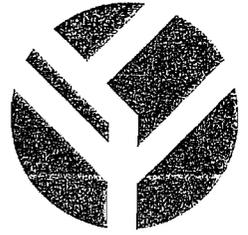




**AGENDA FOR THE
ENGLEWOOD CITY COUNCIL
STUDY SESSION
MONDAY, FEBRUARY 6, 2012
COMMUNITY ROOM
6:00 P.M.**

- I. **Redistricting**
Finance and Administrative Services Director Frank Gryglewicz and City Clerk Lou Ellis will provide the redistricting map.
- II. **Legislators**
Legislators have been invited to discuss current legislative issues with City Council. Those who have RSVP'd are Colorado State Director Rosemary Rodriguez from U.S. Senator Michael Bennet's Office, Colorado Representative Kathleen Conti, Colorado Representative Daniel Kagan, Arapahoe County Commissioner Bill Holen, Arapahoe County Commissioner Susan Beckman and RTD Board Member Kent Bagley.
- III. **Pirates Cove Projects**
Parks and Recreation Director Jerrell Black and Recreation Services Manager Joe Sack will discuss Pirates Cove projects.
- IV. **Arapahoe County Grant Application for Playground Equipment**
Parks and Recreation Director Jerrell Black will discuss a grant application for Arapahoe County for playground equipment.
- V. **Hotels and Motels**
Fire Chief Mike Pattarozzi, Chief Building Inspector Lance Smith and Police Chief John Collins will discuss hotels and motels in Englewood.
- VI. **City Manager's Choice**
- VII. **City Attorney's Choice**

Please Note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood, 303-762-2407, at least 48 hours in advance of when services are needed. Thank you.



MEMORANDUM

TO: Mayor Penn and City Council Members

FROM: Loucrishia A. Ellis, City Clerk

DATE: November 17, 2011

SUBJECT: Council Request 11-241 (Study Session: Council Redistricting)

The Englewood City Charter requires that the number of registered voters be reviewed every four years in an effort to insure the registered voters of the Council Districts are within the range set by Charter.

The Election Commission is charged with reviewing and recommending redistricting to City Council. The Charter requires that redistricting be completed at least six months before the General Municipal Election at which it is to become effective.

Redistricting Guidelines

City of Englewood Charter requirement (Article III, Section 20)

The districts shall be contiguous and compact. The number of **registered voters** should vary no more than 15% between the highest and lowest district.

Constitution of the State of Colorado requirement (Article V, Section 46)

The Constitution has a **population** provision that case law supports, even though the provision is not specifically applicable to municipalities. The population of the districts should vary no more than 5% between the highest and lowest district.

We try to follow County precinct lines. Splitting County precinct lines would complicate the election process and it is also a cost issue as it increases the number of ballot types in a Mail Ballot Election.

Additionally, if possible, we do not want to redistrict a Council member out of their district or split a special district (e.g. Arapahoe Acres Special District).

In 2002, Council asked that we look at the possibility of restructuring Districts 1 and 2 by incorporating a split along Broadway. John Voboril, Planner I, explains in his memo dated June 19, 2002 why he reached the conclusion that the Broadway split was not feasible. The memo is attached.

The current Council Districts were approved by City Council on January 18, 2011. We are scheduled to review the Districts in 2015; if changes are required, they will be presented to City Council at a Study Session.

cc: Gary Sears, City Manager
Dan Brotzman, City Attorney
Mike Flaherty, Deputy City Manager
Frank Gryglewicz, Director of Finance and Administrative Services



M E M O R A N D U M

Date: June 19, 2002
To: Lou Ellis, City Clerk
From: John Voboril, Planner I
Through: Harold Stitt, Senior Planner
Subject: City Council Redistricting Scenarios

Federal and Colorado State Law require redistricting for elective offices take place every ten years using U.S. Census data. Once federal apportionment and district boundaries have been finalized, the Arapahoe County Elections Office must redraw voting precinct boundaries accordingly. In turn, local cities must conform their elected office districts as closely as possible to the county voting precinct boundaries.

The City Clerk's Office and the Community Development Department have recently joined forces in order to develop new City Council district boundaries. The redistricting process must take four factors into consideration:

1. Colorado State Law: District population should vary no more than 5% between the lowest and highest district, and should be as reasonably compact as possible.
2. Englewood City Charter: District registered voters should vary no more than 15% between the lowest and the highest district.
3. District boundaries should follow the county voting precinct boundaries as closely as possible, as splitting county precincts increases election costs.
4. The district boundaries are reasonable, desirable, and satisfying to City Council, and are drawn in such a way as to not to prevent a council member from seeking re-election in their current district.

City Council members have expressed the desire to seek a new set of district boundaries that deviates from the current pattern. Currently, City Council Districts I, II and III span the entire length of the City from east to west. City Council members have indicated that they feel a general dividing line along Broadway, through the

middle of town, would be more desirable, creating more homogenous districts of community interest.

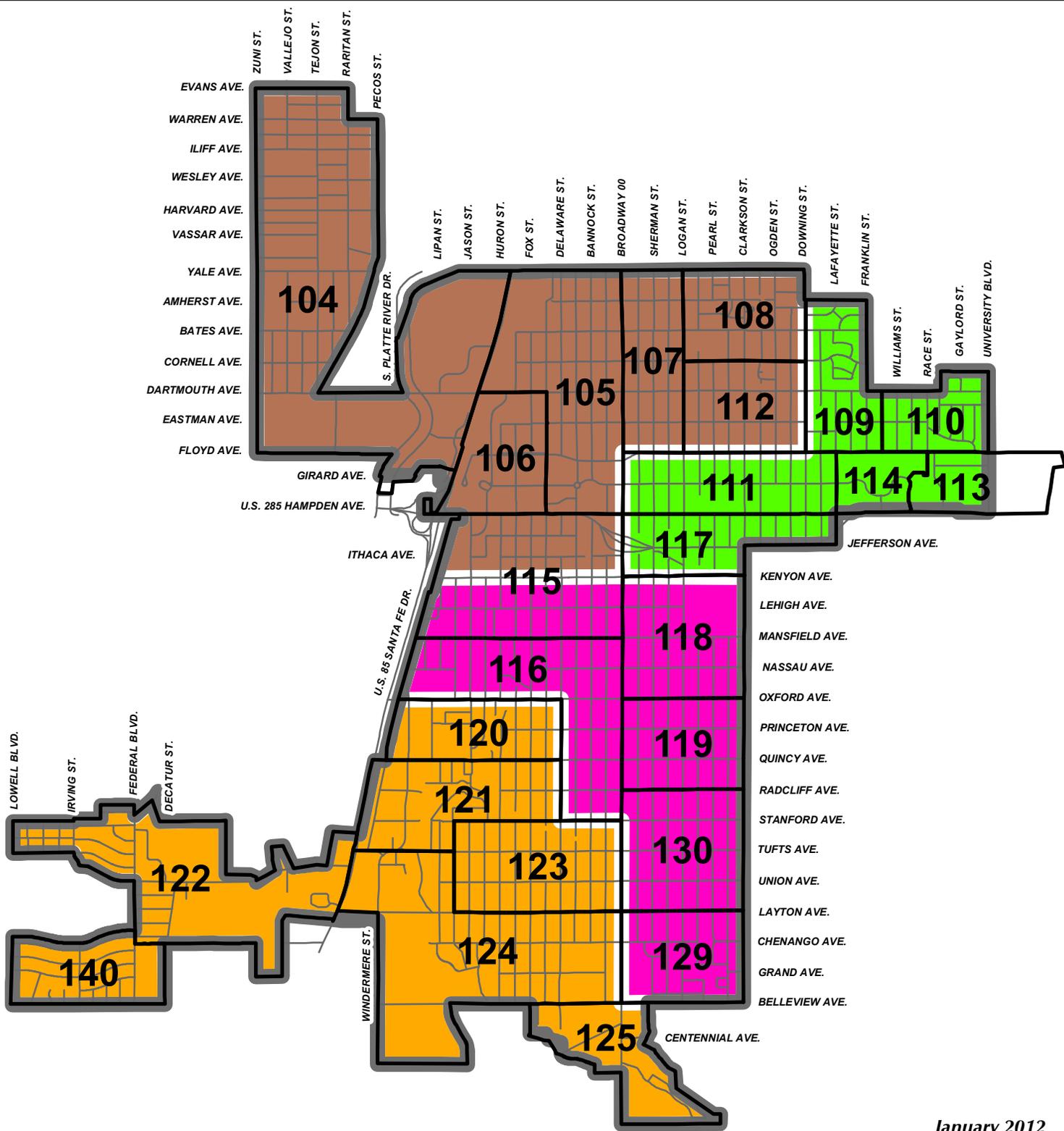
As work on developing redistricting scenarios for Council consideration proceeded, it became evident that an exact Broadway split would not be able to meet all of the above four factors. The reason for this conclusion lies in the different measures required by Colorado State Law and the City Charter. The state population requirement that the lowest and highest district vary by no more than 5%, is much tougher to meet than the City's registered voter standard of 15% variance between the lowest and highest district. Secondly, population and registered voters do not necessarily correspond in the same proportion to each other from one precinct to the next. During the redistricting scenario exercises, it was discovered that precincts located west of Broadway had much lower proportions of registered voters to total population than precincts located east of Broadway.

In order to create district scenarios that achieve the required balances between the different sets of measures, it is necessary for each district to include precincts with both low voter/population ratios and high voter/population ratios. Otherwise, the City's 15% registered voter variance standard will not be met, once the more restrictive 5% state population variance standard has been accounted for.

It was thus mandatory that District I maintain a number of predominantly single family precincts east of Broadway with higher proportions of registered voters to total population, in order to off set the precincts west of Broadway with much lower proportions of registered voters to total population. It was also mandatory that District II include all of precinct 111 and part of 117 (Swedish Medical Center), which contains a higher number of apartments, resulting in relative lower voter/population ratios. These precincts help to balance the rest of the district precincts with high voter/population ratios.

Although a perfect Broadway split was not possible, four scenarios were developed that served to redraw the districts as close to this goal as was possible. The entire area of District II is now located east of Broadway. District I was able to give up its eastern most precincts in exchange for precincts west of Broadway that were formerly part of District III, which results in a greater proportion of that district being located east of Broadway. District IV stays intact in scenarios one, two, and three, and gives up the small area it currently contains east of Broadway in exchange for additional area west of Broadway and north of Oxford.

CC: Harold Stitt
File



January 2012

City of Englewood, Colorado: City Council District and Voter Precinct Boundaries

- District I
- District II
- District III
- District IV

- City Council District Boundary Lines
- 2012 Arapahoe County Voting Precincts
- Street Centerlines
- Englewood City Limits



0 2,000 4,000 6,000 Feet





Memorandum

City Manager's Office

To: Mayor Penn and Members of City Council

Through: Gary Sears, City Manager

From: Michael Flaherty, Deputy City Manager

Date: February 2, 2012

Subject: State and Federal Legislative Issues – Legislative Study Session

City Council will meet with represents of elected County, State and Federal officials. Representatives from the Arapahoe County Board of Commissioners, RTD Board, Colorado General Assembly and the United States Senate have been invited to attend the February 6 Study Session. This year there are numerous legislative bill pending, particularly at the state level, that would impact municipalities.

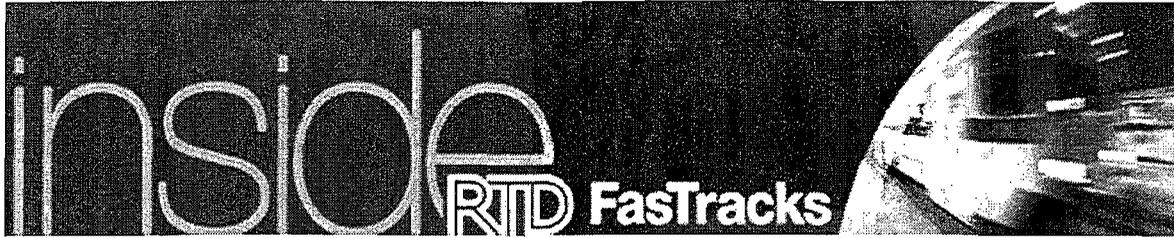
Colorado General Assembly

The Colorado Municipal League (CML) is our primary source for analyzing and advocating for or against legislative issues that impact Colorado's cities and towns and their residents. CML has already identified a number of bills that have been introduced in current session of the Colorado General Assembly that they will be monitoring over the course of this session. I have attached a copy of the January 30 CML *Statehouse Report* that outlines several key legislative issues for this session.

CML is currently working with Colorado legislators to better understand the impact of these proposals and lobbying in support or opposition to bills that have been introduced. As of January 30, CML is monitoring 82 House bills 60 Senate bills and has taken positions on 18 bills, supporting seven and opposing 11. (See CML *Legislative Box Score*, dated January 30, and a calendar for readings on monitored bills attached.) CML will continue to monitor all bills of interest to municipalities and may establish positions in support or opposition to particular bills as they are introduced.

Not all of the bills that CML is monitoring would have direct impact on Englewood. The role of our staff is to keep City Council informed of those issues that may impact us and to cooperate with CML and other cities in protecting our interests.

CML regularly posts updates on bills of interest to cities and counties on their website: www.cml.org. In addition, CML will conduct their annual Legislative Workshop on Wednesday, February 22 at the new History Colorado Center, 1200 Broadway, Denver. A registration form is attached, or you may register on-line through the CML website.



Jan. 30, 2012 HAPPY NEW YEAR!

Welcome to Inside FasTracks - a monthly e-update for key stakeholders and community leaders, designed to keep you informed about the progress of the program, upcoming events and meetings, and most importantly, FasTracks news. Your FasTracks e-news will arrive the last Monday of each month. If you know additional community leaders who would be interested, please contact Angela Shelbourn, 303.299.2423,

Latest News

2012 FasTracks Annual Program Evaluation (APE)

Every year, RTD conducts an Annual Program Evaluation (APE) to review the financial and schedule picture of the FasTracks program. The APE is an opportunity to take into account current market conditions and changes in the economy and allows the team to proactively manage these changes. On Jan. 17 the RTD staff presented the initial report of the 2012 Annual Program Evaluation to the RTD Board of Directors.

The current FasTracks Financial Plan assumes a .4 percent sales and use tax increase following a successful election in 2012. With that assumption, the capital cost to implement the program by 2024 is \$7.8 billion, an increase of \$968.3 million from last year's APE. Eighty-five percent of this increase is due to updated Northwest (NW) Rail Line costs.

Following additional cost information from the BNSF Railway, the cost estimate for segment two of the Northwest Rail Line from Westminster to Longmont has increased to \$1.7 billion in year of expenditure (YOE) dollars. The increase is based on additional right-of-way acquisition and vehicles, further environmental mitigation and utility relocations, and a one-time upfront capital cost for the operating easement (previously assumed by RTD to be an annual Operation & Maintenance cost). Following concerns by stakeholders due to the increase costs of NW Rail, RTD staff developed three options for RTD Board consideration:

- Option One: Delay completion of NW Rail 3-5 years to meet RTD's cash flow, which would extend the completion date for the NW Rail Line from 2020 to 2024.
 - All other FasTracks projects stay on track to be completed by 2020.
- Option Two: Delay completion of NW Rail to 2024, but accelerate select capital projects and increase funding for bus service in the interim.
 - This delays all other partially funded corridors by approximately six months.
- Option Three: Remove NW Rail Line from the FasTracks plan and commit remaining NW Rail Line project funds, capped at \$894.6 million, to expanded Bus Rapid Transit (BRT) in

the northwest service area.

- Before an exact alignment could be established, RTD and CDOT would be required to conduct an Environmental Assessment/Environmental Impact Statement for any additional segments of BRT outside of the US 36 BRT corridor that include state highways.

The RTD Board directed staff to perform technical/financial analyses for NW Rail Line options two and three and return with additional information on March 6. The Board will decide on March 8 which NW Rail Line option to move forward with. The deadline for stakeholder feedback on the Northwest Rail options is March 1. Board approval of the 2012 FasTracks Financial Plan and Annual SB 208 Report to DRCOG is planned for March 27, which will also serve as direction from the Board on whether to pursue a .4 percent sales tax increase ballot initiative in November 2012. DRCOG approval of the SB 208 is anticipated in June.

New FasTracks Annual Video and Flyover Maps

The annual FasTracks video made its debut appearance at the FasTracks Monitoring Committee meeting on Jan. 17. The video reviews the major progress of the program in 2011 and features citizens who are eagerly awaiting the build-out of FasTracks. This year's video is produced as a special "FasTracks News Report" to the public. DVDs will be sent to all city and county public information officers for use on local Channel 8 programming.

Also, a new series of flyover map videos for FasTracks projects is now available for viewing. Each video allows the viewer to take an aerial tour of the FasTracks alignments. The video highlights each station layout and provides details about parking. Through this flyover view, the viewer can see a satellite view of how the new alignment will fit into their existing neighborhoods. Take the tour by visiting RTD-FasTracks.com and clicking on the video flyover tab under each project.

FasTracks Top Ten List for 2011

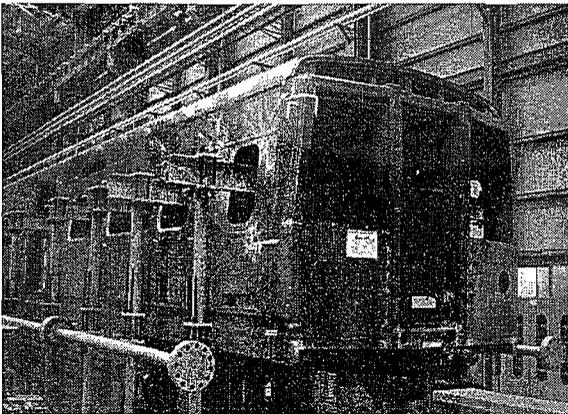
The RTD FasTracks program celebrated numerous milestones throughout the past year. Below are just some of our many accomplishments for 2011.

1. **\$1.03 Billion Grant** – U.S. Department of Transportation Secretary Ray LaHood and Federal Transit Administration Administrator Peter Rogoff awarded RTD with a \$1.03 billion Full Funding Grant Agreement (FFGA) for the East Rail Line to Denver International Airport and the Gold Line to Arvada and Wheat Ridge. This is the largest transit grant awarded by the Obama Administration to date.
2. **Gold Line Groundbreaking** – RTD celebrated the groundbreaking for the Gold Line in historic Olde Town Arvada. The event included a community street fair – complete with an ice cream social – hosted by the City of Arvada.
3. **West Line/Denver Union Station Construction** – Construction continued full-speed ahead with the West Rail Line project reaching 85 percent completion, and the Denver Union Station project reaching 45 percent completion.

4. **Construction-Ready Plan** – The RTD Board of Directors approved a plan to move forward with \$305 million in remaining funds on the projects either not-yet-in construction or under contract. The funding is divided among the North Metro Line; the I-225 Line; the U.S. 36 Bus Rapid Transit Project; the Northwest Rail Project; and the extensions of the Southeast, Southwest and Central Rail Lines to make meaningful progress on each project with the available funds.
 5. **Industry Forum** – RTD hosted its first Transformation through Transportation (T3) industry forum, which attracted more than 200 industry leaders from around the country to consider innovative solutions to RTD’s current challenges and opportunities.
 6. **Opening of First FasTracks Rail Stations** – RTD opened the new Auraria West and Denver Union light rail stations.
 7. **Arrival of Final Light Rail Vehicle** – RTD received the final light rail vehicle for the FasTracks program. The vehicle was the last of 55 vehicles ordered for RTD’s expanded light rail service through the future opening of the West Rail Line, I-225 Rail Line and the extensions of the Southwest and Southeast Rail Lines.
 8. **Display of Commuter Rail Train Model** – Displayed a model of the new RTD commuter rail car at Denver Union Station and Olde Town Arvada. The model attracted more than 10,000 visitors.
 9. **Determined Use for Denver Union Station** – A competitive proposal process attracted two solid proposals for the re-use of historic Denver Union Station. Union Station Alliance will move into negotiations with RTD on developing the inside of the building as a boutique hotel with retail and restaurant elements.
 10. **Telephone Town Halls** – RTD held 15 Telephone Town Halls – one in each Director district. A total of 74,000 residents listened in or asked questions over the course of the meeting series.
-

FastFacts

First FasTracks Commuter Rail Vehicle



- RTD’s first commuter rail vehicle is currently being manufactured by Hyundai Rotem in South Korea. The shells of the cars will be built at Hyundai Rotem’s plant in South Korea, and the rest of

the vehicle manufacturing will happen at Hyundai Rotem's plant in Philadelphia.

- There will be 50 railcars built for the East Rail Line, Gold Line and first segment of Northwest Rail, which are all on track to open to the public in 2016.
 - RTD displayed a model of the commuter railcar at Denver Union Station and in Olde Town Arvada this past summer that was viewed by nearly 12,000 people. The following modifications have been made to the car based on public and stakeholder input:
 - RTD's first commuter rail vehicle is currently being manufactured by Hyundai Rotem in South Korea. The shells of the cars will be built at Hyundai Rotem's plant in South Korea, and the rest of the vehicle manufacturing will happen at Hyundai Rotem's plant in Philadelphia.
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 - RTD displayed a model of the commuter railcar at Denver Union Station and in Olde Town Arvada this past summer that was viewed by nearly 12,000 people. The following modifications have been made to the car based on public and stakeholder input:
 - Increased space for wheelchairs to move around entry areas.
 - The bench seat design in designated ADA areas includes an automatic return to stowed position, which will assist passengers with limited dexterity.
 - Ceiling handholds have been added to the entry areas.
 - Bicycle rack and storage areas have been re-designed.
 - Oversize luggage racks have been re-designed to accommodate more luggage and utilize space more efficiently.
 - Handhold finish reflects the public's choice.
 - Final design phase of the vehicle is close to 50% complete.
 - Initial heating, ventilation and air-conditioning system tests have been completed.
 - Vehicle design fully complies with Federal Railroad Administration requirements. Railcar body structure tests will be performed from now through February.
-

Project Progress

Gold Line

- Right-of-way acquisition continues with parcels on the west end of the line at the Ward Road and Arvada Ridge station areas.
- Utility relocation has begun, with three completed and three more expected to begin in January, all on the east side of the line in Denver.
- Final design work is nearing completion and intergovernmental agreements are in place with Denver, Adams County, Arvada and Wheat Ridge.

US 36 BRT

- The Board approved \$90 million to build the managed lanes to Interlocken as part of the Construction Ready Plan.
- The High Performance Transportation Enterprise (HPTE) was awarded a \$52.9 million Transportation Infrastructure Finance and Innovation Act (TIFIA) loan on Sept. 1. The loan will allow CDOT to move forward with the US 36 BRT project, adding express lanes and additional improvements between Pecos Street and Interlocken Loop.
- The construction contract for the Table Mesa Pedestrian Bridge was awarded to PCL Civil Constructors Inc. Utility relocation began in December. Completion of whole project should be in one year.
- The contract for the queue jumps – at McCaslin and Church Ranch – is scheduled to be advertised in February 2012 with notice to proceed anticipated for May 2012. The project will take six months to build.

Northwest Rail

- The first segment of the rail line to south Westminster is included in Phase Two of the Eagle P3 project. RTD will work with the City of Westminster to plan a groundbreaking for the project this year.
- In light of increased costs, the Board is considering three options for the Northwest Rail project:
 - Keep the 41-mile \$1.7 billion line as part of the FasTracks package, with a projected completion date of 2024.
 - Delay completion of Northwest Rail 3-5 years, but accelerate select capital projects and increase funding for bus service for Northwest Rail and U.S. 36 Bus Rapid Transit Corridor Service Areas.
 - Remove the Northwest Rail Line from the FasTracks plan and commit remaining project funds—capped at \$894.6 million—for expanded/enhanced Bus Rapid Transit in the Northwest Corridor area.
- The Board previously committed \$17 million to complete the Longmont Station as part of the construction-ready plan.

North Metro Rail Line

- The North Metro team issued a Request for Qualification (RFQ) for the Denver Union Station to the National Western Stock Show section of the North Metro corridor at the end of November 2011 allowing all interested Design/Build teams to submit a Statement of Qualifications (SOQ) by January 26, 2012.
- The SOQs will be evaluated and three or four Design/Build teams will be shortlisted to propose on the project. A draft Request for Proposal (RFP) will be issued to the shortlisted teams in February with the final RFP planned to be issued on March. The North Metro team will be working with the shortlisted teams to address comments and questions regarding the RFP and working through an alternate design and construction concepts review with each

team.

- Final proposals are due in May with a proposed award date in August 2012.
- This first section of the North Metro corridor, from Denver Union Station to the National Western Stock Show, is scheduled to begin design and construction in late 2012.

East Rail Line

- A mile-long work zone has opened up in the Coors Field parking lot for a major utility relocation project between 19th and 33rd streets. The aim is to complete this work before the opening day baseball game in 2012. Go to <http://www.flickr.com/photos/rtd-denver/sets/72157628826776681/show/> to view a slideshow of the work in progress.
- Civil design packages range between 65 and 100 percent complete. Traction power and catenary design work is at 60 percent complete.
- Work continues on finalizing a major change that would incorporate Denver's desire to have additional double tracking along Peña Boulevard, which would allow for the inclusion of an extra station stop between 40th/Airport and Denver International Airport. The change also would incorporate new grade separations at Tower Road and at Green Valley Ranch Boulevard/48th Avenue.

Central Rail Extension

- The project team is moving forward with the plan to begin further study of the extension, including a study of a streetcar alternative.
- The team is meeting with stakeholders and planning public outreach for spring/summer 2012.

I-225 Rail Line

- RTD and CDOT developed a combined construction procurement package for highway reconstruction and civil elements of the segment from Nine Mile to Iliff. The construction package was advertised in December for bids. A notice to proceed with construction will be given by the beginning of March 2012.
- The I-225 team is part of a separate procurement package in conjunction with the North Metro team, for track and systems elements construction of the rail segment from Nine Mile to Iliff.

Southeast Rail Extension

- The Board approved the use of \$9 million of the \$305 million in remaining funds for the final design and advanced environmental work in anticipation of seeking federal funding for the project.
- As part of an Alternative Analysis (AA) process, the team held a public meeting on Jan. 11 with 20 people in attendance. The AA is in preparation for an Environmental Assessment that will allow the team to apply for Small Starts to try to obtain federal funding.
- The team is continuing design coordination with project stakeholders.

Southwest Rail Extension

- The Board approved the use of \$8.5 million of the construction-ready plan for the relocation of

Union Pacific Railroad track for development of the Southwest Extension.

West Rail Line

- Seven of the 12 Traction Powered Substations (TPSS) have been set.
- Construction of the parking garage at the Jefferson County Government Center will be completed by February. Station and guideway work will continue through the winter.
- Crews have completed the excavation of the tunnel under Union Boulevard and are now working on the finish.
- Bike path, station and track construction continue throughout the corridor.

Denver Union Station

- Work on the substructures, elevator pits, lift stations and “mud slab” for the second half of the regional bus facility is complete. There will be eight base slab pours for this phase and each one will take about 150 truckloads of concrete. Crew will be installing the aggregate base for the concrete unit pavers that will be placed in the Wynkoop Plaza area. The placement of the pavers will be ongoing through the spring. Installation of the granite seat walls adjacent to the Chestnut Pavilion is nearing completion. Work on underground utilities for the 17th St. Gardens (north of the skylights) is ongoing.
- Crews have begun construction of a retaining wall adjacent to the Ice House and Rodizio Grill which will be completed in early February. Access will be maintained at all times.
- Work on 16th St. between Wewatta Street and Wynkoop Street is ongoing and will continue for the next several months. Xcel crews are installing a steam line and Kiewit crews will be installing a new storm sewer line and removing and replacing light fixtures.
- Crews have fenced off the old parking areas in front of the historic building. The building remains open and there is designated pedestrian access. Crews are working on the retaining wall and removal of pavement on the north side. Crews are working on pavement removal on the south side. The commemorative bricks in front of the building will be removed, stored and reset as part of the final plaza area.

Upcoming Meetings and Events

- Monday, Jan. 30 – May 2012 Service Changes Public Hearing, 7 p.m., Aurora Municipal Center, 15151 E. Alameda Pkwy
- Tuesday, Jan. 31 – DRMAC Transportation Options Workshop, 9-11 a.m., Hirschfeld Towers Community Room, 333 Ellsworth Ave., Denver, 80223
- Tuesday, Jan. 31 – DUSPA Finance Committee, 2 p.m., WWMOB 201 W. Colfax Ave., 10th Floor, Conference Room 10.E.1
- Tuesday, Jan. 31 – RTD Board Study Session, 5:30 p.m., RTD Administrative Offices, 1600 Blake St., Rooms T & D
- Wednesday, Feb. 1 – State of the Base, 11:30 a.m. to 1 p.m., Doubletree Hotel Denver, 13696 E. Iliff Place, Aurora, 80014
- Wednesday, Feb. 1 – May 2012 Service Changes Public Hearings, Noon and 7 p.m., RTD

Administrative Offices, 1600 Blake St., Rooms T & D

- Wednesday, Feb. 1 – Union Station Alliance Town Hall Meeting, 4 p.m., DUS, 1701 Wynkoop St. (in the Great Hall)
- Thursday, Feb. 2 – DUSPA Board Meeting, 1:30 to 3:30 p.m., Hogan & Lovells, 1200 17th St., Suite 1500, Denver, 80202
- Tuesday, Feb. 7 – Metro North Chamber Development Council Breakfast-Planes, Trains and Automobiles, 7 a.m., Ramada Plaza Hotel, 10 East 120th Ave., Northglenn, 80233
- Tuesday, Feb. 7 – FAA/Operations & Customer Service, 5:30 p.m., RTD Administrative Offices, 1600 Blake St., Rooms T & D
- Wednesday, Feb. 8 – Union Station Alliance Town Hall Meeting, 4 p.m., DUS, 1701 Wynkoop St. (in the Great Hall)
- Wednesday, Feb. 8 – NW Rail Longmont City Council Presentation, 7 p.m., Civic Center Complex, 350 Kimbark St., Longmont 80501
- Friday, Feb. 10 – West Rail Line Elected Officials Q1 Briefing, 7:30 to 9 a.m., West Rail Line Project Office, 10455 W. 6th Ave., Lakewood, 80215
- Tuesday, Feb. 21 – RTD Board Meeting, 5:30 p.m., RTD Administrative Offices, 1600 Blake St., Rooms T & D
- Tuesday, Feb. 28 – RTD Board Study Session, 5:30 p.m., RTD Administrative Offices, 1600 Blake St., Rooms T & D

Legislative Advocacy

NLC's federal advocacy efforts are central to its mission to protect municipal interests, seek federal funding to support local investments, and ensure national attention is focused on the needs of cities and towns across the country.

Leadership—with input from membership, Policy & Advocacy Committees, and Federal Relations staff—sets the organization's annual legislative agenda, which helps to guide advocacy efforts on Capitol Hill. Following are the top legislative priorities identified by NLC for this year.

2011 Agenda for Economic Growth

Support CDBG, Create Hometown Jobs

For nearly four decades, the Community Development Block Grant (CDBG) program has served as a catalyst for financing housing, infrastructure, and economic development in America's cities and towns. Any cut to this essential program will severely hamper local efforts to put people to work and spur local, regional, and national recovery.

Invest in Transportation Infrastructure

The time has come for Congress and the Administration to commit to crafting a new, lasting transportation plan that acknowledges local decision-making authority, collaborates with state and local governments, supports sustainable multimodal choices, invests in outcome-oriented solutions, and maintains a strong federal role.

Fix the Country's Broken Immigration System

Cities and towns are caught in the middle of a complex national debate. Barring consensus at all levels of government on a solution to immigration reform—one that supports both enforcement of laws and integration efforts—communities across America will continue to face financial, cultural and political strains.

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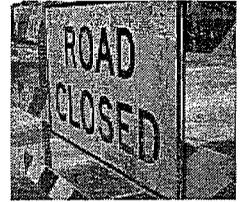


The importance of CDBG grants to local economic recovery cannot be overstated, especially in fiscally challenging times. When fully funded at \$4 billion, 7,000 local governments—*large and small, urban and rural*—use these funds annually to address their own unique employment, housing, and neighborhood revitalization needs. Though cuts to the CDBG program will have little real impact on reducing the federal budget deficit, they will slow and eliminate thousands of projects that leverage public and private funds into new jobs and developments of lasting worth to the community.

CDBG funding does not stay in city hall; in fact, it goes to local businesses, builders and contractors, and service providers who transform the neighborhoods in which they do business. Every dollar of CDBG funding a city or town receives leverages an additional \$1.62 in non-CDBG funding. Full funding for CDBG connects private sector growth to the revitalization of entire communities.

Invest in Transportation Infrastructure

Federal investment in transportation infrastructure lays a foundation for economic growth by creating jobs and promoting community vitality. NLC believes that the time has come for Congress and the Administration to commit to our nation's economic future by authorizing a well-funded long-term, comprehensive surface transportation program.



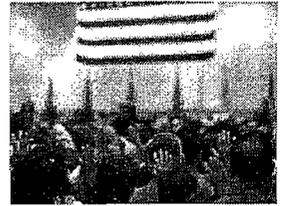
The condition of our nation's infrastructure is vital to our economic recovery and growth. As local governments continue to struggle under mounting budget shortfalls, federal support for infrastructure is even more critical, not only to fund overdue repairs but to also put individuals and communities back to work.

Recently, the Government Accountability Office noted that the federal approach to transportation programs has not been updated since the 1950's when the programs were created. It is time to update these programs to address current challenges and reflect the central role of transportation to metropolitan economic growth and vitality.

Federal investments in infrastructure made available over the last several years were an important down payment, providing cities and towns with resources to make short-term upgrades and to explore innovative, sustainable long-term solutions. Moving forward, a strong intergovernmental partnership is key to advancing national transportation goals and priorities. If we continue to allow our infrastructure to deteriorate through lack of investment and proper maintenance, we put America's economic success—and the success of our hometowns—at risk.

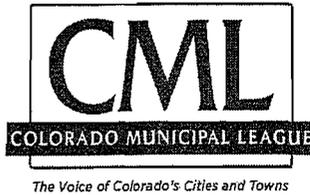
Fix the Nation's Broken Immigration System

Cities and towns are caught in the middle of a complex national debate. Barring consensus at all levels of government on a solution to immigration reform—one that supports both enforcement of laws and integration efforts—communities across America will continue to face financial, cultural and political strains.



America's immigration system is broken, and the nation's hometowns are suffering the consequences. The inability of government at all levels to reach consensus on a solution of immigration has created financial, cultural, and political strains in communities across America. Comprehensive reform is needed to fix the system and to provide cities and towns with the support they need to integrate immigrants into American communities.

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STATEHOUSE *report*

BUILDING A STRONG PARTNERSHIP WITH COLORADO'S CITIES AND TOWNS

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CML's website: Direct links to legislative information

By the CML advocacy team: Kevin Bommer, Mark Radtke, Meghan Storie, and Geoff Wilson

One of the advantages of CML's conversion of *Statehouse Report* to an all-digital format is the ability to connect you directly to information about legislation that CML is following, as well as some of the links that the CML advocacy team uses to stay on top of information. Throughout the legislative session, we will share with you items you may find of particular interest.

The first stop for getting information about the bills CML is tracking or on which the League has positions is to visit www.cml.org under [Advocacy > In Colorado](#). On that page, you will find useful and timely information such as:

1. [CML Box Score](#) of support and oppose bills
2. Log of [CML-followed House bills](#)
3. Log of [CML-followed Senate bills](#)
4. Previous editions of the CML *Statehouse Report*
5. Position papers on bills CML supports or opposes
6. A [calendar of CML-followed bills](#) scheduled for action
7. Lists of senators and representatives by municipality and links to committees

In addition, the Colorado General Assembly has made it much easier for the public to observe hearings and floor action without coming to the capitol. From the [legislature's "Audio and Video Broadcasts" page](#), you can link to live and archived video from the House and Senate chambers, as well as live and archived audio from the chambers and committees. CML may begin to include audio links in future updates on important issues.

[CML's home page](#) also has connections to a wealth of non-legislative information, as well. Publications, event registrations, member information, and other useful information are also available.

Building codes: Colorado Timber Act

In its current form, HB 12-1004 requires local governments to adopt a building code provision to allow lodgepole pine and Engelmann spruce lumber for building framing purposes. The sponsors of the bill are looking at new language for a possible strike-below amendment, which is essentially a new bill. CML is not sure what the bill will look like in its new form, but will continue to monitor its progression. This issue stems from claims that the majority of beetle kill lumber harvested is not sold in Colorado due to restrictive local building codes. CML has yet to find an example of a local government that does not allow lodgepole pine and Englemann spruce as framing material. As long as the timber meets federal grading standards as dictated by the American Softwood Lumber Standard and the West Coast Lumber Inspection Bureau it is accepted by municipal building officials.

Bill: HB 12-1004, Requiring local building codes to allow the use of certain lumber as framing material
Sponsors: Rep. Laura Bradford, R-Collbran; Sen. Steve King, R-Grand Junction

Status: H. Economic & Business Development
Position: Staff discretion to oppose
Lobbyist: Meghan Storrie

Building codes: Prohibition on sprinkler requirements

SB 12-081 prohibits a county or municipality from requiring sprinklers to be installed in single-family dwellings. If adopted, this legislation would obstruct a local regulatory authority's ability to determine the level of fire protection in its community. Several communities throughout Colorado have already adopted local laws that require fire sprinklers in certain houses/townhouses. Their current fire safety methods are based on that protection. This bill challenges a municipality's ability to continue its current fire protection strategies as adopted. CML opposes this legislation along with the Fire Marshal's Association of Colorado. Several other organizations are likely to join the opposition.

Bill: SB 12-81, Prohibition on local governments from requiring sprinklers in single family homes
Sponsor: Sen. Kevin Grantham, R-Cañon City
Status: S. Local Government
Position: Oppose
Lobbyist: Meghan Storrie

Economic development: Regional planning

HB 12-1154 directs the Governor's Office of Economic Development to bring together economic development stakeholders to participate in "regional economic development partnerships" in each of the 14 Department of Local Affairs planning regions. The partnership would establish economic development goals and periodically report progress. The idea is to coordinate existing efforts by municipalities, economic development councils, businesses, educators, and others – as well as serve as a vehicle to apply for federal economic improvement grants.

Bill: HB 12-1154, Regional planning for economic development
Sponsors: Rep. Don Coram, R-Montrose; Rep. Millie Hamner, D-Dillon; Sen. Cheri Jahn, D-Wheat Ridge; Sen. Jean White, R-Hayden
Status: H. Appropriations
Position: Support
Lobbyist: Mark Radtke

Finance: Municipal fund investments

Current statutes limit the types of investment instruments municipalities and other local governments may utilize. Among other elements, the statute requires the highest rating for federal agency bonds (e.g. Fannie Mae, Freddie Mac) to be eligible for purchase with municipal funds. The recent rating downgrade by one of the bond rating agencies has blocked purchases of these federal instruments for cities and towns that do not have a charter provision allowing council action to set investment parameters. HB 12-1005 amends the statute by creating a slightly lower ratings threshold that will again allow investment in these federal agency instruments.

Bill: HB 12-1005, Legal investments for public funds
Sponsors: Rep. Daniel Pabon, D-Denver; Sen. Ted Harvey, R-Highlands Ranch
Status: H. Finance
Position: Support
Lobbyist: Mark Radtke

Labor: Peace Officers Bill of Rights

This year's version of the Peace Officer's Bill of Rights does not include specific language preempting home rule charters, requiring mandatory dues check-off, or requiring third-party binding arbitration. However, HB 12-1062 retains other sections mandating disciplinary due process proceedings notwithstanding any other state or local laws and purports to preempt municipal and county authority over local personnel procedures. As with previous versions of this bill, CML's core objection is that local personnel matters should be addressed by local governments and not dictated by the state. Doing so is contradictory to the state constitution, as it pertains to home rule cities, and is simply an inappropriate intrusion by the state into the matters of all local governments.

Bill: HB 12-1062, Peace Officers Bill of Rights
Sponsor: Rep. Matt Barker, R-Colorado Springs
Status: H. Local Government
Position: Oppose
Lobbyist: [Kevin Bommer](#)

Labor: Prevailing wage for public works projects

HB 12-1082 would have required federal Davis-Bacon wages for any public works project in the state funded in whole or in part by the state. Many local governments in Colorado that receive grant or loan funding through the state would have also been covered by the bill. The League opposes expansion of Davis-Bacon and unfunded state and federal mandates that impose financial burdens on municipalities and their citizens. [Click here for CML's position paper on the bill.](#)

Bill: HB 12-1082, Prevailing wage
Sponsor: Rep. John Soper, D-Thornton
Status: Postponed indefinitely
Position: Oppose
Lobbyist: [Kevin Bommer](#)

Municipal courts: POST certification for municipal prosecutors

Many of the functions performed by city attorneys strongly resemble those performed by district attorneys in Colorado. Currently, district attorneys are granted peace officer status under Colorado law. This status is appropriate for municipal prosecutors as it will allow them to be more effective and efficient by providing them better access to certain evidence and records. In addition, it will afford them the same protections that other public employees who engage in prosecution receive. The City of Montrose has worked with the Peace Officers Standards and Training (POST) Board on legislation that would confer peace officer status to municipal prosecutors under certain circumstances. A CML support position by the CML Policy Committee was approved at the December meeting. This bill is scheduled to be taken up in the House Judiciary Committee on Feb. 2.

Bill: HB 12-1026, Concerning peace officer status for certain municipal attorneys
Sponsors: Rep. Don Corum R- Montrose; Sen. Ellen Roberts R- Durango
Status: H. Judiciary
Position: Support
Lobbyist: [Mechan Storrie](#)

Oil & gas: Staffing of the Colorado Oil & Gas Conservation Commission

As anyone whose city or town is in Colorado's "oil patch" knows, there has been a huge burst of activity in this industry over the past couple of years. This is an industry that generates jobs and tax revenue in our communities. But this is also an industry that can be controversial, as local officials work to assure compatibility of this industrial land use with its neighbors, be they schools, residences, or businesses. Lately, some citizens in our communities have expressed sincere concern about hydraulic fracturing, or "fracking."

Fracking, like the other highly technical aspects of oil and gas drilling, is regulated by the Colorado Oil and Gas Conservation Commission (COGCC). A credible, more visible field inspection program, to back up the commission's rules, is essential to assuring our citizens that their interests are being protected. This obligation to our citizens is one that municipalities share with the commission. Accordingly, CML is strongly supporting OGCC's current budget requests that would add two additional field enforcement staff and two local government liaisons to the OGCC staff.

We at CML are excited about the possibilities of further cooperation between municipalities, the commission, and our neighbors in the oil and gas industry. Colorado Counties, Inc. and CML staff recently had some very positive discussions with Department of Natural Resources Director Mike King and COGCC Director Dave Neslin along this line. A recent MOU/IGA arrangement between Gunnison County and the commission includes groundbreaking provisions for inspection for compliance with commission rules by local officials. This arrangement could serve as a template for future agreements between the commission and other local governments, which could diminish the

extent to which local officials feel the need to address these particulars in local ordinances.

Lobbyist: [Geoff Wilson](#)

Severance tax: Cap on severance tax distribution

SB 12-063 would cap the traditional distribution of state and local severance tax at \$50 million each. Above that amount, committees of the legislature would determine who could receive grants and would allow "rural higher education" institutions to be eligible. Aside from the fact that higher education already has a dedicated stream of energy money from federal mineral lease (FML) dollars, diluting the local government distribution will mean that impact-related issues may not be addressed. Higher severance tax revenues reflect greater impacts, and critical infrastructure and mitigation projects may be hurt. [Click here for more information from CML's position paper.](#)

Bill: SB 12-063, Cap on severance tax distributions

Sponsor: Sen. Greg Brophy, R-Wray

Status: S. Finance

Position: Oppose

Lobbyist: [Kevin Bommer](#)

Severance tax: Impact on water projects

This resolution, SJR 12-002, was adopted by the Water Resources Review Committee – the legislature's interim water committee – and states that Colorado should avoid future diversions of water infrastructure revenues for budget balancing purposes and instead direct these revenues, as intended by existing statute, to protect and develop Colorado's water resources. As a resolution, it carries no force of law; however, CML appreciates the interim committee and the sponsors for continuing to keep this issue present before legislators.

Bill: SJR 12-002, Severance tax diversion impact on water projects

Sponsors: Sen. Ellen Roberts, R-Durango; Rep. Roger Wilson, D-Aspen.

Status: Passed Senate

Position: Support

Lobbyist: [Kevin Bommer](#)

Taxes: Business personal property tax exemptions

HB 12-1029 exempts any business personal property purchased in the year 2013 from a business personal property tax (BPPT) levy as long as it is used by the original purchaser. The bill would allow the exemption for both locally and state assessed BPPT. Local governments combined would lose more than \$90 million in revenue.

Bill: HB 12-1029, Business personal property tax exemptions

Sponsors: Rep. Chris Holbert, R-Parker; Sen. Mark Scheffel, R-Parker

Status: H. Finance

Position: Oppose

Lobbyist: [Mark Radtke](#)

Taxes: Business personal property tax reduction

There are two elements to this bill. Part one increases the exemption of property subject to business personal property tax from the current \$7,000 to \$14,000 of property value. Part two caps business personal property assessments at current levels, with an inflation factor, for state assessed utilities and businesses for the next 10 years.

Bill: SB 12-052, Business personal property tax reduction

Sponsors: Sen. Mark Scheffel, R-Parker; Rep. Kevin Priola, R-Henderson

Status: S. Finance

Position: Oppose

Lobbyist: [Mark Radtke](#)

Taxes: Mandated pesticide tax break

Currently, local elected officials in statutory towns and cities get to decide whether their local budgets can afford a tax break for registered pesticides used in agriculture. HB 12-1037 would eliminate this authority of local officials and simply impose this exemption for agricultural pesticides on local governments across Colorado, regardless of the local fiscal impact. Notably, this bill doesn't affect the state sales tax. Years ago, state legislators decided that the state's general fund could afford this pesticide exemption, and enacted it. Every year, the General Assembly kills tax break bills that the state simply cannot afford.

When the General Assembly enacted the state tax break for pesticides, they made this exemption a local option out of respect for the possible local fiscal impact of this exemption. The General Assembly recognized that, just as state legislators must do with state revenues and budgeting, so local elected officials are the ones who have to make the hard choices of what gets funded with diminished tax revenues. Local elected officials, not the central government in Denver, should make this quintessentially local decision.

A final note: Rep. Jon Becker has been respectful and forthright in how he has dealt with CML on this bill, showing us drafts ahead of time and speaking frankly with CML staff. We may disagree with Rep. Becker on substance here, but we appreciate his style.

Bill: HB 12-1037, Mandated local tax break for ag pesticides
Sponsor: Rep Jon Becker, R-Ft. Morgan
Status: H. Agriculture, Natural Resources, and Energy Committee
Position: Oppose
Staff: Geoff Wilson

Transportation: ATVs on streets

Passage of HB 12-1066 would require municipalities with fewer than 5,000 residents to pass an ordinance if they desired to prohibit off-highway vehicles (OHV) from travel on municipal streets (opt-out). Cities with more than 5,000 residents would be required to pass an ordinance if they desired to permit the use of OHVs on city streets (opt-in). A state administered registration and plating system for OHVs would qualify the machines for use on roadways. In Colorado, 195 cities and towns have fewer than 5,000 residents and would be faced with the expense of an ordinance, signage, and law enforcement issues. All cities and towns currently have the authority to allow OHVs on their streets by ordinance. OHVs are also referred to as all-terrain vehicles.

Bill: HB 12-1066, Power sports vehicles
Sponsor: Rep. Kevin Priola, R-Henderson
Status: H. Transportation
Position: Oppose
Lobbyist: Mark Radtke

Transportation: Reduce FASTER late fees

HB 12-1014 reduces the late fee for motor vehicle registration. House Transportation heard testimony from CML and others on the bill last week and will bring the bill back for action at a later date. Currently, vehicle owners pay a late fee of \$25 per month, with a maximum total late fee of \$100, for failure to register their vehicle on time. The late fee was instituted with the passage of the FASTER registration fee bill in 2009. This bill would reduce the late fee to a flat \$20. CML opposed a similar bill last year on the basis that there should be a meaningful penalty to encourage owners to register their vehicle on time. The primary aim of the late fee is to prompt new residents of the state to register their vehicle in Colorado and begin contributing to the maintenance of state and local roads.

Bill: HB 12-1014, Reduce FASTER late fees
Sponsor: Rep. Randy Baumgardner, R-Hot Sulphur Springs
Status: H. Appropriations
Position: Oppose
Lobbyist: Mark Radtke

Transportation: Low-speed electric vehicles

Under current law, low-speed electric vehicles, better known as Neighborhood Electric Vehicles (NEVs), are allowed to travel on municipal streets and state highways within municipalities in speed zones up to 35 miles per hour. NEVs can attain a maximum speed of 25 miles per hour. The bill would allow NEVs on streets with speed limits of 40 miles per hour. The change is sought to address short segments of 40 mph roads linking 35 mph zones where NEVs can travel.

Bill: SB-013, Low-speed electric vehicles

Sponsors: Sen. Schwartz, D-Snowmass Village; Rep. Jones, D-Glenwood Springs

Status: S. Transportation

Position: Staff discretion to support

Lobbyist: Mark Radtke

Transportation: Eliminate photo radar and red light camera

Local governments and the state would no longer be able to use automated vehicle identification systems as a law enforcement tool under SB 12-050. Red light camera and photo speed radar would be eliminated; however, cameras would be allowed to identify vehicles on toll lanes for billing purposes. Nine municipalities use one or both of these law enforcement tools to encourage compliance with traffic laws.

Bill: SB 12-050, Eliminate photo radar and red light camera

Sponsors: Sen. Scott Renfroe, R-Greeley; Rep. Randy Baumgardner, R-Hot Sulphur Springs

Status: S. Transportation

Position: Oppose

Lobbyist: Mark Radtke

Transportation: Eliminate transportation planning region process

Regional transportation planning commissions would be eliminated and transportation plans for areas outside of Metropolitan Planning Organization (MPO) boundaries would be developed solely by Colorado Department of Transportation staff. MPO planning authority remains (their planning process is created by federal law). Rural municipalities' direct participation in the state planning process is cut off. The Statewide Transportation Advisory Committee (STAC) that serves in an advisory capacity to the Transportation Commission is eliminated.

Bill: HB 12-1021, Eliminate transportation planning region process

Sponsor: Rep. Glen Vaad, R-Mead

Status: H. Transportation

Position: Oppose

Lobbyist: Mark Radtke

Unfunded mandates: Prohibition on unfunded mandates by state agencies

This bill essentially codifies Gov. John Hickenlooper's Executive Order #5 pertaining to state agencies funding mandates on local governments created by new rules. The cooperative effort over the last year between the governor's office and local government organizations to bring EO5 online has been extensive and challenging, and more tweaks may be needed along the way. Locking the order in statute may make appropriate changes more difficult. The sponsor indicated he is willing to ensure the language is palatable to Gov. Hickenlooper's office, as there are arguably merits to codifying the order for future administrations and legislatures. CML will evaluate any changes made to the bill following those discussions and will remain neutral until any necessary agreements are made.

Bill: SB 12-026, Prohibition on unfunded mandates by state agencies

Sponsor: Sen. Bill Cadman, R-Colorado Springs

Status: S. Local Government

Position: No position

Lobbyist: Kevin Bommer

Unfunded mandates: No new mandates without funding

This resolution, SJR 12-006, calls for the federal government to refrain from creating any new unfunded mandates to be passed down to state or local governments, and for the General Assembly to not create new mandates on local governments without providing adequate funding. CML supported this resolution last year, but it was not adopted in the House because the session ended prior to action. It is a resolution, so it does not carry the force of law, and CML is hopeful the legislature will take it to heart.

Bill: SJR 12-006, No new mandates without funding
Sponsor: Sen. Ellen Roberts, R-Durango
Status: S. Business, Labor & Technology
Position: Support
Lobbyist: [Kevin Bommer](#)

Water/wastewater: Nutrient standards

SB 12-017 and HB 12-1161, as well as other bills yet to be introduced, attempt to halt or impede the March 2012 nutrients rulemaking of the Water Quality Control Commission (WQCC). CML has been involved from a policy perspective with the Water Quality Control Division staff, as well as various public and private entities that will be affected by the proposed rules. The rules that will be considered by the WQCC in March are explained as necessary because of federal mandates from the Environmental Protection Agency (EPA). To date, CML staff has found no direct mandate in either the U.S. Code or Code of Federal Regulations, but rather have we seen many inferences to “encouragement” from the EPA or implied mandates for statewide total phosphorus and total nitrogen standards. However, barring all state rulemaking may encourage EPA to believe Colorado is doing nothing, at which time the agency could begin to assert its authority under the Clean Water Act.

It is not a matter of whether or not nutrient criteria rules represent an unfunded mandate. (They do, to the tune of at least \$2 billion on top of \$4.5 billion of statewide water/wastewater infrastructure needs.) Rather, it is about whether the mandate is all federal, all state, or some combination thereof.

As legislation progresses, CML will evaluate bills on what the immediate impacts may be, as well as what any unintended consequences may occur. Barring all rulemaking is likely not a viable option. Other approaches, such as those that address proper scientific review, may be feasible but need to be more thoroughly vetted. [More information on the rulemaking proceedings may be found by clicking here.](#)

Lobbyist: [Kevin Bommer](#)

Colorado Municipal League

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CML LEGISLATIVE BOX SCORE

2012 Regular Session

Updated January 27, 2012

Check for the latest box score at www.cml.org

Lobbyist assigned to each bill in ()

Subject

* means with amendments

SUPPORT

HB 12-1005	<i>Municipal Finance – Investment of municipal funds.</i> Rep. Pabon, Sen. Harvey. Amends the statute create a slightly lower ratings threshold that will again allow investment in recently downgraded federal agency instruments commonly used by municipalities. (Mark Radtke)	H. Finance
HB 12-1026	<i>Municipal Courts - POST certification for municipal prosecutors.</i> Rep. Coram, Sen. Roberts. Grants peace officer status to certain municipal prosecuting attorneys. Allows POST board to grant certification following completion of certification requirements. (Meghan Storrie)	H. Judiciary
HB 12-1078	<i>Water/Wastewater – Exemption from certificates of designation.</i> Rep. Vigil, Sen. Schwartz. Provides limited relief requested by drinking water utilities from issuance of certificates of designation for drinking water treatment residuals. Preserves control for local governments through existing administrative mechanisms, and maintains the statutory framework needed by the Solid Waste Program at CDPHE to implement solid waste regulations. (Kevin Bommer)	Passed House*
HB 12-1125	<i>Animal Control – Costs of animal impoundment.</i> Rep. Ramirez, Sen. Steadman. Changes complicated bonding and impoundment provisions for care of animals impounded in cases of alleged abuse or neglect, and requires payment by owner for actual costs of care. (Meghan Storrie, Kevin Bommer)	H. Agriculture, Livestock & Natural Resources
SB 12-016	<i>Pensions – Local government option to change PERA contribution rates.</i> Sen. Lambert, Rep. DelGrosso. Allows members of PERA's Local Government Division to reduce employer contributions by up to 2.5% and increase employee contributions up to 2.5% in the same manner as the state did in FY 11-12 and FY 12-13. (Kevin Bommer)	S. State, Veterans & Military Affairs
SJR 12-002	<i>Severance Tax – Preserve severance tax for water infrastructure.</i> Sen. Roberts, Rep. Wilson. Encourages the General Assembly to avoid future diversions of water infrastructure revenues for budget balancing purposes and instead direct these revenues, as intended by existing statute, to protect and develop Colorado's water resources. (Kevin Bommer)	Passed Senate
SJR 12-006	<i>Unfunded Mandates – No unfunded mandates resolution.</i> Sen. Roberts. Calls for the federal government to refrain from creating any new unfunded mandates to be passed down to state or local governments; and for the General Assembly to not create new mandates on local governments without providing adequate funding (Kevin Bommer)	S. Business, Labor and Technology

OPPOSE

HB 12-1014	<i>Transportation – FASTER late registration fee.</i> Rep. Baumgardner, Sen. Grantham. Repeals \$25 per month late fee for vehicle registration. Sets late fees to a flat \$20 charge that cannot be waived at the discretion of county clerks. (Mark Radtke)	H. Transportation
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HB 12-1021	<i>Transportation – Planning areas.</i> Rep. Vaad. Eliminates areas outside of metropolitan planning organization (MPO) boundaries from participation in Colorado Department of Transportation (CDOT) regional planning. Local governments' roles in regional transportation planning would be eliminated, and the statewide transportation advisory committee would be eliminated. (Mark Radtke)	H. Transportation
HB 12-1029	<i>Taxes – Business personal property tax exemption.</i> Rep. Holbert, Sen. Scheffel. Exempts any business personal property purchased in the year 2013 from BPPT as long as it is used by the original purchaser. (Mark Radtke)	H. Finance
HB 12-1037	<i>Taxes – Classification of certain agricultural products.</i> Rep. Becker. The bill classifies the sales of certain agricultural items as wholesale sales rather than retail sales. The effect of such a classification is that covered sales will not be subject to sales tax. (Geoff Wilson)	H. Agriculture, Livestock & Natural Resources
HB 12-1062	<i>Labor – Peace Officers Bill of Rights.</i> Rep. Barker. Mandates the state and all local governments that employ peace officers to provide several guarantees as part of their employment. (Kevin Bommer)	H. Local Government
HB 12-1066	<i>Transportation – ATVs on streets.</i> Rep. Priola. Requires municipalities with fewer than 5,000 residents to pass an ordinance if they desire to prohibit off-highway vehicles from travel on municipal streets. (Mark Radtke)	H. Transportation
HB 12-1082	<i>Labor – Prevailing wage.</i> Rep. Soper. Requires payment of federal prevailing wage (Davis-Bacon) for public works, which are defined as any public construction project financed in whole or in part with state money. (Kevin Bommer)	Postponed indefinitely
SB 12-050	<i>Transportation – Photo radar/red light camera ban.</i> Sen. Renfroe, Rep. Baumgardner. Prohibits state and local use of red light cameras and photo speed radar, except for cameras to identify vehicles on toll lanes for billing purposes. (Mark Radtke)	S. Transportation
SB 12-052	<i>Taxes – Business personal property tax reduction.</i> Sen. Scheffel, Rep. Priola. Increases the exemption of property subject to BPPT from \$7,000 to \$14,000 of property value. Caps business personal property assessments at current levels, with an inflation factor, for state assessed utilities and businesses for the next ten years. (Mark Radtke)	S. Finance
SB 12-063	<i>Severance Tax – Cap on severance tax distribution.</i> Sen. Brophy. Caps the distribution of state and local severance tax at \$100 million, and makes excess available for legislative distribution to other recipients without regard to energy impacts. (Kevin Bommer)	S. Finance
SB 12-081	<i>Building Codes – Prohibition on residential sprinkler requirements.</i> Sen. Grantham. Prohibits a county or municipality from requiring sprinklers to be installed in single-family dwellings. (Meghan Storrie)	S. Local Government

Personal Calendar

Bills for the Next Session Day

Date	Bill	Title	Info
Tue, Jan 31	HB12-1002	The CLEAR Act & Application Permit Rules	GENERAL ORDERS -- SECOND READING OF BILLS (7) on House calendar
Tue, Jan 31	HB12-1007	Regulatory Analysis Requirement For Rules	Upon Adjournment Room 0112 Economic & Business Development (2) on House calendar
Tue, Jan 31	HB12-1027	Home Kitchen Nonpotentially Hazardous Food	GENERAL ORDERS -- SECOND READING OF BILLS (8) on House calendar
Tue, Jan 31	HB12-1036	Open Records Act Clarification	1:30 p.m. Room 0107 Judiciary (1) on House calendar
Tue, Jan 31	HB12-1044	Start-up Colo Technology Transfer Grant Program	1:30 p.m. Room 0112 Economic & Business Development (1) on House calendar
Tue, Jan 31	HB12-1127	Unemployment Ins Rate Reduction New Employers	Upon Adjournment Room 0112 Economic & Business Development (3) on House calendar
Tue, Jan 31	SB12-008	Postpone Repeal Denver Basin Aquifers	THIRD READING OF BILLS--FINAL PASSAGE--CONSENT CALENDAR (2) on Senate calendar
Tue, Jan 31	SB12-013	Low-speed Electric Vehicles	SENATE TRANSPORTATION COMMITTEE 2:00 P.M. SCR 352 (2) on Senate calendar
Tue, Jan 31	SB12-024	Residential Nonprofit Corp Refunds Open Meetings	THIRD READING OF BILLS--FINAL PASSAGE--CONSENT CALENDAR (5) on Senate calendar
Tue, Jan 31	SB12-026	Agency Rules With State Mandates On A Local Gov	SENATE LOCAL GOVERNMENT COMMITTEE 2:00 P.M. SCR 353 (1) on Senate calendar
Tue, Jan 31	SB12-076	Bidder Prequalification For CDOT Projects	SENATE TRANSPORTATION COMMITTEE 2:00 P.M. SCR 352 (1) on Senate calendar
Tue, Jan 31	SB12-094	Clarify State Sales Tax Definition Of Food	THIRD READING OF BILLS--FINAL PASSAGE--CONSENT CALENDAR (6) on Senate calendar

Bills for the Next Session Week

Date	Bill	Title	Info
Wed, Feb 01	HB12-1003	Authorize Graywater Use	Upon adjournment of Joint House and Senate State, Veterans & Military Affairs Room 0112 State, Veterans & Military Affairs (1) on House calendar
Wed, Feb 01	HB12-1018	FPPA Social Security Pension Modifications	1:30 p.m. Room LSB-A Finance (5) on House calendar
Wed, Feb 01	HB12-1030	Repeal Transportation-related Reporting Reqmnts	1:30 p.m. Room 0107 Transportation (3) on House calendar
Wed, Feb 01	HB12-1031	FPPA Board Authority To Amend Plans	1:30 p.m. Room LSB-A Finance (4) on House calendar
Wed, Feb 01	HB12-1066	Titling And Registering ATVs	1:30 p.m. Room 0107 Transportation (2) on House calendar

Wed, Feb 01	<u>HB12-1070</u>	Harmonize Gov Ethics Statutes & Constitution	Upon adjournment of Joint House and Senate State, Veterans & Military Affairs Room 0112 State, Veterans & Military Affairs (2) on House calendar
Wed, Feb 01	<u>HB12-1077</u>	FPPA Inv Confidentiality Revisions	1:30 p.m. Room LSB-A Finance (3) on House calendar
Wed, Feb 01	<u>SB12-006</u>	Efficiencies In State Regulatory System	SENATE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE 1:30 P.M. SCR 354 (2) on Senate calendar
Wed, Feb 01	<u>SB12-020</u>	Immunity For Reporters Of Overdoses	SENATE JUDICIARY COMMITTEE 1:30 P.M. SCR 356 (1) on Senate calendar
Wed, Feb 01	<u>SB12-027</u>	Committee Of Reference Review Of Rules	SENATE JUDICIARY COMMITTEE 1:30 P.M. SCR 356 (3) on Senate calendar
Wed, Feb 01	<u>SB12-048</u>	Local Foods Local Jobs	GENERAL ORDERS - SECOND READING OF BILLS (1) on Senate calendar
Wed, Feb 01	<u>SB12-073</u>	Legislative Intent In Review Of State Agency Rules	SENATE JUDICIARY COMMITTEE 1:30 P.M. SCR 356 (2) on Senate calendar
Wed, Feb 01	<u>SJR12-006</u>	No Unfunded Mandates	SENATE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE 1:30 P.M. SCR 354 (1) on Senate calendar
Thu, Feb 02	<u>HB12-1005</u>	Legal Investments For Public Funds	Upon adjournment Room LSB-A Finance (2) on House calendar
Thu, Feb 02	<u>HB12-1012</u>	Increase Agency Displacement Expenses Payment Cap	Upon adjournment of Joint Transportation Room 0107 Transportation (1) on House calendar
Thu, Feb 02	<u>HB12-1026</u>	Municipal Prosecuting Attorney Peace Officers	1:30 p.m. Room 0107 Judiciary (2) on House calendar
Thu, Feb 02	<u>HB12-1089</u>	Specific Wording Of Statewide Ballot Title	Upon adjournment Room 0112 State, Veterans & Military Affairs (2) on House calendar
Thu, Feb 02	<u>HB12-1127</u>	Unemployment Ins Rate Reduction New Employers	1:30 p.m. Room 0112 Economic and Business Development (2) on House calendar
Thu, Feb 02	<u>SB12-031</u>	Federal Mineral Lease Districts	SENATE AGRICULTURE, NATURAL RESOURCES, AND ENERGY COMMITTEE 1:30 P.M. SCR 353 (2) on Senate calendar
Thu, Feb 02	<u>SB12-063</u>	Sev Tax Revenues For Rural Insts Of Higher Ed	SENATE FINANCE COMMITTEE UPON ADJOURNMENT SCR 354 (1) on Senate calendar
Thu, Feb 02	<u>SB12-097</u>	Streamline Change Of Surface Water Diversion Point	SENATE AGRICULTURE, NATURAL RESOURCES, AND ENERGY COMMITTEE 1:30 P.M. SCR 353 (1) on Senate calendar
Fri, Feb 03	<u>HB12-1008</u>	GA & Public Input Proposed Agency Rules & Fees	7:30 a.m. Room LSB A Appropriations (1) on House calendar
Fri, Feb 03	<u>HB12-1009</u>	Federal Funds Transparency Act	7:30 a.m. Room LSB A Appropriations (2) on House calendar
Fri, Feb 03	<u>HB12-1032</u>	Continue Forest Restoration Programs 5 Years	7:30 a.m. Room LSB A Appropriations (3) on House calendar

Fri, Feb 03	<u>HB12-1034</u>	Waste Tire Processor End User Fund	7:30 a.m. Room LSB A Appropriations (4) on House calendar
Mon, Feb 06	<u>HB12-1062</u>	Employment Protections For Colorado Peace Officers	1:30 p.m. Old Supreme Court Chamber Local Government (1) on House calendar
Mon, Feb 06	<u>HB12-1107</u>	Grand Valley Drainage Dist Excavation Exemption	1:30 p.m. Room 0107 Agriculture, Livestock, and Natural Resources (3) on House calendar
Mon, Feb 06	<u>HB12-1173</u>	Protect Pub Health Oil & Gas Hydraulic Fracturing	1:30 p.m. Old Supreme Court Chamber Local Government (3) on House calendar
Mon, Feb 06	<u>HB12-1176</u>	Oil Gas Surface Owner Horizontal Drilling Setbacks	1:30 p.m. Old Supreme Court Chamber Local Government (2) on House calendar
Mon, Feb 06	<u>SB12-062</u>	Voting By Military Personnel	SENATE STATE, VETERANS, AND MILITARY AFFAIRS COMMITTEE 1:30 P.M. SCR 353 (2) on Senate calendar
Mon, Feb 06	<u>SB12-080</u>	Business Comment Fiscal Impact Proposed Laws Rules	SENATE STATE, VETERANS, AND MILITARY AFFAIRS COMMITTEE 1:30 P.M. SCR 353 (1) on Senate calendar
Tue, Feb 07	<u>SB12-034</u>	Repeal Rapid Screen For High-emitting Vehicles	SENATE TRANSPORTATION COMMITTEE 2:00 P.M. SCR 352 (3) on Senate calendar
Tue, Feb 07	<u>SB12-044</u>	Failure To Provide Valid Transit Pass Or Coupon	SENATE TRANSPORTATION COMMITTEE 2:00 P.M. SCR 352 (2) on Senate calendar
Tue, Feb 07	<u>SB12-081</u>	Local Gov Sprinkler Installation Requirements	SENATE LOCAL GOVERNMENT COMMITTEE 2:00 P.M. SCR 353 (3) on Senate calendar
Tue, Feb 07	<u>SB12-082</u>	PERA Retirement Age Same As Social Security	SENATE FINANCE COMMITTEE 1:30 P.M. SCR 354 (1) on Senate calendar
Tue, Feb 07	<u>SB12-084</u>	PERA Transparency	SENATE FINANCE COMMITTEE 1:30 P.M. SCR 354 (2) on Senate calendar
Tue, Feb 07	<u>SB12-087</u>	Accrual Of Interest On Property Tax Refunds	SENATE LOCAL GOVERNMENT COMMITTEE 2:00 P.M. SCR 353 (2) on Senate calendar
Tue, Feb 07	<u>SB12-095</u>	Motor Vehicle Sales Cert Of Title Bond Requirement	SENATE TRANSPORTATION COMMITTEE 2:00 P.M. SCR 352 (1) on Senate calendar

CML ANNUAL LEGISLATIVE WORKSHOP

ABOUT

Plan to attend the *CML Annual Legislative Workshop* on Wednesday, **Feb. 22**, at the **NEW HISTORY COLORADO CENTER, 1200 BROADWAY**, Denver. Municipal officials from across the state will gather at this daylong workshop to discuss key municipal issues before the 2012 General Assembly, the CML legislative program, and what municipal officials can do to influence the legislative process. It is an excellent opportunity to learn about the legislative process and its importance to cities and towns.

An open house reception for state legislators and all attendees will follow the workshop at the CML office building, 1144 Sherman St., Denver, 4:30-6:30 p.m.

CML LEADERSHIP CREDITS

Five Elected Officials' Leadership Training Program credits are available for this training.

PARKING

There is limited complimentary parking at the League building (approximately 1 block from Center) and a parking lot next to the Center which currently charges \$7 for all day parking.

LODGING

CML has a discounted room rate at the Burnsley Hotel, 1000 Grant St. (one block from the League building), for \$131. Call 303-830-1000 or visit www.Burnsley.com for reservations, and mention CML for discounted rate. Make reservations by **Tuesday, Feb. 14**, to secure a room. The Burnsley Hotel offers complimentary guest parking and a shuttle to/from History Colorado and downtown on a first-come, first-served basis.

REGISTRATION OR QUESTIONS

For more information or special needs, call 303-831-6411 or 866-578-0936. Return the registration form to CML by Friday, **Feb. 8**, or visit www.cml.org to register online.

AGENDA

- 8:00 Registration and breakfast
- 8:30 Welcome by City & County of Denver Mayor Michael Hancock
- 8:45 The State of Colorado Cities & Towns
- 9:00 Opening session: 2012 General Assembly — What municipal officials can expect
Presented by CML advocacy team
- 10:15 Morning break
- 10:30 Concurrent sessions
- Session 1: Oil & gas: In your community & at the Capitol
Presenters: Geoff Wilson, CML general counsel; Tisha Conoly Schuller, Colorado Oil & Gas Association president & chief executive officer
- Session 2: Education in Colorado: Funding challenges and community impacts
Presenters: Bruce Benson, University of Colorado president; Ken Delay, Colorado Association of School Boards executive director
- Noon Lunch: Legislative leadership panel
All members of the Legislature's leadership have been invited to review 2012 Statehouse activity of municipal concern.
- 1:45 General session: Federal issues
Presenter: Carolyn Coleman, Director, Office of Federal Relations, National League of Cities
- 2:45 General session: Meet the State Cabinet
Panelists: Reeves Brown, Colorado Department of Local Affairs executive director; Donald Hunt, Colorado Department of Transportation executive director; Mike King, Colorado Department of Natural Resources executive director
- 4:15 Adjourn to CML for open house
- 4:30 League Open House
A reception for state legislators and all attendees will be held at the CML office, 1144 Sherman St.

Thanks to Anadarko Petroleum Corporation for underwriting this workshop!

REGISTRATION — CML ANNUAL LEGISLATIVE WORKSHOP — WEDNESDAY, FEB. 22

Please submit a separate form for each participant. This form may be copied. Return by Wednesday, **Feb. 8** — add a \$35 late fee if received after that date.

Name _____

Title _____ Representing _____

Phone _____ Fax _____

Email _____

Address _____

City, State, ZIP _____

Check here for a vegetarian meal Check here for a gluten-free meal Check here if you plan to attend the League's Open House

Payment:

Check enclosed Visa MasterCard

Visa/MC # _____ Exp. date _____

Name on card _____ Signature _____

Registration fees:*

- \$95 (CML member/associate members if received by Feb. 8) \$190 (all nonmembers if received by Feb. 8)
 \$130 (CML member/associate members if received after Feb. 8) \$225 (all nonmembers if received after Feb. 8)

Mail or fax this form and send payment to CML, 1144 Sherman St., Denver, CO 80203-2207; fax 303-860-8175.

Make checks payable to Colorado Municipal League. **Registration is also available online at www.cml.org.**

* Registrations may be canceled up to seven days prior to the scheduled event. Canceled registrations received prior to this time will be refunded, less a \$25 processing fee. Cancellations less than seven days prior to the event cannot be accepted; however, substitutions can be made at any time. If you fail to attend the event, you are still responsible for payment. Your registration will not be final until payment is received.

Proposed Nutrient Regulations A Summary of Issues

Prepared by Littleton/Englewood Wastewater Treatment Plant

The Supervisory Committee for the Littleton/Englewood Wastewater Treatment Plant has filed comments on two nutrient related issues:

- A responsive prehearing statement on proposed statewide nutrient criteria being considered by the Water Quality Control Commission at a hearing in March 2012, and
- Public comments on a Total Maximum Daily Load (TMDL) for Barr Lake and Milton Reservoir to address water quality impairments in the two reservoirs.

The comments are in opposition to the proposed nutrient criteria and the TMDL, respectively.

Some of the major issues regarding the proposed nutrient criteria in the comments are:

- The proposed statewide nutrient criteria would only be selectively enforced for wastewater plants with a capacity of over 2 million gallon per day and exempting, at least for a time, smaller wastewater treatment plants. The WQCC does not have the authority for selective enforcement, which effectively creates favored and unfavored classes of publically owned treatment plants.
- A study conducted by the Water Quality Control Division estimated the cost of complying with the proposed criteria, as well as the value of the benefits resulting for the control of nutrients. The study found the cost of compliance exceeds the value of the benefits by a wide margin and fails the economic reasonableness test in the Colorado Water Quality Control Act.

In addition, nitrogen — in its' various forms as a nutrient — is not toxic, but some concentration is needed to have productive waters in the state. The toxic forms of nitrogen are already appropriately controlled by existing regulations protecting drinking water supplies and aquatic life.

The comments opposing the Barr Lake/Milton Reservoir TMDL similarly cited the cost of complying with the TMDL versus the value of the benefits. It is doubtful that controlling point sources of phosphorus (including at the L/E WWTP) would result in any water quality benefits in the two reservoirs without controlling other sources also. Even eliminating all external sources of phosphorus may result in the reservoirs remaining 'green.' Also, the reservoirs are privately owned and, as such, should not be 'waters of the state' subject to the Colorado Water Quality Control Act.

There has been discussion regarding potential legislative action regarding the proposed nutrient criteria. Hill & Robbins has prepared a memorandum (attached) describing the status of these actions. The above issues should be considered when deciding which, if any, legislative actions are supported.

Attachments:

Hill & Robbins Memorandum (w/attachments)
Colorado's Development of Statewide Nutrient Criteria
Colorado Nutrient Coalition Fact Sheet
Responsive Prehearing Statement of Littleton/Englewood Wastewater Treatment Plant
Hill & Robbins letter – Barr/Milton Reservoirs TMDL

MEMORANDUM

To: Dennis Stowe, Stu Fonda, Gary Sears, Michael Penny Charlie Blosten Rick Kahm

From: David W. Robbins

Date: February 1, 2012

Re: Current Proposed Nutrient Legislation

There are currently only two bills in the hopper that address the WQCC's effort to adopt water quality standards for nutrients. The Senate bill described below is not one that I feel the Cities should support. It really doesn't solve the problem and places the State in a direct conflict with EPA. The reality is that nutrients are, in fact, pollutants that are currently regulated. The Bi-City NPDES permit already has discharge limits in it for nitrogen compounds. While we do not have a phosphorous limit at this time the Bi-City Plant is capable of treating for and meeting a phosphorous standard without excessive additional expense. SB-017 goes overboard.

The Looper bill, HB-1161, on the other hand, proposes to get at the problem that most impacts the Bi-City Plant. It proposes to initiate further study, both the scientific necessity of the proposed Tier 3 limits as well as putting further focus on the costs and benefits associated with those limits. It addresses the need to comply with the Governor's executive order and requires addressing issues on a basin-specific basis. From the Cities' standpoint we will inevitably have to deal with some additional treatment requirements for nitrogen compounds. We need to push for more time, more focus on cost versus benefit achieved, and a slower approach that addresses the problem incrementally so that unnecessary treatment isn't required. The Looper bill moves the State in that direction and is a preferable approach, in my view.

The two bills are separately described below and copies of the bills are attached. I have also attached the power point that the Water Quality Control Division gave to the Joint Agriculture Committee today (2/1/12).

Senate Bill 017 by Senator Steve King. Operative language is that the Water Quality Control Commission can adopt standards by rule EXCEPT THAT THE COMMISSION SHALL NOT ADOPT NUMERIC CRITERIA FOR A WATER CONTROL STANDARD REGARDING NITROGEN OR PHOSPHORUS.

Status: Calendared in Senate Ag on February 8 at 1:30. Likely to get killed there. CWC State Affairs is not likely to support because it is too extreme a solution.

House Bill 1161 by Rep. Looper. Operative language is that the Commission shall not adopt a numeric standard until the standard is approved by the legislature. Creates a Nutrient Science Advisory Board. BY OCTOBER 1, 2012, THE BOARD SHALL HOLD A PUBLIC

HEARING ON HOW THE DIVISION'S PROPOSED NUMERIC WATER QUALITY
NUTRIENT STANDARD REGULATING NITROGEN AND PHOSPHORUS:

(I) COMPLIES WITH EXECUTIVE ORDER 2011-005;

(II) REFLECTS ACTIVE STAKEHOLDER PARTICIPATION;

(III) FULLY CONSIDERS THE CONCLUSIONS OF THE COST-BENEFIT STUDY
CONDUCTED ON BEHALF OF THE DIVISION AND THE WATER
RESOURCES AND POWER DEVELOPMENT AUTHORITY;

(IV) IS STRUCTURED 1 TO AVOID UNNECESSARY REGULATION AND MINIMIZE
THE FISCAL IMPACT TO STATE AGENCIES AND LOCAL
GOVERNMENTS; AND

(V) IS DESIGNED TO ADDRESS BASIN-SPECIFIC CONDITIONS

This is the language that was in the Senate Joint Resolution from last year. The Nutrients Science Advisory Board is to prepare a report by February 1, 2013. Their work is to be funded by gifts, grants, and donations.

Status: Not calendared yet in House Ag.

It is possible that Rep. Looper will make additional changes to the bill in the coming days but no amendments have been provided as of now. At a minimum, it appears that the make-up and function of the Science Board needs to be addressed further.

cc: Jennifer Hunt
Mark Wagner
Mary Gardner
Dan Brotzman
Kristen Crawford

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0472.02 Thomas Morris x4218

HOUSE BILL 12-1161

HOUSE SPONSORSHIP

Looper,

SENATE SPONSORSHIP

King K.,

House Committees
Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 CONCERNING SCIENTIFIC REVIEW OF WATER QUALITY RULES
102 REGULATING NUTRIENTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billssummaries>.)

The bill establishes a nutrients scientific advisory board, appointed by leadership of the general assembly, to review proposed numeric water quality nutrient standards regulating nitrogen and phosphorus to determine how the proposed rules comply with an executive order; reflect active stakeholder participation; fully consider a cost-benefit study; are

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

structured to avoid unnecessary regulation and minimize the fiscal impact to state agencies and local governments; and are designed to address basin-specific conditions. The advisory board will deliver a report to the water quality control commission and the general assembly by February 1, 2013. The commission cannot adopt the proposed rule until the rule is approved by the general assembly acting by bill.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 25-8-402, **amend** (1);
3 and **add** (6) as follows:

4 **25-8-402. Procedures to be followed in classifying state waters**
5 **and setting standards and control regulations - nutrients scientific**
6 **advisory board - notice of funding through gifts, grants, and**
7 **donations - repeal.** (1) EXCEPT AS SPECIFIED IN SUBSECTION (6) OF THIS
8 SECTION, prior to the classification of state waters and promulgating any
9 water quality standard or any control regulation authorized in this article,
10 the commission shall conduct a public hearing ~~thereon~~ as provided in
11 section 24-4-103, C.R.S. Notice of ~~any such~~ THE hearing ~~shall~~ MUST
12 conform to the requirements of section 24-4-103, C.R.S., but ~~such~~ THE
13 notice ~~shall~~ MUST be given at least sixty days prior to the hearing and
14 ~~shall~~ MUST include each proposed standard or regulation.

15 (6) (a) THE COMMISSION SHALL NOT ADOPT A NARRATIVE OR
16 NUMERIC WATER QUALITY NUTRIENT STANDARD REGULATING NITROGEN,
17 PHOSPHORUS, OR RELATED PARAMETERS UNTIL THE STANDARD IS
18 APPROVED BY THE GENERAL ASSEMBLY ACTING BY BILL.

19 (b) (I) THERE IS HEREBY CREATED THE NUTRIENTS SCIENTIFIC
20 ADVISORY BOARD. THE BOARD CONSISTS OF NINE MEMBERS APPOINTED BY
21 LEADERSHIP OF THE GENERAL ASSEMBLY, EACH OF WHOM MUST BE A
22 SCIENTIST OR ENVIRONMENTAL ENGINEER POSSESSING ADVANCED

1 DEGREES AND SPECIALIZED EXPERTISE IN THE AREAS OF POLLUTANT
2 EFFECTS ON WATER QUALITY, HUMAN HEALTH, AQUATIC WILDLIFE, OR THE
3 ENVIRONMENT.

4 (II) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE
5 MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF
6 THE SENATE, AND THE MINORITY LEADER OF THE SENATE SHALL EACH
7 APPOINT TWO MEMBERS TO THE BOARD. THE SPEAKER OF THE HOUSE OF
8 REPRESENTATIVES AND THE PRESIDENT OF THE SENATE SHALL JOINTLY
9 APPOINT ONE MEMBER TO THE BOARD. AT LEAST ONE MEMBER MUST
10 RESIDE IN EACH OF THE STATE'S WATER DIVISIONS AS ESTABLISHED IN
11 SECTION 37-92-201, C.R.S. ALL MEMBERS MUST BE APPOINTED BY JUNE
12 1, 2012.

13 (III) EACH BOARD MEMBER IS ENTITLED TO RECEIVE A PER DIEM
14 PAYMENT THAT IS TWICE THE AMOUNT PAID TO THE GENERAL ASSEMBLY
15 FOR ATTENDANCE AT INTERIM COMMITTEES FOR EACH DAY ACTUALLY AND
16 NECESSARILY SPENT IN THE DISCHARGE OF OFFICIAL DUTIES.
17 ADDITIONALLY, EACH MEMBER IS ENTITLED TO RECEIVE TRAVEL AND
18 OTHER NECESSARY EXPENSES ACTUALLY INCURRED IN THE PERFORMANCE
19 OF HIS OR HER OFFICIAL DUTIES AS A BOARD MEMBER.

20 (c) BY OCTOBER 1, 2012, THE BOARD SHALL HOLD A PUBLIC
21 HEARING ON HOW THE DIVISION'S PROPOSED NUMERIC WATER QUALITY
22 NUTRIENT STANDARD REGULATING NITROGEN AND PHOSPHORUS:

23 (I) COMPLIES WITH EXECUTIVE ORDER D 2011-005;

24 (II) REFLECTS ACTIVE STAKEHOLDER PARTICIPATION;

25 (III) FULLY CONSIDERS THE CONCLUSIONS OF THE COST-BENEFIT
26 STUDY CONDUCTED ON BEHALF OF THE DIVISION AND THE WATER
27 RESOURCES AND POWER DEVELOPMENT AUTHORITY;

1 (IV) IS STRUCTURED TO AVOID UNNECESSARY REGULATION AND
2 MINIMIZE THE FISCAL IMPACT TO STATE AGENCIES AND LOCAL
3 GOVERNMENTS; AND

4 (V) IS DESIGNED TO ADDRESS BASIN-SPECIFIC CONDITIONS.

5 (d) BY FEBRUARY 1, 2013, THE BOARD SHALL DELIVER A REPORT
6 CONTAINING ITS FINDINGS ON THE FACTORS SPECIFIED IN PARAGRAPH (c)
7 OF THIS SUBSECTION (6) TO THE WATER QUALITY CONTROL COMMISSION
8 AND THE GENERAL ASSEMBLY.

9 (e) (I) THE DIVISION IS AUTHORIZED TO SEEK AND ACCEPT GIFTS,
10 GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE
11 PURPOSES OF THIS SUBSECTION (6); EXCEPT THAT THE DIVISION SHALL NOT
12 ACCEPT A GIFT, GRANT, OR DONATION THAT IS SUBJECT TO CONDITIONS
13 THAT ARE INCONSISTENT WITH THIS SUBSECTION (6) OR ANY OTHER LAW
14 OF THE STATE. THE DIVISION SHALL TRANSMIT ALL PRIVATE AND PUBLIC
15 MONEYS RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE
16 STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE NUTRIENTS
17 SCIENTIFIC ADVISORY BOARD FUND, WHICH FUND IS HEREBY CREATED IN
18 THE STATE TREASURY AND REFERRED TO IN THIS SUBSECTION (6) AS THE
19 "FUND". THE MONEYS IN THE FUND ARE CONTINUOUSLY APPROPRIATED TO
20 THE DIVISION FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH
21 IMPLEMENTING THIS SUBSECTION (6).

22 (II) (A) THE DIVISION SHALL NOTIFY THE LEGISLATIVE COUNCIL
23 STAFF WHEN IT HAS RECEIVED ADEQUATE FUNDING THROUGH GIFTS,
24 GRANTS, OR DONATIONS FOR THE PURPOSES OF THIS SUBSECTION (6) AND
25 SHALL INCLUDE IN THE NOTIFICATION THE INFORMATION SPECIFIED IN
26 SECTION 24-75-1303 (3), C.R.S.

27 (B) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE SEPTEMBER

1 1, 2015.

2 **SECTION 2. Applicability.** The provisions of this act apply to
3 rules adopted before, on, or after the effective date of this act.

4 **SECTION 3. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0194.01 Thomas Morris x4218

SENATE BILL 12-017

SENATE SPONSORSHIP

King S.,

HOUSE SPONSORSHIP

(None),

Senate Committees

Agriculture, Natural Resources, and Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ADOPTION OF WATER QUALITY CONTROL RULES**
102 **REGARDING NUTRIENTS, AND, IN CONNECTION THEREWITH,**
103 **PROHIBITING THE WATER QUALITY CONTROL COMMISSION**
104 **FROM ADOPTING NUMERIC CRITERIA FOR A WATER CONTROL**
105 **STANDARD OR CONTROL REGULATION REGARDING NITROGEN OR**
106 **PHOSPHORUS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

The bill prohibits the water quality control commission from adopting numeric criteria for a water control standard or control regulation regarding nitrogen or phosphorus.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 25-8-204, **amend** (1)
3 as follows:

4 **25-8-204. Water quality standards - rules.** (1) THE COMMISSION
5 SHALL, BY RULE, PROMULGATE water quality standards ~~shall be~~
6 ~~promulgated by the commission by regulations which~~ THAT describe
7 water characteristics or the extent of specifically identified pollutants for
8 state waters; EXCEPT THAT THE COMMISSION SHALL NOT ADOPT NUMERIC
9 CRITERIA FOR A WATER CONTROL STANDARD REGARDING NITROGEN OR
10 PHOSPHORUS.

11 **SECTION 2.** In Colorado Revised Statutes, 25-8-205, **amend** (5)
12 as follows:

13 **25-8-205. Control regulations.** (5) The commission shall not
14 adopt control regulations that:

15 (a) Require agricultural nonpoint source dischargers to utilize
16 treatment techniques that require additional consumptive or evaporative
17 use ~~which~~ THAT would cause material injury to water rights. With regard
18 to nonpoint source water pollution control related to agricultural
19 practices, the commission and division shall pursue incentive, grant, and
20 cooperative programs in preference to the promulgation of control
21 regulations. When interested water conservation districts, water
22 conservancy districts, and conservation districts recommend nonpoint
23 source control activities related to agricultural practices to the division
24 and commission, the division and commission, after consultation with

1 such districts, shall give substantial weight to the recommendations of
2 ~~such~~ THE districts into the approved program. Except as provided by
3 section 25-8-205.5, THE COMMISSION SHALL PROMULGATE control
4 regulations related to agricultural practices ~~shall be promulgated~~ only if
5 THE COMMISSION DETERMINES THAT incentive, grant, and cooperative
6 programs are ~~determined by the commission to be~~ inadequate and ~~such~~
7 THE regulations are necessary to meet state law or the federal act. This
8 subsection (5) does not allocate wasteloads or relieve any source from
9 participation in wasteload allocations determined necessary under any
10 duly promulgated regulations established by the ~~water quality control~~
11 commission under this section.

12 (b) CONTAIN NUMERIC CRITERIA FOR NITROGEN OR PHOSPHORUS.

13 **SECTION 3. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.

Joint Agriculture Committee

HJR 11-1025 Briefing

January 25, 2012

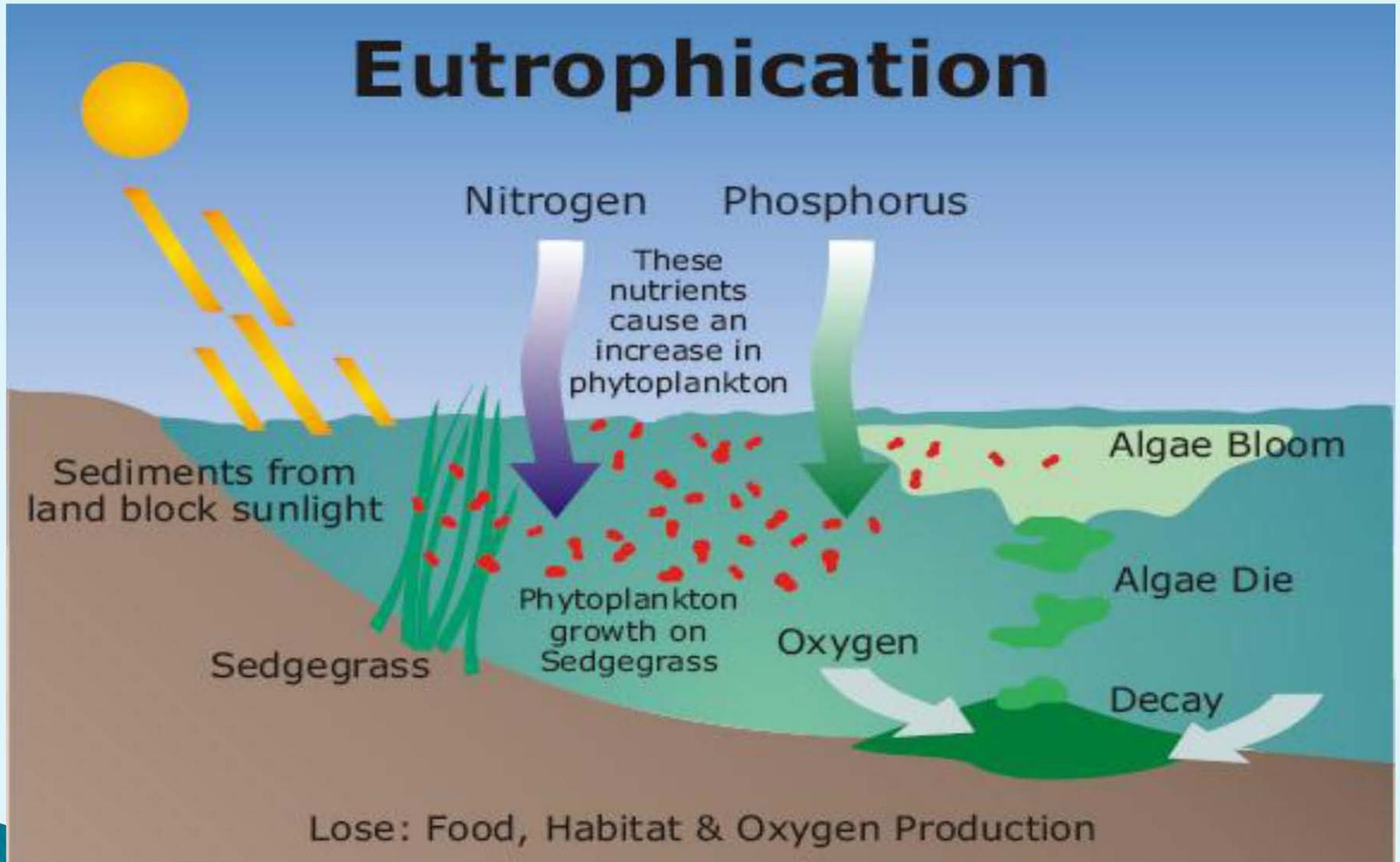
Christopher E. Urbina, MD, MPH, Executive Director and Chief Medical Officer
Steven H. Gunderson, Director, Water Quality Control Division
Colorado Dept. Public Health and Environment

House Joint Resolution 11-1025 Requires Presentation on Division Nutrient Proposal

- ▶ Presentation Shall Address How the Division's Proposal:
 - (a) Reflects active stakeholder participation;
 - (b) Fully considers the Cost/Benefit Study conclusions;
 - (c) Is structured to avoid unnecessary regulation and minimize the fiscal impact;
 - (d) Is designed to address basin-specific conditions; and
 - (e) Complies with Executive Order 2011-005



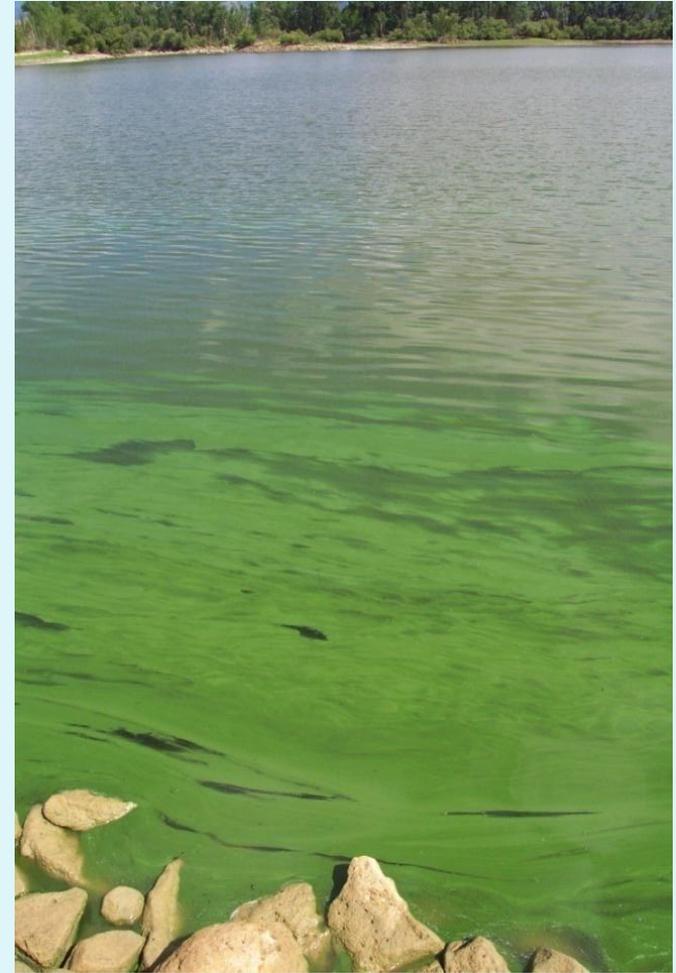
Nutrient Impacts



Nutrient Impacts



Sanchez Reservoir



Fruitgrowers Reservoir

Nutrient Impacts

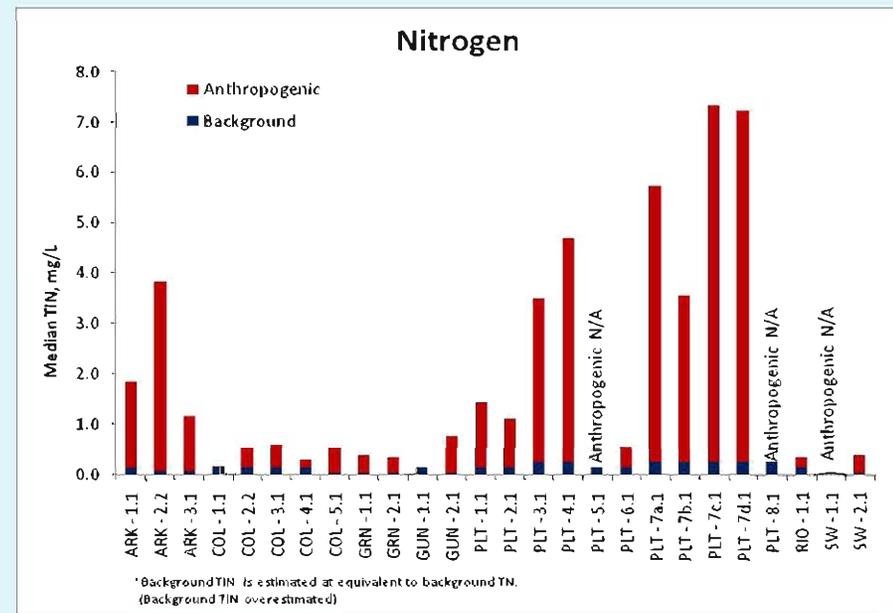
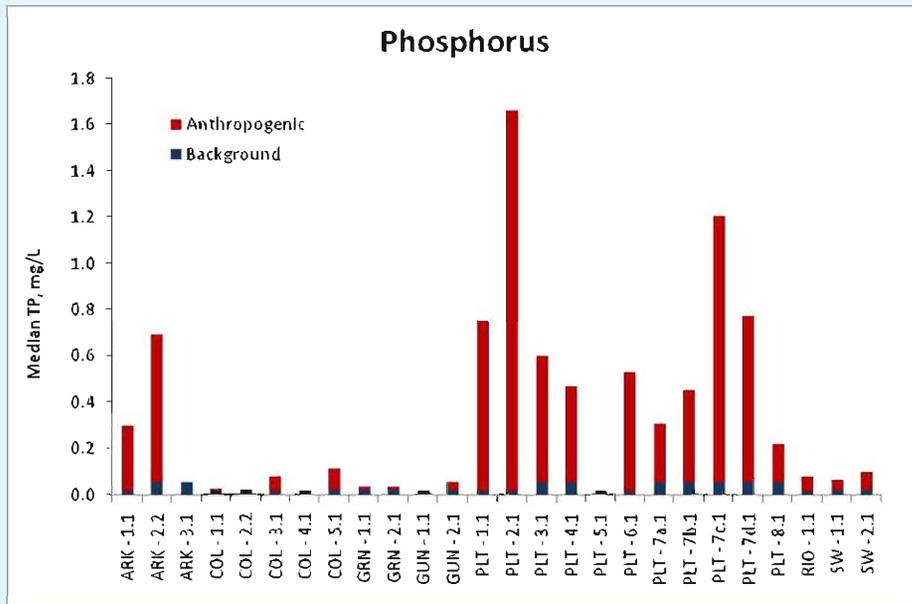


N. Fork Gunnison River



Barr Lake

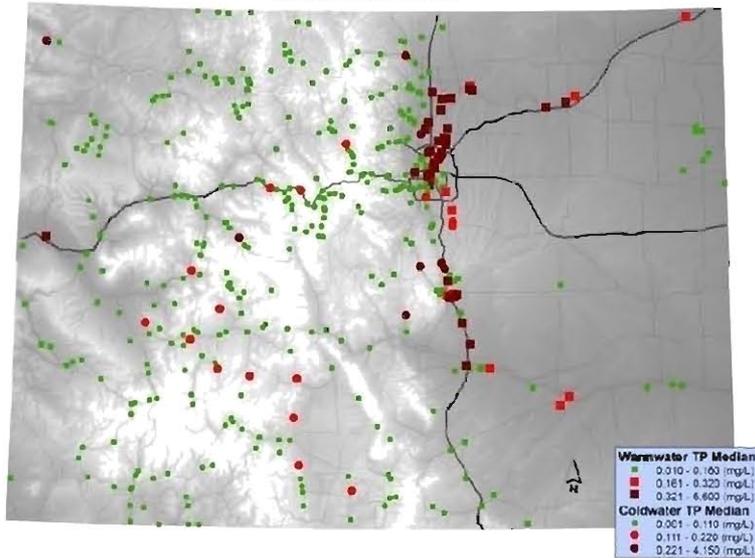
Nutrients in Colorado's Environment Elevated above background



Distribution of Elevated Nutrient Concentrations

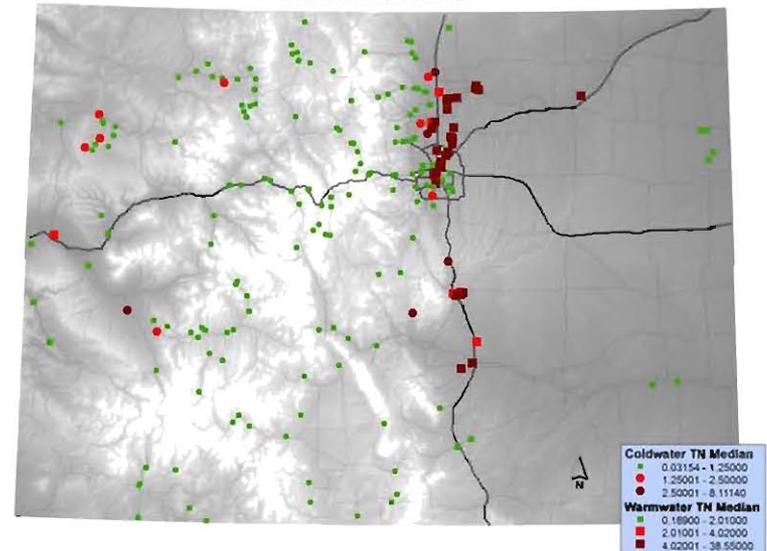
Median Phosphorus Concentrations

Colorado Rivers and Streams



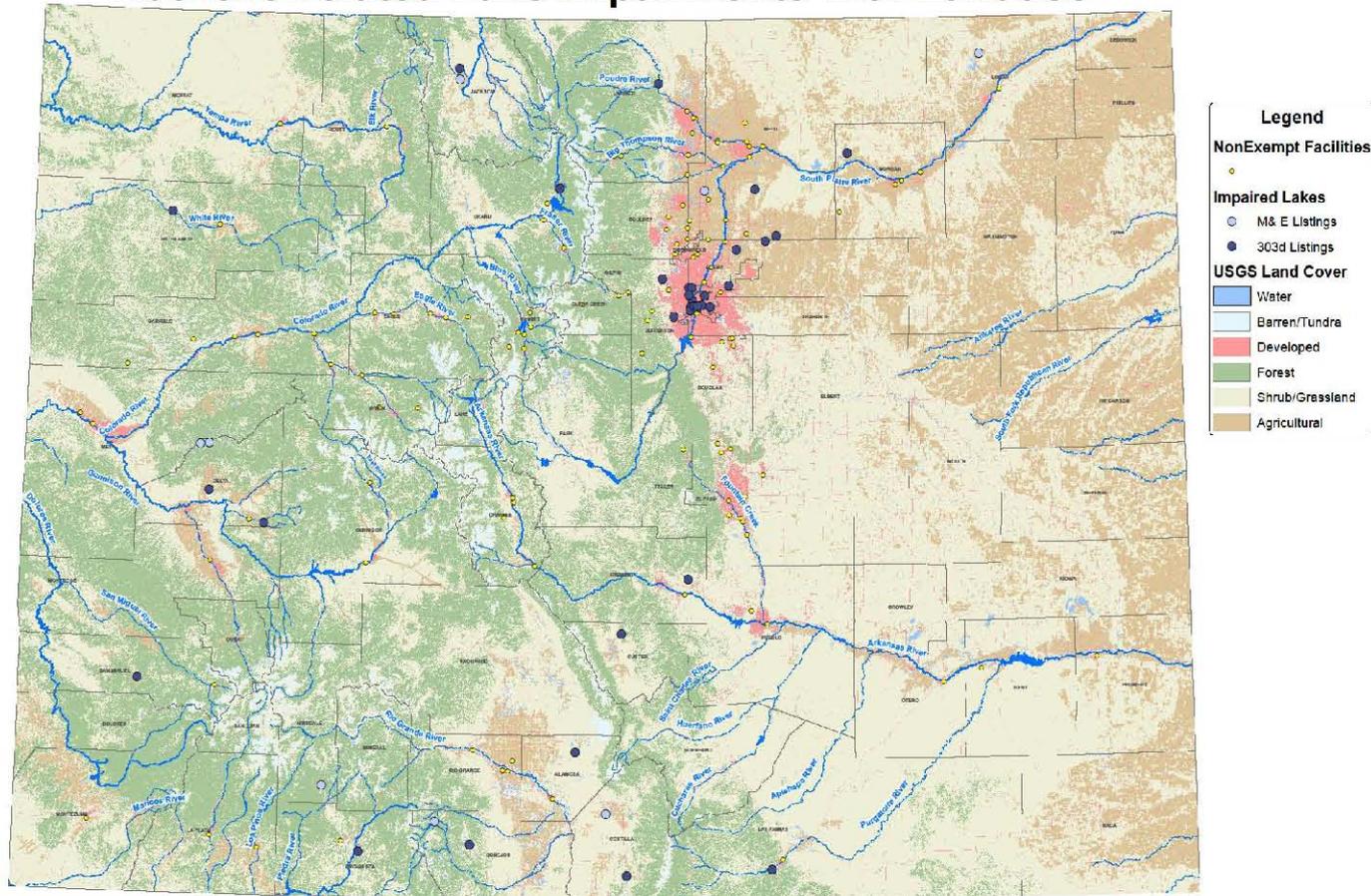
Median Nitrogen Concentrations

Colorado Rivers and Streams



Lakes/Reservoirs Affected by Elevated Nutrients

Cost Benefit Study Facilities and Nutrient Related Lake Impairments with Landuse



Date: 10/07/17
Author: Sarah Whittle
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Division's Nutrient Proposal

- ▶ Initially (2009/Early 2010) – Adoption of Criteria to be Applied as State Wide Standards
- ▶ “Traditional” regulatory approach
 - Standards would have been adopted into all river basins over 4 years.
 - Standards would have been implemented into permits.
 - Limits well below those in the current proposal.
 - Limits would have been required for many additional communities beyond those under the proposal.
 - Standards would have been used to determine impaired waters requiring TMDLs.

Division's Nutrient Proposal

- ▶ Tailored Approach (Sept. 2010 – Present)
 - Protect Sensitive Water Supplies
 - Water Quality Standards Upstream of Dischargers
 - Technology-Based Limits (Biological)
 - Only Required of the largest 33% of facilities.
 - Addresses ~ 95% of flow discharged statewide.
 - Exemptions for small & disadvantaged communities.
 - New variance provision—accounts for cost and WQ impact.
 - Facility-specific schedules to install wastewater treatment.

(a) Reflects Active Stakeholder Participation

- ▶ First meeting in Sept. 2001
– 57 meetings since
- ▶ 36 meetings in 2010 and 2011
- ▶ About 100 people/meeting
- ▶ E-mail distribution list of over 300 people
- ▶ Initial proposal in Feb. 2011
- ▶ Modified in July and Sept. 2011 based on stakeholder feedback



(b) Fully considers the Cost/Benefit Study

- ▶ Study developed in cooperation with stakeholders
 - Scope of work vetted and modified per comments.
 - Four stakeholder meetings (5/16, 6/24, 7/14 and 9/26) to present study approach/results.
 - Modifications made along the way where possible.
 - Some comments outside of scope of work.
 - Final report out in early December.

(b) Fully considers the Cost/Benefit Study

- ▶ Determined costs of treatment for proposed regulation and two other scenarios
- ▶ Statewide – \$0.80 in benefits for every \$1.00 in cost for proposed regulation
- ▶ Major river basin benefit to cost ratios varied
 - Less than 0.50:1 – Rio Grande, Southwestern, Colorado and Gunnison.
 - Between 0.50:1 and 1:1 – S. Platte and Yampa–White
 - Greater than 1:1 – Arkansas.
- ▶ Cost estimates used to increase discharge flow exemption category

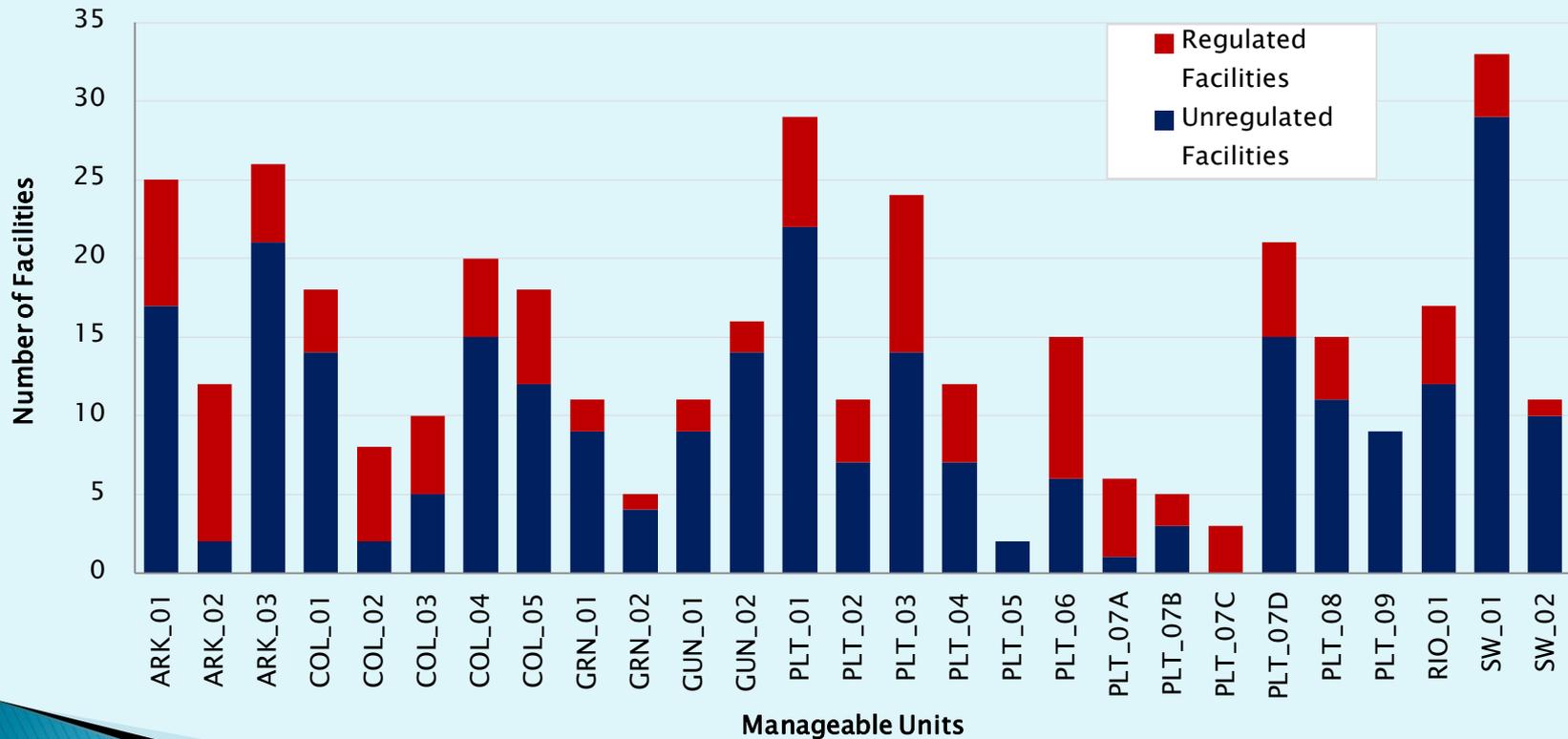
(c) Is structured to avoid unnecessary regulation and minimize the fiscal impact

Division Strategy

- ▶ Reduces potential future treatment costs 10X
- ▶ Balances protection of existing good WQ with improving poor WQ
- ▶ Avoids high regulatory/administrative costs for Division and regulated entities
 - – Compared to traditional approach
- ▶ Exempts over 260 small and financially disadvantaged communities

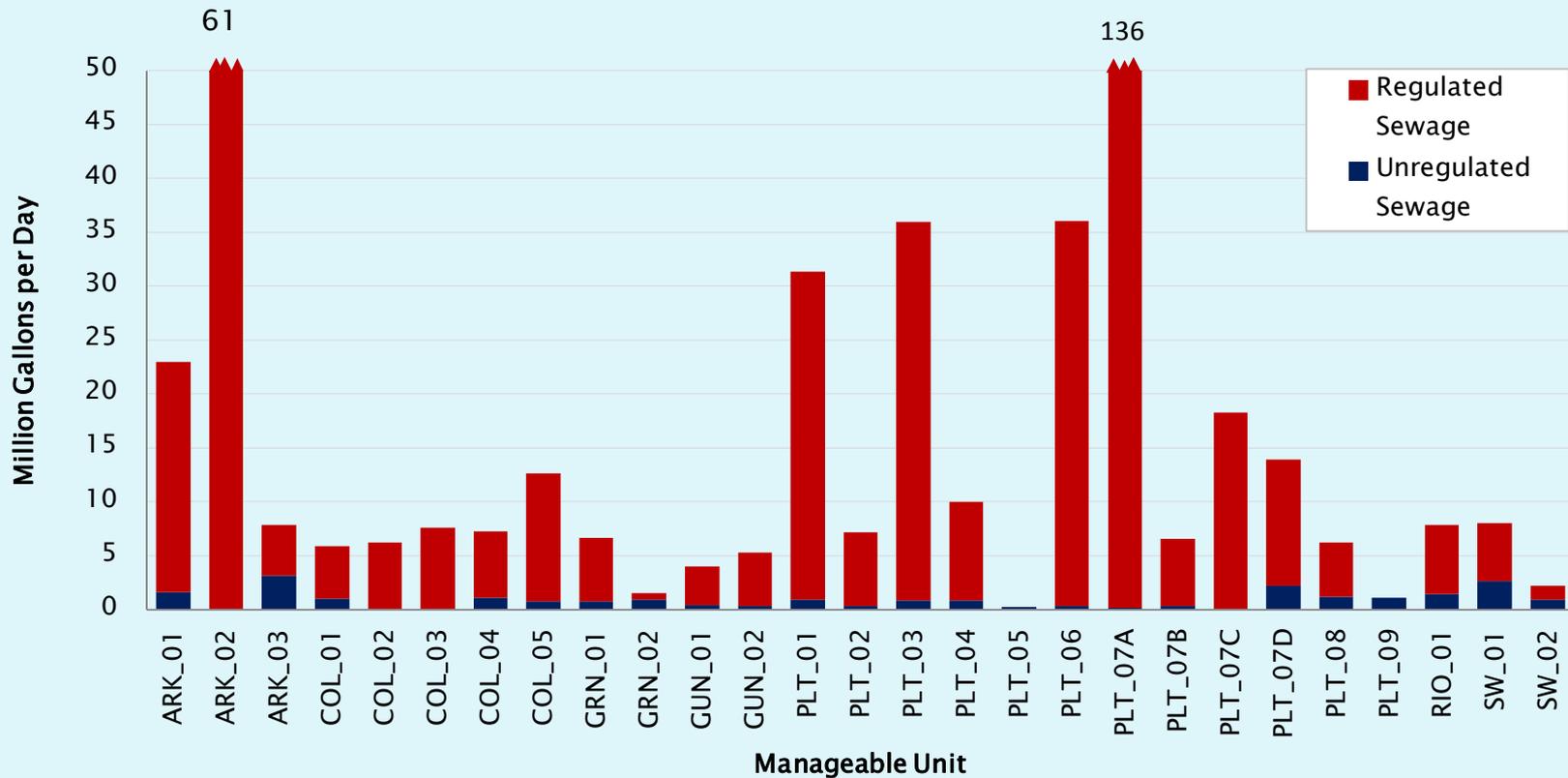
(c) Is structured to avoid unnecessary regulation and minimize the fiscal impact

Facilities: Regulated and Unregulated for Nutrients

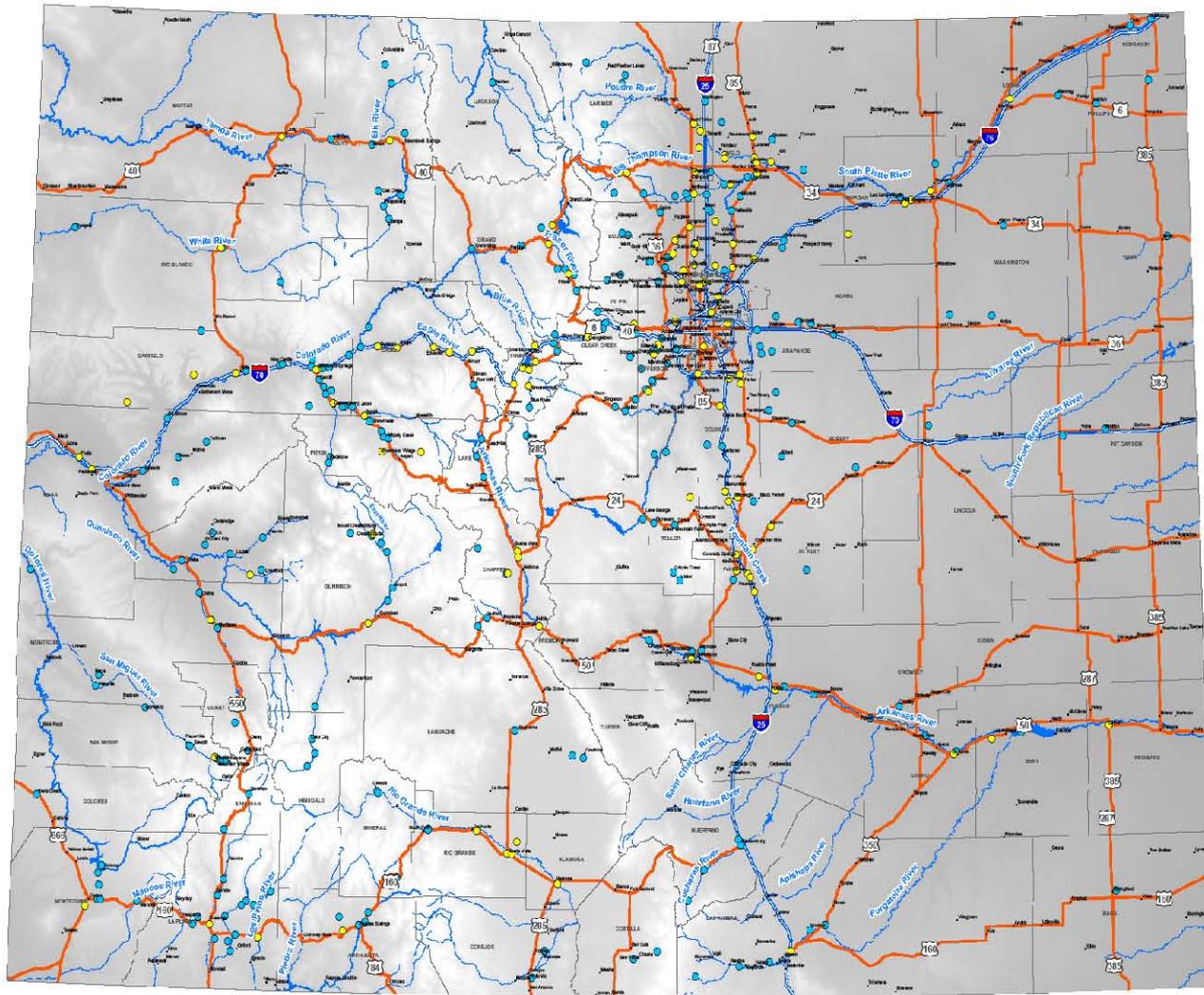


(c) Is structured to avoid unnecessary regulation and minimize the fiscal impact

Sewage: Regulated and Unregulated for Nutrients



Cost Benefit Study Facilities



- Legend**
- NonExempt Facilities
 - Exempt Facilities



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(d) Is designed to address basin-specific conditions

- ▶ Cost benefit study divided state into 27 manageable units (sub-basins)
 - Based on numbers and types of wastewater and drinking water facilities
- ▶ Assess WQ impacts and costs/benefits on a basin or smaller scale
- ▶ Paints a basin-specific picture of cause and effect
- ▶ Division used information to propose an alternative to limit regulation to certain basins

(e) Complies with Executive Order 5

- ▶ Proposal would implement a Federal requirement
- ▶ Mailing/e-mail to solicit input Sept., 2011
- ▶ Governor's EO-5 process – Posted on Web Site in December 2011
- ▶ – Mixed feedback



Boulder Creek

Conclusions

- ▶ Nutrients the biggest WQ challenge of the last 20 years
- ▶ Over 10 years invested in developing a Colorado-specific approach different than past practice
- ▶ Implementation of controls will take longer than other pollutants
- ▶ Projected 36% population growth in Colorado over next 30 years will increase nutrient impacts

Questions

COLORADO'S DEVELOPMENT OF STATEWIDE NUTRIENT CRITERIA

Prepared by Littleton/Englewood Wastewater Treatment Plant

Nutrients: *Naturally occurring and artificially produced chemicals that organisms of all levels, including humans, need to live and grow.*

1. What are they?
 - Nitrogen and phosphorus are the two main nutrients being discussed for regulatory purposes. Some other aquatic parameters are also being discussed.
2. What do nutrients do?
 - Nitrogen and phosphorus are used to build and repair tissues and regulate body processes, and are converted to and used as energy. Organic nutrients include carbohydrates, fats, proteins and vitamins. They are vital to living organisms of all kinds and are needed for healthy, productive fisheries.
 - Over abundance of nutrients in the environment can cause excessive plant and algal growth, which in turn can deplete oxygen needed for fish and microbes. This is called eutrophication. This can diminish recreational uses of water and cause problems for some drinking water sources.
3. What are the sources?
 - Wastewater treatment facilities receive and discharge phosphorus from domestic detergents and nitrogen from ammonia.
 - Storm water runoff carries excess urban lawn fertilizer.
 - Runoff of excess fertilizer from farms
 - Nonpoint sources (unknown)
 - Atmosphere (e.g., deposition, nitrogen fixation, etc.)
4. Why are nutrients being regulated?
 - The Environmental Protection Agency (EPA) has a long-standing mandate for states to adopt nutrient water quality standards, under the authority of the Clean Water Act, preferring specific numeric values for at least phosphorus and nitrogen.
 - Colorado is developing regulations to meet this mandate and to protect the uses of water in Colorado, under the authority of the Water Quality Control Act.
5. Who are the main stakeholders involved in the issue?
 - EPA
 - Colorado Department of Public Health and Environment (the Division)
 - Environmental Interests
 - Wastewater Treatment Facilities

- Drinking Water Facilities
- Drinking Water Providers
- Storm Water Permittees
- Agriculture
- Legislature

6. What are the Proposed Regulations about?

- The EPA developed national strict numeric criteria based on eco-regions and required all states to adopt the same regulations or something similar.
- Colorado is proposing two state-wide regulations.
- Regulation 85 is a technology-based regulation for new and existing wastewater facilities that is scheduled to go into effect in 2013. It requires both phosphorus and nitrogen removal based on treatment systems currently available.
- Regulation 31 is a basic standards regulation that sets specific numeric values for phosphorus and nitrogen water quality standards. This regulation is scheduled to go into effect in 2022 or sooner.
- The currently proposed regulations identify three different levels of nutrient removal, referred to as tiers, with increasing levels of nutrient removal.

7. What are the main issues?

- The standards are controversial because the systems to remove nutrients are very expensive.
- It is questionable as to whether the numeric nitrogen standard is even achievable using existing wastewater treatment technology.
- It is questionable as to whether portions of the standards are based on sound science.
- It is questionable whether the standards will resolve water quality problems.
- Site-specific problems have not been identified in many areas of the state.
- It is questionable whether the benefits outweigh the costs.
- Under the current proposal, nutrient removal will be required even if there is no problem with nutrients.

8. What are the costs of the proposed regulations?

- A cost and benefits report was completed under the guidance of the Water Quality Control Division. The report estimates the cost of the proposed Regulation 85 for the entire state to be approximately \$2,500,000,000. The report estimates the cost at Littleton/Englewood as approximately \$77,000,000
- The estimated cost for implementing Regulation 31 for the entire state is \$25,000,000,000. The estimated cost at Littleton/Englewood is \$1,300,000,000
- The benefits to the state are estimated to be \$1,900,000,000 for Regulation 85 and \$3,400,000,000 for Regulation 31. The cost of implementing Regulations 85 and 31 exceeds the benefits of the regulations using the Division's own numbers.

9. What is the schedule for adopting nutrient criteria?

- Commission reviews and approves hearing notice and proposals: November 14, 2011 (Completed)
- Notice officially published: November 25, 2011 (Completed)
- Proponents' Prehearing Statements due: December 14, 2011 (Completed)
- Requests for party status: December 27, 2011 (Completed, party request filed)
- Responsive Prehearing Statements due: January 20, 2012
- Rebuttal Statements due: February 15, 2012
- Prehearing Conference: on or about February 22, 2012
- Hearing: March 12 and 13, 2012
- A formal request to defer the rule-making hearing has been sent to the Water Quality Control Commission and was denied at a December hearing.
- There may be an attempt in the upcoming legislative session to place a 5-year moratorium on the Commission's adoption of any nutrient standards, if adopted by the Commission.

10. When will the regulations be effective for Littleton/Englewood WWTP?

- Since this is a state-wide regulation, the Littleton/Englewood discharge permit would have Regulation 85 standards included in the next permit renewal cycle, or in 2014. The proposed regulations would result in effluent limits of 1 mg/l phosphorus and 10 mg/l nitrogen (tier 1 nutrient requirements), with lower limits in the future.
- Regulation 31 is proposed to take effect in 2022. However, there is provision in the proposed regulation to make these criteria effective sooner if a facility discharges to impaired water, which may include the Littleton/Englewood discharge

11. What are the current requirements for removing phosphorus and nitrogen? (see table below)

- There are no requirements to remove phosphorus now. Plant effluent typically contains 3 to 4 mg/l.
- Nitrogen removal requirements are for ammonia, which varies by month from 4 to 11 mg/l, and for inorganic nitrogen as low as 23 mg/l. Treatment systems are in place to meet these requirements.
- The existing nitrogen removal system was originally selected for its' ability to also remove phosphorus, with some modifications, should the need arise. The system will need to be expanded to meet the anticipated nutrient requirements.

Barr Lake/Milton Reservoir Total Maximum Daily Load

Work being done at Barr Lake and Milton Reservoir may require phosphorus removal to protect the fisheries in those privately owned reservoirs before the proposed nutrient criteria discussed above:

- A Total Maximum Daily Load study is being proposed by the Division to correct water quality problems at Barr Lake which will directly implicate Littleton/Englewood.
- State waters that are determined to be impaired in meeting state standards must have a total maximum load limit placed on it until the water quality is improved meeting the state standards. Littleton/Englewood discharges to the South Platte River, which ultimately reaches the Barr Lake.
- Barr Lake is impaired for pH, which is believed to be due to high phosphorous concentrations in the lake.
- If the Division’s proposed TMDL is approved Littleton/Englewood will be given a phosphorous discharge limit, along with other dischargers, to help restore the Barr Lake. It is doubtful that controlling nutrients from point sources only will be successful but that is the Division’s current direction.
- The current proposed standard for phosphorus at Barr Lake is 0.1 mg/l.
- Littleton/ Englewood has opposed the proposed TMDL for a number of reasons, including the costs and the doubtful benefits.

Table 1 Nitrogen and Phosphorous

	Current Permit Limits	Current effluent Discharge Condition (2 year average)	Proposed Regulation 85 Standards	Proposed Regulation 31 Standards	Removal rates for L/E for phosphorous	Removal rates for L/E for TIN
	Mg/L	Mg/L	Mg/L	Mg/L	%	%
Total Inorganic Nitrogen	23.5	14.6				n/a
Phosphorous	n/a	2.67	1.0	0.17	50%	
Total Nitrogen	n/a	No data	10.0	2.01		

Colorado Nutrient Coalition Fact Sheet

Expert Analysis of Regulation 85 Total Nitrogen (TN) Reduction Mandate Demonstrates Proposal is Not Scientifically Defensible and Will Broadly Misdirect State Resources

Background

The Water Quality Control Division has proposed to adopt a statewide TN reduction mandate for virtually all communities and industries; the projected statewide capital cost is ***\$1.564 billion***. This cost is ***6 times higher*** than the cost of statewide total phosphorus (TP) reduction (\$0.230 billion) – the nutrient historically regulated in fresh waters to limit excessive plant growth (eutrophication).

TN reduction is mandated even where (1) the receiving waters are not designated as nutrient impaired, (2) communities demonstrate that TN control is unnecessary to remedy excessive plant growth (should it exist), and (3) the waters are already subject to an existing control regulation that is effectively preventing excessive plant growth.

The Colorado Nutrient Coalition (“CNC”) (composed of 67 municipal, stormwater, industrial and water conservation entities) has repeatedly requested that an open scientific peer review be conducted to confirm the need for this new state (*not federal*) mandate. The Division has steadfastly refused to allow an outside peer review to occur, insisting that their scientific assessment confirms the need for statewide TN reduction.

Expert Finding on Efficacy of the Division’s TN Reduction Mandate

The CNC recently sought the opinions of three nationally and internationally renowned experts on nutrient dynamics and ecological risk assessment to review the Division’s scientific rationale for statewide TN reduction:

- Dr. Alex Horne – Professor Emeritus, Univ. of California, Berkeley – specializing in Algal Physiology and Limnology and Nitrogen: Algal Dynamics
- Dr. Steven Chapra – Lewis Berger Chair, Tufts University, MA – author of several treatises on water quality modeling and nutrient impact assessment cited by EPA as key references for nutrient criteria development
- Mr. Timothy Moore, Risk Sciences, Brentwood, TN – a nationally recognized expert on statistical evaluation of environmental data

These experts have reviewed the Division’s technical reports regarding the need for statewide TN reduction and have concluded the approach is not “scientifically defensible” and will misdirect pollution control resources for a host of reasons, as follows:

1. The statistical analysis of Colorado MMI data (a measure of aquatic life (mostly insect) health) used to justify the stream standards is fundamentally flawed, double-counted critical data, and was confounded by improperly mixing biotypes. These errors created the appearance of a relationship between nutrient levels and the MMI measurements when no meaningful relationship actually exists.
2. The rule’s assumption that “wedge” plots confirm that nutrients caused the reduction in MMI readings in streams is “patently untrue.”

3. There is no reliable database showing that effective control of excessive algal growth can be expected through TN reduction for either lakes or streams.
4. The rule’s presumption that an existing TN-limitation confirms that TN reduction is necessary to control excessive plant growth in lakes or streams is misplaced and contrary to decades of experience showing that TP reduction is often the preferred initial course of action.
5. The assertion that high nutrient concentrations always result in ecological impairment is demonstrably incorrect – nutrients are not toxics.
6. Key out of state research relied upon to conclude TN reduction is necessary for all Colorado waters (e.g., Yuan 2010) was either misinterpreted or contained “fatal flaws that make it unlikely that a reduction in nitrogen in any specific Colorado stream would give a noticeable improvement in stream insect health.”
7. The proposed “nuisance” periphyton (attached plant growth) levels are largely unrelated to ambient nutrient levels and are a poor basis for identifying nutrient impaired waters.
8. In terms of this regulation, “there is a high risk of getting no result or even the opposite result to that anticipated by reducing nitrogen.” Due to the complexity of stream ecosystems, “the relationship of TN to stream insect health is fundamentally weak.”
9. The Division should establish ecological indicators relevant to nutrient impacts (algal levels, DO variation, pH variation, internal nutrient/plant biomass ratios) to determine whether and where to limit nutrients to protect against adverse ecological effects.

These expert opinions confirm that statewide TN reduction is not scientifically defensible, not ecologically justified, and will likely result in the broad misdirection of critical state and municipal resources. *Well over a billion dollars in misdirected expenditures may be anticipated.*

Updated cost information for Regulation 85 shows that capital costs for statewide TP reduction are *one-sixth* of those associated with statewide TN reduction. As this action was plainly not mandated by federal law, proper consideration of the Governor’s EO 5 and related statutory requirements should result in deferral of the TN reduction mandate.

Conclusion

Given the opinions of the internationally recognized experts, the TN component of the proposed rule should be withdrawn and TN requirements should only be required where site-specific information confirms that TN reduction is necessary to avoid or eliminate excessive plant growth in lakes or streams. Likewise, the proposed periphyton interim values should be withdrawn pending a determination that this parameter can serve a useful purpose in identifying waters as nutrient impaired.

At a minimum, an independent scientific peer review should be required before the Division may impose statewide TN reduction based on these expert findings that fundamental flaws underlie the Division’s contention that TN reduction is necessary to protect all Colorado waters.

**RESPONSIVE PREHEARING STATEMENT OF LITTLETON/ENGLEWOOD
WASTEWATER TREATMENT PLANT**

FOR CONSIDERATION OF THE ADOPTION OF REVISIONS TO THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER, REGULATION #31 (5 CCR 1002-31) AND THE ADOPTION OF A NEW NUTRIENTS MANAGEMENT CONTROL REGULATION, REGULATION #85 (TO BE CODIFIED AT 5 CCR 1002-85)

The Supervisory Committee of the Littleton/Englewood Wastewater Treatment Plant ("Littleton/Englewood") submits the following responsive prehearing statement in opposition to the draft proposed regulations proposed by the Division and others in this proceeding.

I. STATEMENT OF ISSUES TO BE RESOLVED.

The Division and others have proposed that the Commission adopt statewide nutrient standards. The cost of compliance with the most stringent tier of the proposed regulations will, by the Division's own estimates, cost multiple billions of dollars and will require Colorado wastewater treatment facilities to eventually employ reverse osmosis treatment in order to remove nutrients to the miniscule levels that would be required by such standards. The technical and scientific flaws associated with these proposals are described in the Colorado Nutrient Coalition's Responsive Prehearing Statement and expert testimony. The legal issues that are raised by the proposed standards and that also must be resolved include the following:

- 1. Whether the Commission can lawfully adopt nutrient regulations that will impose costs on local governments far in excess of the benefits?**
- 2. Whether the Commission can lawfully adopt nutrient regulations that will impose treatment requirements costing billions of dollars without providing the funding to comply with those regulations?**
- 3. Whether the Commission can lawfully adopt classifications and standards that would be selectively enforced on some dischargers but not others?**
- 4. Whether the Commission can lawfully adopt water quality standards for a "Direct Use Water Supply" sub-classification to the extent that the sub-classification would apply to waters that are not "State waters"?**

Littleton/Englewood's position on these issues is discussed below and constitutes its Written Testimony in this matter.

- 1. Colorado law precludes the Commission from adopting nutrient regulations that will impose costs on local governments far in excess of the benefits.**

Colorado law requires that prior to taking any final action, other than enforcement action, the Division must take into account the costs, benefits, and economic reasonableness of the action. C.R.S. § 25-8-102(5).

According to the analysis of the Division's own expert, the statewide costs of the proposed nutrient regulations will outweigh the benefits by over \$525.5 million for Tier 1 standards and by over \$2.678 billion and \$21.637 billion for Tiers 2 and 3, respectively. Division Exhibit 5 at 5-6, excerpted and attached hereto as L/E Exhibit 1.

Given the staggering magnitude of these costs in excess of the benefits, the proposed nutrient standards fail the economic reasonableness test set forth in the Colorado Water Quality Control Act, and should be rejected by the Commission.

2. Colorado law and Executive Order prohibits the Commission from approving new nutrient regulations that will impose treatment requirements costing billions of dollars unless state funding is provided to comply with those regulations.

C.R.S. § 29-1-304.5(1) prohibits state agencies from imposing new mandates on local governments unless the state provides the funds to reimburse the local governments for the costs of the new state mandates, or unless the mandate is a requirement of federal law.

The specific nutrient standards that the Division is proposing are not requirements of federal law. EPA has previously stated that its policy memoranda and other related guidance documents on nutrients "are not regulations nor do they contain or constitute a determination that new or revised nutrient water quality standards are necessary in a particular or site-specific context to meet the requirements of the Clean Water Act. State and Tribal decision-makers retain discretion to adopt water quality standards based on other scientifically defensible approaches that may differ from the recommendations in EPA guidance." EPA Report--*State Adoption of Numeric Nutrient Standards* (1998-2008) at page 2, excerpted and attached hereto as L/E Exhibit 2.

Accordingly, the proposed nutrient regulations should be withdrawn until state funding is provided that will enable local governments to construct, operate, and maintain the facilities needed to remove phosphorus and nitrogen to the levels mandated by the draft standards as required by Colorado law.

Moreover, Governor Hickenlooper's Executive Order D 2011-005, attached hereto as L/E Exhibit 3, specifically directs state agencies to refrain from imposing requirements creating a mandate on local governments unless (1) specifically required by federal or state law, (2) the agency consults with local governments prior to promulgation, and (3) the state government provides the funding necessary to pay the direct costs incurred by local governments in complying with the mandate. (Emphasis added.)

Despite these clear directives, the Division-- in derogation of the Governor's Executive Order--is proposing the adoption of nutrient regulations that will impose billions of dollars of treatment costs on local governments without identifying the state funding source to pay those

costs. Therefore, the proposed mandates should be withdrawn until funding is provided to comply with the proposed mandates as required by the Governor's Executive Order.

3. Colorado law does not authorize the Commission to adopt statewide water quality classifications and standards that are to be selectively enforced on some dischargers but not others.

The Division is proposing that the Commission adopt some of the most onerous statewide nutrient regulations that have ever been adopted in the United States for the stated purpose of protecting classified use of waters. At the same time, the Division is proposing to exclude hundreds of dischargers from the ambit of the proposed regulations, even though those dischargers discharge nutrients at levels far higher than the Division's proposed standards, and presumably at levels that the Division believes would impair classified uses. Division Exhibit 7, attached hereto as L/E Exhibit 4.

Rather than being scientifically supportable, the Commission should see this for what it is: an attempt by the Division to keep its negative cost/benefit analysis from being even more negative, and an attempt to cull out opposition to its multi-billion dollar proposed regulations by promising to exclude certain dischargers from its ambit, at least for the time being.

However, this selective enforcement approach to statewide water quality standards, which would effectively create favored and unfavored classes of dischargers, is not authorized by the Colorado Water Quality Control Act.

C.R.S. § 25-8-204(2)(e) authorizes the Commission to adopt water quality standards for nutrients. Section 204(3) provides that water quality standards may be promulgated in connection with classes of water and may be made applicable to all state waters or to any designated portion of state waters. However, the Water Quality Control Act provides no authority for the Division or the Commission to pick and choose the dischargers that must comply with the standards and those who do not.

Accordingly, the Commission should reject the Division's proposal to the extent that it would select out dischargers that would not be subject to compliance with the proposed standards, because Colorado law does not authorize the Commission to adopt statewide standards that are only applicable to some dischargers, but not others.

4. The Commission has no authority to adopt water quality standards for a "Direct Use Water Supply" sub-classification to the extent that the sub-classification would apply to waters that are not "State waters".

The Colorado Water Quality Control Act authorizes the Commission to adopt classifications and standards only for State waters. C.R.S. §§ 25-8-203 and 204. The Commission has no authority to adopt classifications and standards for water that are not State waters. Under C.R.S. § 25-8-103(19) of the Colorado Water Quality Control Act, the term "State waters" is defined as:

. . . any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems,

waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

(Emphasis added). The above definition of "State waters" is the same definition adopted by the Commission in 5 CCR 1002-31 Part 31.5(38). Accordingly, under both the plain language of the statutory and regulatory definitions, water diverted and delivered to storage until treatment and use can occur, is excluded from the definition of State waters. Therefore, the Commission has no authority to adopt classifications and standards for such waters.

However, the Division's proposed new Direct Use Water Supply sub-classification would unlawfully apply to water that does not meet the definition of "State waters" to the extent that the new sub-classification is intended to be applicable to water in reservoirs that are part of a municipal or private water treatment and supply system.

Colorado law provides no authority for the Commission to set classifications and standards for waters that are not State waters. Thus, the Commission should reject the Division's proposal to adopt the Direct Use Water Supply Classifications and correlating standards for waters that are not "State waters" as defined by law, and thus are outside of the statutory jurisdiction of the Commission under the Water Quality Control Act.

II. WITNESSES.

David W. Robbins and/or Jennifer Hunt

III. EXHIBITS.

L/E Exhibit 1 (Excerpted Division Exhibit 5)—Cost-Benefit Summary

L/E Exhibit 2—EPA Notice Statement

L/E Exhibit 3—Executive Order D 2011-005

L/E Exhibit 4 —Division's Preliminary List of Excluded Facilities

Respectfully submitted this 20th day of January, 2012.

~~HILL & ROBBINS, P.C.~~

By: _____

David W. Robbins

*Attorneys for Supervisory Committee of the
Littleton/Englewood Wastewater Treatment Plant*

CERTIFICATE OF SERVICE

I hereby certify that the original and 13 copies the foregoing Responsive Prehearing Statement was hand delivered to the Colorado Water Quality Control Commission's mailroom addressed to the administrator of the Commission, and that a true and correct copy was served by e-mail to the parties listed on the Commission's Email List for Nutrients Rulemaking Hearing – Amended 01/05/12 at the following e-mail addresses:

Table 1-5. Summary of Qualitative Costs and Benefits

	Cost or Benefit	Magnitude of Effect
Greenhouse Gas Emissions	Cost	Potentially Substantial
Potable Water Supplies	Benefit	Substantial
Private Property Values (streamside and lakeside)	Benefit	Potentially Substantial
Additional Recreational Activities (hiking, picnicking, wildlife watching)	Benefit	Moderate
Intrinsic Values	Benefit	Unknown
Agriculture (livestock source water, conveyance vegetation, crop irrigation)	Benefit/Cost	Minimal

River Basin and Statewide Results

The benefit-cost ratios developed for each Manageable Unit were aggregated into a benefit-cost ratio for the seven river basins (Study Table 1-6). The aggregate values are the combined benefit and cost values for each Manageable Unit shown as a combined benefit-cost ratio. Benefit-cost ratios at the river basin level are lower overall simply because the variable Manageable Unit results are being averaged across the river basin. The highest ratios are found for Tier 1, which is similar to the Manageable Unit results.

Table 1-6. Aggregate Benefits and Costs by River Basin

Aggregate (River Basin or Statewide)	Component	Tier 1*	Tier 2*	Tier 3*
Arkansas	Benefits	\$679,062,000	\$808,956,000	\$1,056,414,000
	Costs	\$545,429,000	\$1,121,448,000	\$5,910,796,000
	Benefit-Cost Ratio	1.25 : 1	0.72 : 1	0.18 : 1
Colorado	Benefits	\$103,315,000	\$154,851,000	\$279,996,000
	Costs	\$226,322,000	\$393,719,000	\$2,840,746,000
	Benefit-Cost Ratio	0.46 : 1	0.39 : 1	0.1 : 1
Gunnison	Benefits	\$24,043,000	\$31,798,000	\$43,075,000
	Costs	\$46,947,000	\$96,172,000	\$447,136,000
	Benefit-Cost Ratio	0.51 : 1	0.33 : 1	0.1 : 1
Platte	Benefits	\$1,068,108,000	\$1,278,498,000	\$1,854,325,000
	Costs	\$1,473,367,000	\$3,152,796,000	\$14,286,950,000
	Benefit-Cost Ratio	0.72 : 1	0.41 : 1	0.13 : 1
Rio Grande	Benefits	\$10,561,000	\$12,206,000	\$16,980,000
	Costs	\$68,185,000	\$94,131,000	\$502,522,000
	Benefit-Cost Ratio	0.15 : 1	0.13 : 1	0.03 : 1
Southwestern	Benefits	\$22,418,000	\$33,428,000	\$55,024,000
	Costs	\$63,657,000	\$98,692,000	\$542,752,000
	Benefit-Cost Ratio	0.35 : 1	0.34 : 1	0.1 : 1
Yampa-White	Benefits	\$31,882,000	\$36,204,000	\$49,229,000
	Costs	\$40,990,000	\$77,461,000	\$461,614,000
	Benefit-Cost Ratio	0.78 : 1	0.47 : 1	0.11 : 1

* Expressed in Present Value 2010 Dollars

The Manageable Unit values were also aggregated together to establish a statewide benefit-cost ratio for each effluent tier (Study Table 1-7). The final statewide numbers represent the combined costs and benefits for all Manageable Units presented as a total benefit-cost ratio. Similar to the river basin aggregation, aggregating all Manageable Units has the effect of averaging the wide range of benefit-cost ratios observed across the state. The highest benefit-cost ratio continues to be associated with the implementation of Tier 1 effluent limits.

Table 1-7. Aggregate Benefits and Costs Statewide

Aggregate (River Basin or Statewide)	Component	Tier 1*	Tier 2*	Tier 3*
Statewide Aggregate	Benefits	\$1,939,389,000	\$2,355,941,000	\$3,355,043,000
	Costs	\$2,464,897,000	\$5,034,419,000	\$24,992,516,000
	Benefit-Cost Ratio	0.79 : 1	0.47 : 1	0.13 : 1

* Expressed in Present Value 2010 Dollars

Study Limitations and Uncertainties

There are specific sources of uncertainty and limitations associated with this Study that have been noted by CDM or by the various Colorado stakeholders who participated in workshops, reviewed interim work products, provided comments, or interacted directly with the project team to better understand the project methodology. These uncertainties or limitations are identified in the table below.

Summary of Study Limitations and Uncertainties.

Study Component	Limitation/Uncertainty	Effect on Study Conclusions
<u>Manageable Unit Framework</u>		
<i>Key Geographic Differences</i>	Differences within Manageable Units	Data are not generally available at small geographic scales
<u>Development of Wastewater Costs</u>		
<i>Planning Level Costs</i>	Order of magnitude estimates (+50% to -30%)	Keep in mind when interpreting benefit-cost ratios
<i>Cost Validation</i>	Significant uncertainty underlies Tier 3 costs	Typical facility Tier 3 costs may be high
<i>Implementation of Facility Upgrades to Comply with Effluent Quality Tiers</i>	No other effluent quality issues emerge	Uncertainty would be site-specific and not evaluated
<u>Water Quality Analyses</u>		
<i>Data Limitations</i>	Uncertain estimated percent changes in water quality	Qualitative approach used rather than developing expected concentrations with substantial uncertainty
<i>Water Quality Improvements</i>	Use of median instream and discharge values	Under- or overestimate water quality improvements
<i>Other Water Quality Factors</i>	Estimated water quality changes attributable solely to changes in TP and TIN in WWTF effluent discharge	Water quality may improve or decline for many reasons unrelated to the proposed regulation
<u>Benefits Analyses</u>		
<i>Relationship of Nutrient Changes to Changes in Biologic Processes</i>	Exact incremental response of adverse conditions to changes in nutrient levels is unknown	Site-specific cause and effect relationships
<i>Elasticity Response of Active Recreation to Water Quality Changes</i>	Assumed a linear response, but may be nonlinear	No relevant studies found that provided reliable information regarding potential non-linearity
<i>Willingness-to-Pay Issues</i>	No specific Colorado survey conducted	Uncertainty reduced by applying substantial adjustment to WTP estimates
<i>Future Values versus Current</i>	Focus on conditions that might	Assumed current conditions that



Notice

Beginning in 1998, EPA recommended in a series of policy memoranda that States accelerate the development and adoption of numeric nutrient water quality standards. These policy memoranda and other related guidance documents are designed to implement national policy. They are not regulations nor do they contain or constitute a determination that new or revised nutrient water quality standards are necessary in a particular or site-specific context to meet the requirements of the Clean Water Act. State and Tribal decision-makers retain discretion to adopt water quality standards based on other scientifically defensible approaches that may differ from the recommendations in EPA guidance.

L/E EXHIBIT 2

STATE OF COLORADO

OFFICE OF THE GOVERNOR

136 State Capitol
Denver, Colorado 80203
Phone (303) 866-2471
Fax (303) 866-2003



John W. Hickenlooper
Governor

D 2011-005

EXECUTIVE ORDER

Establishing a Policy to Enhance the Relationship between State and Local Government

Pursuant to the authority vested in the Office of the Governor of the State of Colorado, I, John W. Hickenlooper, Governor of the State of Colorado, hereby issue this Executive Order directing state agencies to take specific steps to enhance relations with local government.

I. Background and Purpose

For many years state government has imposed an ever-increasing number of legal requirements on local governments, without regard to the costs such requirements impose on already-strained local budgets, and without providing additional funding to enable local governments to comply. Local governments continue to face difficulties such as funding, complexity, and delay in securing flexibility and approvals regarding state requirements.

Local governments should have more flexibility to design solutions to problems without excessive interference or oversight, or unnecessary regulation, from state government. In addition, local governments should not be expected to implement laws and regulations without the funding necessary to do so. In order to assist local governments in effectively complying with such requirements, this Executive Order gives direction to state agencies on consulting and working with local governments before imposing new regulations or other obligations.

II. Directive and Scope

A. To the extent authorized by law, no state agency shall promulgate any regulation creating a mandate on local governments unless:

1. The mandate is specifically required by federal or state law;
2. The agency consults with local governments prior to promulgation of the regulation; and
3. The state government provides the funding necessary to pay for the direct costs incurred by local governments in complying with the mandate.

L/E EXHIBIT 3

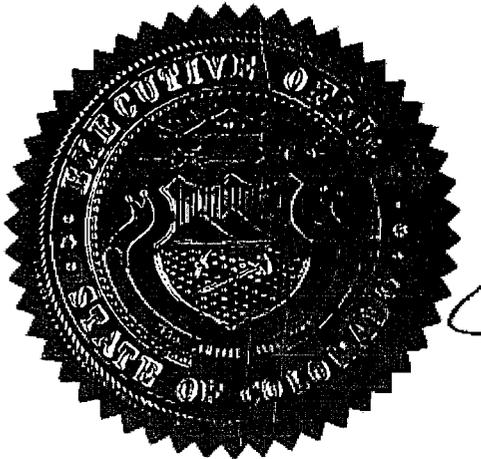
- B. Each agency, prior to the formal promulgation of regulations containing the proposed mandate, shall provide to the Director of the Governor's Office of State Planning and Budgeting a description of the nature and extent of the agency's consultation with representatives of the local governments that would be affected by the proposed mandate, the nature of their concerns, any written communications or comments submitted to the agency by such units of local government, and the agency's reasoning supporting the need to issue the regulation containing the mandate.
- C. Each agency shall develop a process to actively solicit the meaningful and timely input of elected officials and other representatives of local governments into the development of regulatory proposals affecting local government. Each agency shall implement its process as soon as practicable and post the process on its website.
- D. Each agency that is permitted by law to grant temporary or permanent waivers of statutory or regulatory requirements shall adopt rules for granting waivers if a local government can demonstrate that the requirements conflict with other regulations or statutes, or are unduly burdensome. Each State agency shall prepare and publish on its website a policy describing the circumstances in which temporary or permanent waivers will be granted, and the criteria required for obtaining a waiver.
- E. Each agency shall consider any application by a local government for a waiver of statutory or regulatory requirements in light of the goal of increasing opportunities for local governments to exercise flexibility in seeking to comply with statutory or regulatory requirements.
- F. To the fullest extent practicable and as permitted by law, each agency shall render a decision on an application for waiver within 90 days of receipt of such application by the agency. If the application for waiver is not granted, the agency shall provide the applicant local government with timely written notice of its decision and the reasons for its decision.
- G. The executive director of each agency shall be responsible for ensuring implementation of, and compliance with, this Executive Order.
- H. Executive agency means any authority of the State of Colorado that is an "agency" pursuant to C.R.S. § 24-3-101.

III. No Creation of Rights

This Executive Order is intended only to improve intergovernmental operations, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the State of Colorado, its agencies, officers, employees, or any other person. This Executive Order shall not be used as a basis for legal challenge to statutes, regulations, or other actions or to any inaction of any state agency subject to it.

IV. Duration

This Executive Order shall remain in full force and effect until modified or rescinded by future Executive Order of the Governor. This Executive Order supersedes Executive Order D 0007 94.



GIVEN under my hand and the
Executive Seal of the State of
Colorado, this eleventh day of
January, 2011. J W H

John W. Hickenlooper
Governor

Preliminary List of Facilities that Qualify for Exclusion

WQCD Prehearing Statement – Exhibit 7

12/9/2011

L/E EXHIBIT 4

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Preliminary List of Facilities that are Excluded

Moose Haven Condominiums	Kremmling Sanitation District
Royal Gorge Company of Colorado	West Glenwood Springs Sanitation District
Young Life Campaign Inc	Winter Park Water and Sanitation District
Penrose Sanitation District	Dundee Realty USA LLC
Monarch Mountain Lodge	
Mt Princeton Hot Springs Resort	Red Cliff Town of
Leadville MHC LLC	Sopris Engineering LLC
Christian Mission Concerns	Riversbend Homeowners Association
Victor City of	El Rocko Mobile Home Park
Mountain View Villages WSD	Blue Creek Ranch LLC
Meadowbrook MHP LLC	Woody Creek Mobile Home Owners Association
Cheyenne Wells Sanitation District No 1	Independence Environmental Services
La Jara Town of	H Lazy F LLC
PowderMonarch LLC	Sunlight Inc
Colorado City Metropolitan District	Redstone WSD
Cripple Creek City of	Aspen Village Inc
Academy School Dist 20	Ranch at Roaring Fork
Broadmoor Park Properties	Roaring Fork Water and San District
Colorado Dept of Corrections	Spring Valley SD
Crowley County Correctional	Mid Valley Metro District
Sunset Metropolitan District	Mesa Water and Sanitation District
Avondale Water and Sanitation District	Wastewater Treatment Service LLC
Cokedale Town of	Colorado Department of Transportation
Hoehne School Dist R3	Canyon Creek Estates
Primero School District	Riverbend Water and Sewer Company
Trinidad City of	Mesa WSD
Country Host Motel	Grand Mesa Metro Dist 2
North La Junta Sanitation District	DeBeque Town of
Fowler Town of	Talbott Enterprises Inc
Colorado Dept of Corrections	Collbran Town of
La Veta Town of	Town of New Castle
Crowley Town of	Palisade Town of
Cucharas Sanitation and Water District	Steamboat Lake State Park
Simla, Town of	Whiteman School
Springfield Town of	Routt County
Walsenburg City of	Routt County Phippsburg/Dept of Envir Hlth
Limon Town of	Yampa Town of
Rocky Ford City of	Steamboat Lake Water and Sanitation Dist
Colorado Mountain Resort Investors LLC	Hayden Town of
Colorado Department of Transportation	Oak Creek Town of
Colorado Department of Transportation	Morrison Creek Metropolitan Water and Sanitation District
Roundup River Ranch	Whiteriver RV LLC
C Lazy U Ranch	Oak Meadows Service Company
Ouray Ranch Home Owners Association	Rangely Town of
Young Life Campaign Inc	City of Rifle
Rock Gardens MHP	Camp Gunnison Inc
Hot Sulphur Springs Town of	Ute Trail Ranch Foundation
Two Rivers Metro District	Camp Red Cloud
Tabernash Meadows WSD	

Preliminary List of Facilities that are Excluded

L and N Inc	WCFLP RE Wind River, LP
Almont Sewage Hereafter In Transit Plant	Peaceful Valley Ranch LLC
East River Regional Sanitation District	Mueller Red Lion Inn
Lake City Town of	Orodel Inc
Crested Butte South Metro District	Mead Town of
Town of Crested Butte	B and B Mobile Home and RV Park
Brookway Irwin LLC	San Souci MHP
Volunteers of America Care Fac	Lake Eldora WSD
Elk Meadows Estates	Eldorado Springs Wastewater
Elk Mountain Resort	Seventh-Day Adventist Assoc of Colorado
Delta Correctional Center	San Lazaro Park Properties LLP c/o
Crawford Town of	Nederland Town of
Ridgway, Town of	Lyons Town of
Paonia Town of	Mead Town of
Ouray City of	Aspen Lodge at Estes Park Corp
Cedaredge Town of	Serenity Ridge
Olathe Town of	Riverglen Homeowners Assoc
Hotchkiss Town of	Western Mini-Ranch/Vaquero Estates Sewer Assoc.
West Montrose Sanitation District	Berthoud Estates Community Assoc
Delta City of	Johnstown Town of
Jefferson County Public Schools	Johnstown Town of
Platte Canyon School Dist #1	Walden Town of
Hungate Bruce and Jayne	LONGS PEAK COUNCIL, INC.
Tiny Town Company LLC	Lutheran Ranches of The Rockies
Brook Forest Inn	Saddler Ridge Metro Dist Water Reclamation Facility
YMCA Camp Shady Brook	Girl Scouts Mile-Hi Council
Pikes Peak Council - Boy Scouts of America	Fox Acres Community Services Corp
Amen Real Estate, LLC	Wellington Town of
Lost Valley Ranch Corp	Orica USA Inc
Conifer Metropolitan District	Mile High Racing and Enter dba Arapahoe Park
Teller County	Rangeview Metro District
Forest Hills Metro District	Galeton Water and Sanitation District
Florissant Water and San Dist	Front Range Airport WWTF
Will-O-Wisp Metropolitan District	Weld County School District RE-3J
Kittredge Water and Sanitation District	SouthWest Water Company
Bailey Water and Sanitation District	Keenesburg Town of
Mountain Water and Sanitation District	Colorado Real Estate & Investment
Perry Park Water and Sanitation District	Gilcrest Town of
Alma Town of	Spring Valley Ranch Metro Dist
Morrison Town of	Platteville Town of
Fairplay Sanitation District	Kersey Town of
Perry Park Water and Sanitation District	La Salle, Town of
Shwayder Camp Wastewater	Bennett Town of
Clear Creek WWTP	Elizabeth Town of
Clear Creek Skiing Corp	Evans City of
Colorado Dept of Transportation	Elbert Water Sanitation District
Empire Town of	Woodlin School District R-104
Central Clear Creek Sanitation District	Snyder Sanitation District
St Marys Glacier WSD	Ovid Town of

Preliminary List of Facilities that are Excluded

Hillrose Town of	South Durango Sanitation District
Morgan Heights Water and Sanitation District	Silverton Town of
Kiowa Town of	Pagosa Springs Sanitation District
Julesburg Town of	Durango West Metropolitan District No. 2
Byers Water and Sanitation District	Dove Creek, Town of
Eastern Adams County Metro District	Hermosa Sanitation District
Fleming Town of	Pagosa WSD
Seibert Town of	Bayfield Town of
Arriba Town of	Fall Creek Home Owners Association
Stratton Town of	Blue Jay Lodge & Cafe
Flagler Town of	St Barnabas Church Camp
Haxtun, Town of	Last Dollar Pud Imps. Assoc.
Wray City of	Telecam Partnership II Limited
Holyoke City of	SW Mesa County Rural Public Improvement District
Akron Town of	Nucla Town of
Wolf Creek Ski Corp	Naturita Town of
Baca Grande Water and Sanitation District	Dolores Town of
Mountain Views at Rivers Edge RV	Norwood Sanitation District
Fun Valley Resort	
Costilla County Water and Sanitation System	
Baca Grande WSD	
Antonito Town of	
South Fork Water and Sanitation District	
San Luis Water and Sanitation District	
Saguache Town of	
Manassa Town of	
Creede City of	
DLMT, LLC	
Durango/La Plata County Airport	
Lakeside WWTP	
Haciendas de la Florida HOA	
High Country Lodge LLC	
Amorelli, Joe and Cheryl	
Forest Groves Estates	
Five Branches Camper Park	
Pine River Camp LLC	
Vallecito Resort LLC	
Vista Verde Village LLC	
Herrick Durango Land Co LLC	
Thomas J Feuerborn	
Lee Mobile Home Park	
Narrow Gauge Mobile Home Park	
Mill Creek Management Co LLC	
San Juan River Village Metro	
Edgemont Ranch Metro District	
Loma Linda San Dist	
Upper Valley Sanitation	
Mancos Town of	
Forest Lake Metro Dist	

HILL & ROBBINS, P.C.

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Mr. Philip Hegeman
TMDL Workgroup Leader
Colorado Water Quality Control Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

July 7, 2011

RE: Barr/Milton Reservoirs TMDLs

Dear Mr. Hegeman:

The Supervisory Committee of the Littleton/Englewood Wastewater Treatment Plant ("Littleton/Englewood") submits the following comments in opposition to the draft pH TMDLs for Barr and Milton Reservoirs. The draft TMDLs were submitted for public notice on May 1, 2011. The thirty-day public comment period for the draft TMDLs was extended until July 8, 2011.

In general, the draft TMDLs seek to control pH in Barr and Milton Reservoirs by limiting total phosphorus. Under the proposed TMDLs, the phosphorus contribution of agricultural and other non-point sources is characterized as being minimal. Therefore, the burdens of compliance with the phosphorus reduction that would be mandated by the draft TMDLs are placed directly upon local governments and the Colorado residents and businesses within those local governments that pay for wastewater treatment at the Littleton/Englewood Wastewater Treatment Plant, and other facilities, including those operated by the Denver Metropolitan Wastewater Reclamation District ("Denver Metro"), and Centennial Water and Sanitation District.

Colorado law requires that prior to taking any final action, other than enforcement action, the Division must take into account the costs, benefits, and economic reasonableness of the action. C.R.S. § 25-8-102(5). Moreover, Governor Hickenlooper's Executive Order D 2011-005 specifically directs state agencies to refrain from imposing requirements creating a mandate on local governments unless (1) specifically required by federal or state law, (2) the agency consults with local governments prior to promulgation, and (3) the state government provides the funding necessary to pay the direct costs incurred by local governments in complying with the mandate.

Mr. Hegeman
July 7, 2011
Page 2

Phosphorus removal is extremely expensive. The capital costs alone for treatment of phosphorus to the level that would be required by the TMDLs are enormous. Preliminary estimates are for over \$25 million for L/EWWTP; and we understand that Denver Metro is estimating capital costs for that facility in the hundreds of millions of dollars. In addition there would be substantial and ongoing operation, maintenance, and energy consumption costs for the new phosphorus treatment facilities and processes that have not yet been quantified. The draft TMDLs do not address, or even mention, the capital and operation and maintenance costs of phosphorus removal facilities, and provide no discussion of how such costs will be allocated or funded.

When compared to the enormity and widespread impact of these costs, the benefits of the TMDLs appear to be questionable at best. The stated purpose of the TMDLs is to protect aquatic life in Barr and Milton Reservoirs. Those reservoirs are off-channel, privately owned, shallow, plains reservoirs that have been historically used for irrigation purposes. Each summer, water levels in both reservoirs are drawn down as water is released to satisfy irrigation and other water demands of the shareholders of the Farmers Reservoir & Irrigation Company ("FRICO"). During dry years, the storage pools in Barr and Milton Reservoirs are effectively emptied by FRICO and, to the extent the reservoirs are emptied, any habitat for fish and other aquatic life is destroyed. Adoption of TMDLs for such structures would be unprecedented in Colorado or anywhere else in the United States.

Over the course of several decades, in numerous district court cases and at least two Colorado Supreme Court cases, FRICO has zealously asserted and guarded its right to receive wastewater effluent into its ditch and reservoir system, and by contractual arrangement has allowed sewage effluent to be pumped from Denver Metro and delivered into Barr Reservoir. Scientists who have studied the limnology of Barr and Milton Reservoirs have testified before the Colorado Water Quality Control Commission that there is now a thick sludge layer at the bottom of Barr Reservoir that is stirred by winds and mixed into the water column, and that as long as that situation exists, nutrients will be a problem for Barr Reservoir even if the Burlington Canal diverted only distilled water. Although the in-lake source of nutrients was discussed in the draft TMDLs, no specific cost estimate for dredging or other remediation was performed, and there was no discussion of how the costs of such remediation would be allocated or funded.

In a 2000 rulemaking hearing, the Commission considered a proposal by FRICO and others to establish phosphorus and other nutrient standards for Barr and Milton Reservoirs. After a multi-day hearing and on a complete evidentiary record, the Commission decisively rejected the proposal based largely on evidence presented to the Commission regarding the limnology of Barr and Milton Reservoirs, the lack of sound science supporting the proposal, and that the huge costs of compliance with the proposed standards would not justify the benefits. The draft TMDL contains no analysis or basis for the Division to reach a different conclusion from that reached by the Commission after a full and complete hearing.

In summary, the draft TMDL contains no indication that the Division has engaged in the cost-benefit analysis required by statute after evaluating the magnitude of the costs involved in implementing and complying with the phosphorus removal requirements of the draft TMDLs and

Mr. Hegeman
July 7, 2011
Page 3

showing that implementation and compliance would be economically reasonable. Nor does it appear that the Division has taken into account the unique geographical, hydrological, ownership, and limnological facts of Barr and Milton Reservoirs that were presented in the prior Commission hearing in which the Commission rejected nutrient standards for Barr and Milton Reservoirs. In addition, the Division has not consulted with the elected officials of the Cities of Littleton and Englewood or identified a state funding source to pay for the mandated phosphorus removal as required by the Governor's recent executive order.

Accordingly, the draft TMDLs should be withdrawn until the Division has conducted the requisite cost-benefit analysis and made a showing that the draft TMDLs are economically reasonable, and otherwise appropriate for Barr and Milton Reservoirs; that it has engaged in the requisite consultation with the elected officials of the affected local governments, including the mayors and city councils of the Cities of Littleton and Englewood; and that it has identified the source of state funding necessary to construct, operate, and maintain the facilities needed to remove phosphorus to the levels mandated by the draft TMDLs.

In the event that the Division determines to proceed with approval of the draft TMDLs without resolving these issues, Littleton/Englewood requests that the matter be referred to the Commission for an adjudicatory hearing in accordance with Commission Policy #98-2, Section V.B.2.

Respectfully submitted,

HILL & ROBBINS, P.C.

By: _____
Mark J. Wagner
*Attorneys for Supervisory Committee of the
Littleton/Englewood Wastewater Treatment Plant*

cc: Supervisory Committee
Dennis Stowe
Steve Gunderson



Memorandum

TO: Gary Sears, City Manager

THROUGH: Jerrell Black, Director of Parks and Recreation

FROM: Joe Sack, Recreation Services Manager ✓

DATE: February 2, 2012

RE: Pirates Cove Projects 2012

Pirates Cove Family Aquatic Park opened in 2004 and is entering into the ninth operating season. As the facility continues to maintain high usage and as equipment continues to age, an increase in annual capital maintenance will be needed. Pirates Cove operating budget repair and maintenance costs average \$29,000 per year. This does not include additional annual projects that have been funded through CTF. Consideration of some type of program or plan to assure sufficient funds for required capital maintenance expenditures in future years is essential to the success of the facility. Funding programs may be simply to budget additional funds for annual capital repair and maintenance within the Pirates Cove operating budget, or the creation of a special fund drawn from Pirates Cove annual net revenues. Pirates Cove annual revenues exceed expenditures by approximately \$238,000 on average.

Currently, the Parks and Recreation Department along with Public Works are planning a number of repair and maintenance projects for 2012.

- **Pirates Cove Competition Pool Resurfacing** – Resurface the competition pool with Diamond Brite. Estimated project cost \$77,000. Project is funded through the approved 2012 CTF budget. Upon completion of a competitive bid process, Parks and Recreation will bring a contract to City Council for approval on February 21, 2012.
- **Pirates Cove Lazy River Pool Painting** - Clean and power wash lazy river to remove surface contaminants and loosened coating, patch large holes in coating, apply primer and paint lazy river. Estimated project cost \$40,000. Project is funded through the approved 2012 CTF Budget. Upon completion of a competitive bid process, Parks and Recreation will bring a contract to City Council for approval on February 21, 2012.
- **Concrete Repair** – Nine concrete walkway locations have been determined to be unsafe due to deterioration and/or trip hazard. Estimated project cost \$12,500. Project will be funded through the approved 2012 Pirates Cove Operations Budget. The Project is planned to begin in April 2012 and will be completed prior to opening day, May 26, 2012.

- **Play Structure Maintenance** –The central play structure, in the leisure pool, is the main feature of Pirates Cove and is in need of maintenance. The dump bucket operates on bearings that allow the bucket to rotate. These bearings need to be replaced and the bucket must be painted to prevent rust. Also due to sun damage, the play structure panels also need to be painted. Each of these projects are estimated to be under \$20,000. These projects are funded through the approved 2012 CTF budget and will be completed prior to opening day, May 21, 2012.
- **Building Repair** – Parks and Recreation along with Public Works accepted an engineering proposal to design a repair to the north CMU (concrete block) wall and exterior door to the concession stand of Pirates' Cove. The most cost effective repair of the wall and door will include removal on the CMU's immediately adjacent to the door as well as the foundation/footing for the wall in this area. Two caissons will be added to assure a sound foundation and to complete this project. Estimated cost of this project is \$25,000. Parks and Recreation will bring this project forward to City Council later this year upon completion of a competitive bid process. Project is planned for the fall after the 2012 season. This project is an unanticipated repair and is not budgeted in the 2012 Budget. A supplemental appropriation may be necessary to fund the cost of this repair.

JAS



C I T Y O F E N G L E W O O D
F I R E D E P A R T M E N T

MEMORANDUM

TO: Mayor Penn and Members of City Council
THROUGH: Gary Sears, City Manager
FROM: Michael Pattarozzi, Fire Chief
DATE: January 31, 2012
SUBJECT: Englewood Hotels/Motels Summary

In the calendar year 2011, the Fire Department responded to hotels/motels in Englewood 86 times. The summary is as follows,

The Wright Motel, 3020 S. Broadway,	6, all medical
The 4U Motel, 3850 S. Broadway,	7, all medical
The Holiday Motel, 4475 S. Broadway,	33, all medical
The Lucky U Motel, 4575 S. Broadway,	40, 38 medical, 1 hazardous condition, 1 assist to PD

Violations of the Property Maintenance Code were researched by the Building and Safety Division.

The Wright Motel, 3020 S. Broadway, no complaints within the last five years.

The 4u Motel, 3850 S. Broadway, no complaints within the last five years

The Holiday Motel, 4475 S. Broadway,

- 1/24/2011, received a complaint regarding a gas leak. Management stated that the complainant had not lived there for several months, no gas leak was found.
- 12/10/2010, received a complaint regarding a lack of hot water. The plumbing inspector met with the manager and checked the water temperature. The water temperature was in compliance.
- 2/14/2008, received a complaint of overcrowding and having three dogs in one unit. The manager stated that the occupants had vacated the unit.
- 7/7/2006, received a complaint of infestation of bed bugs. Manager provided an invoice from an extermination company showing that the rooms had been treated.

The Lucky U Motel, 4575 S Broadway, no complaints within the last five years.

MEMORANDUM

To: Chief of Police John Collins
From: Sgt Christian Contos, Impact Team Supervisor
Date: January 3, 2012
Subject: Council Request #11-267

Council Request #11-267
Date assigned: December 27, 2011
Assigned to: Police

Information was requested regarding a perceived increase in police activity at local motels, as well as statistics regarding calls for service at local motels. Information regarding potential health code violations was also requested.

There are four motels in Englewood; all of them located on Broadway:

Wright Motel, 3020 South Broadway
4U Motel, 3850 South Broadway
Holiday Motel, 4475 South Broadway
Lucky U Motel, 4575 South Broadway

In 2010, when the Impact Team became operational and continuing currently, Impact Officers have developed partnerships with the management of all of Englewood's motels. As part of developing a partnership with any business or community member, citizens gain more trust in the police and are more willing to call police when a problem is discovered. As trust develops between police and citizens, calls to police increase, sometimes significantly, as the citizens feel more comfortable reporting crimes and problems. Gradually, the calls for service will go down as crime moves away from those locations that don't tolerate criminal activity. In addition, partnerships require more frequent police visits to locations that have problems, possibly giving the misperception that crime is up at a given location. In many cases, a police car parked at a location may simply mean the police are there to visit with the neighbors and residents.

The Impact Team and the Patrol Division have a strong relationship with all of the motels. Officers conduct proactive visits, and often discover otherwise unreported problems during these visits. In several recent cases, the Impact Team has successfully worked with owners regarding known drug dealers, wanted persons, and even dishonest managers. These people have been removed and will continue to be removed from our local motels.

A statistical review of responses (both police and fire/medical calls), for 2010 and 2011, shows that responses to all of the motels are roughly the same from 2010 to 2011, with some hotels showing about a 10% rise in calls for service and others showing about a 10% decrease in calls for service. A good portion of the calls are based on proactive visits by police, and are likely not due to criminal activity.

Alleged health code violations reported by motel patrons fall under the jurisdiction of local health departments and public health agencies. Municipal codes generally do not address these types of violations, and Englewood Police and Code Enforcement Officers do not have the authority to investigate or enforce these codes. Motel patrons who have made health code related complaints have been referred to the local health department or public health agencies that would be most likely able to help with the specific complaint.

MEMORANDUM

To: Chief of Police John Collins
From: Sgt Christian Contos, Impact Team Supervisor
Date: January 12, 2012
Subject: Council Request #11-267 Follow-up

Council Request #11-267 Follow-up
Assigned to: Police
Date assigned: January 12, 2012

Follow-up information was requested regarding the involvement of public health agencies with local motel health complaints.

On January 12, 2012, Sgt Contos spoke with the Tri-County Health Department, which is responsible for public health in Arapahoe/Douglas/Adams Counties in Colorado. Tri-County Health is responsible for many aspects of public health such as emergency preparedness, immunizations, disease prevention, public education, restaurant and child care facility inspections, etc.

Tri-County Health has regulatory and enforcement authority over facilities that would normally be open to the public. Examples are restaurants, child care facilities, public or neighborhood swimming pools, and grocery stores. Tri-County Health does not have any inspection or enforcement authority over any facility that would normally be private, such as apartment buildings, motels that don't have food service, private homes, etc. As a government agency, Tri-County would require the resident's consent to enter any private location. As an example, a motel room occupied by a guest is a private residence under the law, and a government entity is not permitted to enter without a search warrant or consent from the resident of that motel room.

Tri-County Health Department/Division of Environmental Health is responsible for inspections of the above types of public facilities. Complaints about these facilities are received by Tri-County Health from citizens and other organizations such as police departments and building departments of local municipalities. For those facilities that Tri-County Health has authority over, they can enforce rules violations by suspending food service licenses, closing food service, requiring kitchen or food storage modifications, etc. For those facilities that they don't have authority over, they can only call the facility owner/manager and encourage cleanliness practices and provide educational material. The facility owner/manager is under no obligation to take any action, even if there was a complaint.

Unless it is a specific complaint related to a motel restaurant, cafeteria, or other regulated facility, the Tri-County Health Department generally classifies complaints about motels as "Public Accommodation Issues". These include complaints such as rats/mice, insects (including bedbugs, cockroaches, and lice/scabies), dirty conditions, etc.

Tri-County Health has documented the following complaints against the following Englewood Motels:

Wright Motel, 3020 S Broadway: 1 complaint on 6-18-09 for “public accommodation issues” (alleged rodent or insect problem).

4-U Motel, 3850 S Broadway: 1 complaint on 12-01-09 for “public accommodation issues” (alleged rodent or insect problem).

Holiday Motel, 4475 S Broadway: 13 complaints from 11-29-04 to 10-26-09 for “public accommodation issues” (alleged rodent or insect problem).

Lucky-U Motel, 4575 S Broadway: 4 complaints from 6-29-06 to 2-10-11 for “public accommodation issues” (alleged rodent or insect problem).

Because all of the Englewood motels do not have any restaurants or cafeterias, the only kitchen facilities on the property are contained in each living unit, making them private residences which are not subject to health department inspection, regulation, or enforcement.

Tri-County Health will release written records about complaints upon written request to the following:

Director Laura DeGolier
Director of Environmental Health
Tri-County Health Department
6162 S Willow Drive
Greenwood Village, CO 80110

Payment is required for copying of the records. Further information about Tri-County Health can be found at their website: <http://www.tchd.org/index.html>

Memorandum

To: Mayor Randy Penn and City Council
Through: Gary Sears, City Manager
From: Frank Gryglewicz, Director of Finance and Administrative Services
Date: January 30, 2012
Re: Council Request 12-016: List of Hotels/Motels in Englewood

Attached is a list of the hotels/motels in the City of Englewood.

Attachment

City of Englewood, Colorado
Finance and Administrative Services Department
Revenue and Budget Division

DOING BUSINESS AS..... BUSINESS ADDRESS.....

WRIGHT MOTEL	3020 S BROADWAY
FOUR U MOTEL	3850 S BROADWAY
HOLIDAY MOTEL	4475 S BROADWAY
LUCKY U MOTEL	4575 S BROADWAY

Information from Mayor Pro Tem Woodward

Center for Problem-Oriented Policing (COPS)

http://www.popcenter.org/Problems/problem-budget_motels.htm

Disorder at Budget Motels

Guide No.30 (2005)

by
Karin Schmerler

The Problem of Disorder at Budget Motels

This guide begins by describing the problem of disorder at budget motels, and reviewing factors that contribute to it.[†] It then identifies a series of questions to help you analyze your local problem. Finally, it reviews responses to the problem, and what is known about them from evaluative research and police practice.

[†] Temporary overnight lodging falls into two general categories: motels and hotels. At motels, guests (registered room occupants) and visitors (people who enter the grounds but are not registered guests) can directly access rooms without having to enter the motel lobby or main building. At hotels, guests and visitors must pass through the front lobby or enter the building through an outside door and an interior corridor to get to the rooms.

A wide variety of problems occur at budget motels, including

 disturbances,[†]

[†] An analysis of motel calls for service in Chula Vista, California, found that the most typical citizen call was about a disturbance of some sort. A significant portion involved guests who wouldn't leave or pay (Morris 2003).

 domestic violence,

 theft,

 auto theft and theft from autos,[†]

[†] For further information, see *Thefts of and From Cars in Parking Facilities* [ Full text], Guide No. 10 in this series.

 public drinking,

 vandalism,

 prostitution,

 drug dealing and use,

 fights,

 clandestine drug-lab operations,[†]

[†] For further information, see *Clandestine Drug Labs* [ Full text], Guide No. 16 in this series.

 sexual assault, and

 robbery.

Many of these problems can be reduced through better motel management, design, and regulation.

In a number of communities, certain motels generate significant numbers of service calls and consume inordinate levels of police resources. Problem motels are frequently hot spots for both nuisance activity and more serious incidents, such as robbery and sexual assault. In addition, problem motels inhibit nearby economic redevelopment¹ and reduce the number of safe, clean lodging units available for tourists and travelers.

Factors Contributing to Disorder at Budget Motels

Understanding the factors that contribute to your problem will help you frame your own local analysis questions, determine good effectiveness measures, recognize key intervention points, and select appropriate responses.

The very nature of overnight lodging makes it conducive to crime and disorder. Motels and hotels house people only temporarily, often in commercial areas with high crime rates. Because budget motels offer low rates, accept cash, and often have a relatively unrestricted environment, local residents with illicit or antisocial intentions find them particularly attractive. Drug sales, prostitution, loud parties, and other activities can often be undertaken at motels with less risk than at private residences. Motel guests have little motivation to report drug dealing and prostitution because they have no long-term stake in the motel. In addition, motel managers often have a limited opportunity to get to know the backgrounds of the people on their premises. Finally, in municipalities that lack the resources to provide motel oversight, motel managers have little incentive to accept responsibility for problems.

Motels attract crime, in that people inclined to commit it[†] are drawn to them because their conditions and reputations are favorable for doing so.² Poorly managed motels also enable crime by attracting offenders to a location with weak oversight.³

[†] In Chula Vista, an estimated 21 percent of guests and visitors at several problem motels were on probation or parole, compared with less than 2 percent of California's overall adult population (Theisen 2002a).

Motel Economics

In 2002, the lodging industry posted revenues of more than \$102 billion.⁴

In general, lodging establishments that charge nightly rates of less than \$60 fall under the budget category. However, both the price and the amenities at budget motels can vary greatly.[†] Room rates—even for the same motel chain—differ significantly by location, season, and day of week. The upscale budget motels (which account for 25 percent of all U.S. lodging units) are typically chain motels, some of which cater to business travelers and tourists and offer fitness centers, complimentary breakfasts, and premium movie channels. Low-end budget motels (13 percent of all U.S. lodging)⁵ are typically independent properties that charge \$20 to \$45 per night, and may not offer any amenities except for cable movies.

[†] Some motels in the rural Southwest have nightly rates of less than \$20; in these markets, motels with nightly rates of \$35 are high-end. In contrast, low-end budget motels in major metropolitan areas generally charge between \$30 and \$45 a night, and high-end budget motels may charge up to \$80 a night. The rates quoted in this guide do not apply to all motels, but are included to give you a general idea of the cost of budget lodging.

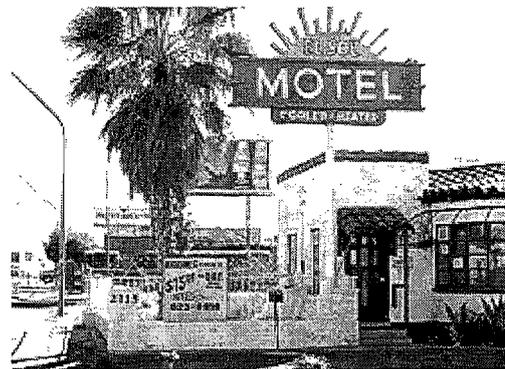
While some low-end motels offer safe, clean lodging (and some high-end motels do not), low-end motels are more likely to experience crime and disorder problems. A study of Chula Vista motels by California State University, San Bernardino (CSUSB), found that low room rates were strongly correlated with higher call-for-service rates.⁶ Compared with motels that charged from \$41 to \$60 a night, those that charged \$40 or less per night had twice the number of service calls per room, and more than two-and-a-half times the number of arrests per room.⁷

Cheap motels did not always pose crime and disorder problems. In the 1930s and 1940s, individually owned and operated motels offered travelers an eclectic, economical array of relatively safe lodging options. In the 1950s, corporations such as Holiday Inn and Howard Johnson sought to capitalize on the growing national travel market by offering consumers brand-name, standardized lodging. The interstate highways built in the 1950s and 1960s favored the chains by essentially rerouting motorists away from the older, independent establishments, many of which were located along aging roads that ran parallel to—but were difficult to access from—the new interstates.⁸ In some cases, major motel chains built their properties right at the interstate exits; motorists seeking independent motels had to bypass the chains and venture farther from the interstate to find them.

The smaller, non-chain motels had difficulty competing with the large national chains under these circumstances. To survive economically, they began catering to the lower end of the market; some turned into adult motels,[†] while others served as housing for low-income people. Unable to afford upkeep, many of the formerly quaint motels deteriorated and became havens for crime and disorder.^{††} Unsightly and crime-prone motels can inhibit economic growth in the surrounding areas.

[†] The definition of "adult motels" varies from one jurisdiction to the next, but they often rent rooms by the hour and advertise the availability of in-room pornographic movies.

^{††} There is evidence that drug dealers sometimes operate out of financially strained motels and apartment complexes because the property managers are unlikely to have the will or resources to stop them (Eck 1995b [[Abstract only](#)]).



In an effort to attract customers, older motels such as this urban Arizona establishment offer rock-bottom prices for longer term guests, essentially creating low-income housing.
CREDIT: Steve Morris.

Establishing and Enforcing Regulations and Penalties

27. **Limiting occupancy to no more than 28 days in a 90-day period, and evicting problem tenants.** A number of jurisdictions have prohibited motels from housing people on a long term basis—typically for more than a month at a time—citing health and safety reasons.[†] If motels cannot be prohibited from housing long-term

residents, they should implement more rigorous screening procedures and operate their businesses as landlords, rather than managers.^{††} Established motel tenants involved in illegal activity should be evicted under existing landlord-tenant laws.^{†††} The arrest and subsequent eviction of managers and several long-term problem residents of a Fresno motel resulted in a 70 percent decrease in the average number of service calls per month.⁴⁷

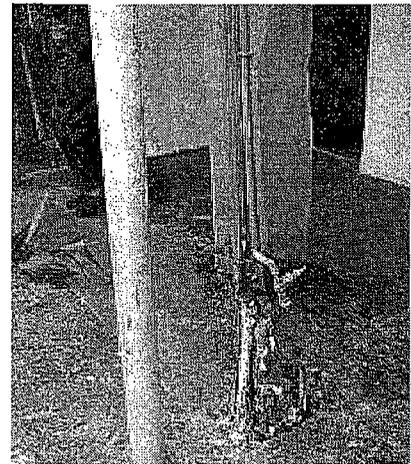
† In justifying its 30-day stay limit at motels, Buena Park, California, indicated that the lack of ongoing maintenance and maid service at long-stay motels rapidly creates substandard conditions in most, if not all, of the rooms.

†† For further information about effective rental-property management, see Campbell (2009) [ Full text].

††† An evaluation of effective drug abatement efforts found that problem-tenant eviction enabled a large majority of properties to essentially eliminate drug problems and avoid abatement (Davis and Lurigie 1998)

28.

29. **Conducting regulatory inspections and audits.** Regulatory inspections and audits can help ensure that properties comply with relevant fire, building, zoning, property maintenance, and health and safety codes, as well as tax laws. Oakland, California's Specialized Multiagency Response Team routinely inspects nuisance properties, including motels, to ensure compliance with housing, fire, and safety codes. Properties not in compliance may be sued using civil laws. An evaluation found that this approach was more effective at reducing drug problems in and around targeted properties than traditional enforcement efforts.⁴⁸ Involving tax authorities can prove particularly effective in encouraging motels to change their business practices.[†] Fresno police requested that the city revoke a problem motel's rooming tax permit on the grounds the motel was violating a municipal code that prohibited allowing unlawful activity on the property; ultimately, the threat of this action forced the owners to sell the motel.⁴⁹



30. † In California, the Franchise Tax Board can eliminate tax deductions if a property does not comply with housing codes.

31. **Implementing licensing requirements for lodging establishments, including minimum security, sanitation, and management standards.** In Stockton, California, motels must meet minimum standards to obtain a permit to operate. Among other things, permit applicants must demonstrate that the property fully complies with all applicable building, fire, and health codes; that service calls to the property have not been "excessive," as determined by the police chief; that the premise is governed by a management plan that addresses cleaning schedules and property maintenance; and that the property manager has not been involved in criminal activity for at least five years[†]; and has completed a motel-management training course co-taught by the police, fire, code enforcement, and environmental health departments, and the local hotel/motel association.⁵⁰, ^{††} During 2002, the program's first year of operation, 12 of the city's 59 motels were shut down because they failed to comply with the new requirements. Oakland, California, requires that all motel rooms be secured with deadbolt locks and meet minimum standards regarding conditions and furnishings, as well as linen and mattress cleanliness.⁵¹ Motel practices and standards can also be regulated through conditional-use permits, particularly when motel ownership changes hands.

Because many independent motels were built more than 50 years ago and owners tend to limit investment in the properties, a number will exhibit moderate to severe code violations.
CREDIT: Adele Sidock

† The CSUSB study of Chula Vista motels found that only 19 percent of motels that were not family-owned conducted criminal records checks on motel employees.

†† For a copy of the Stockton ordinance, see http://www.stocktonca.gov/SMC/Chapter07/Ch07_PartIV_Div02.cfm.

1. **Requiring a performance bond[†] or other changes at a property in exchange for continued business operation.** Oakland police and city officials required a prominent national budget chain to take out a \$250,000 performance bond in return for continued operation of a problem motel. The motel had well-documented problems of prostitution and drug sales, and a service-call level substantially above that of neighboring chain motels. Rather than forfeit the \$250,000 bond to the city, the motel improved its management practices, hired 24-hour security guards to control access to the property, prohibited visitors between 10 p.m. and 6 a.m., and instituted a series of other management changes. These changes reduced service calls to the property by 59 percent^{††}; seven months after the agreement was reached, and pushed the motel's service-call levels down to those of neighboring chain motels, a key stipulation of the agreement. National City officers required a series of changes in return for the continued operation of a motel whose owners had been cited for violating California state penal code sections that prohibit room rental to known prostitutes.^{†††} Requiring a performance bond or other changes at

a property provides a certain degree of leverage with the property owner. In the case of the Oakland airport motel, the adverse publicity of a drug abatement lawsuit provided the necessary leverage for the company to take out the performance bond. In National City, misdemeanor charges that put the owners on probation for one year gave officers the means for requiring management changes.

† A performance bond guarantees that the terms of an agreement will be met or the injured party will be financially compensated.

†† This call reduction was achieved with virtually no police enforcement action. Just one search warrant was served, and several arrests made.

††† To prove that the motel was violating the penal code, National City officers paid an hourly rate for rooms and then brought known street prostitutes to the motel, making it clear that they were doing so to have sex in exchange for money. Violation of the penal code provisions enabled officers to obtain a search warrant for the property, which revealed separate bookkeeping practices and tax violations (National City Police Department 2002 [ Full text]).

2. **Seeking cost recovery for excessive city time spent at problem motels.** If police can establish that they have, out of necessity, spent an inordinate amount of time at problem motels, they can request reimbursement for that time. Oakland police recovered more than \$35,000 for time spent surveilling the budget motel that took out the \$250,000 performance bond.⁵²
3. **Closing the property.** Problem motels can be closed using a variety of approaches, including nuisance or drug abatement,[†] failure to meet legally mandated operation standards, amortization,^{††} eminent domain,^{†††} and imminent hazard.^{††††} Although it can be a lengthy process and is not without costs, property closure (or the threat of property closure) may be the only way to effectively address problems at the worst motels. In the case of abatement, civil penalties that accrue to the local government may help offset property-closure costs. Abatement laws vary by state, and the process can be complicated; legal assistance and full consideration of the benefits and potential pitfalls of the process are a must.^{†††††} (You can find a full discussion of closure options, their costs and benefits, and their appropriate use, given local crime conditions and the level of effort motel managers make to improve the property, at <http://www.chulavistapd.org/motels>.) Once a property is closed, the government can demolish it, sell it, or convert it to permanent housing or some other lawful use.⁵³

† In 1999, the University of California, Berkeley, estimated it would cost the city of Oakland approximately \$18,000 in legal and administrative costs to close a motel under the state drug nuisance-abatement statute, but only an estimated \$1,300 to close the motel if it constituted a public nuisance under the same statute (Amato et al. 1999).

†† Amortization is a means of terminating a nonconforming use by allowing investors to recoup their investment over a reasonable period, which may range from a few months to several years.

††† Eminent domain is the government's ability to take possession of private property for the public good, usually by providing fair compensation to the owner.

†††† An imminent hazard is a structure that is at risk of causing immediate or impending harm to the occupants or their property.

††††† In weak real-estate markets, for example, a property that is closed or acquired through abatement may have significant tear-down or conversion costs that could inhibit future property development.

4. **Using asset forfeiture or seizure.** Although not widely used because the target property's value is often low,⁵⁴ asset forfeiture of motel property has been attempted on several occasions. The Maricopa County, Arizona, Attorney's Office sought to reduce problems at a motel using state statutes that provide for property seizure if a criminal nuisance is not abated.⁵⁵ In 1998, the U.S. Attorney in Houston sought to use federal drug asset-forfeiture laws to seize a motel that was the site of drug sales, prostitution, and other serious crimes, despite the fact that the owners did not actively participate in the crimes. Ultimately, the U.S. Attorney did not pursue the forfeiture case because the motel owners agreed to make a number of changes in motel operations.

General Principles for an Effective Strategy

#	Response	How It Works	Works Best If...	Considerations
1	Enlisting community support to address the problem	Establishes joint ownership of the problem and a solid foundation for change	...there is sufficient public interest in and political support for addressing the problem	A local business association, such as the Chamber of Commerce, may be best positioned to take the lead in enlisting and maintaining community support
2	Obtaining cooperation from motel owners and managers	Limits the need to regulate changes in business practices	...the needs and opinions of motel managers and owners are sought early in the problem-solving process	Not all motels are interested in changing the way they do business; these establishments will require a different approach
3	Establishing and enforcing minimum motel functionality and security standards	Restricts the operation of motels to those that can provide accommodations that meet basic standards	...pertinent city and county agencies, such as code enforcement, the attorney's office, and the health department can provide assistance	May require years to implement, as well as significant political support and ongoing resources for implementation
4	Establishing crime- and disorder performance standards and goals	Shifts the responsibility for safety to those most able to improve conditions—motel operators	...a number of motels already maintain annual CFS/room ratios of less than 1.0	May require years to implement, as well as significant political support

Specific Responses to Disorder at Budget Motels

Deterring/Screening Problem Guests and Visitors

#	Response	How It Works	Works Best If...	Considerations
5	Requiring all adult guests and visitors to present government-issued photo ID at the front desk immediately upon arrival	Creates a record of motel users for police purposes; can help screen out those who do not wish to be identified by motel personnel	...front desk clerks consistently adhere to information collection requirements and refuse to allow access to people without proper IDs	A guest/visitor log is most useful to police if the information is legibly recorded on a standardized form, or, if possible, entered into a standardized computer database
6	Requiring that guests and visitors be at least 21 years old, unless accompanied by a parent or legal guardian	Denies minors access to a place to drink alcohol; helps prevent minors from being sexually assaulted in a motel room	... front desk clerks consistently refuse to allow unaccompanied minors on the premises and a large number of problem guests are under 21	Can be difficult to implement without perimeter control
7	Maintaining and enforcing "no rent" and "no trespass" lists	Prevents one-time problem motel users from becoming repeat motel users	...both visitors and guests are required to present photo ID to enter the property	Requires good record-keeping on the part of motels and perimeter control
8	Limiting visitors and contact between strangers	Inhibits parties; reduces the opportunity for illicit transactions between strangers	...motels can control both pedestrian and vehicle access to the property	Controlling the perimeter may be costly
9	Prominently posting notices and signs that clearly outline appropriate guest and visitor behavior, as well as the sanctions that will be levied against violators	Sets rules for motel users' behavior; removes excuses regarding the consequences of violations	...guests and visitors read the notices, and management enforces the rules	Motels with lower CFS/room ratios may not want or need explicit rules prohibiting prostitution and drug use
10	Guaranteeing payment from high-risk guests	Gives motel staff leverage over guests who won't leave or pay; helps screen guests who can't afford a room	...guests' credit cards are legitimate	Not all motel customers will have credit cards; in these cases, motels can require multi-night deposits well in advance of departure dates
11	Refusing to rent to known or suspected	Denies motel access to extremely high-risk guests	...clerks can identify high-risk guests; management	Clerks cannot discriminate against people who would like to

	members, or drug dealers, or to anyone clearly intoxicated or under the influence of illicit substances		access, and the motel can either replace them with low-risk guests or absorb the resulting short-term loss of revenue	religion, gender, or other protected characteristics
12	Implementing clear check-in policies, and training clerks in their use	Standardizing and formalizing check-in procedures aids clerks in consistently screening out problem guests	...clerk turnover is relatively low, or key information is provided to new clerks, in written form	Managers may need to periodically check on adherence to check-in procedures and standards
13	Reinforcing formal and informal social controls over problem guests	People who have influence over problem guests limit their ability to frequent the premises, or they require improvements in behavior	...problem motels are patronized by significant numbers of people who can be influenced (parolees/probationers, military personnel, college students, or seasonal laborers)	Parolees/probationers may have difficulty finding other housing that meets their needs

Managing Problem Guests and Visitors

#	Response	How It Works	Works Best If...	Considerations
14	Assigning potential problem guests to rooms near the front office or with high natural surveillance	Increases the guests' risk of getting caught engaging in problem behaviors	...such rooms are not booked when suspicious guests arrive	This response should be used in only a few borderline cases at any one time; if a clerk or manager does not feel comfortable renting to a person, they should not proceed with check-in
15	Employing well-trained, uniformed, on-site security guards, with clear expectations regarding duties	Provides significant oversight of the property	...guards go beyond patrolling and proactively use all the tools at their disposal to keep order on the property	Involves a substantial cost to the motel
16	Prohibiting "back-in" parking	Reduces motels' appeal to criminals; gives guards an opportunity to engage violators	...motels are located in or near states that do not require a front license plate	Signs prohibiting this practice must be posted; guests may not understand the restriction
17	Inspecting the rooms of guests who refuse maid service or behave suspiciously after check-in	Limits the amount of time guests have total control over the use of rooms	...motels employ security guards or other staff who are trained in recognizing drug paraphernalia	Situations involving suspected clandestine drug labs or sales are dangerous, and police involvement is recommended

Changing the Physical Environment

#	Response	How It Works	Works Best If...	Considerations
18	Limiting access to the property	Problem guests and visitors can be screened out at the front desk	...direct room access or use of the property by people not associated with the motel is a source of the problem	Involves a cost to the motel; police and other emergency personnel must have access to the property
19	Installing and monitoring CCTV	Increases the risk offenders will get caught engaging in illicit or undesirable behavior	...the motel has only a few identifiable problem areas	Involves a cost to the motel
20	Installing adequate lighting, and improving the visibility at blind corners with mirrors	Increases the risk offenders will be detected	...problems occur at night and in the motel's public areas	Involves a cost to the motel
21	Landscaping and maintaining the property in a way that minimizes crime opportunities and maximizes the perception of ownership	Sends the message that the location is unsuitable for criminal activity	...it is done in conjunction with access control, and strict guest and visitor screening	Involves a cost to the motel

22	Establishing redesign and property improvement incentives	Provides motel owners with resources or benefits for upgrading properties or improving their security features	...motel owners are interested in serving a legitimate clientele, but lack the resources to attract legitimate customers	May involve a cost to the jurisdiction and/or the motel
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Changing the Physical Environment

#	Response	How It Works	Works Best If...	Considerations
23	Informing owners and managers about problems on site	Removes excuses on the part of owners and managers	...the problem motels are concerned about their reputation or the threat of abatement	Requires ongoing staff support to forward crime-and-disorder statistics to motels and conduct follow-up meetings
24	Requiring that a manager be on the property at all times	Ensures that the property will have 24-hour oversight	...a manager can live in the motel	Involves a cost to the motel
25	Encouraging owners to sign "good neighbor agreements"	Creates a formal record of specific management practices agreed to by a problem motel	...the agreed-upon practices can be easily monitored	The consequences of violating the agreement should be spelled out
26	Offering employee training programs	Provides employees with information that can help them run safe motels; ensures employees are aware of pertinent regulations	...training sessions are required and offer information that will help prevent fraud, establishment of drug labs, theft, vandalism, robbery, and other crimes that adversely affect motel finances and employees	Requires ongoing staff support to develop, coordinate, and conduct the training

Changing the Physical Environment

#	Response	How It Works	Works Best If...	Considerations
27	Limiting occupancy to no more than 28 days in a 90-day period, and evicting problem tenants	Prevents occupants from becoming legal tenants at motels not designed for long-term stays; removes problem guests	...guests staying longer than seven days undergo more-thorough screening procedures, such as credit and reference checks	Guests who need long-term housing but can afford or obtain only motel lodging may cycle in and out of multiple motels over a period of months
28	Conducting regulatory inspections and audits	Ensures that buildings meet codes designed to protect guests and visitors	...city/county agencies coordinate efforts	Requires ongoing staff support to coordinate and conduct inspections/audits
29	Implementing licensing requirements for lodging establishments, including minimum security, sanitation, and management standards	Ensures that motels meet minimum standards of operation specifically developed for overnight lodging establishments	...a significant number of a jurisdiction's motels operate in a substandard way	Requires significant political support to be instituted, as well as ongoing resources to manage the licensing program
30	Enacting special regulations for adult motels	Targets those motels most likely to generate a high number of service calls by limiting their operations in various ways	...problems at the motels stem from prostitution, and compliance with regulations can be easily monitored	Exemptions may need to be made for legitimate hourly rentals such as those for corporate hospitality suites
31	Requiring a performance bond or other changes at the property in exchange for continued business operation	Gives police financial leverage over problem motels	...problem motels have sufficient resources and incentive to take out a bond	Requires legal support and clear evidence of significant problems at a property
32	Seeking cost recovery for excessive city time spent at problem motels	Jurisdictions calculate the value of officer or other staff time required to address problems at a motel	...one or two motels are extreme outliers with respect to calls-for-service ratios	May require legal action

longer operate

allowed crime to occur on the property

consuming; must have the support of city or county legal staff; all legal property owners must be accurately identified, which can be a challenge

34 **Using asset forfeiture or seizure**

Jurisdictions assume ownership of property used for illicit purposes

...the property can be relatively easily sold or converted to other uses

Faces legal challenges

Changing the Physical Environment

#	Response	How It Works	Works Best If...	Considerations
35	Continually arresting offenders at problem properties	Intended to remove problem guests from motels and deter them from returning	...arrests are used to build a case against owners regarding poor guest screening	Except for case-building, this is not shown to be an effective use of officer time
36	Conducting field interviews of people at problem motels and traffic stops of vehicles leaving them; scheduling extra police patrols of problem motels	Intended to deter problem guests from frequenting motels	...the measures are used to better understand what attracts problem guests to the motels	Except for data-gathering, this is not shown to be an effective use of officer time
37	Implementing Crime-Free Hotel/Motel programs	Intended to promote voluntary compliance with good management practices		Focuses on process rather than outcomes

Hotel Motel Ordinance

Montgomery, Neil

Sent: Thursday, February 02, 2012 7:28 AM
To: Jim Woodward
Cc: Dodson, Councilwoman Lori
Attachments: Hotel Motel Ordinance No ~1.pdf (22 KB)

Mayor Pro Tem Woodward,

Lori Dodson forwarded your email re: hotels / motels to me. Attached is a copy of an ordinance our Council passed some years ago – while it was adopted to set standards for new construction I think some of the provisions could perhaps be utilized to address the problems you mentioned. For example, Section (E) contains requirements for security that might be applied to existing establishments as well. You may wish to consult with your City Attorney for an opinion on what provisions you could apply.

In our dealing with similar establishments we have also used concentrated enforcement from Police, Code Compliance, Fire and Building Inspection departments to ensure that all applicable codes are being met.

In the worst situations, our Police Department did undercover work which resulted in them declaring the property the site of criminal activity which then allowed us to pull the Certificate of Occupancy and turn off utilities. There may be applicable statutes under City or Colorado law that would allow you to pursue a similar program.

Please don't hesitate to contact me if I can be of any further assistance.

Neil Montgomery

ORDINANCE NO. 5213

AN ORDINANCE AMENDING CHAPTER 34, "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF GARLAND, TEXAS AND ORDINANCE NO. 4647, AS AMENDED, THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF GARLAND, TEXAS; PROVIDING A PENALTY CLAUSE, A SAVINGS CLAUSE, AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:

Section 1

That Sec. 34.43 of the Code of Ordinances of the City of Garland, Texas is hereby amended to read as follows:

"Sec. 34.43. Site Design.

(A) *Building Design.* The following requirements apply to both full-service hotel/motels and to limited-service hotel/motels:

- (1) *Accessibility.* A guest room shall be accessible only from an internal hallway and the internal hallway shall be accessible only from a central lobby area contained within the hotel/motel.
- (2) *Exterior walls.* No more than two basic materials (in addition to glass) shall be used on an exterior wall on any single building of a hotel/motel. One of the two materials shall be masonry. The percent of masonry as required below shall be measured for each expanse of exterior wall between corners of 15 degrees or more. Exterior walls shall be composed of:
 - (a) at least 50% primary masonry product such as brick, stone, hand-laid tile (laid unit-by-unit), or veneer simulations of such materials having the appearance of hand-laid units;

- (b) not more than 50% secondary masonry products, that is, exterior insulation and finish systems composed of natural aggregates and synthetic binders having a minimum applied thickness of 3/4 inches, exposed aggregate, glass block or decorative concrete masonry units other than flat-gray block; and
- (c) not more than 20% non-masonry materials, excluding doors, windows and window units.

The Director of Planning may approve a masonry alternative if the alternate material has a true unit-masonry appearance, the material has been rated by a national standards rating association or has been accepted by the industry as safe and suited for the intended use, and the material has been demonstrated to be as durable as exterior unit masonry.

(B) *Site Facilities.*

- (1) *Number of Rooms.* A full-service hotel/motel shall have at least 100 guest rooms. A limited service hotel/motel shall have at least 65 guest rooms.
- (2) *Meeting Rooms.* A full-service hotel/motel shall have at least one meeting room of at least 4000 square feet in area. A limited-service hotel/motel shall have at least one meeting room of at least 700 square feet in area. The meeting room shall be equipped with a sink and a coffee bar.
- (3) *Swimming Pools.* A full-service hotel/motel and a limited- service hotel/motel shall have a swimming pool of at least 800 square feet of surface area.
- (4) *Restaurants and Food Service.* A full-service hotel/motel shall have, on-site, a restaurant with table service provided primarily by waitpersons, seating for at least thirty customers, and full menu service offering multiple entrees with on-site food preparation.

(C) *Parking and Circulation.* The following requirements apply to both full-service hotel/motels and to limited-service hotel/motels:

- (1) Parking shall be provided at the ratio of 1.25 parking spaces per guest room in addition to required parking for any additional component of the hotel/motel such as meeting rooms and restaurants. Parking spaces shall be separated by at least one foot.
- (2) An attached, covered, drive-through area adjacent to the hotel/motel lobby or main desk shall be provided for the temporary parking of vehicles during guest registration or check-out.
- (3) All parking areas shall be illuminated by lighting standards having a minimum illumination intensity of 2.0 foot-candles measured at ground level.

(D) *Screening.* In addition to any other screening and landscaping requirements imposed by the Code of Ordinances or the Comprehensive Zoning Ordinance, both full-service hotel/motels and limited-service hotel/motels shall provide screening of ground-mounted satellite, HVAC (other than HVAC equipment serving an individual unit) and auxiliary power equipment by means of a masonry screening wall or a wrought-iron (tubular steel) fence with a living screen either of which shall be of sufficient height to block visibility of the equipment from view at the property line.

(E) *Security.* The following requirements apply to both full-service hotel/motels and to limited-service hotel/motels:



- (1) When a guest arrives for registration, the guest shall provide at least two forms of identification, one of which shall include a photographic likeness of the guest and be issued by a governmental agency. The guest shall also provide the license plate number of the vehicle, if any, to be used by the guest during the guest's stay. The hotel/motel shall issue a parking sticker or other identifying placard to be placed on the windshield of each vehicle to be used by the guest during the guest's stay.

- (2) A hotel/motel shall install and maintain, in proper operating order, security cameras *in* each interior hallway and lobby, in the parking lots, and at each exterior door. The cameras shall be placed so as to provide visibility to the front and rear exteriors of the building and to the swimming pool area. Monitors shall be provided for security and other hotel/motel personnel so that on-site activities may be viewed at all times. Videotapes from security cameras shall be operating 24 hours a day and shall be kept a minimum of 30 days.
- (3) Guest room access shall be provided only through the use of magnetic access keys.
- (4) Exterior doors (other than lobby doors) shall be locked after 10:00 p.m. and shall be equipped with an alarm or other device that will alert hotel/motel security and other personnel when the door has been opened.
- (5) Doors to guest rooms shall be solid core.
- (6) Graffiti and markings or insignia that do or may indicate the presence or association of a street gang shall be removed within 24 hours."

Section 2

That Sec. 34.44 of the Code of Ordinances is hereby amended to read as follows:

"Sec. 34.44. Bed and Breakfast Accommodations.

A bed and breakfast accommodation may provide no more than ten bedrooms for guests (exclusive of the living quarters of the owner or operator). Guests at a bed and breakfast accommodation may stay up to fourteen consecutive days provided that the bed and breakfast accommodation may only offer a daily rate and shall not offer weekly or bi-weekly rates. A bed and breakfast accommodation may include kitchen and dining facilities to furnish meals for guests only. Food preparation within a guest bedroom is prohibited. A bed and breakfast accommodation may not include a restaurant, banquet facilities or similar services. A bed and breakfast accommodation shall provide parking at the ratio of one parking space for each room. Parking spaces shall be separated by at least one foot."

Section 3

That Section 10-200 of Ordinance No.4647, as amended, the Comprehensive Zoning Ordinance, shall be amended by amending the land use chart to provide as follows:

- (1) A full-service hotel/motel shall be allowed as a permitted use in the FW (Freeway) District, the I-I (Industrial) District, the O-2 (Office) District, and the CA-I (Central Area-I) District, and in a Planned Development District when so allowed by the granting ordinance. A full service hotel/motel may be allowed only by specific use permit in the CA-2 (Central Area-2) District.
- (2) A limited-service hotel/motel may be allowed only by specific use permit in the FW (Freeway) District, the I-I (Industrial) District, and the O-2 (Office) District, and in a Planned Development District when so allowed by the granting ordinance.
- (3) A bed and breakfast accommodation shall be allowed as a permitted use in the CA-I (Central Area-I) District, and in a Planned Development District when so allowed by the granting ordinance. A bed and breakfast accommodation may be allowed only by specific use permit in the AG (Agricultural) District and the CA-2 (Central Area-2).

Section 4

That Section 38, Definition 117 of Ordinance No. 4647, as amended, the Comprehensive Zoning Ordinance, is hereby amended to read as follows:

"117. Hotel/Motel

A building for the overnight or temporary lodging of travelers for compensation. A hotel/motel may be either a full-service hotel/motel, a limited service hotel/motel, or a bed and breakfast accommodation, each as more particularly described in Article IV of Chapter 34, "Zoning", of the Code of Ordinances."

Section 5

That a violation of any provision of this Ordinance shall be a misdemeanor punishable in accordance with Sec. 10.05 of the Code of Ordinances of the City of Garland, Texas.

Section 6

That Chapter 34, "Zoning", of the Code of Ordinances of the City of Garland, Texas, as amended, and Ordinance 4647, as amended, shall be and remain in full force and effect save and except as amended by this Ordinance.

Section 7

That the terms and conditions of this Ordinance are severable and are governed by Sec. 10.06 of the Code of Ordinances of the City of Garland, Texas.

Section 8

That this Ordinance shall be and become effective immediately upon and after its passage and approval.

PASSED AND APPROVED this the 6th day of October, 1998.

CITY OF GARLAND, TEXAS

James M. Spence

Mayor

ATTEST:

Ranette Larsen

City Secretary

Re: First Tier Suburbs - Motels

David Sander

Sent: Saturday, January 21, 2012 4:36 PM

To: Jim Woodward

Cc: A. Keith McDonald ; Arthur Sharpe | ; A. Keith McDonald II ; Amy Elsbree
 | ; Barbara Staggs ; Bob Hart
 | Brian Ramsey ; Carl Diedrich |
 Chris Eggen ; Christy McFarland ; Corey Rushton [c
 Daniel Pocek ; Daniel Pocek II]; Danita Love ; David Sander
 ; Debbie Johnson]; Dennis Doyle II
]; Diana Ewy Sharp]; Donald Groesser];
 Earl Leiken]; Gerry Biedenstein ; Henry Marraffa
]; Lara Malakoff]; Lisa Leone ; Lissa
 Smith []; Lori Dodson ; Marc San Soucie s];
 Michael Smith II]; Robert McGarvey]; Scott Cannon
 ; Scott Cannon II]; Stanley Koci];
 Stephanie Karlin]; Steve Byington]; Will McGahan ;
 Douglas Athas]; Laura McConwell]

Jim:

This is a tough challenge. We've had a couple to deal with, and mostly been successful.

Our approach is multifaceted - using code enforcement to look for any violations, building inspectors to be sure that the facility is completely up to the building code, parole agents to do regular checks on parolees who may be calling this "home", and by placing the property on our "Focus on Fifty" list.

 Focus on Fifty is a multi-department effort to eliminate the problems from the 50 worst properties in town, with an updated list of targets every year. Basically, it's a no holds barred approach for properties that rank highest in calls for service based on the data available to us (code enforcement, police, truancy, ambulance, fire, etc.). We commonly approach the lender on the property as well and let them know that their loan is in jeopardy due the mismanagement of the property. We let fines pile up, lein the property to cloud the title, etc. The goal of the program is to get that property off the Focus on Fifty list for subsequent years.

I'm sure our Code Enforcement manager would be happy to talk to you or your folks.

Let me know.

David

On Jan 19, 2012, at 2:01 PM, Jim Woodward wrote:

Hi FTS Council,

Hope all is well and Happy New Year.

I have a request for any experience any of you have had with the 1950's/60's vintage

motels which in our City of Englewood, CO have turned into a cash cow for the owner and a nuisance for the community. That is, the two or three story walk-up motel that is occupied as temporary high priced housing for underemployed or unemployed, homeless including families, meth labs, prostitution, and other criminal activity, etc. Unfortunately for us, these are the only motels in the city and no one I know would recommend them to visiting relatives or friends.

My questions have to do with any ordinances put in place with regard to health issues, nuisances, safety, habitability and maintenance (inside and out). All this with trying to avoid any resemblance of a taking. We have this coming-up in February for a study session discussion and I would appreciate any links you could forward me of your ordinances dealing with this problem if you have experienced it. I would like to be well prepared to get something done. We have dealt with this problem in the past and resolved nothing on a permanent basis. Any help you can provide me would be greatly appreciated.

See you in Washington.

Jim Woodward,
Mayor Pro Tem
Englewood, CO

RE: First Tier Suburbs - Motels

Scott Cannon (Council member)]

Sent: Friday, January 20, 2012 4:19 AM

To: Jim Woodward

Jim:

* I completely understand your situation. We had an older motel that provided the same "services and accommodations". We passed an ordinance that did not allow "extended stays" and it has somewhat moderated their business. The only challenge with the new ordinance is enforcement.

SCOTT CANNON, III
Duncanville, TX Councilman - District 2
972.743.2587

From: Jim Woodward
Sent: Thursday, January 19, 2012 4:01 PM
To: A. Keith McDonald; A. Keith McDonald II; Amy Elsbree; Arthur Sharpe; Barbara Staggs; Bob Hart; Brian Ramsey; Carl Diedrich; Chris Eggen; Christy McFarland; Corey Rushton; Daniel Pocek; Daniel Pocek II; Danita Love; David Sander; Debbie Johnson; ddoyle@ci.beaverton.or.us; Dennis Doyle II; Diana Ewy Sharp; Donald Groesser; Earl Leiken; Gerry Biedenstein; Henry Marraffa; Jim Woodward; Lara Malakoff; Lisa Leone; Lissa Smith; Lori Dodson; Marc San Soucie; Michael Smith II; Robert J. McGarvey; Scott Cannon (Council member); Dara Crabtree; Stanley Koci; Stephanie Karlin; Steve Byington; Will McGahan; Douglas Athas; Laura McConwell
Subject: First Tier Suburbs - Motels

Hi FTS Council,

Hope all is well and Happy New Year.

I have a request for any experience any of you have had with the 1950's/60's vintage motels which in our City of Englewood, CO have turned into a cash cow for the owner and a nuisance for the community. That is, the two or three story walk-up motel that is occupied as temporary high priced housing for underemployed or unemployed, homeless including families, meth labs, prostitution, and other criminal activity, etc. Unfortunately for us, these are the only motels in the city and no one I know would recommend them to visiting relatives or friends.

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See you in Washington.

Jim Woodward,
Mayor Pro Tem
Englewood, CO

Stockton Municipal Code
Chapter 7
HEALTH AND SANITATION CODE

Part IV
CAMP CARS (TRAILERS) AND CAMP GROUNDS; HOTELS — LODGING —
ROOMING AND APARTMENT HOUSES

Division II
HOTELS — MOTELS — LODGING AND ROOMING HOUSES

SEC. 7-111. SHORT TITLE:

This Division shall be known as the "Hotel, Motel, and Residential Hotel/Motel Permit Ordinance."

SEC. 7-111.1. PURPOSE:

* Based on the research conducted by, and the recommendations provided by, the Community Improvement Task Force, the City Council hereby finds that it is of the utmost importance to improve the conditions of the City's Hotel and Motel stock, which, in addition to serving the transient guests, often serves as temporary housing for the City's low-income residents. There is a tremendous concern to ensure that this housing stock meets all applicable housing and building standards that will provide its residents with safe and decent places to live. The City Council also recognizes that some Hotels and Motels within the City limits may at times also serve as long-term housing for some residents, and, for this reason, the City Council adopts a separate category of "Residential Hotel/Motel" with additional regulations that will ensure that the buildings meet long-term housing requirements.

The purpose of this Division is to require the issuance of a Permit to Operate to conduct, own, or operate Hotel, Motel, and Residential Hotel/Motel establishments within the City of Stockton; to require Manager permits for the Hotel, Motel, and Residential Hotel/Motel Managers employed therein; to establish standards for the issuance of said permits; to establish rules and regulations under which such permits shall remain in force, be suspended or revoked; and providing penalties for violations thereof.

SEC. 7-111.2. DEFINITIONS:

For the purpose of this Division, unless the context clearly requires a different meaning, the words, terms, and phrases hereinafter set forth shall have the meanings given them in this Section:

(a) "Bathroom" shall mean a room with a minimum of thirty (30) square feet containing a toilet, sink, and shower or tub.

(b) "Bed" shall mean mattress and box springs, which shall be off of the floor.

(c) "Common Indoor Space" shall mean a common gathering space within a Residential Hotel/Motel establishment for use by the residents, which has no less than 200 square feet, unless, under certain specified conditions, a variance is granted, and which has air conditioning and heating facilities capable of maintaining a minimum temperature of seventy (70) degrees Fahrenheit three (3) feet above the floor.

* (d) "Excessive calls for service": The calls for service included in a case by case analysis are those defined as calls for service generated by guests or as a result of actions by guests, their visitors, or the operator. The calls for service analyzed would not normally include calls such as Emergency Medical Service calls, public information service requests, auto accidents, or police initiated contact not involving criminal activity.

(e) "Furnishings" shall include a minimum of a bed, mirror, minimum lighting, and adequate place for clothes storage

(f) "Hotel" shall mean a facility (in one or more buildings on the same legal parcel) providing transient lodging accommodations at a daily rate and where access is provided through a common entrance, lobby or hallway and over 50 percent (50%) of the revenue derived from the rental of lodging accommodations in the previous calendar year was subject to the transient occupancy tax.

(g) "Kitchen" shall mean a complete kitchen containing a sink, refrigerator and stove, range top and/or oven, and/or those amenities required of an efficiency dwelling unit as such is defined in the Uniform Codes.

(h) "Management Plan" shall mean a plan that addresses the establishment's management, including staffing, equal access to housing, internal security, and other items that include, but are not limited to, the following components:

- (1) Rental rates;
- (2) Housekeeping schedules and cleaning provisions to ensure that the premises are in a clean, healthy, and presentable condition, free of litter, pests, and vermin at all times;
- (3) Grounds and landscape maintenance;
- (4) Acknowledgment of adherence to prompt collection and payment of transient occupancy taxes;
- (5) Schedules of linen changes if a Hotel or Motel;
- (6) Identification of the role of each staff member, especially in emergency situations, such as fires and police responses;
- (7) A staff training program;
- (8) Any condition that is imposed as a result of the Permit Application for an individual Hotel, Motel, or Residential Hotel/Motel; and
- (9) Any additional requirement for a Residential Hotel/Motel.

(i) "Manager" shall mean any person who is the proprietor of any Hotel, Motel, or Residential Hotel/Motel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, operator or agent of any of the foregoing. The person who, in connection with the activities of a Hotel, Motel, or Residential Hotel/Motel, manages the business operations, including the collection of rental charges, issuing of keys, direction of maintenance personnel, assigning of rooms to guests, or handles guest affairs and oversees security. The term shall also include Resident Manager and Assistant Manager.

(j) "Manager's Quarters" shall mean any dwelling unit contained in any Hotel, Motel, or Residential Hotel/Motel meant for year-round habitation by the Manager, Resident Manager, or owner of the premises.

(k) "Motel" shall mean a facility (in one or more buildings on the same legal parcel) providing transient lodging accommodations at a daily rate and where access is individually available from outside the building. The term shall also include "motor lodge" and "motor hotel." In addition, over 50 percent (50%) of the revenue derived from the rental of lodging accommodations in the previous calendar year was subject to the transient occupancy tax.

(l) "Operator" shall mean those persons or person responsible for the daily operation and management of the premises and all functions related thereto.

(m) "Owner" shall mean any person, firm, association, partnership, or corporation, which is the record owner of real property as listed on the last equalized assessment roll as maintained by the San Joaquin County Assessor. It shall also mean any part owner, joint owner, or lessor of the whole or part of the land or buildings situated thereon.

(n) "Person" shall mean any natural person, firm, partnership, corporation, receiver, trustee, estate trust, business trust, organization, or association.

* (o) "Pest Control Certification" shall mean an annual certification, issued within thirty (30) days of submission of the Application, from a fully licensed pest control company that the proposed premises is free of insect and/or pest infestation.

* (p) "Residential Hotel/Motel" shall mean a single building or group of detached or semi-detached buildings providing transient accommodations at a daily rate and where 50 percent (50%) or more of the revenue derived from the rental of lodging accommodations in the previous calendar year was not subject to the transient occupancy tax.

(q) "Room charges" shall include, but are not limited to, the amounts charged by the premises for providing such services as laundry, cleaning, appliance rental, linen services, phone, additional person cost or meal service.

SEC. 7-111.3. PERMIT REQUIRED:

* No person shall operate a Hotel, Motel, or Residential Hotel/Motel without first having obtained a written permit from the City of Stockton. There shall be only one (1) permit for each Hotel, Motel, or Residential Hotel/Motel establishment. It is unlawful and a misdemeanor to operate a Hotel, Motel, or Residential Hotel/Motel without a valid Permit to Operate. A fee will be required to obtain a Permit.

SEC. 7-111.4. APPLICATION:

* An Application for a Hotel, Motel, or Residential Hotel/Motel Permit shall be filed with the City Manager or designee, be in writing on forms provided by the City, and be accompanied by payment of an annual fee in an amount as established, from time to time, by Resolution of the City Council. Any such Application

shall be under oath, in duplicate, and shall contain such information pertinent to the applicant and the business as the City may require.

SEC. 7-111.5. DOCUMENTS ACCOMPANYING APPLICATION:

The Permit to Operate Application shall also include as attachments to the Application for a Permit to Operate, the following documents:

- (a) Two identity prints of a recent passport-size photograph of the applicant(s);
- (b) Written evidence that the applicant(s) is eighteen (18) years of age or older;
- (c) Proposed Management Plan, including provision of twenty-four (24)-hour manager and/or designee;
- (d) Name of Manager(s) of the establishment, along with proof of required management certificate(s) for every Manager;
- (e) Pest Control Certification issued within 30 days of Application submission;
- (f) Existence of required Common Indoor Space or request for variance;
- (g) Provision of twenty-four (24)-hour Manager and/or designee; and
- (h) Receipt from San Joaquin County Environmental Health showing full compliance with their requirements for operation of the premises.

SEC. 7-111.6. ADDITIONAL INFORMATION REQUIRED FOR RESIDENTIAL HOTEL/MOTEL:

In addition to the information required for Hotels and Motels, the following information must also be included as an attachment to an Application to Operate a Residential Hotel/Motel:

- (a) Compliance with all applicable zoning requirements;
- (b) Adequate parking for long-term residency;
- (c) Adequate bathroom and kitchen facilities, required of individual dwelling units, equivalent to those features required of an efficiency dwelling unit as such is defined under the Uniform Codes; and
- (d) Signed statement that the Residential Hotel/Motel shall not operate without an on-site Manager or designee in charge of the premises at all times.

SEC. 7-111.7. INVESTIGATION:

The City Manager or designee shall conduct an investigation beginning January 1, 2002, and shall refer all Applications for a Permit to the Police Chief, Fire Chief, City of Stockton Health Officer, and San Joaquin County Environmental Health for their investigation and recommendations.

- (a) The Police Chief shall investigate and ascertain the following:
 - (1) Whether the applicant has, within three (3) years immediately preceding the date of filing of the Application, had any Hotel, Motel, or Residential Hotel/Motel Permit, which has been issued within the state of California, suspended or revoked; or
 - (2) Whether the applicant has knowingly made a material misrepresentation in the Application for the Permit to Operate; or
 - (3) Whether the applicant has had excessive turnover in management without training.

The Police Chief shall also review the records pertaining to the premises on which the Hotel, Motel, or Residential Hotel/Motel is located, including a review of the number of calls for service involving crimes, disturbances, and public nuisance activities occurring on the premises, and take this information into consideration when issuing recommendations.

The Police Chief shall make a report of the findings to the City Manager or designee, together with recommendations for conditions of approval of the Permit to Operate, if any.

- (b) The Fire Chief and City Manager or designee, within the jurisdictions and duties of their particular departments, shall ascertain whether or not the premises to be used are suitable, proper, and adequate, and comply with all applicable laws, ordinances, and regulations. The Fire Chief and City Manager or designee shall make a report of their findings, together with their recommendations for conditions of approval for the Permit to Operate, if any.

SEC. 7-111.8. REQUIRED CONDITIONS OF THE PREMISES; REQUIRED MANAGEMENT PLAN:

A. As part of the investigation conducted by the City Manager or designee in conjunction with an Application for a Hotel, Motel, or Residential Hotel/Motel Permit to Operate, the premises shall be inspected to verify the existence of all of the following items:

- 1) Full compliance with all applicable Housing Code requirements, including electrical and plumbing requirements;

- 2) Full compliance with all applicable Fire Code requirements, including life safety measures, emergency exiting, and panic hardware requirements;
- 3) Required heating facilities for each individual dwelling unit;
- 4) Required bathroom facilities;
- 5) A bed in good and clean condition and maintained in such a condition as to not be a detriment to the health of guests, as determined by County Environmental Health and/or City of Stockton Health Officer;
- 6) Required minimum furnishings;
- 7) Required common indoor space, and/or approved variance as defined above;
- 8) For hotel/motels, a schedule of linen changes that, at a minimum, provide for weekly changes and/or change of linen whenever a guest departs and before another guest arrives;
- 9) Immediate access for police, fire, and emergency personnel for those premises that have secured entries; and
- 10) Screens on all exterior windows.

B. There shall not be an infestation of insects, vermin, or rodents, as determined by the City of Stockton Health Officer and/or Public Health Department.

C. In addition, the Application for a Permit to Operate must also be accompanied by a Management Plan as defined above, which shall include items such as housekeeping schedules, facility maintenance, grounds and landscape maintenance, emergency provisions, and contacts.

SEC. 7-111.9. LIST OF ROOM CHARGES:

In addition to the listing and posting of room rates, a list of all other room charges shall be made available to residents and the public and shall be posted in a conspicuous location on the premises.

SEC. 7-111.10. QUARTERLY INSPECTIONS; EXEMPTIONS:



Upon the filing of an Application for a Permit to Operate, investigations by the requisite departments shall commence. Said investigation shall include an inspection of the premises by designated City staff for the purposes of determining whether the premises meet all applicable Codes, including the Uniform Code requirements, such as the Housing and Building Codes, and all applicable requirements of the Stockton Municipal Code, including the Zoning and Health and Safety Codes. No Permit to Operate shall issued until all of the required Codes are met. A fee, as from time to time may be set by resolution of the City Council, will be required for each inspection.

In addition to the initial inspection, quarterly inspections shall be conducted of the premises as a condition of retention of the Permit to Operate. In the event that the initial inspection reveals full compliance with all applicable provisions of the Stockton Municipal Code and adopted Uniform Codes, as well as full endorsement without conditions by the Fire, Police, City of Stockton Health Officer, and Public Health Departments, no quarterly inspections will be required as a condition for retention of the Permit to Operate for the remainder of the year, or, for the next three quarters, absent the existence of a subsequent violation.

SEC. 7-111.11. BUSINESS LICENSE:

Nothing herein shall constitute a waiver of the requirements of Chapter 6 of the Stockton Municipal Code requiring issuance and possession of valid business license.

SEC. 7-111.12. TIME WITHIN WHICH TO GRANT OR DENY PERMIT TO OPERATE:

Within forty-five (45) days after the filing of an Application for a Permit to Operate, the City Manager or designee shall review the Application, together with reports and recommendations of the Police Chief, Fire Chief, City of Stockton Health Officer, and County Environmental Health, and shall grant said Permit to Operate or notify the applicant of the intent to deny the Permit to Operate, together with the grounds for denial as set forth in Section 7-111.13 of this Division, or grant a conditional Permit to Operate, as set forth in Section 7-111.4. Said notice shall be in writing and sent by mail to the applicant's mailing address set forth in the Application.

SEC. 7-111.13. GROUNDS FOR DENIAL OF A PERMIT TO OPERATE:

The following grounds may constitute grounds for denial of a Permit to Operate:

- (a) The establishment as proposed by the applicant does not comply with all applicable laws including, but not limited to, the applicable building, zoning, housing, fire, safety, and health regulations;
- (b) any of the following exist:

1. The applicant is or has been a registered sex offender; or
 2. Five (5) years has not expired from either the date the applicant was convicted of, or completed parole or probation for any offense which relates directly to the operation of a Hotel, Motel, or Residential Hotel/Motel establishment, whether as an owner, operator, or manager, or from any offense constituting a misdemeanor or felony involving weapons, narcotics, assault, or crimes of moral turpitude.
- (c) The applicant has, within three (3) years immediately preceding the date of filing of the Application, had a Hotel, Motel, or Residential Hotel/Motel Permit to Operate, or Manager's Permit, or related permit, which was issued within the state of California, suspended or revoked;
- (d) The applicant has knowingly made a material misstatement in the Application for a Permit to Operate;
- (e) There have been excessive calls for service to the Police Department within the twelve (12) months preceding the Application with inadequate response by management or the owners or operators, involving the commission of crimes, disturbances, public nuisances, or applicable Stockton Municipal Code violation investigations, which are located, committed, or generated on the premises of the establishment.
- (f) There have been an excessive number of false fire alarms at the property with inadequate response by management or the owners or operators.
- (g) Failure to get clearance from San Joaquin County Environmental Health.

SEC 7-111.14. ALTERNATE PROCEDURE; ISSUANCE OF PERMIT WITH CONDITIONS IMPOSED:

As an alternative to a denial of a Permit to Operate for failure to meet the requisite Housing, Building, Health, and Fire Codes, or failing to pass an investigation conducted by the Police, Fire, City of Stockton Health Officer, or San Joaquin County Environmental Health, the City Manager or designee may issue a Conditional Permit to Operate. Said Conditional Permit to Operate shall be issued with conditions imposed on the operation of the premises. All conditions shall be complied with in order to maintain the Conditional Permit to Operate in a valid status. Failure to comply with the imposed conditions will subject the Conditional Permit to Operate to suspension and/or revocation procedures or any other remedy authorized by law. A conditional Permit shall mandate four quarterly inspections, the cost of which is to be borne by the Permittee.

SEC. 7-111.15. INSPECTION:

Any person operating a Hotel, Motel, or Residential Hotel/Motel establishment shall, during business hours, be responsible for and provide that any premises used for the purposes of a Hotel, Motel, or Residential Hotel/Motel establishment shall be readily accessible and open for inspection by law enforcement officers or other employees of the City of Stockton and San Joaquin County Environmental Health, who are charged with enforcement of health and safety or penal laws of the City of Stockton or state of California.

SEC. 7-111.16. BUSINESS NAME:

No person shall operate a Hotel, Motel, or Residential Hotel/Motel establishment under any name or conduct business under any designation not specified in the Permit to Operate. Any proposed changes shall be submitted in writing to the City Manager or designee at least two (2) weeks prior to the date the change is to take place, unless a shorter amount of time is permitted under the circumstances.

SEC. 7-111.17. BUSINESS LOCATION CHANGE:

Upon a request to change the location of a Hotel, Motel, or Residential Hotel/Motel establishment, an Application to the City Manager or designee shall be made, and such Application shall be granted, provided all applicable provisions of this Code have been complied with and the change of location fee, in an amount established by Resolution of the City Council, has been paid to the City.

SEC. 7-111.18. SALE OR TRANSFER OF HOTEL, MOTEL, AND RESIDENTIAL HOTEL/MOTEL ESTABLISHMENT INTEREST:

The sale or transfer of any majority interest in any Hotel, Motel, or Residential Hotel/Motel establishment shall be reported to the City Manager or designee at least two (2) weeks prior to such sale or transfer. A new Application, pursuant to Section 7 111.4, shall be filed and an investigation conducted pursuant to Section 7-111.7 as to the person obtaining such interest. If such person satisfies the requirements related to Permit to Operate applicants, the existing Permit to Operate shall be endorsed to include such person.

A fee in the amount established by Resolution of the City Council shall be paid to the City for the investigation necessitated by such sale or transfer.

SEC. 7-111.19. DISPLAY OF PERMITS:

The Operator shall display the Permit to Operate, together with the permit of each Hotel, Motel, and Residential Hotel/Motel Manager employed in the establishment, in an open and conspicuous place on the premises. Passport-size photographs of the Operator and permittees shall be affixed to the respective Permit to Operate and permits on display pursuant to this Section. Residence addresses of Operators or permittees need not be displayed.

SEC. 7-111.20. RECORDS:

 The owner and/or Operator of a Hotel, Motel, or Residential Hotel/Motel establishment shall maintain a current file of all persons employed therein. This file shall contain true names and aliases used by such employees; the age; birth date; height; weight; color of hair and eyes; home address; phone numbers; Social Security number; the date of employment and termination; the name and addresses of the recognized school of hotel/hotel management attended, the date attended, and the written proof that the Hotel, Motel, or Residential Hotel/Motel Manager has completed a residence course of study in motel/hotel management. Such person shall make all records immediately available upon demand of any law enforcement officer or designated enforcement staff.

SEC. 7-111.21. PRE-EXISTING OPERATORS AND MANAGERS:

All operators of existing hotel/motel Permits to Operate, and all persons engaged in the operation of a Hotel, Motel, or Residential Hotel/Motel establishment, including Managers, in the City of Stockton, upon the effective date of this Division, shall file an Application and comply with all requirements of this Division within 180 days of the effective date of this Division.

SEC 7-111.22. SUMMARY SUSPENSION OF A PERMIT TO OPERATE:

 Any Permit to Operate issued hereunder may be summarily and temporarily suspended by the City Manager or designee in the event it is determined that the holder of such Permit has committed any act, which would constitute grounds for denial of a Permit to Operate pursuant to Section 7-111.13 of this Division. Any such suspension shall be accomplished by written notification of the suspension and the reasons therefore, sent by certified mail, return receipt requested, to the Operator's business address as approved in the Permit to Operate.

Within twenty-four (24) hours thereafter, a copy of such notice, together with the reasons for the suspension, shall be transmitted to the Administrative Hearing Officer for setting of a hearing, in accordance with the procedures outlined in Chapter One of the Stockton Municipal Code. All hearings shall be held within fifteen (15) business days of the date of mailing of the written notification, unless continued by the mutual consent of the parties.

The findings and decisions of the Administrative Hearing Officer, upon an appeal, shall be final and conclusive, but nothing in this Code shall be construed to deprive any person of recourse to the courts as such person may be entitled to under the law.

SEC 7-111.23. SUSPENSION OR REVOCATION BY CITY MANAGER:

 As distinguished from the provisions of Section 7-111.22 of the Stockton Municipal Code, the City Manager or designee may initiate suspension or revocation procedures by sending written notice setting forth the grounds for such suspension or revocation. Said notice shall be sent by certified mail, return receipt requested, to the Operator's business address as approved in the Permit to Operate.

SEC. 7-111.24. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMIT TO OPERATE:

 Any Permit to Operate may be suspended and/or revoked by the City Manager or designee after a review, where it is determined that:

- (a) The Operator has violated the provisions of this Division; or
- (b) The Operator has committed any act or engaged in action, which would constitute grounds for denial of the Permit to Operate pursuant to Section 7-111.13 of this Part; or
- (c) The Operator has engaged in fraud, misrepresentation, or false statements in conducting the Hotel, Motel, and Residential Hotel/Motel establishment; or
- (d) The Operator has failed to correct a violation within the time period ordered by the City; or

- (e) The Operator has operated or continued to operate the Hotel, Motel, or Residential Hotel/Motel establishment without a Permit to Operate or after a Permit to Operate has been suspended; or
- (f) The Operator has allowed a person to work as a Hotel, Motel, and Residential Hotel/Motel Manager who:
 - (1) Does not have a proper, valid permit in his/her possession; or
 - (2) Has committed any offense described in Section 7-111.13 of this Division where the Operator has actual or constructive knowledge of such act.

SEC. 7-111.25. RIGHTS OF APPEAL FROM DENIAL, SUSPENSION, OR REVOCATION OF PERMIT TO OPERATE/HEARING PROCEDURE:

The Notice of Denial, Suspension, or Revocation of a Permit to Operate may be appealed by filing the proper appeal in accordance with Chapter One of the Stockton Municipal Code. An appeal must be made in writing, on the proper form, to the City of Stockton, Neighborhood Services Division, 22 East Weber Avenue, Stockton, California 95202. There is a \$50 non-refundable Administrative Hearing Fee, which must accompany the appeal form.

The hearing before the Administrative Hearing Officer shall be held within fifteen (15) business days following the filing of an appeal. The applicant shall be given notice of said hearing at least ten (10) business days prior to the hearing date. Said notice may be by personal service or by certified mail, return receipt requested.

At the time and place fixed in said Notice, or at any time to which the matter may be continued by the mutual consent of the parties, the Administrative Hearing Officer shall hear the applicant and all witnesses, together with any proper documentary evidence offered in support of or against the granting or continuation of a Permit to Operate. The Administrative Hearing Officer shall, at the conclusion of the hearing, make findings of fact based upon the evidence submitted and determine whether grounds exist for denial of a Permit to Operate, as set forth in Section 7-111.13 of this Division, or for the suspension and/or revocation of the Permit to Operate, as set forth in Section 7-111.24 of this Part. If, from the evidence, the Administrative Hearing Officer finds grounds exist for the denial, suspension, or revocation of the Permit to Operate, the Hearing Officer shall deny the Permit to Operate or order the suspension and/or revocation thereof. If, following the hearing, the Administrative Hearing Officer determines that no proper grounds exist for the denial, suspension, or revocation of the Permit to Operate, then the Administrative Hearing Officer shall grant the appeal and cause a Permit to Operate to be issued or terminate any prior suspension or revocation.

SEC. 7-111.26 ACTION OF ADMINISTRATIVE HEARING OFFICER AS TO PERMIT TO OPERATE - FINAL AND CONCLUSIVE:

Action taken by the Administrative Hearing Officer with respect to the granting, denial, suspension, or revocation of a Permit to Operate a Hotel, Motel, and/or a Residential Hotel/Motel establishment shall be final and conclusive, but nothing in this Code shall be construed to deprive any person of recourse to the courts as such person may be entitled to under the law.

SEC. 7-111.27. RETURN OF PERMIT TO OPERATE — CLOSURE OF PREMISES:

If revocation or suspension shall occur, the Permit to Operate shall be returned to the City Manager or designee for cancellation or holding pending the period of suspension. The City Manager may direct or cause the premises to be closed and locked against use by the public when deemed reasonably necessary by the City Manager in order to ensure compliance with an order of suspension or revocation. Said closure of premises to the public shall not exceed ninety (90) days and may be terminated prior to the expiration of such period upon request of the owner of the premises accompanied by a statement under oath that the premises will not be used as a Hotel, Motel, and Residential Hotel/Motel establishment during the remainder of the suspension period. In the event the premises are occupied, relocation benefits may be due and payable as determined by the City Manager or designee, pursuant to applicable provisions contained in this Code.

SEC. 7-111.28. HOTEL, MOTEL, AND RESIDENTIAL HOTEL/MOTEL MANAGER'S WORK PERMIT REQUIRED:

It shall be unlawful for any person to act as a Hotel, Motel, or Residential Hotel/Motel Manager, as

defined herein, or night clerk without first having acquired a valid work permit from the City Manager or designee and complying with all of the regulations contained in this Division.

SEC. 7-111.29. MANAGER'S PERMIT ELIGIBILITY:

Any person to be eligible for a Hotel, Motel, or Residential Hotel/Motel Manager's Permit must have completed, within 60 days of the Application for said Permit, a review of an instructive video tape; and, within 180 days, a residence course of study in hotel/motel management. The residence course of study shall include eight hours of training annually, consisting of (1) a total of six hours of training to be provided by the City of Stockton Fire, Police, and Code Enforcement Departments; the San Joaquin County Environmental Health Department; and (2) an additional two hours of hotel/motel management training to be provided by the Stockton Hotel/Motel Association or other recognized group. A certificate of successful completion of this course (or written proof that the applicant has begun a course of study within 180 days of the date of the applicant's first request for a Permit) is to be included with the initial and/or annual application as required by Section 7-111.31.

SEC. 7-111.30. APPLICATION FOR A MANAGER'S PERMIT:

An Application for a Manager's Permit shall be filed with the City Manager or designee and shall be in writing on forms provided by the City and shall be accompanied by payment of a fee in an amount as established, from time to time, by Resolution of the City Council. Any such Application shall be under oath, in duplicate, and shall contain such information pertinent to the applicant as the City may require.

SEC. 7-111.31. THE FOLLOWING ITEMS SHALL ACCOMPANY THE APPLICATION FOR A HOTEL, MOTEL, AND/OR RESIDENTIAL HOTEL/MOTEL MANAGER'S PERMIT:

- (1) Two prints of a recent passport-size photograph of the applicant;
- (2) Written evidence that the applicant is at least eighteen (18) years of age;
- (3) Written proof that the applicant has completed/or begun the residence course of study in Hotel, Motel, or Residential Hotel/Motel management as required by Section 7 111.29 of this Part.

SEC. 7-111.32. INVESTIGATION OF MANAGER PERMIT APPLICATIONS:

In addition to the investigation undertaken by the City Manager or designee, all Applications for work permits for Hotel, Motel, and Residential Hotel/Motel Managers shall also be referred to the Chief of Police for investigation and recommendation. The Chief of Police shall investigate and ascertain:

- (1) Whether the applicant has, within three (3) years immediately preceding the date of filing of the Application, had any Hotel, Motel, or Residential Hotel/Motel establishment Operator's or Manager's Permit suspended or revoked;
- (2) Whether the applicant has knowingly made a material misstatement in the Application for a permit; The Police Chief shall make a report of the findings to the City Manager or designee, together with any recommendations.

SEC. 7-111.33. TIME WITHIN WHICH TO GRANT OR DENY A MANAGER'S PERMIT:

Within twenty (20) days after the filing of an Application for a permit, the City Manager or designee shall review the Application, together with the report and recommendation of the Chief of Police and shall grant said permit or shall notify the applicant of the denial of the permit and the grounds for such denial. Said notice shall be in writing and sent by certified mail to the applicant's mailing address as set forth in the Application.

SEC. 7-111.34. GROUNDS FOR DENIAL OF A MANAGER'S PERMIT:

The following may constitute grounds for denial of a Manager's Permit:

- (1) If either of the following exist:
 - a. The applicant is or has been a registered sex offender; or
 - b. Five (5) years has not expired from either the date the applicant was convicted of, or completed parole or probation for any offense which relates directly to the operation of a Hotel, Motel, or Residential Hotel/Motel establishment, whether as an owner, operator, or manager, or from any offense constituting a misdemeanor or felony involving weapons, narcotics, assault, or crimes of moral turpitude.
- (2) The applicant has, within three (3) years immediately preceding the date of filing of the Application, had any similar Manager's Permit, which was issued within the state of California suspended or revoked;
- (3) The applicant has knowingly made a material misstatement on the Application for a Permit;



(4) The applicant has permitted or allowed violations of applicable Municipal Code violations on the premises of other Hotels, Motels, or Residential Hotel/Motel establishments where the applicant served as Manager and has failed to respond, address, and/or correct the violations within a reasonable time when notified by the City.

SEC. 7-111.35. SUMMARY SUSPENSION OF PERMIT:

Any Manager's Permit issued hereunder may be summarily and temporarily suspended by the Chief of Police or the City Manager or designee in the event that it is determined that the holder of said Permit has committed an act or engaged in action, which would constitute grounds for denial of a Permit pursuant to Section 7-111.34 of this Division.

SEC. 7-111.36. NOTICE OF SUMMARY SUSPENSION:

Summary suspensions shall be accomplished by written notice of the suspension and the reasons therefore sent by certified mail, return receipt requested, to the Permittee's residence address as set forth in the Application for Manager's Permit.

Within twenty-four (24) hours thereafter, a copy of such notice, together with the reasons for the suspension, shall be transmitted to the Administrative Hearing Officer for setting of a hearing, in accordance with the procedures outlined in Chapter One of the Stockton Municipal Code. All hearings shall be held within fifteen (15) business days of the date of mailing of the written notification. The findings and decisions of the Administrative Hearing Officer, upon an appeal, shall be final and conclusive, but nothing in this Code shall be construed to deprive any person of recourse to the courts as such person may be entitled to under the law.

SEC. 7-111.37. SUSPENSION AND REVOCATION BY CITY MANAGER:

As distinguished from the provisions of Sections 7-111.35 and 7-111.36, the City Manager or designee may initiate suspension or revocation procedures by sending written notice setting forth the grounds for such suspension or revocation. Said notice shall be sent by certified mail, return receipt requested, to the Permittee's residence address, as set forth in the Application for Manager's Permit.

SEC. 7-111.38. GROUNDS FOR REVOCATION OR SUSPENSION OF MANAGER'S PERMIT:

Any Manager's permit may be suspended and/or revoked by the City Manager or designee after a review where it is determined that:

- (a) The Permittee has violated any provisions of this Division; or
- (b) The Permittee has committed an act or engaged in action that would constitute grounds for denial of the Permit, pursuant to Section 7-111.34 of this Division; or
- (c) The Permittee has continued to function as a Hotel, Motel, or Residential Hotel/Motel Manager after the permit has been suspended; or
- (d) The Permittee has failed to complete the course of study as set forth in Section 7 111.29 of this Division.

SEC. 7-111.39. RETURN OF PERMIT:

Upon revocation or suspension, the Manager's Permit shall be returned to the City Manager or designee for cancellation or holding during the period of suspension.

SEC. 7-111.40. RIGHTS OF APPEAL FROM DENIAL, SUSPENSION, OR REVOCATION OF A MANAGER'S PERMIT//HEARING PROCEDURE:

The Notice of Denial, Suspension, or Revocation of a Manager's Permit may be appealed by filing the proper appeal in accordance with Chapter One of the Stockton Municipal Code. An appeal must be made in writing, on the proper form, to the City of Stockton, Neighborhood Services Division, 22 East Weber Avenue, Stockton, California 95202. There is a \$50 non-refundable Administrative Hearing Fee, which must accompany the appeal form.

The hearing before the Administrative Hearing Officer shall be held within fifteen (15) business days following the filing of an appeal. The applicant shall be given notice of said hearing at least ten (10) business days prior to the hearing date. Said notice may be by personal service or by certified mail, return receipt requested.

At the time and place fixed in said notice, or at any time to which the matter may be continued by the

mutual consent of the parties, the Administrative Hearing Officer shall hear the applicant and all witnesses, together with any proper documentary evidence offered in support of or against the granting or continuation of a Manager's Permit. The Administrative Hearing Officer shall, at the conclusion of the hearing, make findings of fact based upon the evidence submitted and determine whether grounds exist for denial of a Manager's Permit, as set forth in Section 7-111.34 of this Division, or for the suspension and/or revocation of the Manager's Permit, as set forth in Section 7-111.38 of this Division. If, from the evidence, the Administrative Hearing Officer finds grounds exist for the denial, suspension, or revocation of the Manager's Permit, the Administrative Hearing Officer shall deny the Manager's Permit or order the suspension and/or revocation thereof. If, following the hearing, the Administrative Hearing Officer determines that no proper grounds exist for the denial, suspension, or revocation of the Manager's Permit, then the Administrative Hearing Officer shall grant the appeal and cause a Manager's Permit to be issued or terminate any prior suspension.

SEC. 7-111.41. ACTION OF ADMINISTRATIVE HEARING OFFICER AS TO MANAGER PERMITS FINAL AND CONCLUSIVE:

Action taken by the Administrative Hearing Officer with respect to the granting, denial, suspension, or revocation of work permits of Hotel, Motel, and Residential Hotel/Motel Managers shall be final and conclusive, but nothing in this Code shall be construed to deprive any person of recourse to the courts as such person may be entitled to under the law.

SEC. 7-111.42. RENEWAL OF MANAGER'S PERMIT:

Any person who holds a valid Manager's Permit may obtain a new permit for the succeeding year by applying for said new Permit during the thirty (30) days preceding the expiration date of the current Permit.

SEC. 7-111.43. ADMINISTRATIVE PROCEDURE AND AUTHORITY OF ADMINISTRATIVE HEARING OFFICER:

In the event of a violation of any of the provisions set forth herein, or upon evidence that there has been a failure to comply with any required conditions of any Permit pursuant to these provisions, in addition to any other remedies available by law, a hearing shall be scheduled before the Administrative Hearing Officer, in accordance with Chapter One of the Stockton Municipal Code. Notification of the hearing shall be in accordance with the provisions contained in Chapter One of the Stockton Municipal Code.

The purpose of this hearing is to receive testimony and evidence on whether violations of any of the conditions of the Permit, pursuant to these provisions, have occurred. After the taking of evidence, the Administrative Hearing Officer may modify conditions of the Permit as part of the decision, based upon the evidence presented; or alternatively, may suspend or revoke the Permit, pursuant to these provisions.

SEC. 7-111.44. VIOLATIONS AND PENALTIES:



In the absence of an imminent health and safety hazard for which immediate corrective action shall be taken, a violation notice shall be sent to the operator and manager detailing the corrective action required and the time frame within which the corrective action shall be taken.

In addition to any other remedy available by law, any person who violates, or causes or permits another person to violate any of these provisions, including any condition of a Permit, is guilty of a misdemeanor. Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of these regulations is committed, continued, permitted, maintained, or caused. Failure to fully comply with the violation notice shall trigger the following penalty schedule:

A. Penalty for First Violation: The penalty for the first violation within a twelve (12) month period shall be a fine of \$200.

B. Penalty for Second Violation: The penalty for the second violation in a twelve (12) month period shall be a fine of \$500.

C. Penalty for Third and subsequent Violations: The penalty for third and subsequent violations within a twelve (12)-month period shall be suspension and/or revocation of the Permit, pursuant to these provisions.

Every day any portion of the premises are not in compliance with the requirement of this Code, shall be considered a separate violation for the purposes of the preceding penalty schedule.

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SEC. 7-111.45. APPEAL OF ADMINISTRATIVE CITATION ISSUED HEREUNDER:

Any Administrative Citation issued pursuant to these provisions is appealable under the same procedures set forth in Stockton Municipal Code sections 1-076 through 1 088.

SEC. 7-111.46. PERMITS ISSUED FOR ONE (1) YEAR:

 All Permits issued pursuant to this Division shall expire one year from the date of issuance and must be renewed annually, and are not transferable. Applications for renewal shall be filed thirty (30) days from the expiration of the current Permit in the same manner as applications for initial permits and subject to the same procedures, rules, and regulations provided for in this Division. For initial permits beginning January 1, 2002, applications shall be filed prior to December 1, 2001. Each Hotel, Motel, or Residential Hotel/Motel establishment shall be issued a temporary Permit until an inspection is made of that premises.

SEC. 7-111.47. OTHER LICENSES, PERMITS REQUIRED:

The Permit required by the provisions of this Division shall be in addition to any other licenses or permits that may be required by other provisions of the Stockton Municipal Code or rules, laws or regulations of the State or Federal Government.