their own property, business, or dwelling place or on property owned or under their control at the time of the act of carrying, or on the property of another with permission to carry from the property owner.

(5) The carrying or possession of a firearm in a motor vehicle or other private means of conveyance.

(6) The carrying of an unloaded firearm in a locked or enclosed case that must be recognizable as a gun carrying case by a reasonable person. A plain-shaped case must be clearly marked to be deemed recognizable under this standard. A holster satisfies the requirement of a carrying case for a pistol.

(7) The carrying of a concealed handgun by a person with a valid permit to carry issued or recognized pursuant to Title 18, Article 12, Part 2 of the Colorado Revised Statutes, or the otherwise lawful use of a handgun by a person with a valid permit to carry.

(8) Private security guards.

(c) Any violation of the provisions of this section by a person who knew or reasonably should have known that their conduct was prohibited shall be punished by a fine of not more than $500 for a first offense. Any violation of the provisions of this section by a person who did not know or could not reasonably have known that their conduct was
prohibited shall be treated as a civil infraction and punished by a fine of not more than $250 for a first offense. For a second and subsequent offense, a person shall be punished by a fine or imprisonment or both in accordance with section 1-10(a)(2) of the code.

(d) Nothing herein shall be deemed to affect or impair in any way the authority of any private or public property owner to prohibit the carrying of firearms into or upon other public or private property.

Section 2. If any article, 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 passed 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. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 5. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 6. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section 7. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 7TH DAY OF JUNE, 2022.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE ________ DAY OF ________________, 2022.

CITY OF LAFAYETTE, COLORADO
Attachment D - Ordinance No. 22, Series 2022 Prohibiting Open Carry

Jaideep Mangat, Mayor

ATTEST:

Lynnette Beck, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney
CITY OF LAFAYETTE

ORDINANCE NO. 23, Series 2022
INTRODUCED BY: Councilor ____________

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING CHAPTER 75, ARTICLE IX, OF THE LAFAYETTE CODE OF ORDINANCES TO PROHIBIT THE CARRYING OF FIREARMS ON CITY PROPERTY

WHEREAS, the City of Lafayette respects the rights of law-abiding citizens to carry concealed handguns in public places where it is safe and lawful to do so; and

WHEREAS, the United States Supreme Court has recognized the validity of laws forbidding the carrying of firearms in “sensitive places” such as schools and government buildings;¹ and

WHEREAS, there are certain areas where firearms pose an acute risk to the health and well-being of children, office workers, and members of the public; and

WHEREAS, the presence of firearms at government buildings and offices, polling places, ballot counting facilities, and public demonstrations poses a serious threat to First Amendment rights, voting rights, and the functioning of our democracy; and

WHEREAS, people carrying handguns in public buildings and at crowded public events – including financial institutions, sporting venues, courthouses, hospitals and medical or mental health facilities, theaters, houses of worship, and similar locations – create unnecessary risks of intentional or accidental shootings, increase the risk of lethal disputes between members of the public, and increase the risk that a law-abiding citizen’s weapon will be stolen and used by someone else to harm or threaten employees or the public; and

WHEREAS, courthouses and hospitals in particular are the site of high-stakes, emotional events and may be frequented by people in crisis who do not have a choice other than to be there. Allowing the carry of concealed firearms in such locations increases the risk of intentional or reckless violence or violence fueled by mental health crises and raises the possibility that everyday disagreements will escalate into shootouts; and

WHEREAS, the presence of firearms in places frequented by children and families – including parks, playgrounds, community and recreation centers, and daycare centers – poses unreasonable risks to children, particularly of unintentional shootings and firearm misuse, as well as trauma that can result from mishandled firearms or gun violence; and

WHEREAS, firearms pose a substantial danger in the vicinity of intoxicated people at facilities that serve alcohol, as research demonstrates a strong link between alcohol use and

domestic violence, gun crimes, and self-inflicted firearm injuries; and

WHEREAS, the City Council of the City of Lafayette finds it necessary to prohibit the open or concealed carrying of firearms in certain designated sensitive areas and buildings and in areas under control of the City in order to protect the safety of its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. That the definition of “firearm” in section 75-260, “Definitions,” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended as follows:\(^2\)

Sec. 75-260. Definitions.

(a) As used in this article, the following shall mean as defined herein unless otherwise specifically provided:

(3) **Firearm** means any handgun, revolver, pistol, rifle, shotgun or other instrument or device capable or intended to be capable of discharging from which any shot, bullet, cartridge, or other missile, or other explosive charge can be discharged, including without limitation any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver; any firearm muffler or firearm silencer; or any “firearm component or accessory” as that term is defined in C.R.S. § 29-11.7-101.5.

Section 2. That the Code of Ordinances, City of Lafayette, Colorado, is hereby amended by adding a section to be numbered 75-263.5, which section reads as follows:

Sec. 75-263.5 Possession of firearms in buildings and areas under the control of the city prohibited.

(a) No person shall knowingly carry any firearm, whether in an open or concealed manner, in any of the following locations:

(1) Any building or real property owned or operated by the city, or by an entity created or controlled by the city.

(2) The portion of any building that is being used for governmental purposes by the city or by an entity created or controlled by the city.

(3) Any public parks, playgrounds, trails, open space, or recreation area.

\(^2\) Additions to the existing Code are indicated by underlining, and deletions are indicated by strikethrough.
(4) Any city owned, operated, or managed recreation center, community center, golf course, athletic field, camp ground, aquatic center, or recreation area.

(5) At any demonstration, as described in subsection (e), held on public property.

(6) Within 500 feet of any polling location within the city on the day of an election or any place within the city officially designated by the Boulder County Clerk and Recorder for the counting of ballots on any day when ballots are being counted or for conducting activities related to a federal, state, or municipal election.

(b) Notice of the prohibitions on the concealed and open carry of firearms shall be posted conspicuously at all public entrances to the locations identified in subsection (a) as required by C.R.S. § 29-11.7-104 and C.R.S. § 18-12-214(1)(c)(II).

(c) No person shall be determined to violate this section if signs are not posted as required by subsection (b).

(d) The provisions of this section do not apply to:

(1) Any federal, state, or local law enforcement officer when engaged in official duties.

(2) Any federal, state, or local law enforcement officer carrying a concealed firearm whether or not such officer is engaged in official duties.

(3) Any member of the United States Armed Forces or Colorado National Guard when engaged in official duties.

(4) Private security guards.

(5) The carrying or possession of a firearm in a motor vehicle or other private means of conveyance.

(6) A person within or upon their own property, business, or dwelling place or on property owned or under their control at the time of the act of carrying, or on the property of another with permission to carry from the property owner.

(e) As used in this section:

(1) “Demonstration” means demonstrating, picketing, speechmaking or marching, holding of vigils and all other like forms of conduct occurring in a public place which involve the communication or expression of views or grievances engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. Such term shall not include casual use of property by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.
(2) “Firearm” has the same meaning as set forth in section 75-260 of the code.

(f) Any person violating the provisions of this section shall be subject to immediate removal from the premises. Any person who refuses to leave the premises after receiving oral notice from the property owner or authorized representative shall be subject to punishment by a fine or imprisonment or both in accordance with section 1-10(a)(2) of the code.

(g) Any person violating the provisions of this section who knew or reasonably should have known that their conduct was prohibited, including because notice of the firearm prohibition was posted conspicuously as required by this section, shall be punished as follows:

(1) For a person who, at the time of the offense, held a valid permit to carry a concealed handgun or a temporary emergency permit issued pursuant to Title 18, Article 12, Part 2 of the Colorado Revised Statutes, such person shall be punished by a fine not to exceed $50 for a first offense, and for any second or subsequent offense, such person shall be punished by a fine not to exceed the maximum fine established by the state for municipal ordinance violations.

(2) For a person who, at the time of the offense, did not hold a valid permit to carry a concealed handgun or a temporary emergency permit issued pursuant to Title 18, Article 12, Part 2 of the Colorado Revised Statutes, such person shall be subject to punishment by a fine or imprisonment or both in accordance with section 1-10(a)(2) of the code.

Section 3. That section 75-263, “Unlawful carrying of a concealed weapon; unlawful possession of weapons,” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:3

Sec. 75-263. Unlawful carrying of a concealed weapon; unlawful possession of weapons.

(a) It shall be unlawful for any person to carry a concealed weapon or possess weapons. A person commits the crime of unlawfully carrying a concealed weapon or possessing a weapon, when a person knowingly:

(1) Carries a knife concealed on or about his or her person; or

(2) Carries a firearm concealed on or about his or her person; or

(3) Without legal authority, carries, brings, or has in such person's possession a firearm or any explosive, incendiary, or other dangerous device on the property of or within any building in which the chambers or offices of the city council are located, or in

3 Additions to the existing Code are indicated by underlining, and deletions are indicated by strikethrough.
which a city council hearing or meeting is being or is to be conducted, or in which the
official office of any member of city council, officer, or employee of the city is located.

(b) It shall not be an offense if the defendant was:

(1) A person in his or her own dwelling or place of business or on property
owned or under his or her control at the time of the act of carrying; or

(2) A person in a private automobile or other private means of conveyance who
carries a weapon for lawful protection of such person or another person or property while
traveling; or

(3) A person who, at the time of carrying a concealed weapon, held a valid permit to carry a concealed handgun; or a
temporary emergency permit issued pursuant to Title 18, Article 12, Part 2 of the Colorado
Revised Statutes, except that it shall be an offense under this section if the person
was carrying a concealed handgun in violation of the provisions of section 75-263.5 of the
code or in violation of the provisions of C.R.S. § 18-12-214.

Section 2. If any article, 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 passed 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. All other ordinances or portions thereof inconsistent or conflicting with this
ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Code of Ordinances, City
of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in
whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been
incurred under such provision. Each provision shall be treated and held as still remaining in force
for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for
enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any
judgment, decree or order which can or may be rendered, entered or made in such actions, suits,
proceedings or prosecutions.

Section 5. This ordinance is deemed necessary for the protection of the health, welfare
and safety of the community.

Section 6. Violations of this ordinance shall be punishable in accordance with Section
1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section 7. This ordinance shall become effective upon the latter of the 10th day
following enactment, or the day following final publication of the ordinance.
INTRODUCED AND PASSED ON FIRST READING THE 7TH DAY OF JUNE, 2022.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THE ________ DAY OF ______________________, 2022.

CITY OF LAFAYETTE, COLORADO

Jaideep Mangat, Mayor

ATTEST:

Lynnette Beck, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney
Firearm Regulations

Resolution No. 2022-33

Ordinance Nos. 20, 21, 22, and 23

June 7, 2022

Fritz Sprague, City Administrator
Other local jurisdictions

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Overview

- **Res. No. 2022-33** - Implores the Colorado legislature to enact statewide laws to address gun violence and prevention, and expresses City Council’s strong support for Colorado local governments enacting and enforcing local firearms regulations;

- **Ord. No. 20** - Prohibiting possession of unfinished frames and receivers and unserialized firearms (a/k/a “ghost guns”);

- **Ord. No. 21** - Requiring firearms dealers to post signage at points-of-sale warning of the risks of having a firearm in the home;

- **Ord. No. 22** - Prohibiting open carrying of firearms in public places throughout the City; and

- **Ord. No. 23** - Prohibiting the open or concealed carrying of firearms on City property.
Local Regulation of Firearms

Colorado General Assembly passed SB21-256 lifting state preemption of certain firearms regulations

SB21-256 allows local governments to regulate:

- the “sale, purchase, transfer, or possession of a firearm, ammunition, or firearm component or accessory”
  - unless such regulation is otherwise expressly prohibited by state law; and
  - as long as the local regulation is at least as restrictive as state law

- The carrying of handguns – open or concealed - in a public “building or specific area” within a local government’s jurisdiction (i.e., owned or under control of local government)
Resolution No. 2022-23

- Urges Colorado legislature to enact statewide regulations to prevent gun violence and impose effective regulations on the purchase, transfer, and possession of assault weapons, high-capacity magazines, and firearm components and accessories.

- Expresses strong support for other local governments enacting and enforcing local firearms regulations to address gun violence and prevention, following SB21-256.
RECOMMENDATION:

“I move to approve Resolution No. 2022-33 imploring the Colorado General Assembly to enact statewide laws to address gun violence and prevention, and expressing the City Council’s strong support for Colorado local governments enacting and enforcing local firearms regulations.”
Ord. No. 20 – Unserialized Firearms (a/k/a “ghost guns”)

What ordinance would do:

Makes it unlawful for any person to possess a firearm that has not been identified with a serial number by a federally licensed firearms dealer, manufacturer, or importer

Exceptions:

Licensed manufacturers, dealers, or importers
Law enforcement performing official duties,
Firearms made before Oct. 22, 1968 (when serial numbers required), unless remanufactured after that date
RECOMMENDATION:

“I move to approve on first reading Ordinance No. 20, Series 2022, amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to regulate the possession of unfinished frames and receivers and unserialized firearms.”
Ord. No. 21 – Firearms Dealer Signage

What ordinance would do:

Require firearms dealers to conspicuously display a sign on premises where the sales or transfers occur:

**WARNING:** The presence of a firearm in the home significantly increases the risk of suicide, unintentional deaths and injuries to children and family members, and death during domestic violence disputes. If you or a loved one is experiencing distress and/or depression, call 1-844-493-8255.
RECOMMENDATION:

“I move to approve on first reading Ordinance No. 21, Series 2022, amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to require all firearm dealers to post signs at all locations where firearm transfers take place.”
Ord. No. 22 - Prohibiting Open Carry in Public Places

What ordinance would do:

- Prohibits any person from knowingly openly carrying a firearm in a “public place”

- “Public place” defined in LCO § 75-100 as “a place to which the public or a substantial number of the public has access”

- Examples: grocery stores, retail stores, restaurants, parks, playgrounds, common areas of public and private buildings and facilities, and many more
Exceptions for:

- Law enforcement, Armed Forces or Colorado National Guard engaged in official duties
- A person in their own home or business or on their own property
- Legal target shooting or hunting activity
- Private motor vehicles
- Carrying of unloaded firearm in locked or enclosed firearm carrying case
- Concealed carry permit holders
- Private security guards
RECOMMENDATION:

“I move to approve on first reading Ordinance No. 22, Series 2022, amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to prohibit the open carrying of firearms in public places.”
Ord. No. 23 - Prohibiting Firearms On City Property

What ordinance would do:

- Makes it unlawful for any person to carry firearm—openly or concealed—in or on:
  - Any building or property owned or operated by the city, and any portion of a building being used for governmental purposes by the city
  - Any public parks, playgrounds, trails, open space, or recreation area
  - Any City recreation center, community center, golf course, athletic field, camp ground, aquatic center, or recreation area
  - At any “demonstration” held on public property
  - Within 500 feet of any polling place on election day, or any place within City designated by Boulder County Clerk for counting ballots or conducting activities related to a federal, state, or municipal election
Ord. No. 23 - Prohibiting Firearms On City Property (con’t)

Exceptions for:

- Law enforcement and members of Armed Forces or Colorado National Guard when engaged in official duties
- Law enforcement officers carrying concealed, on- or off-duty
- Private security guards
- Private motor vehicles
- A person in their own home or business or on their own property, or on another’s property with permission
RECOMMENDATION:

“I move to approve on first reading Ordinance No. 23, Series 2022, amending Chapter 75, Article IX, of the Lafayette Code of Ordinances to prohibit the carrying of firearms on city property.”
MEETING DATE: June 7, 2022
AGENDA TITLE: Resolution No. 2022-31/Revocable Right-of-Way License Agreement with Teocalli Cocina Tequileria, LLC d/b/a/ Teocalli Cocina for Use of Certain City-Owned Right-of-Way Adjacent to 103 N. Public Road
PREPARED BY: Fritz Sprague, City Administrator
Jeff Arthur, Public Works Director

Executive Summary
In 2020, Teocalli Cocina received authorization to temporarily occupy a portion of the public right-of-way adjacent to 103 N. Public Road for the purposes of providing outdoor food and liquor service under special provisions associated with the Covid-19 pandemic. Temporary liquor license provisions established during the pandemic expired on May 31, 2022. Resolution No. 2022-31 would provide a revocable license agreement for Teocalli to continue to occupy the public right-of-way and secure an associated liquor license renewal.

City Council Strategic Outcome (most applicable): Economic Prosperity

Background Information
Cities in Colorado commonly use revocable licenses, permits, or leases to authorize private use of public rights-of-way for amenities such as outdoor seating for restaurants. Teocalli previously received authorization from the City to occupy the public right-of-way, and from the State of Colorado to serve alcohol in the occupied area, under special provisions intended to help restaurants remain viable under pandemic-related restrictions. Teocalli desires to continue to occupy the adjacent right-of-way following expiration of the pandemic provisions.

The City does not currently have an established ordinance or process specific to outdoor seating in public rights-of-way. A revocable license agreement is proposed to define terms of use of the right-of-way and to support Teocalli in meeting associated liquor license requirements. City Council action is required to authorize a revocable license agreement.

Next Steps
If council authorizes the revocable license agreement, Teocalli will be permitted to continue to occupy a portion of the right-of-way adjacent to their business and may pursue an associated liquor license. If council declines to authorize the agreement, the City would...
provide notice requiring that encroachments be removed and the sidewalk area restored to its previous condition.

**Recommendation**
Staff recommends approval of this resolution.

**Proposed Motion Language**
Council motion to approve Resolution No. 2022-31 authorizing a revocable right-of-way license agreement with Teocalli Cocina Tequileria, LLC d/b/a/ Teocalli Cocina for use of certain city-owned right-of-way adjacent to 103 N. Public Road.

**Attachment(s)**
A: Resolution No. 2022-31
CITY OF LAFAYETTE
RESOLUTION NO. 2022-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, APPROVING AND RATIFYING A REVOCABLE RIGHT-OF-WAY LICENSE AGREEMENT WITH TEOCALLI COCINA TEQUILERIA, LLC D/B/A TEOCALLI COCINA FOR USE OF CERTAIN CITY-OWNED RIGHT-OF-WAY ADJACENT TO 103 N. PUBLIC ROAD

WHEREAS, North Public Road and the sidewalks adjacent thereto between Simpson Street and Geneseo Street (“City Property”) are City of Lafayette public right-of-way and part of the City’s municipal street system; and

WHEREAS, Teocalli Cocina Tequileria, LLC (“Teocalli Cocina”), owns and operates a restaurant known as Teocalli Cocina upon premises it leases located at 103 N. Public Road, Unit C, Lafayette, CO 80026 (“Leased Premises”); and

WHEREAS, Teocalli Cocina desires to operate an outdoor dining area upon a portion of the City Property, specifically, upon the sidewalk immediately adjacent to the Leased Premises, including the placement of furniture, temporary barriers, and certain equipment upon the sidewalk, and the service and consumption of food and beverages prepared by Teocalli Cocina; and

WHEREAS, in order to use a portion of the City sidewalk for such purposes, Teocalli Cocina is required to enter into a revocable license agreement with the City; and

WHEREAS, the City Administrator and Teocalli Cocina have negotiated and executed the attached Revocable Right-of-Way License Agreement, which sets out the terms and conditions under which Teocalli Cocina is permitted to use of a portion of the City’s public right-of-way; and

WHEREAS, the City Council desires to approve and ratify the Revocable Right-of-Way License Agreement with Teocalli Cocina, pursuant to the terms and conditions therein, and finding that it furthers the public health, safety, and welfare by providing a means to authorize the use of a portion of the City’s sidewalk for an outdoor dining area in Old Town, which supports local businesses in the Old Town area, while protecting and proscribing the use of the sidewalk right-of-way in a manner that minimizes disruption and adverse impacts to the safe and efficient movement of pedestrian traffic.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lafayette, Colorado, as follows:

1. The City Council hereby approves the Revocable Right-of-Way License Agreement with Teocalli Cocina Tequileria, LLC d/b/a Teocalli Cocina, dated May 10, 2022, in the same form as attached hereto. The City Council further ratifies and authorizes the prior execution thereof by the City Administrator.
2. In accordance with paragraph 2.1.2 of the attached Revocable Right-of-Way License Agreement, Teocalli Cocina Tequileria, LLC d/b/a Teocalli Cocina shall not be permitted to serve or allow the consumption of alcohol beverages within the licensed area unless and until (a) both the state and local licensing authorities have approved a temporary outside service area for the licensed area, and any annual renewal thereof, in accordance with Regulation 47-302.A.4. of the Colorado Liquor Rules (1 CCR 203-2); (b) Teocalli Cocina is in compliance with all applicable laws and regulations; (c) Teocalli Cocina is in compliance with the attached agreement and the license otherwise remains in effect; and (d) Teocalli Cocina has a valid alcohol beverage license in effect and not otherwise suspended or revoked.

RESOLVED AND PASSED THIS 7TH DAY OF JUNE 2022.

CITY OF LAFAYETTE, COLORADO

_____________________________
Jaideep Mangat, Mayor

ATTEST:

_____________________________
Lynnette Beck, City Clerk

APPROVED AS TO FORM:

_____________________________
Mary Lynn Macsalka, City Attorney
REVOCABLE RIGHT-OF-WAY LICENSE AGREEMENT
Teocalli Cocina Tequileria, LLC - 103 N. Public Road, Unit C

THIS REVOCABLE RIGHT-OF-WAY LICENSE AGREEMENT (the "Agreement") is made this 10th day of May, 2022, by and between the City of Lafayette, Colorado, a municipal corporation, whose mailing address for purposes of this Agreement is 1290 South Public Road, Lafayette, Colorado 80026 (the "City") and Teocalli Cocina Tequileria, LLC d/b/a Teocalli Cocina whose mailing address for purposes of this Agreement is 15958 Humboldt Peak Dr., Broomfield, CO 80023 ("Licensee"). The City and the Licensee are referred to each individually as "Party" and collectively as the "Parties."

A. North Public Road and the sidewalks adjacent thereto between Simpson Street and Genesee Street ("City Property") are City of Lafayette public right-of-way and part of the City’s municipal street system.

B. Licensee owns and operates a restaurant known as Teocalli Cocina upon premises it leases from RJ Capital Investments, LLC, which leased premises is located at 103 N. Public Road, Unit C, Lafayette, CO 80026 ("Leased Premises").

C. Licensee desires to operate an outdoor dining area upon a portion of the City Property, specifically, upon the sidewalk immediately adjacent to the Leased Premises, including the placement of furniture, temporary barriers, and certain equipment upon the City Property.

D. In order to use a portion of the City Property for such purposes, the Licensee is required to enter into this Agreement.

E. The City and Licensee wish to agree as to the nature, terms, and conditions under which the Licensee may operate an outdoor dining area upon the sidewalk within a portion of the City Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. GRANT OF LICENSE

1.1 Subject to the terms and conditions of this Agreement, the City grants to Licensee a non-exclusive, revocable license ("License") to use and occupy a portion of the City Property immediately adjacent to the Leased Premises as more fully described and depicted on the attached Exhibit A (the "License Area") for the purposes described in Section 2 of this Agreement.

1.2 It is the express intent of the Parties that the License granted herein does not create or convey an estate, interest, or claim in or to the License Area, and that the Licensee’s use of the License Area does not create a license coupled with any property interest in or claim to the License Area.
1.3 Licensee acknowledges that this Agreement is subject to formal approval of its terms and conditions by the City Council of the City of Lafayette on or before June 15, 2022. Notwithstanding Section 3 of this Agreement, in the event the City Council does not approve this Agreement, this Agreement shall automatically terminate on June 15, 2022, at 11:59 p.m. Mountain Time, provided, however, that Sections 3, 4, 5, 6, 7, 8, and 9 of this Agreement shall survive such termination.

SECTION 2. USE OF LICENSE AREA

2.1 The License Area may be used by the Licensee to locate, maintain, and operate an outdoor dining area, subject to the following conditions:

2.1.1 Licensee is authorized to place and maintain furniture, temporary barriers, and portable equipment directly related to operation of the outdoor dining area only in the areas marked as “Dining 1” and “Dining 2” on the attached Exhibit A.

2.1.2 Licensee may use the License Area for the service and consumption of food and beverages prepared by the Licensee for customers of Licensee to consume within the License Area. Licensee shall not be permitted to serve or allow the consumption of alcohol beverages within the License Area unless and until (a) both the state and local licensing authorities have approved a temporary outside service area and any annual renewal thereof in accordance with Regulation 47-302.A.4. of the Colorado Liquor Rules (1 CCR 203-2), (b) Licensee is otherwise in compliance with all applicable laws and regulations including, without limitation, the Colorado Liquor Code and Colorado Beer Code (articles 3 and 4 of Title 44, C.R.S., respectively), (c) Licensee is in compliance with this Agreement and this License remains in effect, and (d) Licensee’s alcohol beverage license is in effect and has not expired or been suspended or revoked.

2.1.3 Licensee and its employees may utilize the area marked “Walkway” on the attached Exhibit A solely to transport food and beverages to the “Dining 1” and “Dining 2” areas within the License Area.

2.1.4 Licensee shall not place or allow the placement of any furniture, barriers, equipment or any other object or obstruction within the area marked “Walkway” on the attached Exhibit A. Licensee shall not allow or permit Licensee’s employees, customers, contractors, agents, guests, or invitees to obstruct or loiter within the “Walkway,” which shall remain open and available to the public as a thoroughfare for pedestrian traffic. Licensee shall immediately remove any obstruction from the “Walkway” and to immediately instruct any individuals loitering in or obstructing the “Walkway” to leave or clear the “Walkway” area.

2.1.5 The City’s Director of Public Works or their designee has the authority to inspect the License Area at any time, with or without advance notice to Licensee, and to require Licensee to immediately remove from the License Area any furniture, barriers, equipment, or any other object or personal property the Director of Public Works or their designee determines, in their sole discretion, is interfering or may interfere with the
efficient or safe passage or movement of pedestrian traffic through the License Area or upon City Property.

2.2 Licensee shall not place, build, erect, store, park, or add any structures, facilities, improvements, vehicles, equipment, or materials, or other above-ground or below-ground items on, under, over, across, or within the License Area or City Property, even temporarily, except as expressly authorized under 2.1 of this Agreement.

2.3 Any changes, expansions, or alterations in any way to the License Area or to the use of the License Area shall require prior written approval by the City.

2.4 Licensee shall strictly comply with the following:

a. Licensee is solely responsible for ensuring and requiring its employees, customers, contractors, agents, guests, invitees, and any third parties using the License Area at the invitation or with the authorization of Licensee to comply with and abide by all terms of this Agreement. Licensee is solely responsible for informing its employees, contractors, and agents of the terms of this Agreement and for its employees’, contractors’, and agents’ compliance with this Agreement.

b. No utility connections shall be installed on the License Area without prior written approval of the City.

c. Licensee shall not place or permit any hazardous materials in or about the License Area.

d. Licensee shall at its sole expense promptly remove from the License Area and any adjacent areas all waste, trash, or other rubbish generated by its operation and use of the License Area.

2.5 Licensee acknowledges that its use and occupancy hereunder is of the License Area in its present, as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges the City shall have no obligation to repair, replace, or improve any portion of the License Area in order to make the License Area suitable for Licensee’s intended use.

SECTION 3. TERM AND TERMINATION

3.1 The initial term of the License shall commence on June 1, 2022 (the “Effective Date”), and expire on June 5, 2023, at 11:59 p.m. Mountain Time (the “Initial Term”), unless terminated earlier pursuant to this Section 3 or paragraph 1.3 of this Agreement.

3.2 The License will automatically renew for up to two (2) successive one-year terms (each a “Renewal Term”) upon expiration of the Initial Term, unless terminated as provided in this Section 3.
3.3. Either Party may terminate the License and this Agreement, with or without cause, by providing written notice to the other party at least 30 days before the expiration of the then-current term of the License, with such termination to be effective at the end of the then-current term.

3.4. The City may, upon 30 days written notice to Licensee, terminate the License (i) for violation by the Licensee of any of the terms and conditions set forth herein, including without limitation a determination by the City’s Director of Public Works or their designee, in their sole discretion, that the use restrictions in Section 2 or the maintenance requirements in Section 4 are being violated; (ii) upon a determination by the City’s Director of Public Works or their designee, in their sole discretion, that the Licensee’s continued use of the License Area is interfering or may interfere with the efficient or safe passage or movement of pedestrian traffic through the License Area or upon City Property, or (iii) upon a determination by the City’s Public Works Director or the City Administrator or their designee, in their sole discretion, that the termination of the License is necessary for the public health, safety, or welfare.

3.5. Notwithstanding any other provisions of this Agreement to the contrary, if the City’s Public Works Director or the City Administrator or either of their designees determines that Licensee’s continued use or occupation of the License Area presents an imminent and substantial threat or danger to the public health, safety, or welfare, the City may immediately terminate this License upon written notice to the Licensee.

3.6. Notwithstanding any other provisions of this Agreement to the contrary, Licensee acknowledges and agrees that the following shall result in automatic termination of the License:

3.6.1. Licensee’s alcohol beverage license expires or is revoked;

3.6.2. Licensee fails to timely apply for annual renewal of the temporary outside service area in accordance with Regulation 47-302.A.4. of the Colorado Liquor Rules (1 CCR 203-2); or

3.6.3. Licensee fails to receive approval of the temporary outside service area in accordance with Regulation 47-302.A.4. of the Colorado Liquor Rules (1 CCR 203-2) from both the state and local licensing authorities.

3.7. Licensee shall vacate the License Area, including all furniture, barriers, equipment, waste, trash, rubbish, and personal property of the Licensee, no later than 11:59 p.m. Mountain Time on the date of expiration or earlier termination of this Agreement.

3.8. In the event of termination of this License by either Party, Licensee shall not be entitled to, and waives any claim for, compensation from the City for any and all costs, expenses, damages, or loss, including business interruption and lost profits, incurred by Licensee as a result of such termination. Licensee shall bear all risk of loss due to termination or expiration of this License and Agreement.

3.9. Licensees’ obligations under Sections 4, 5, 6, 7, 8, and 9 shall survive the expiration or termination of this Agreement until the City excuses such obligations by written notice.
SECTION 4. MAINTENANCE

4.1. During the Initial Term and any Renewal Term hereof, Licensee agrees to take such actions, at its sole expense, as are necessary to maintain the License Area in a good, safe, working, clean, and hazard-free condition at all times, including disposal of all trash, rubbish, and waste withing and adjacent to the License Area, removal of snow and ice, and regular maintenance of all of Licensee’s furniture, barriers, and equipment within the License Area.

4.2. Licensee further agrees to comply at all times with the ordinances, resolutions, rules, and regulations of the City with respect to Licensee’s use and occupancy of the License Area.

4.3 Licensee further agrees to comply at all times with ordinances, resolutions, rules, and regulations of the City with respect to maintenance of the License Area, including, without limitation, regulations regarding water use restrictions (Lafayette Code of Ordinances Section 120-13) and snow and ice removal (Lafayette Code of Ordinances Section 70-18).

SECTION 5. RESERVATION OF RIGHTS

5.1. Notwithstanding any other provisions of this Agreement to the contrary, the City shall at all times have the right to enter the License Area and the City Property to inspect, improve, maintain, alter, or utilize the License Area or the City Property in any manner authorized to the City; provided, however, that the City shall provide at least 7 days advance written notice to Licensee of the City’s intent to undertake improvement, maintenance, alteration, or utilization (“Work”) of the License Area, except in the case of an emergency, in which case the City will provide Licensee with as much advance notice as practicable under the circumstances. Advance notice to Licensee of inspection of the License Area and City Property shall not be required. If such Work by the City requires disturbance of the License Area, the City shall not be required to repair or replace any such disturbance.

5.2. Licensee’s loss of use of the License Area, or any disturbance to the License Area arising out of or relating to the City’s use of the License Area shall not entitle Licensee to any compensation from the City for damages or loss, including business interruption and lost profits, in any manner or kind whatsoever.

SECTION 6. DAMAGE; REPAIR & RESTORATION

6.1. Licensee shall be responsible for all damage to the License Area and to any City facilities, installations, structures, utilities, improvements, landscaping, fencing, curbing, sidewalks, or other facilities in, on, under, or adjacent to the License Area, caused by Licensee’s or its employees, agents, contractors, guests, or invitees’ use of the License Area or arising out of the License granted herein; provided, however, that Licensee will not be responsible for any damage caused by the City.

6.2. Upon termination or expiration of this Agreement, Licensee, at its sole expense, shall (a) restore the License Area to substantially the same condition as existed immediately prior to commencement of any of Licensee’s activities permitted under this Agreement; and (b) repair any damage to the License Area or adjacent City Property for which Licensee is responsible under paragraph 6.1, unless any such restoration or repair is waived in writing by the City Administrator.
in his sole discretion. Such restoration and repair shall be completed within thirty (30) days of the
date of expiration or earlier termination of this Agreement.

SECTION 7. INDEMNIFICATION; RISK OF LOSS

7.1 Licensee agrees to indemnify, defend, and hold harmless the City, its officers,
employees, and insurers from and against all liability, claims, damages, losses, expenses, and
demands caused by an injury or death to any person or damage to property resulting from the
breach of any terms of this Agreement or from the negligent act or omission of Licensee, its
employees, agents, contractors, guests, or invitees, if the same shall in any way be connected with
or result from the use of the License Area or City Property, unless caused by the negligence or
willful misconduct of the City or its agents. Licensee agrees to investigate, handle, respond to, and
to provide defense for and defend against any such liability, claims, damages, losses, expenses, or
demands at its sole expense, or, at the option of the City, agrees to pay the City or reimburse the
City for the defense costs incurred by the City in connection with any such liability, claims,
damages, losses, expenses, and demands. Licensee also agrees to bear all other costs and expenses
related thereto, including court costs and reasonable attorney fees, whether or not any such
liability, claims, damages, losses, expenses, or demands alleged are groundless, false, or
fraudulent.

7.2 Licensee further assumes all risk of loss, including without limitation business
interruption and lost profits, and hereby waives all claims Licensee may have or assert against the
City arising out any damage or destruction of Licensee’s furniture, barriers, equipment, and other
personal property, or that of its employees, agents, contractors, guests, or invitees, as a result of its
use of the License Area, whether such loss, damage, or destruction may be caused by theft, weather
conditions, casualties, vandalism, fire, flooding, riots, wars, or otherwise. The City shall in no
event be answerable or accountable therefor, and the Licensee shall not be entitled to any
compensation or recovery from the City for any such loss, damage, or destruction unless caused
by the negligence or willful misconduct of the City.

SECTION 8. INSURANCE

8.1 Licensee agrees to procure an insurance policy which includes and covers the
License Area that is the subject of this Agreement, and to name the “City of Lafayette, Colorado,
and its officers, employees, and agents” as an additional insured thereon. Such insurance policy
shall at a minimum include liability and property damage insurance, with a combined single limit
for bodily injury and property damage of one million dollars ($1,000,000) per person and two
million dollars ($2,000,000) per occurrence. A Certificate of Insurance showing the City as an
additional insured thereon shall be provided to the City within three (3) days of execution of this
Agreement. The failure to timely provide the Certificate of Insurance shall be grounds for
immediate termination of this Agreement, notwithstanding any other provisions of this Agreement
to the contrary.
SECTION 9. GOVERNMENTAL IMMUNITY; WAIVER; POLICE POWER RESERVED

9.1. The City is relying on and does not waive or intend to waive by any provision of this Agreement the monetary limitations or any other rights, immunities, and protections provided under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., as from time to time amended, or otherwise available to the City and its officers and employees.

9.2. Licensee hereby waives any and all claims which Licensee may or might hereafter have or acquire against the City for loss or damage arising from the use by the City of the License Area or City Property for any purpose, except to the extent such claims are caused by the negligence of the City.

9.3. The rights granted herein shall not limit or otherwise restrict the right of the City to exercise its police power with respect to its control of the License Area or the City Property.

SECTION 10. NOTICES

10.1. Any notice given pursuant to this Agreement by either Party to the other shall be in writing and delivered by (1) hand delivery or (2) certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the City:  City of Lafayette - Director of Public Works
1290 South Public Road
Lafayette, CO 80026
Tel: 303-661-1277
Email: publicworks@lafayetteco.gov

With a copy to:  City of Lafayette - City Clerk
1290 South Public Road
Lafayette, CO 80026
Tel: 303-661-1222
Email: Lynnette.Beck@lafayetteco.gov

To Licensee:  Teocalli Cocina Tequileria, LLC
Attn: Grant Hopfenspirger
15958 Humboldt Peak Dr.
Broomfield, CO 80023
Tel: 303.284.6597 (b); 303.868.6647 (c)
Email: ghopfi@comcast.net

Email addresses and telephone numbers are provided solely for convenience of the Parties, and not for notice as provided herein.
SECTION 11. MISCELLANEOUS

11.1. Binding Effect/Non-Assignability. Licensee and the City each binds itself, its successors, and assigns to this Agreement with respect to all rights and obligations hereto. Neither Party shall assign or transfer its interest in, or obligations under this Agreement without the written consent of the other.

11.2. Colorado Law: Jurisdiction and Venue. This Agreement is to be governed by the laws of the State of Colorado. Jurisdiction and venue for any litigation shall be in Boulder County, Colorado.

11.3. Counterparts. This Agreement may be executed in two or more counterparts, using manual, facsimile, or electronic signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

11.4. Severability. If any term, covenant, or condition of this Agreement is deemed by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be binding upon the Parties.

11.5. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all other prior and contemporaneous agreements, representations, and understandings of the Parties regarding the subject matter of this Agreement.

11.6. Attorney's Fees. In any dispute arising from or relating to this Agreement, the prevailing Party shall be awarded its reasonable attorney fees, costs, and expenses, including any attorney fees, costs and expenses incurred in collecting upon any judgment, order, or award.

11.7. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement shall not constitute a waiver by either Party of any of the other terms or obligations of this Agreement.

11.8. No Third-Party Beneficiaries. This Agreement is not intended to and shall not confer rights on any person or entity not named as a Party to this Agreement.

[Signatures on following page.]
IN WITNESS WHEREOF, the Parties have duly executed this Agreement, effective the day and year first above written.

CITY OF LAFAYETTE, COLORADO,
a Municipal Corporation

By: __________________________
    Fritz Sprague, City Administrator

ATTEST:

Lyndelle Beck, CMC, City Clerk

APPROVED AS TO FORM:

[Signature]
    City Attorney

LICENSEE
Teocalli Cocina Tequileria, LLC
d/b/a Teocalli Cocina

By: __________________________
    [Signature]
Name: Grant Hopkins
Title: Owner

STATE OF COLORADO  )
COUNTY OF BOUNCER ) ss.

Acknowledged before me this 2nd day of June, 2022, by

[Signature]
    Grant Hopkins
(name) as Owner (title) of
Teocalli Cocina Tequileria, LLC.

Notary Public
My commission expires: 12/11/2023

MONIPHON XIONG
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 2019406159
MY COMMISSION EXPIRES DEC 11, 2023

9
Exhibit A
License Area

LEGEND:

License Area
Walkway
Leased Premises

Public Road
Revocable Right-of-Way License Agreement

Teocalli Cocina Tequileria

Resolution No. 2022-31

June 7, 2022

Jeff Arthur
Public Works Director
History

- Temporary Public Health Orders
- Right-of-Way Encroachments
- Temporary Land Use Approvals
- Liquor Licensing
- Expired May 31, 2022
Key License Terms

- Current configuration
  - Removal of bench – sidewalk clearance
- License agreement is separate from liquor license
- Does not include adjacent parking
- Insurance and indemnification of City
- Revocable by City
Revocation

One-year term: two automatic one-year renewals

Termination:

- 30 days advance notice if: (1) breach of agreement, or (2) use substantially interferes with safe and efficient use
- Immediately if imminent and substantial threat or danger to the public health, safety, or welfare
RECOMMENDATION:

“I move to approve Resolution No. 2022-31, Revocable Right-of-Way License Agreement with Teocalli Cocina Tequileria, LLC d/b/a Teocalli Cocina for use of certain City-owned right-of-way adjacent to 103 N. Public Road.”
Executive Summary
The City’s water supply for domestic use, outdoor irrigation, and fire protection relies on snow accumulating in the mountains during winter months and running off to fill reservoirs in the spring. The amount of water available for the City’s use varies from year to year. The Lafayette Municipal Code anticipates that there will be years where the City’s unconstrained water demand will exceed available supply and provides measures to encourage efficient water use and curtail demand when necessary.

Available water supply is currently projected to be insufficient to meet unconstrained demands due to below average snowpack, hot/dry weather, and loss of soil moisture due to persistent high winds. Water demand has also exceeded projections, with the peak summer irrigation season commencing approximately one month sooner than normal. Actions are required to curtail demands to ensure that sufficient water remains available to meet essential indoor uses such as drinking, cooking, bathing, and cleaning until such time as additional supply becomes available.

Staff is recommending adoption of Resolution No. 2022-32, limiting outdoor watering, as an initial measure to curtail demand. Staff is further recommending adoption on first reading of Ordinance No. 19, Series 2022, amending the municipal code to help ensure that water demand reduction strategies can be implemented effectively.

City Council Strategic Outcome (most applicable): Excellent City Services and Infrastructure
Background Information
Resolution No. 2022-32
Sec. 120-13(e) of the municipal code authorizes City Council to impose time restrictions on
the use of municipal water for irrigation purposes in addition to those otherwise prescribed
in Sec. 120-13. Resolution No. 2022-32 restricts outdoor irrigation to a maximum of three
days per week for each customer. The resolution preserves the ability of the customer to
select desired watering days. Limiting watering to a maximum of three days per week is
considered a best practice and is consistent with baseline regulations imposed by Denver
Water and other providers in the front range.

In the event the additional restriction does not sufficiently reduce demand, Council will be
asked to consider additional resolutions at a future meeting. Such resolutions could include
assigning specific watering days by address or region of the city and/or further reducing the
allowable number of watering days. If necessary, a resolution prohibiting all outdoor use
could be implemented to ensure adequate supply remains available for essential uses until
such time as supplies are replenished.

Ordinance No. 19, Series 2022
Currently, Sec. 120-13 of the municipal code outlines restrictions on water use, exemptions,
and the process for addressing violations. This section of the code has not been recently
updated and is drafted in a way that would make enforcement highly resource intensive and
potentially ineffective. Under the current code, a staff member would need to personally
observe and issue formal warnings for two separate violations as a prerequisite to issuing a
municipal court summons for a third observed violation. The City resources required to have
staff observe three separate violations (which could occur at any hour), testify in municipal
court, and prove a case beyond reasonable doubt to a judge with no authorized discretion
would be substantial.

Ordinance No. 19, Series 2022 would strengthen the enforcement mechanisms in Sec. 120-
13, and allow for issuance of administrative citations for violations of Sec. 120-13. Staff
would retain the discretion to issue warnings but would not be required to do so before
issuing a municipal court summons and complaint or administrative citation to prosecute a
violation.

An administrative citation is a civil process with a monetary penalty and has a lower
“preponderance of the evidence” burden of proof, rather than the “beyond a reasonable
doubt” standard of a criminal violation prosecuted in municipal court. Persons issued an
administrative citation for violations would retain the right to due process by protesting the
citation and requesting an administrative hearing. Such hearings could be scheduled
promptly with a designated hearing officer and grouped to minimize staff time required to
prepare and appear for hearings. Ordinance No. 2022-19 includes further amendments to
clarify processes and update fines to be consistent with other violations.

Finally, Ordinance No. 19, Series 2022 further amends Sec. 120-13 of the code to restrict
outdoor watering to not more than three days per week on a permanent basis. This
restriction will supersede Resolution No. 2022-18 upon the ordinance becoming effective.
Council would retain the authority to impose additional limitations on the timing of outdoor watering by resolution under Sec. 120-13(e) as needed.

**Next Steps**
If Resolution No. 2022-32 is adopted, staff will immediately initiate education and outreach related to the additional restrictions. Any violations identified prior to second reading of Ordinance No. 19, Series 2022 would be subject to the current prerequisite of two warnings before issuance of a municipal court summons. If Ordinance No. 19, Series 2022 is passed on first reading, a second reading will be scheduled for June 21.

**Recommendation**
Staff recommends approval of Resolution No. 2022-32 and Ordinance No. 19, Series 2022.

**Proposed Motion Language**
Council motion to approve Resolution No. 2022-32 imposing additional time restrictions on the use of municipal water for irrigation purposes.

AND

Council motion to approve on first reading Ordinance No. 19, Series 2022, amending Chapter 7, “Administrative Citations” and 120 “Water” of the Code of Ordinances pertaining to water restrictions and enforcement.

**Attachment(s)**
A: Resolution No. 2022-32
B: Ordinance No. 19, Series 2022
CITY OF LAFAYETTE
RESOLUTION NO. 2022-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, IMPOSING ADDITIONAL TIME RESTRICTIONS ON THE USE OF WATER FROM THE CITY’S MUNICIPAL WATER UTILITY SYSTEM TO IRRIGATE, SPRINKLE, OR OTHERWISE APPLY WATER TO ANY OUTDOOR VEGETATION, PURSUANT TO SECTION 120-13(e) OF THE CODE OF ORDINANCES

WHEREAS, the City Council for the City of Lafayette (“City Council”) desires to protect and preserve the health, safety, and welfare of its citizens in times of ongoing drought conditions by protecting and preserving, to the greatest extent possible, the water resources of the City of Lafayette; and

WHEREAS, the City Council finds that the Boulder Creek and Colorado River basins provide a portion of the City’s water; and

WHEREAS, based on information obtained from United States Department of Agriculture, Natural Resources Conservation Service, the City Council finds that the snow water equivalent in the Boulder Creek basin peaked at below average levels for the water year 2022; and

WHEREAS, the City Council finds that, below average snow pack and dry soil conditions have contributed to below average runoff in the Boulder Creek basin; and

WHEREAS, City Council finds that runoff to-date has been insufficient for the water rights required to fill City reservoirs to come into priority; and

WHEREAS, warm temperatures and high winds contributed to an increase in outdoor water use approximately one month earlier than normal, resulting in an abnormally high use of available water supply; and

WHEREAS, the City Council finds that moderate to severe drought conditions throughout the State of Colorado and across the Colorado River, South Platte River, and Boulder Creek basins are putting a great strain on water resources locally and regionally; and

WHEREAS, the City Council finds that projections of the City’s Public Works Department show that, assuming the continuation of drought conditions and without water conservation measures, the City of Lafayette may not have adequate supply to meet unconstrained outdoor demand while preserving sufficient water storage to meet essential indoor use needs; and

WHEREAS, Section 120-13(a) of the Lafayette Code of Ordinances makes it unlawful for any person to apply water from the City’s municipal water utility system to outdoor vegetation between 10:00 a.m. and 6:00 p.m., with certain limited exceptions; and

Attachment A - Resolution No. 2022-32 Water Time Restrictions
WHEREAS, Section 120-13(b) of the Lafayette Code of Ordinances makes it unlawful for any person to apply water from the municipal water utility system to any lawn, garden, or other area of land in a manner that allows water to be cast upon a paved area or onto any other area not covered by vegetation; and

WHEREAS, Section 120-13(c) of the Lafayette Code of Ordinances makes it unlawful for any person to wash any paved area with a hose using water from the municipal water utility system; and

WHEREAS, Section 120-13(e) provides that, in addition to the restrictions in Section 120-13(a), the City Council may, by resolution, impose further time restrictions on the use of municipal water for irrigation purposes; and

WHEREAS, because the ongoing moderate and severe drought conditions affecting Colorado are straining the City’s water resources, the City Council hereby determines it is necessary to establish additional measures to conserve water by implementing irrigation and watering restrictions on a temporary basis to achieve a reduction in outdoor water use and application of irrigation water; and

WHEREAS, the City Council further determines that such measures are necessary to protect and preserve the public health, safety, and welfare in the present drought, to facilitate the preservation and protection of the City’s water resources, and to minimize the impacts of ongoing drought conditions on the City’s water resources.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lafayette, Colorado, as follows:

1. That, pursuant to the authority in Section 120-13(e) of the Code of Ordinances of the City of Lafayette, Colorado (“Code”), and in addition to the restrictions imposed in Section 120-13 of the Code, it shall be unlawful for any consumer or other person, or for the owner of any property to cause, permit, suffer, or allow any person to irrigate, sprinkle, or otherwise apply water from the municipal water utility system to any outdoor vegetation, including, but not limited to, lawns and gardens, more than 3 days per week, subject, however, to the exceptions in subparagraphs (a)(1)a. - d. in Section 120-13 of the Code.

2. The restrictions imposed in section 1 of this resolution shall automatically expire on October 1, 2022, unless terminated or extended by resolution of the City Council.
RESOLVED AND PASSED THIS 7TH DAY OF JUNE, 2022.

CITY OF LAFAYETTE, COLORADO

_________________________________
Jaideep Mangat, Mayor

ATTEST:

_______________________
Lynnette Beck, City Clerk

APPROVED AS TO FORM:

_________________________________
Mary Lynn Macsalka, City Attorney
CITY OF LAFAYETTE

ORDINANCE NO. 19, Series 2022
INTRODUCED BY: Councilor ____________

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE,
COLORADO, AMENDING CHAPTERS 7, “ADMINISTRATIVE CITATIONS,”
AND 120, “WATER,” OF THE CODE OF ORDINANCES PERTAINING TO
WATERING RESTRICTIONS AND ENFORCEMENT

WHEREAS, Section 120-13, “Irrigation – Restricted,” of the Code of Ordinances of the City of Lafayette, Colorado (“Code”) imposes time, manner, and place restrictions and limitations on the use of water from the City of Lafayette’s municipal water utility system to irrigate, sprinkle, or otherwise apply water from the municipal water utility system to outdoor vegetation and paved areas, with certain limited exceptions; and

WHEREAS, Section 120-15, “Irrigation – Finding of noncompliance,” of the Code provides that a finding by a duly authorized representative of the City of improper irrigation as provided in section 120-13 shall constitute presumptive evidence of a violation of section 120-13 by the head of the household and any person occupying or owning the premises where such violation is found to occur; and

WHEREAS, Section 120-13(g) sets forth certain procedures and penalties for enforcement of the watering restrictions in section 120-13 of the Code; and

WHEREAS, the City Council for the City of Lafayette (“City Council”) desires to protect and preserve the health, safety, and welfare of its citizens in times of ongoing drought conditions by protecting and preserving, to the greatest extent possible, the water resources of the City of Lafayette; and

WHEREAS, the City Council finds that the Boulder Creek and Colorado River basins provide a portion of the City’s water; and

WHEREAS, since 2000, the Colorado River basin has been experiencing an historic, extended drought that has impacted regional water supplies, including in Colorado; and

WHEREAS, Colorado has been experiencing an extended moderate to severe drought, which has the potential to impact local water supplies and resources; and

WHEREAS, based on information obtained from United States Department of Agriculture, Natural Resources Conservation Service, the City Council finds that the snow water equivalent in the Boulder Creek basin peaked at below average levels for the water year 2022; and

WHEREAS, the City Council finds that, below average snow pack and dry soil conditions have contributed to below average runoff in the Boulder Creek basin; and
WHEREAS, City Council finds that runoff to-date has been insufficient for the water rights required to fill City reservoirs to come into priority; and

WHEREAS, warm temperatures and high winds contributed to an increase in outdoor water use approximately one month earlier than normal, resulting in an abnormally high use of available water supply; and

WHEREAS, the City Council finds that moderate to severe drought conditions throughout the State of Colorado and across the Colorado River, South Platte River, and Boulder Creek basins are putting a great strain on water resources locally and regionally; and

WHEREAS, the City Council finds that projections of the City’s Public Works Department show that, assuming the continuation of drought conditions and without water conservation measures, the City of Lafayette may not have adequate supply to meet unconstrained outdoor demand while preserving sufficient water storage to meet essential indoor use needs; and

WHEREAS, the City Council finds that, while the City of Lafayette has been diligent in pursuing and acquiring a diverse water supply portfolio, the ongoing extended drought in the region is likely to directly and adversely impact the water resources that supply the City’s municipal water utility system; and

WHEREAS, the City Council finds that the enforcement and penalties for violation of the City’s watering restrictions in section 120-13 must be strengthened and broadened to encourage compliance in order to conserve water and to preserve and protect the City’s water supplies in light of the ongoing drought conditions; and

WHEREAS, the City Council desires to amend section 120-13(g) of the Code to provide that a third or subsequent violation of the watering restrictions in section 120-13 of the Code should be subject to the maximum fine established by the state for municipal ordinance violations; and

WHEREAS, the City Council desires to amend Chapter 7 of the Code to provide for the enforcement of violations of section 120-13 by administrative citation, in addition to all other enforcement actions and remedies that are or may be available to the City for such violations; and

WHEREAS, the City Council determines that such measures are necessary to protect and preserve the public health, safety, and welfare in the present drought, to facilitate the preservation and protection of the City’s water resources, and to minimize the impacts of ongoing drought conditions on the City’s water resources.
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. That the definitions of “enforcement official” and “responsible party” in
section 7-1, “Definitions,” of the Code of Ordinances, City of Lafayette, Colorado, are hereby
amended to read as follows:¹

Enforcement official means any person authorized by the city administrator to enforce the
provisions of this chapter and to issue an administrative citation. Any officer, employee, or agent of
the city authorized to enforce ordinances of the city, including, but not limited to, community
service officers, code enforcement officers, police officers, the chief building official, building
inspector, and city personnel authorized by ordinance to enforce specific provisions of the Code.

Responsible party shall mean a person or entity who has or is alleged to have violated a
specific provision of the Code, ordinance, or any rule, order, or regulation as are adopted through
a rulemaking process as provided by ordinance. Responsible party includes the property owner,
occupant, or a person or an entity who, acting as an agent for or other legal capacity on behalf of
the property owner, has authority over property where a violation occurred that is subject to an
administrative citation under this chapter.

Section 2. That subsection (a) of section 7-2, “Authority,” of the Code of Ordinances,
City of Lafayette, Colorado, is hereby amended to read as follows:

(a) An enforcement official may issue an administrative citation to any responsible party for
violating the following ordinances, rules, orders, or regulations of the city:

(1) Violation of an order, rule, regulation, or directive issued pursuant to section 1-11
of the Code, or willfully obstructing, hindering, or delaying any duly authorized city officer
or employee in the enforcement of such orders, rules, regulations, or directives issued
pursuant to section 1-11 of the Code.

(2) Violation of any provision in chapter 120 (Water) of the Code.

Section 3. That section 7-3, “Procedures,” of the Code of Ordinances, City of
Lafayette, Colorado, is hereby repealed and reenacted to read as follows:

Sec. 7-3. Procedures.
(a) The enforcement official shall attempt to issue personally serve the administrative citation
to upon the responsible party at the site of any violation or at the responsible party's business or
personal address. In lieu of personal service, service may be made by leaving a copy of the
administrative citation with a person over the age of eighteen years residing or working at the site
or at the responsible party’s business or personal address, or by mailing a copy to the responsible
party’s last known address by certified mail, return receipt requested.

¹ Additions to the Code are indicated by underlining, and deletions are indicated by
strikethrough.
(b) For purposes of this section, “last known address” shall mean the most recent mailing address of the responsible party contained in the records of any municipal, state, or federal agency, including but not limited to the Boulder County Assessor’s Office and the Colorado Secretary of State’s Office. The enforcement official shall attempt to obtain the signature of the person receiving the administrative citation on the citation. If that person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the administrative citation and subsequent proceedings.

(e) If the enforcement official is unable to issue the administrative citation to the responsible party, the administrative citation shall be sent via first-class mail to the responsible party at the last known address.

(d) Notice shall be deemed served on the date of receipt by the responsible party, if personally served, or upon the fifth day after mailing of the administrative citation.

Section 4. That section 120-13, “Irrigation—Restricted,” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

Sec. 120-13. Irrigation—Restricted.

(a) It shall be unlawful for any consumer or other person, or for the owner or occupant of any property to cause, permit, suffer, or allow any person to irrigate, sprinkle, or otherwise apply water from the municipal water utility system to any outdoor vegetation, including, but not limited to, lawns and gardens, between the hours of 10:00 a.m., and 6:00 p.m., or such other times established by resolution of the city council in accordance with subsection (f) of this section.

(1) The foregoing restrictions shall not apply to:

a.—(1) Irrigation of land used for commercial agriculture; or

b.—(2) Watering by hand of any outdoor vegetation using a manually operated hose equipped with an automatic shut-off valve; or

e.—(3) Watering by hand of any community gardens using a manually operated hose equipped with an automatic shut-off valve; or

d.—(4) Irrigation of, short grass on city-owned or operated golf courses and city-owned athletic fields.

(b) It shall be unlawful for any consumer or other person, or for the owner or occupant of any property to cause, permit, suffer, or allow any person to irrigate, sprinkle, or otherwise apply water from the municipal water utility system to any outdoor vegetation, including, but not limited to, lawns and gardens, more than 3 days per week.

(b)(c) It shall be unlawful for any consumer or other person, or for the owner or occupant of any property to cause, permit, suffer, or allow any person to irrigate, sprinkle, or otherwise apply
water from the municipal water utility system to any lawn, garden, or other area of land in a manner
that allows water to be cast upon a paved area or onto any other area not covered by vegetation.

(e)(d) It shall be unlawful for any consumer or other person, or for the owner or occupant
of any property to cause, permit, suffer, or allow any person to wash any paved area with a hose
using water from the municipal water utility system.

(d)(e) The provisions of this section shall apply to all real property within the city, whether
publicly or privately owned, and all land outside of the city that is served by the municipal water
utility system. The In addition to other actions and remedies available to the city for the
enforcement of this section, the provisions of this section may be enforced with respect to land
located outside of the city by a suit for injunctive relief in a court of competent jurisdiction.
Notwithstanding the foregoing, the testing of fire hydrants or fire sprinkler systems shall be exempt
from the provisions of this section.

(e)(f) In addition to the restrictions set forth herein in this section, city council may by
resolution impose additional time restrictions on the use of water from the municipal water utility
system for irrigation purposes to irrigate, sprinkle, or otherwise apply water to any outdoor
vegetation.

(f)(g) In addition to any other officers, employees, or agents of the city authorized to
enforce the ordinances of the city, water conservation enforcement personnel, as designated by
the city’s public works director, shall be authorized to enforce the provisions of this section,
including the issuance of warnings, municipal court summons and complaints, and administrative
citations.

(g)(h) A consumer or other person alleged to have violated any provision of this section
may be issued a warning before issuance of a summons and complaint, administrative citation, or
commencement of any other enforcement action by the city; provided, however, that issuance of
a warning shall not be considered a prerequisite to, or affect the validity of, any summons and
complaint, administrative citation, or other enforcement action by the City, or any subsequent
proceedings thereof. Prior to the issuance of a summons and complaint any consumer or person
alleged to have violated any provision of this section shall first have received two (2) written
warnings from water conservation, code or law enforcement personnel. Thereafter a

(i) Any consumer or other person issued a municipal court summons and complaint
and convicted of violating any of the provisions of this section, shall upon first conviction be
punished by a fine of not less than one hundred dollars ($100.00), which fine shall not be
suspended by the court; upon a second conviction of such consumer or other person, there shall be
imposed a fine of not less than two hundred fifty dollars ($250.00), which fine shall not be
suspended by the court; and upon a third and each subsequent conviction of such consumer or
other person, there shall be imposed a fine of not less than five hundred dollars ($500.00), which
fine shall not be suspended by the court.

(i) Any consumer or other person issued an administrative citation for violating any of
the provisions of this section shall be subject to the procedures and penalties in chapter 7
(Administrative Citations) of the Code for such citation.
(k) Actions to enforce the provisions of this section are intended to be cumulative and the city may pursue any and all available actions, penalties, judgments, and remedies simultaneously or in succession.

Section 5. That section 120-15, “Irrigation—Finding of noncompliance,” of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

Sec. 120-15. Irrigation—Finding of noncompliance.

A finding by any water conservation enforcement personnel or any other officer, employee, or agent of the city authorized to enforce the ordinances, a duly authorized representative of the city of improper irrigation, sprinkling, or other application of water from the municipal water utility system as provided in section 120-13 shall constitute presumptive evidence of a violation of section 120-13 sections 120-13—120-16 by the head of the household and/or any the consumer and any other person occupying, owning, managing, or who, acting as an agent for or other legal capacity on behalf of the property owner, has authority over, the premises where such violation is found to occur.

Section 6. If any article, 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 passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 7. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 8. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 9. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 10. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section 11. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 7TH DAY OF JUNE, 2022.

City of Lafayette
Ordinance No. 19, Series 2022
Page 6
PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THE _______ DAY OF _____________, 2022.

CITY OF LAFAYETTE, COLORADO

Jaideep Mangat, Mayor

ATTEST:

Lynnette Beck, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney
Items Pertaining to Water Use

Resolution No. 2022-32

Ordinance No. 19, Series 2022

June 7, 2022

Jeff Arthur
Public Works Director
Resolution No. 2022-32 – Imposing Additional Time Restrictions on the Use of Water from the City’s Municipal Water System to Irrigate, Sprinkle or Otherwise Apply Water to Any Outdoor Vegetation, Pursuant to Section 120-13(e), Code of Ordinances

First Reading/Ordinance No. 19, Series 2022 – Amending Chapter 7, “Administrative Citations,” and 120, “Water” of the Code of Ordinances Pertaining to Watering Restrictions and Enforcement
Water Supply Conditions

- Early start to outdoor irrigation
- Below average snowpack
- Peak runoff has passed
- City reservoirs did not fill
Reservoir Storage Volume

Volume (AF)

- 2018
- 2019
- 2020
- 2021
- 2022

Volume June 1st  Volume November 1st
Restrictions

- Section 120-13 (a), (b), (c), (e)
  - No watering 10 am – 6 pm
  - No overspray onto hard surfaces
  - No washing of hard surfaces
  - Provision to reduce watering hours by resolution
- Resolution No. 2022-32
  - Maximum 3 days per week
Ordinance No. 19, Series 2022 - Time Restrictions

- Makes Resolution No. 2022-32 ongoing baseline requirement
- Would not go into effect until 10 days after 2nd reading
  - Second reading tentatively scheduled for June 21
- Additional time restrictions still allowed by resolution
Current Enforcement Process

- Three violations prior to summons
- Formal documentation of warnings
- Municipal Court
  - Criminal violation – beyond reasonable doubt
  - Judge required to impose max fine for convictions
Current Enforcement Process

- Resource intensive
- Not timely – goal is to reduce water waste ASAP
- Formal warning requirement discourages other compliance approaches – education and outreach
Ordinance No. 19, Series 2022

- Adds enforcement by Administrative citation
- Issuance of a fine (1\textsuperscript{st}: $50; 2\textsuperscript{nd}: $200; 3\textsuperscript{rd}+: $500)
- No court appearance required
- Right to administrative hearing – person cited can either pay fine or request a hearing to contest violation
- Civil – preponderance of evidence
- Hearing Officer reviews evidence and issues a finding
- Municipal Court summons still available as an option
RECOMMENDATION:

“I move to approve Resolution No. 2022-32 imposing additional time restrictions on the use of municipal water for irrigation purposes.”
RECOMMENDATION:

“I move to approve on first reading Ordinance No. 19, Series 2022, amending Chapter 7, ‘Administrative Citation’ and 120 ‘Water’ of the Code of Ordinances pertaining to water restrictions and enforcement.”
Meeting Date: June 7, 2022
Agenda Title: Appointment / Lafayette Open Space Advisory Committee
Prepared By: Fritz Sprague, City Administrator
Monte Stevenson, Director of Parks, Recreation & Open Space
Rob Burdine, Open Space Superintendent & Staff Liaison to LOSAC

Executive Summary
On May 5, 2022, the Lafayette Open Space Advisory Committee (LOSAC) made a motion to recommend to City Council the appointment of new committee member, Grant Swift. The motion was seconded and passed unanimously. Grant will serve on the committee as an Alternate Member. Grant fills a vacancy whose term would have ended in June of 2024.

City Council Strategic Outcome (most applicable): Bold, Authentic Leadership

Background Information
The Lafayette Open Space Advisory Committee was established to serve in an advisory capacity and to make recommendations to City Council on the following matters:

(A) To examine the needs of the city for additional open space and trails which have not already been identified in the City’s Comprehensive Plan, and to make recommendations to the Planning Commission and City Council with respect to the location and identification of such additional open space and trails for inclusion in the City’s Comprehensive Plan;

(B) To assist City Council in establishing priorities for the acquisition of park and open space properties and trails, funds permitting.

(C) To examine and make recommendations to City Council with respect to possible sources of funding for the purchase of land by the City of Lafayette for use as developed parks, preservation of open space, establishment of trails, and other similar purposes.

(D) To make recommendations to City Council regarding management policies for open space and trails and the process by which these policies are assigned to City-owned land.

(E) The term of office for each voting member on the Board is four years; there shall be no term limits.
Next Steps
With an approved appointment from City Council, Grant Swift will attend scheduled meetings and continue to serve on the committee.

Recommendation
Staff recommends the appointment of Grant Swift to LOSAC.

Proposed Motion Language
Council motion to appoint Grant Swift as an Alternate Member, with a term ending in June of 2024.

Attachment(s)
A: Grant Swift Application
**Applicant Questionnaire**

*This section of the application will be posted online after the deadline has passed.*

<table>
<thead>
<tr>
<th>Name</th>
<th>Swift, Grant</th>
</tr>
</thead>
<tbody>
<tr>
<td>How long have you lived in Lafayette?</td>
<td>Thirty one years</td>
</tr>
<tr>
<td>1. Why would you like to serve on the Open Space Advisory Committee?</td>
<td>I have served on LOSAC before. Since stepping down in 2011, I have continued to be interested in open space in Lafayette.</td>
</tr>
<tr>
<td>2. Describe your history associated with community volunteerism any current volunteer work.</td>
<td>I began volunteering for the city in 1992, serving on the Outdoor Classroom Task Force. I served as Chair of LOSAC for over ten years. I've also volunteered on numerous boards within the city, and at the recreation center as a coach.</td>
</tr>
<tr>
<td>3. What do you believe to be the 2-3 most pressing issues facing Lafayette Open Space, and how do you feel the Lafayette Open Space Advisory Committee should address each issue?</td>
<td>Acquisition of open space is always crucial. I also believe strengthening open space presence within the Municipal Code to provide Planning with a wider variety of tools and considerations to use is important. Working with neighboring communities to enhance our buffers, creating larger open areas for our urban wildlife is also key. Trail alignment to minimize human impact to open space parcels and it's natural residents is very valuable. I can also add a lot of historical knowledge to the group's discussions.</td>
</tr>
<tr>
<td>4. Have you had any personal experience in dealing with issues related to open space? If so, what skills, ability, or experience would you bring to the committee?</td>
<td>I am a retired teacher, and a former outdoor educator. I have used those skills to have students conduct wetland surveys and ant population studies at the Outdoor Classroom, and grasshopper population studies at Waneka Lake. I also served on LOSAC from 1994 to 2011, dealing with a wide variety of issues (encroachments, public outreach, prairie dogs, open space use, adding information to the Code...) in a wide variety of formats (monthly meetings, Arbor Days, Open Space Days, Council workshops and presentations, joint meetings with neighboring communities, focused public workshops).</td>
</tr>
<tr>
<td>5. Are you willing to commit to a four year term, or to fulfilling the remainder of an expired term?</td>
<td>Either is fine, though I prefer a 4 year term.</td>
</tr>
<tr>
<td>6. Are you willing to attend monthly meetings (6 pm, first Thursday of each month)?</td>
<td>Yes.</td>
</tr>
<tr>
<td>Question</td>
<td>Answer</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>7. Are there particular programs, services or resources you think are</td>
<td>I'm unfamiliar with where we are with the Wildlife Plan. I'd like to see that finished, if it's not there yet, and then have some of its elements brought into the Code.</td>
</tr>
<tr>
<td>important for LOSAC to focus on?</td>
<td></td>
</tr>
</tbody>
</table>
Executive Summary
Human Rights Commission (HRC) member Chelsea Jackson resigned on April 4, 2022. At the April HRC meeting the Commission voted to recommend promotion of Vijay Arora from an alternate to a regular voting member. Arora’s promotion will leave two alternate seats open on the committee. Recruitment will continue for the alternate seats.

City Council Strategic Outcome (most applicable): Bold, Authentic Leadership

Background Information
Lafayette City Council created the Human Rights Commission (HRC) in 2016. The HRC is committed to evaluating City of Lafayette government, programs, and processes with an inclusive lens, with a goal of fostering equity, social justice, and freedom from fear of persecution based on race, religious belief, country of origin, sexual or gender identity, physical ability, or age. The group meets monthly, and in alignment with City Code:

- Makes recommendations to City Council on ways to improve inclusivity and diversity in the City of Lafayette.
- Facilitates community conversations on issues and/or occurrences of division and conflict in the City of Lafayette, and to make recommendations for ways to resolve and eliminate these.
- Researches, studies, and makes recommendations to City Council and staff regarding federal, state, or local

Next Steps
Recruitment of the alternate position vacated by Arora, should the HRC recommendation be approved, will continue.

Recommendation
Council reappointment of Vijay Arora as a regular member of the HRC.
**Proposed Motion Language**
Council motion to appoint Vijay Arora as a regular member on the Human Rights Commission.

**Attachment(s)**
A: Vijay Arora Application Materials
Dear Melissa,

As per the decision of Human Rights Commission (HRC) taken in its April 26 meeting, I request the Lafayette City Council to affirm my elevation to fully functioning member of the HRC.

Thank you with my Attitude of Gratitude 🙏.

Vijay

--

Vijay K. Arora

Professor of Electrical Engineering

IEEE-EDS Distinguished Lecturer

Leading Educator of the World 2005
VIJAY K. ARORA
Lafayette, CO 80026, USA
Phone: +
E-mail:

PROFESSIONAL VISION
To utilize my multi-disciplinary and multi-cultural aptitude in promulgation of integrated science and engineering wisdom with management of technical personnel/resources in the global milieu.

ATTRIBUTE HIGHLIGHTS
- Self-motivated, empathetic, and future-oriented global leader for committees, groups and organizations
- Research supervisor on drift-diffusion of quantum physics to nanoengineering
- Organizer of conferences, events, and paper contests for professional organizations
- Curriculum designer with integrative spirit of technology, liberal arts, and business aspects, consistent with the Outcome-Based Assessment Criteria, as espoused in the Washington Accord.
- Laboratory director and developer for microfabrication, data acquisition, and industrial programs
- Mediator for conflict resolution as member of faculty and student teams
- Consultant to deans, department heads, and industry in developing strategic plans at the international organizations
- Invited foreign expert at various international professional conferences, specialized short courses, and research projects
- Fully functioning global person with profound knowledge of the self, the profession, the organization and management infrastructure, the environment and the world

WORK EXPERIENCE
8/85–8/2020 Wilkes University
Professor of Electrical Engineering, Physics, and Engineering Management with long-term distinguished visiting appointments during the tenure

Other Experience at Varied Times:
Distinguished extended visiting appointments each lasting more than a year in Japan, Singapore, Australia, and Malaysia (listed below) on sabbatical or without pay, in addition to several short term visiting appointments during summer months.
Director—Science and Engineering Graduate Programs
Director—Microfabrication and Electronics Laboratory
Assistant Dean for Research and Scholarly Activities
Chair—Faculty Development Committee
Chair—Tenure and Promotion Committee
Chair—International Division, American Society for Engineering Education
Chair—1996 ASEE Mid-Atlantic Conference
Chair—IEEE Student Activities, Lehigh Valley Section
Member—Academic Planning Committee
Member—Faculty Affairs Council
Member—IEEE EDS Publication Committee
EDS Representative—IEEE-USA Technology Policy Council
IEEE Distinguished Lecturer worldwide
Leading Educator of the World 2005 (IBS Cambridge)

9/76–7/85 King Saud University, Riyadh
Professor/Associate Professor/Assistant Professor
Coordinator—Pre-Engineering Program
Expatriate Advisor—Deans of Medicine, Dentistry, Engineering, Sciences, and Graduate Studies

8/74–8/76 Western Michigan University, Kalamazoo
Assistant Professor

9/73–8/74 University of Colorado—Denver
Lecturer

10/72–5/73 Colorado School of Mines, Golden
Instructor

7/73–12/73 National Bureau of Standards (now NIST), Boulder
Visiting Scientist, Quantum Electronics Division

9/68–9/73 University of Colorado, Boulder
Research Associate/Research Assistant/Teaching Assistant

OTHER NOTEWORTHY/DISTINGUISHED APPOINTMENTS
05/07-08/15 Universiti Teknologi Malaysia
Distinguished Visiting Professor
Nanoelectronics and Consultant for Accreditation

05/00-12/00 University of Western Australia, Perth
Sir Gledden Visiting Professor and Consultant

6/99-05/00 Nanyang Technological University
Visiting Professor and Consultant

7/91–7/93 National University of Singapore
Visiting Professor and Consultant

12/89–1/91 University of Tokyo
Visiting Research Professor—RCAST
Consultant—Quantum Wave Project, ERATO Program

7/81–8/82 University of Illinois, Urbana
Visiting Associate Professor (Research)—Coordinated Science Laboratory

EDUCATION
1968-1973 University of Colorado—Boulder
Degrees: M.S., Ph.D. (Engineering Physics)

1975-1976 Western Michigan University, Kalamazoo, Michigan.
Degree: M. S. with Honors (Operations Research/Industrial Management).

HONORS AND AWARDS
• Brain Gain Fellow, Academy of Sciences Malaysia 2010
• Universiti Teknologi Malaysia 2007 Best International Journal Paper Award
• IEEE-EDS Award for Valued Service and Contributions to Communication and Information Policy of the U. S. Government
• IEEE Award for Notable Service and Contributions towards Advancement of the IEEE and the Engineering Profession
• Who’s Who in American Education 2007-2008
• The World Medal of Freedom
• Wilkes University Final Word 2006 Award
• 500 Greatest Geniuses of the 21st Century
• Leading Educators of the World 2005
• Leading Scientists of the World 2005
• Man of Achievement 2005
• Who’s Who in Finance and Business
• International Educator of the Year 2004
• 2000 Outstanding Scientists of the 21st Century
• Who’s Who in American Education
• IAANEPA Distinguished Service Award given by Indo-American Association of NorthEastern Pennsylvania (IAANEPA), November 2002.
• Great Minds of the 21st Century
• Leading Intellectuals of the World
• International Man of the Year 1998/99
• Outstanding People of the 20th Century
• Millennium Hall of Fame
• Five Thousand Personalities of the World
International Who’s Who of 20th Century Achievement
IEEE EDS Distinguished Lecturer
APS Forum on Industrial and Applied Physics Distinguished Lecturer
Chair, 1996 ASEE Mid-Atlantic Conference, Wilkes University
ASEE International Division Distinguished Service Award—1996
Kurukshetra University Distinguished Alumni Award—1996
Man of the Year—1996
Most Admired Men and Women of the Year (1994-95)
The International Directory of Distinguished Leadership
Who’s Who in the World
Who’s Who in America
Who’s Who in Science and Engineering
Who’s Who in the East
American Men and Women of Science
Dictionary of International Biography
IEEE (Singapore) Appreciation Award
Wilkes Outstanding Faculty for 1988 and 1990
Chairperson, International Division, American Association for Engineering Education
Wilkes Sigma-Xi Club - President (1989-1991)
Citation for Contributing to International Cooperation in Science and Technology, NBS (NIST)

RESEARCH AREAS
- Constraints Management and Entrepreneurship
- Nanoelectronics
- Semiconductor process modeling and fabrication
- VLSI and VHSIC design

PUBLICATIONS AND PRESENTATIONS
- 200+ papers in reputed journals and conference proceedings on educational, managerial, scientific, and engineering problems.
- 500+ invited professional lectures at national and international gatherings around the world.

GRANTS AND CONTRACTS
Received research grants and contracts from NSF, AFOSR, ONR, NBS, DOE, Japan Research and Development Corporation (JRDC), King Saud University Research Center, University of Antwerp, International Center for Theoretical Physics, Western Michigan University, Wilkes
Faculty Development Committee, National University of Singapore, and Australian National University. Managed faculty development funds.

CONSULTING
Japan Research and Development Corporation, GTE, NBS, SERI, GE/RCA, Harris, Vision Technology, Productivity Systems Design, SmithKline Beecham (Singapore), Phillips Petroleum (Singapore), Polycore (Singapore), and King Saud University Research Center.

THESIS SUPERVISION
200+ graduate theses and undergraduate projects.

TEACHING EXPERIENCE


PROFESSIONAL AFFILIATIONS
Institute of Electrical and Electronics Engineers (IEEE)–Senior Life Member
IEEE Electron Devices Society
IEEE Professional Communication Society
IEEE Education Society
IEEE Circuits and Systems Society
Eta Kappa Nu
American Association of University Professors (AAUP)
American Society for Engineering Education (ASEE)
American Physical Society - Life Member (APS)
American Geographical Society (AGS)
American Association for the Advancement of Science (AAAS)
Sigma-Xi - The Scientific Research Society of North America

WORKSHOPS OFFERED
Research Workshop on Nanoelectronics, January 2-13, 2017, Amity University, NOIDA, India
Research Workshop on Nanoelectronics and keynote lectures, International Conference on Recent Innovations in Engineering and Technology 21-23 December 2016, Aurora Scientific Academy, Katriya Hotel and Towers, Hyderabad, India

Carbon: The Soul of Future Nanoelectronics, December 20, 2015, IEEE-EDS Hyderabad Chapter, Hotel Kamat Lingapur


Entrepreneurship and Leadership: An Integrative Process, January 3-5, 2005, Amity Business School, NOIDA, India.

The Role of Physical and Behavioral Sciences in Developing Strategic Technologies in Micro/Nano-Systems, March 11, 2004, one-day short course, State University of Campinas, Brazil.

Quantum Nanoengineering, March 12, 2004, one-day short course, State University of Campinas, Brazil.

Quantum Nanoengineering, December 16 and 23, 2004, short course, Universiti Teknologi Malaysia, Skudai.


Quantum Engineering of Nanoelectronics Devices, India/Singapore/Malaysia/USA at varied times and at several institutions.


Education, Training, and Leadership for Competitive Excellence, India/Singapore/Malaysia/USA at varied times and at several institutions.

COMMUNITY SERVICE
President—Indo-American Association of Northeastern Pennsylvania
Community Worker—Arsh Vidya Gurukulam, dedicated to the study of Vedanta and Sanskrit
Organizer—Community events and functions
Advisor—Indian Cultural Association, Wilkes University
PROFESSIONAL ENHANCEMENT PROGRAMS
Attended a number of skills building workshops including how to engineer the engineering education, RFID technologies, rf plasma applications, internet-controlled remote laboratories, semiconductor manufacturing, assembly and packaging of microelectronics devices, submicron MOSFET design, CMOS circuits, VLSI and VHDL, rf integrated circuits, pc controlled instrumentation, structure and interpretation of computer programs, computer simulations, CAD/CAM, computer organization and design, knowledge-based systems, applied optics, optical fiber communication, optoelectronics, design capabilities and economic principles, mathematics in industry, multimedia programs, integrated workstations, technology assessment, and a variety of educational development.
Online Form Submission #34190 for Human Rights Commission (HRC) Application

noreply@civicplus.com <noreply@civicplus.com>
Tue 9/28/2021 11:35 AM
To: Melissa Hisel <Melissa.Hisel@lafayetteco.gov>; Diana Thurman <Diana.Thurman@lafayetteco.gov>

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Human Rights Commission (HRC) - Application

About the Position

Join the Human Rights Commission!

*Lafayette City Council created the Human Rights Commission (HRC) in 2016. The HRC is committed to evaluating Lafayette City government, programs and processes with an inclusive lens, with a goal of fostering equity, social justice and freedom from fear of persecution based on race, religious belief, country of origin, sexual or gender identity, physical ability or age*

How to Apply  [joinHRC]View Detailed Position Information and Deadlines

Questions? Contact Melissa Hi se l, Library Director  [contactliaisons]-By email

Apply Now Online

-Please use the CONTINUE button below to fill out your application online.
- Supplemental materials (resume/letter) will need to be in PDF format to be uploaded.

Printable Application  [hrcapplication]Download application and position information

Enter Your Info

*Your application will be posted on the City's website after the deadline has passed and after personal information has been redacted.*

Name  ARORA, Vijay
Date  9/28/2021
Address  
Phone Number  
Email Addre  
I will have lived in the City of Lafayette for at least 12 months prior to my appointment.  Yes
I am registered to vote  Ye
I understand that the  Yes
information provided in this application is considered part of the public record and could be made available to others upon request.

### Applicant Questionnaire

*This portion of the application will be posted online after the deadline has passed.*

<table>
<thead>
<tr>
<th>Name</th>
<th>ARORA, Vijay</th>
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<tbody>
<tr>
<td>How long have you lived in Lafayette?</td>
<td>Field not completed.</td>
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</table>

1. Why would you like to serve on the Human Rights Commission?  
   Inclusion, Diversity, and Experiences for all in the community

2. Have you been a member of other boards, commissions, or committees?  
   No

3. What challenges and opportunities do you see related to diversity and inclusivity in Lafayette now and in the coming years?  
   The opportunities are available only to select group of people making the inclusion restricted

4. What else would you like to tell us about your background or experience that might be helpful in advancing the purpose of the Human Rights Commission?  
   Fully functioning global person with profound knowledge of the self, the profession, the organization and management infrastructure, the environment and the world

### Add Documents & Submit

Supplemental Information: OPTIONAL

*All information provided to the City on this application, and on your resume (if required), is subject to the Colorado Open Records Act.*

*Upload one or more files in PDF format*

- **Letter of interest addressed to the Mayor and City Council**
- **Current resume**

<table>
<thead>
<tr>
<th>Upload 1st PDF</th>
<th>Arora.resume.pdf</th>
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<tbody>
<tr>
<td>Upload 2nd PDF</td>
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</tbody>
</table>

Thanks for your interest! Press "Submit" to complete your application.
Executive Summary
The Lafayette Urban Renewal Authority (LURA) serves as the lead public entity for the revitalization of the Old Town area. The Authority works in partnership with property owners and businesses to remove blight, rehabilitate existing structures, attract new mixed-use development, and improve streetscapes to create an inviting and vibrant downtown.

Per Resolution No. 2012-16, the Lafayette Urban Renewal Authority is represented by seven non-Council members appointed by the Mayor and subject to approval by Council. The Colorado Urban Renewal Law (Sections 31-25-101 - 116, C.R.S.) governs appointments to urban renewal boards. The law provides that the Mayor appoints the members of an urban renewal board, and that "[a]ll mayoral appointments ... are subject to approval by the governing body of the municipality within which the authority has been established." C.R.S. § 31-25-104(2)(a)(IV). At the May 17, 2022 Council meeting, Mayor Mangat will bring forward a recommendation for the reappointment of Marlene Martin and Kate Williams to the Lafayette Urban Renewal Authority for Council’s discussion and approval.

City Council Strategic Outcome (most applicable): Bold, Authentic Leadership

Background Information
In June 2022, the terms of LURA Commissioners Marlene Martin and Kate Williams will expire. Kate Williams was appointed to LURA in June 2017 with a full 5-year term by Mayor Christine Berg. Marlene Martin was appointed to LURA in August 2021 with a 10-month term by Mayor Jamie Harkins; Marlene Martin completed the term of a former LURA Commissioner who resigned.

At the May 17, 2022 meeting, Mayor Mangat will bring forward a recommendation to reappointment Marlene Martin and Kate Williams to the Lafayette Urban Renewal Authority for Council’s consideration and approval.

Next Steps
Once Council approves Mayor Mangat appointments, LURA will have a full board of seven non-Council members.
Recommendation
All candidates meet the eligibility requirements and Mayor Mangat recommends the following appointments:

- Marlene Martin – July 2022 – June 2027
- Kate Williams – July 2022 – June 2027

Proposed Motion Language
Council motion to approve the appointments of Marlene Martin and Kate Williams to the Lafayette Urban Renewal Authority.

Attachment(s)
A: Kate Williams Reappointment Letter
B: Marlene Martin Reappointment Letter
May 16, 2022

Mayor Mangat
City of Lafayette
1290 S Public Road
Lafayette, CO 80027

RE: Lafayette Urban Renewal Authority (LURA) Commission Term

Mayor Mangat,

I am grateful to the Lafayette community and City Council for my current position and tenure on the Board of the Lafayette Urban Renewal Authority. I would like to express my desire to remain a Commissioner on the Board, and request to be reappointed by Council for an additional term. Thank you for the opportunity to volunteer for my community, and for your consideration.

Sincerely,

Kate Williams
LURA Commissioner
Marlene Martin  
345 London Ave  
Lafayette, CO 80026

April 13, 2021

Mayor JD Mangat  
City Council  
LURA  
City of Lafayette

Re: Re-Appointment to Lafayette Urban Renewal Authority

Dear Mayor Mangat, Council Members and Members of LURA:

I am writing to express my interest in serving for a second term on the Lafayette Urban Renewal Authority. Since my appointment last August, I have enjoyed serving on LURA and learned a lot about Lafayette. I feel that there is still some work ahead and would like to continue as a commissioner.

I hope to help guide the growth and development of Lafayette for the enjoyment of future generations.

Thank you for your consideration.

Sincerely,

Marlene Martin