

THE USE OF THE BALLOT BOX TO SHAPE A COMMUNITY The Boulder Experience¹

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Will Toor is going to share some of his thoughts about politics and coalitions that developed around a few ballot measures that were on the Boulder Ballot this year. I'm going to talk about land use based ballot issues and then a little bit about how the recent ballot measures in Boulder, had they passed, would have affected city planning efforts.

Ballot questions are often changes to Boulder's city charter or are enacted laws in what are referred to as "peoples' ordinances" Ballot Question No. 300 is entitled **"Neighborhood Right to Vote on Land Use Regulation Changes."** It was proposed as a City Charter amendment on the direct legislation provisions of the City Charter. The normal referendum provisions in the City Charter apply city-wide. The amendment provided that the referendum process be used within neighborhoods to vote on certain land use regulations only within a number of the city's residential zoning districts. Any of the enumerated changes do not become effective until 60 days after final passage. Neighborhood voters can then use those 60 days to gather signatures within the neighborhood so that the law can be referred to the voters at a subsequent election. In order to be referred to the voters on an election ballot, a petition meeting charter requirements must be signed by 10 percent of the registered electors of a residential neighborhood affected by such change. The change would basically allow neighborhoods to opt out regulatory changes.

Ballot Question No. 301 is entitled, **"New Development Shall Pay Its Own Way."** The initiative proposed to amend the City Charter on the powers and duties of the City Council. The charter amendment provided that:

"The City shall not approve new development that does not fully pay for or otherwise provide all the additional facilities and service required to fully offset the burdens that otherwise would have been imposed by such new development on City facilities and services." New development is generally defined as construction that results in additional floor area for a building or site. The initiative creates an exception for modifications to residential buildings that do not result in additional dwelling units or that have a *de minimis* effect on the facilities and services. It also does not affect changes of use that have a *de minimis* effect on facilities and services.

The "Development Shall Pay its Own Way" section would have required the city to analyze whether growth pays its own way with respect to facilities and services. The ballot measure,

1 This paper includes portions of a paper that I worked on some time ago. It was co-authored by Joseph N. de Raismes, III, Jerry Gordon and Peter Pollock. The paper was called "Growth Management in Boulder, Colorado: A Case Study." It was presented at a CLE International Conference on Real Estate Development on April 8-9, 1999.

2 **The Standard Disclaimer.** All views and opinions contained within this paper are those of David Gehr and should not be in any way considered as those of his employer, the City of Boulder.

with few exceptions, required the city deny developments that did not pay its own way. It also directed the city analyze whether development paid its own way, and to the extent necessary, to develop fees, taxes, regulatory, or growth management tools to assist in its implementation.

A memo that was provided to our city council is attached, if you are interested. Needless to say, these measures created a great deal of uncertainty in the development world. Question 300 added a great deal of uncertainty in the legislative process. It also provided for a great deal of neighborhood protectionism. On the other hand, 301 was drafted to have an almost immediate impact effectively creating a development moratorium on new development in town, while the city attempted to figure out how to quantify the costs and regulate in a manner that required development to pay its own way.

Development Related Ballot Measures – From the Beginning to the Present.

As a back drop to this discussion, I thought it might be interesting to see how the ballot box has been used to shape Boulder. Many people are familiar with the three pillars of the Tax Payer Bill of Rights (“TABOR”.) It requires voter approval of new taxes, new debt, and prohibits multi-year fiscal obligations. Two of the three elements of TABOR, multi-year fiscal obligations prohibitions and voter approval of debt, have been in Boulder’s Charter for nearly 100 years.

I created a data base with all of the ballot measures (at least those that I could uncover) going back to Boulder’s incorporation as a city in the 1880’s. Since the 1880’s, there were approximately 270 questions put to a vote.³ Between 1880 and 1960, 30 of the 70 ballot measures requested bonding authority. The ballot measures paint a picture of building a community, developing water, sewers, parks, roads, an airport, and the construction of civic buildings.

As with many communities, after World War II, Boulder had a big surge in development. The growth of the University of Colorado, and the establishment of many federal research institutions, brought a highly skilled work force that ultimately grew to embrace the notion that Boulder was a special place. From the 1940 to 1950, Boulder was doubling its population each decade. One of the first indicators of this post war phenomenon, was a rethinking of the basic administrative structure in the Boulder Charter. Prior to 1952, the city planning function was primarily under the purview of a parks and planning commission.

Planning Department Established .

In 1951, the voters approved, after a study and recommendation of a citizen committee, to restructure the planning function within the city. The voters revised the Charter to require the establishment of a Planning Department, complete with a professionally trained planning director, and a planning board to provide oversight and direction to the City Council and the staff on the development of a variety of city planning functions. Upon its adoption by the voters, it represented the longest part of the city charter devoted to city administration and the associated board oversight.

³ The approach to creating the inventory of ballot measures, while systematic, it was not perfect.

1959 - Blue Line.

To address growth related impacts to the city's water system, the water utility needed to improve water pressure in the system. One of the consequences of these improvements, was that it would also enable the water utility to serve water to higher elevations along the city's mountain backdrop. Before the charter amendment, a few council members advocated for the council to adopt a blue line as an approach for protection. This effort failed and a committee of petitioners formed to seek a charter that prohibited the city from providing water above 5750 feet above sea level. This measure passed. The bonds for improvement proposed at the same election failed.

Since the Blue Line runs along the base of Boulder's foothill backdrop, it has effectively preserved the backdrop from development, and most of the remaining backdrop land has gradually been acquired as the city's open space. This measure was the first direct planning measure resulting from the citizens petitioning for a vote.

Guide to Growth – 1958.

After the vote, off to work the planning department went. One of Boulder's first plans was called the "Guide to Growth in 1958." It included recommendations that city services should not be extended beyond the city limits. It was quickly outdated because, within a year after its adoption, the city began extending its utilities outside of its municipal limits. The city started issuing revocable utility permits intended to guarantee properties would annex into the city (these were approved by ordinance). The construction of any improvements would be done in accordance with the city's building, zoning and engineering regulations and prohibit participation in the formation of future special purpose districts.

The "Service Area Concept."

The "Service Area Concept" policy adopted in 1965 had quite fatalistic conclusions on planning. It provided, "The fringe area of Boulder is going to grow. Whatever becomes legally incorporated into the city or not, it will be part of the total community. . ." The proponents of the "Spokes of the Wheel" concept asserted that by serving the properties outside the city, the city would discourage the formation of special districts throughout Boulder Valley. The concept was summed up by a Councilman, who stated: "There is nothing we can do that will stop growth. The question is whether the growth that will happen will be orderly or just haphazard."

The City Council began to investigate the service area concept in 1962. From the study, a service area was drawn that could utilize a gravity flow sewer system. The boundary is roughly the natural drainage basin for Boulder Valley.

As a result of these planning efforts, two documents were adopted: Boulder's Fringe Area Objectives (1964) and The Service Area Concept: A program for Boulder's Planned Development (1965), often referred to as the "Spokes of the Wheel." By providing service outside of the city limits, the city could help prevent the formation of special districts that deliver

water and sanitation services. Therefore, the plans concluded, the city should guide growth in the fringe areas, to prevent disorderly sprawl through contracts for water and sewer service outside of the city's boundaries.

The objective was to extend services along three major arteries (or spokes) radiating from the center of Boulder to the north (the Diagonal Highway), south (South Broadway), and east (Arapahoe Ave.), with development occurring along the rim. This would allow development to begin from the outer reaches of the city's service area and to work inwards towards the city, while allowing development adjacent to the city to work outward. This required persons on outside utility services to annex when eligible, build improvements to city standards, allow city review of development plans, and pay increased plant investment fees and user rates.

The "Spokes of the Wheel" plan was never fully implemented, as the voters put an end to the construction of the third spoke by repealing an ordinance approving an out-of-city utility connection going down Broadway and Highway 93 towards the Jefferson County line. The city officially dropped the spokes of the wheel concept and the service area concept with the adoption of the 1970 Boulder Valley Comprehensive plan.

The Rudd Election – 1965.

Evidence of the demise of the Spokes of the Wheel policy came quite early in 1965. The Spokes of the Wheel policy was adopted concurrently with an out-of-city utility permit request for the Rudd property. Service to this property represented the third "spoke." The Rudd property consisted of approximately 2500 acres south of the town on Marshall that straddled Highway 93. Approximately 1100 acres were in the city's service area. When the City Council approved the out-of-city service permit for the property, it effectively expanded the city's service area by an additional 600 acres. The remaining 900 acres would be eligible to receive city water but would have to form a sewer district for sewer service.

The developer proposed to finance and construct the three-mile, 20-inch wide, water transmission line, together with pumping and storage facilities. Also required was a two-mile sewer trunk to tie into the city's sewer system. The city staff estimated that it would be able to acquire additional water rights from the increased water rates that would be paid by the rate payers within the development. The water capacity necessary to serve water to the property was estimated at the amount necessary to serve a population of 25,000 people.

As news of the plan surfaced, opposition within the community grew. Reasons included questioning the rationale for using the city's excess water capacity to serve an area that would not be eligible to annex within the near future. Opponents of the Spokes of the Wheel concept and the provision of water and sewer service to the Rudd property questioned the city's ability to acquire the amount of water necessary to serve all of the proposed new service area. Residents pointed out that the city should not be using its newly created capacity (as a result of the 1961 bond election) to serve property that was so far away from the existing municipal limits. There was also a concern that construction of the transmission line would accelerate the development of properties along the utility line out to the property.

In addition, the environmental condition that had supported the Blue Line just six years before, was ready to take another stand against growth in the Boulder Valley -- this time to the south. Residents requested that the matter be submitted to the voters. The Council refused. Again, a successful petition effort resulted in a referendum of the ordinance. A majority of the voters voted against the City Council's ordinance. The election ended the Spokes of the Wheel concept.

Height Limits - 1971.

The city saw an initiative to limit the height of buildings in 1971. The measure grew out of a frustration over both the height and of a number of buildings, development proposal for taller buildings and the city's adoption of new height regulations that allowed buildings over 140 feet tall.

During this time, like many downtowns, Boulder was in a time of decline. Many downtown boosters saw taller buildings as a way to revitalize and strengthen the downtown. There was quite a debate in the community with many saying that they didn't want another Colorado building downtown. (The city recently designated the Colorado Building as a local landmark.) On the other side of the debate was the notion that with a 55' height limit, the city's commercial areas would become monolithic and uniform heights that would create a "wall effect."

Ruth Wright, who would later serve the city in the Colorado Legislature, led a petition effort to gather signatures to get the 55' height limit on the ballot. The ballot item passed, and this land use regulation resides in the city's charter.

Residential Growth Management 1970's.

The growth-related issues were placed on the ballot in November of 1971. A charter amendment initiated by ZPG (Zero Population Growth) would have required the city to plan for a maximum of 100,000 people. It received over 40 percent of the vote of the electorate. The Council placed a competing measure on the ballot that passed. It called upon the city to undertake a definitive analysis of optimum population and growth rate for the city. In the interim, it also directed Council to take steps to hold the growth rate in Boulder to a level substantially below that experienced in the 1960's.

The Boulder Area Growth Study Commission, a city-county effort, was established to complete a definitive study of the growth and development issues raised in the Council's ballot measures. Much of the early 1970's was spent studying and trying to understand growth.

1976 - Danish Plan.

At about the same time, by a 1976 referendum, Boulder adopted restrictions on the issuance of building permits for housing, to limit the expansion of the city to about two percent population growth per annum. The initial plan, known as the Danish Plan, was revised several times, but kept its focus on residential growth. Thus, from 1976 on, residential growth has been restricted, even as annexation has been sharply limited under the Boulder Valley Comprehensive Plan, resulting in the gradual build-out of the remaining residentially zoned land. However, the

city had already built up a substantial inventory of non-residentially zoned land, and commercial and industrial growth had outstripped residential growth during most of the last 25 years. This imbalance became the subject of a non-residential growth management effort in the mid-90's.

The Danish Plan passed. The city has continued to have some form of residential rate control since the original five-year sunset in the measure

Slow Growth! Initiative - 1995.

Non-residential growth was robust in Boulder in the 1990's. City Council started discussions concerning impacts from commercial, industrial, and retail growth in the mid-90's and considered various options for managing this growth. The options ran the gamut from rate control to rezoning to travel demand management programs.

During this time, a citizen's group was circulating a petition to place an initiated ordinance on the ballot, to control the rate of nonresidential growth. The petitioners gathered enough signatures to get on the November 1995 ballot. This ballot item was called the "Slow Growth! Initiative." The initiative would limit the amount of nonresidential building square footage to 1,300,000 over a five-year period. The measure also would strengthen the city's residential growth management system to one percent growth per year, increase the length of time for gathering referendum signatures on annexations, and mandated a study and regulations to ensure that growth would pay its own way.

The proponents pointed to a possible buildout of 11 million square feet of commercial and industrial floor area. "The congestion, pollution, noise and crowding that such additional growth would generate will drastically lower everyone's quality of life - particularly if it occurs in the space of 10 to 15 years and commercial and industrial growth rates are not greatly reduced." (Campaign booklet: Slow Growth! Restore the Balance, Yes on 2A).

The Council considered placing a competing measure on the ballot, but ultimately determined it would only confuse voters. In an effort to address the issues raised in the petition, the Council adopted its own non-residential growth management system. The Council was concerned that the ballot measure would not be flexible and that amending such measure would generally require voter approval. The Slow Growth! Initiative failed at the ballot box. Also, the nonresidential rate control ordinance that the council adopted was incredibly contentious, difficult to understand, and administratively burdensome. To address some of the issues related to the large amount of commercial and industrially zoned land in the city, the city redrafted its zoning regulations to set limits on the amount of floor area that could be established, and looked for opportunities to either rezone properties or encourage the construction of housing in these areas.

This ballot measure did not pass.

Careful Choice - Major Land Use Decisions - 1996.

On the 1996 ballot was an initiative to amend the City Charter to require that "major land use decisions" be subject to a very liberal referendum requirement. Major land use decisions

included a variety of legislative and quasi-judicial decisions. These include land rezoning, land use code changes that increased density or intensity of development, a development of over 25,000 sq. ft., and changes to the city's growth management system.

The ballot measure would have created a referendum for these decisions with a petition that only need one percent of the voters from the prior election. The City's Charter, for all other legislative decisions, requires a five percent petition for an ordinance to be referred to the voters for approval or rejection.

This measure failed at the November 1996 election.

Annexation by Vote - 2006.

In 2006, citizens petitioned to have a people's ordinance placed on the ballot to require a vote to allow any annexation of property into the city of more than five acres. By 2006, much of Boulder's urban service area was developed. There were a few remaining green field development areas, and those areas are in close proximity to existing development. These two factors lead to opportunities for conflict in the land development process.

In the year prior, the city considered, but chose not to, add the "planning reserve" into the service area. The planning reserve is a portion of the city's planning area that it has determined suitable for urban development in the future, based on its apparent lack of sensitive environmental areas, hazard areas, and significant agricultural lands, the feasibility of efficient urban service extension and contiguity to the existing service area. It is the last large tract slated for future development. Bringing in the planning reserve has been a contentious issue in the community and the standards for bringing it into the community are quite high.

The heightened alertness of residents who were skeptical of new annexation proposals, and the perceived value that such annexation brought the city together with a fresh discussion about the planning reserve, provided energy to this petition effort.

Proponents asserted that Annexation by Vote will force Boulder decision makers to demand a better deal because of the additional voter approval requirements. Arguments were also made with regard to many ballot box matters that have led to the shaping of the community.

Opponents of the measure asserted that the annexation process was objective and transparent. Each step of the process allows for significant public input. They require affirmative votes from several public bodies, and a final vote from the City Council. The city's referendum process also provides protection through the ballot box.

This ballot question failed at the election.

Conclusions

Boulder is a community that appears to be rather comfortable with voting on the matters that shape its future. In addition to many tax and bond measures, over time the voters have been asked to vote on community governance, public health issues, national policy, liquor, the greenbelt, and of course, dog leash laws. Interspersed in all of those measures are a few planning matters that have helped shape the community.

A few conclusions can be drawn about the ballot measures described in this paper. The first common theme is that they all grew out of periods of high growth. Many were done in the post WWII growth years, in the dot.com growth spurt in the 1990's, and then again in the "housing bubble" growth era of the first part of this century. The two most recent ballot measures were proposed at a time when the city was beginning to see the pent up demand that grew, as the nation recovered from the 2008 banking crisis. With growth there is tends to be change and many of the ballot measures were a reaction to the change that was occurring, or anticipated to occur, when the city was on a particular land use path.

Many of the measures that passed were relatively simple, straight forward, and had a concrete outcome. These included the measures that passed on the city's Height Limit, the Blue Line that prohibited water service on the city's backdrop, and the referendum on the Rudd water transmission main permit that would have opened big areas to development, and the rate control system of the Danish Plan. It is relatively easy to conceptualize the outcomes of these measures.

Many of the ballot items that failed were associated with changing the land use process. They included restrictions on the process for both the adoption of regulations and how the city goes about approving development. The zero population growth measure of the early 1970's called on the city to regulate in a manner to keep population down. It did not provide any certainty on how or what the regulations and policies would be to implement its population growth limitations. The annexation by vote and the careful choice measures proposed changes to the process that added uncertainty in the minds of many.

Also, many of the ballot measures that failed were very complicated. The Slow Growth residential and no residential rate control measure was quite complicated and inserted a great deal of regulatory detail that would not benefit from the council being able to easily adapt the ordinance. It had four major regulatory mandates: two regulatory rate control, financial policy, and legislative process policy.

Attachment 1
Summary of Ballot Measures

Year	Ballot Measure	Result
1952	Planning Department Established	Pass
1959	Blue Line – Utility Service Boundary	Pass
1965	The Rudd Election – Referendum on a utility permit that had the effect of undermining prior comprehensive planning efforts.	
1971	Building Height Limit of 55 feet	Pass
1971	Zero Population Growth – Required laws and policies to limit growth to 100,000 people	Fail
1971	Study Growth Council alternative to ZPG	Pass
1976	Danish Plan – Residential Rate Control for five years	Pass
1995	Slow Growth! Initiative – Non-residential rate control; residential rate control; growth pays its own way; and extended period for gather referendum procedures for annexation ordinances	Fail
1995	Careful Choice = Major Land Use Decisions	Fail
1996	Annexation by Vote	Fail
2015	Neighborhood Right to Vote on Land Use Regulation Changes	Fail
2015	Growth Shall Pay its Own Way	Fail

Attachment 2



INFORMATION PACKET MEMORANDUM

To: Members of City Council

From: Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Maureen Rait, Executive Director of Public Works
David Driskell, Executive Director of Community Planning, Housing, and Sustainability
Susan Richstone, Deputy Director of Community Planning, Housing, and Sustainability
David Gehr, Deputy City Attorney

Date: October 1, 2015

Subject: Plans for the Implementation of the initiated ballot measures if they pass.

- Ballot Question No. 300 Neighborhood Right to Vote on Land Use Regulation Changes
- Ballot Question No. 301 New Development Shall Pay Its Own Way

EXECUTIVE SUMMARY

There are two planning related ballot measures that are on the ballot in November. One is on the neighborhood's right to vote on land use changes. The other is on requirements that development pay its own way for the burdens placed city facilities and services. The purpose of this memorandum is to provide council some information about how staff intends to begin the implementation of these measures if they pass. Staff anticipates that its thinking will continue to evolve as it considers approaches to the initiatives. Ultimate recommendations may vary or change as work plans are more fully developed and analyzed.

BACKGROUND

Two committees of registered voters prepared petitions to initiate charter changes earlier this year. Signatures were gathered and presented to the city to be certified for inclusion on the

November 3, 2015 general municipal election ballot. The city council approved final ballot titles for the ballot questions at its September 1, 2015 meeting.

Ballot Question No. 300 is entitled **“Neighborhood Right to Vote on Land Use Regulation Changes.”** The ballot title was approved by the council pursuant to Ordinance No. 8068. The initiative proposes to amend Article IV of the City Charter on direct legislation by the addition of a new section 43A. The new section would allow the referendum process to be used within neighborhoods to vote on certain land use regulations within a number of the city’s residential zoning districts. Any of the enumerated changes do not become effective until 60 days after final passage. Neighborhood voters can then use this time to gather signatures within the neighborhood so that the law can be referred to the voters at a subsequent election. In order to be referred to the voters, a petition meeting charter requirements must be signed by ten percent of the registered electors of a residential neighborhood affected by such change. A copy of the proposed Charter language is attached as Attachment A.

Ballot Question No. 301 is entitled, **“New Development Shall Pay Its Own Way.”** The ballot title was approved by the council pursuant to Ordinance No. 8069. The initiative proposes to amend Article II of the City Charter on the powers and duties of the city council with the addition of a new section 12A entitled, “New Development Shall Pay its Own Way.”

This charter amendment provides that “the City shall not approve new development that does not fully pay for or otherwise provide all the additional facilities and service required to fully offset the burdens that otherwise would have been imposed by such new development on City facilities and services.” New development is generally defined as construction that results in additional floor area for a building or site. The initiative creates an exception for modifications to residential buildings that do not result in additional dwelling units or that have a *de minimis* effect on the facilities and services. It also does not affect changes of use that have a *de minimis* effect on facilities and services.

The Development Shall Pay its Own Way section will require that the city analyze whether growth pays its own way with respect to facilities and services. If such development does not, then the city will need to develop fees, taxes, regulatory, or growth management tools that will assist in its implementation.

IMPLEMENTATION APPROACHES

Ballot Question No. 300

Neighborhood Right to Vote on Land Use Regulation Changes

The neighborhood right to vote charter change will give neighborhood voters an opportunity to engage in a neighborhood based referendum process. The referendum process applies to a number of land use regulation changes that occur in residential neighborhoods. For the most part, the regulatory changes that are subject to this process generally have the potential to increase the intensity of a land use on a property. They include things like allowable size, height, occupancy, changes of use, parking, setbacks solar access, or zoning designations. The specific language can be found in Attachment A. The language makes reference to 66 recognized city

neighborhoods. It requires the council designate the neighborhoods, requiring them to be contiguous. The referendum right will be based on the boundaries for the neighborhoods.
Tasks to be completed if the “Neighborhoods’ Right to Vote on Land Use” petition is approved:

- (a) Define neighborhoods:
 - 1. Develop a process to create neighborhood voting districts. The council might want to consider a variety of options related to the establishment of neighborhood boundaries.
 - 2. The city would be responsible for redrawing neighborhoods: As development occurs and neighborhoods change or limit zoning requirements, differently around the city, new neighborhoods would need to be drawn to create equitable districts.
- (b) Adopt an ordinance to define the neighborhoods.
- (c) Consider adoption of an ordinance setting forth the land use regulations subject to the initiative.
- (d) Delay any land use code changes that affect residential zoning districts in process until neighborhoods are mapped and procedures are in place.

Ballot Question No. 301

New Development Shall Pay Its Own Way

Some components of the ballot measure are self implementing. It prohibits the city from approving building permits and changes of use for new development that do not fully pay for or otherwise provide all the additional facilities and services required to fully offset the burdens that otherwise would have been imposed by such new development on city facilities and services.

New development is defined as:

- (a) Any residential or non-residential construction that results in additional floor area in a building or on a site, except for modifications to residential buildings that do not add additional dwelling units and that have a de minimis effect on the facilities and services referred to in this Section, or
- (b) Any change in use of an existing building or site, except for changes of use that have a de minimis effect on the facilities and services referred to in this Section.

The ballot measure will require subsequent implementation to allow for new development. Many of those efforts are described below.

November 4, 2015.

If the measure passes on November 3, the city will stop accepting building permit applications for “new development.” The city will continue to accept applications for construction activities that do not constitute new development. This will include the following types of applications:

- (a) Residential building permit applications that are related to additions, alterations, remodels, repairs or basement finishes to existing dwelling units.

- (b) Non-residential building permits for alterations, remodels, repairs, or tenant remodels to existing buildings.

The city also intends to continue to process development review applications such as site and use review applications.

Permits submitted on or before November 3.

The language of the charter amendment also provides that certain permits that would otherwise constitute new development will be allowed to be approved in the following circumstances:

- (a) If an application for “new development” is submitted with a complete “application for a building permit, or a change of use permit, as of the date of passage of this Section, shall be exempt from the requirements of this Section, but only for the construction or change of use covered by the permit or change of use application as submitted.
- (b) All building permits applications that meet the standards of the charter language for “new development” will continue to be processed and considered for approval.
- (c) “Change of use permits” submitted prior to November 3 will also continue to be processed and considered for approval. As discussed below, the staff may ask the council to further define and clarify this term in an ordinance. The city does not have a “change of use permit” application. The staff interprets this section to apply to the following application types:
 - (i) Buildings permit applications to allow the change from one occupancy classification to another as required by Section 105.1 of the International Building Code.
 - (ii) Use review applications.
 - (iii) Rezoning applications.

Transition Provisions -- December 2015 to January 2016

The city may need to develop some interim development regulations to implement the initiative. The measure indicates that it should be implemented “to the extent allowed by federal and state law.” The city will need to analyze state and federal laws to determine if there are any portions of the initiative would be inconsistent with other areas of the law.

Development Review Applications. In particular, the initiative does not have much implementation guidance with regard to application types that are not building permits or change of use applications. In particular, the city will need to analyze and make decisions with regard to development review applications such as concept reviews, site reviews, use reviews, subdivisions, and technical document review applications that have been previously approved or who have submitted applications prior to the adoption of the initiatives.

State and Federal Law Issues. As part of this effort, staff will research potential issues of state and federal law to determine if there are any impediments or other limitations that will prevent or limit the ability of the city to "not approve new development that does not fully pay for or otherwise provide all the additional facilities and services required to fully offset the burdens that otherwise would have been imposed by such new development on City facilities and services," as stated in the initiative's second paragraph.

Clarifications and Interpretations. As the staff moves towards implementation of the day to day applications, it anticipates that it will find areas within the proposed language that may need further clarification and interpretation. Staff will bring these issues to the council, most likely in the form of ordinances, so that the council can affirmatively legislate in these areas.

Define *de minimis* impacts. The initiative does not seek to stop use change applications that have *de minimis* impacts. The city may want to propose regulations that would allow such applications to continue during the time that the city develops long term approaches to implement the initiative.

Exemptions. The initiative also permits the city council to exempt affordable housing projects and public projects from the requirements of the section if approved by six council members. The council could decide in the interim to allow these types of projects to continue forward outside of the 2016 work plan.

2016 Work Plan

The city anticipates that it will need to develop a regulatory program to implement the initiative. There are a number of components that will need to be addressed in the context of potentially indentifying additional revenue sources, whether through fees or taxes, regulatory approaches, or growth management techniques. The city has started the process of updating the capital facilities impact fee that is implemented through Chapter 8-9, "Capital Facilities Impact Fee," B.R.C. 1981. If the initiative passes, the city will need to determine if the scope of the existing work efforts include all of the facilities that are covered by the initiative. Additionally, the city will need to develop an approach to deal with services that are covered by the initiative.

It is anticipated that this will be an extensive work effort that includes further defining the services that are described by the initiative.

1. Create an inventory of facilities and services included in the petition. The city will need to create an inventory of all of the facilities and services that are "material and provided by all City departments or divisions." The ballot measure provides a general definition of "City facilities and services" to include police, fire-rescue, parks and recreation, public libraries, housing, human services, senior services, parking services, transportation, and open space and mountain parks.
2. Document and Develop Service Standards. The city will need to establish a baseline for existing facilities and services. New development will not be able to place additional burdens on the identified facilities and services. The city will need to develop service

standards for city facilities and services. Service standards for many city services or facilities can be found in the various departmental master plans. The city will need to document the present level of service at the time of the initiative passage so that it can be the documented service standard. This will need to be done in accordance with metrics in the initiative for transportation. These standards will need to be updated on a regular interval, perhaps as part of the Comprehensive Plan and master plan updates.

3. Revenue Requirement. A revenue requirement will need to be developed for each of the services and facilities. The city should develop fiscal assumptions, methodology, and a model to determine the costs of and the revenue captured (both direct and indirect) of new growth. It is anticipated that a revenue requirement will have two components: capital and ongoing operations and maintenance.
4. New Tools. The city will need to identify facilities or services affected by the petition that will have a revenue deficiency because of new growth. It will also need to develop an implementation approach that might include taxes, fees, development regulations, adjusting service standards to be in line with available revenue but still not allowing service levels to be burdened by new growth as required by the initiative.

Legislative Standards. The city will need to develop and draft legislation to implement the initiative. The legislation will provide the basis for approving development applications that fully pay for or otherwise provide all the additional facilities and services required to fully offset the burdens that otherwise would have been imposed by such new development on city facilities and services. The city could consider options such as additional development regulations, public improvement requirements, revenue requirements, programs, and development timing tools.

The city will need to develop standards that ensure that new development fully pays for or provides the additional facilities and services required to fully offset the burdens that otherwise would have been imposed by such new development on city facilities and services.

Attachments:

- A. Ballot Question No. 300 -- Neighborhood Right to Vote on Land Use Regulation Changes - Initiative petition language
- B. Ballot Question No. 301 -- New Development Shall Pay Its Own Way - Initiative petition language.

ATTACHMENT A

Ballot Question No. 300

Neighborhood Right to Vote on Land Use Regulation Changes

Initiative petition language

Section 43A. Neighborhoods' Right to Vote on Land Use Regulation Changes

The purpose of this Section is to ensure that residents of neighborhoods have a voice in changes to land use regulations that may have impacts on their quality of life, neighborhood character, or property values. Such changes may include but are not limited to those that increase the maximum allowable building heights, floor areas, or occupancy limits, and changes in allowable uses within residential neighborhoods.

For purposes of this Section, "residential neighborhood" shall mean a contiguous area reasonably demarcated by the City, including the neighborhoods commonly known by the names listed in Appendix A, as well as other neighborhoods the City may reasonably identify, and that contains at least a portion of the MH, RE, RL-1&2, RM-1,2&3, RMX-1&2, RH-1-7, or RR-1&2 zoning districts as set forth in the Boulder Revised Code as of the passage of this Section.

No proposed changes to city regulations for one or more residential neighborhoods that would do one or more of the following for part or all of any residential neighborhood:

- increase the maximum allowable size, height, or density of any residential development;
- increase the maximum allowable occupancy limits of any residential development;
- change allowable uses for any residential zoning district identified in this Section as a zoning district that is subject to this Section;
- reduce on-site parking requirements of any residential development;
- reduce required setbacks of any residential development;
- reduce solar access protection of any residential development;
- change the zoning district designations or the regulations applicable to existing residential zoning districts such that any of the aforementioned changes are enabled to occur;

shall become effective until sixty days following the approval of such change. However, if within such sixty day period, a petition meeting the requirements of Section 45 and signed by ten percent of the registered electors of a residential neighborhood affected by such change is filed with the city clerk requesting that such change be submitted to a vote of the electors of that neighborhood, then such change shall not be effective for that neighborhood until the procedures

set forth in Sections 46 and 47 have been completed. For purposes of filing such a petition, fulfilling the requirements of Sections 46 and 47, and voting in the subsequent neighborhood election, the "electors" shall be only those registered electors that use an address in that neighborhood as their residence for voter registration purposes.

Where changes to land use regulations that are subject to this Section affect multiple residential neighborhoods, there shall be a separate election for each residential neighborhood that has submitted the required petition; and the results of that election shall apply only to that neighborhood.

The City Council may combine contiguous residential neighborhoods to function as a single residential neighborhood for purposes of this Section. However, the inclusion of residential neighborhoods in such a combination shall be subject to the above referendum process carried out by any of the individual neighborhoods.

The City shall pay for the costs of any election required by this Section?

APPENDIX A

Bear Creek, Boulder Meadows, Buena Vista, Carolyn Heights, Catalpa Park, Centennial, Chautauqua, Crestview, Dakota Ridge, Devil's Thumb, East Aurora, East Central, East (Lower) Chautauqua, East Foothills, Flatirons, Foothills Community, Forest Glen, Four Mile Creek, Frasier Meadows, Goss Grove, Grandview, Grant, Gunbarrel, Hartford, Hawthorne, Heatherwood, Hillcrest/Panorama Heights, Hillside, Holiday, Iris Hollow, Juniper / Kalmia, Keewaydin, Keewaydin East, Kendall, Kings Ridge, Majestic Heights, Mapleton Hill, Mapleton Mobile Home Park, Martin Acres including Highland Park, Newlands, Noble Park, North 26th Street, North Wonderland, Northbriar, Norwood / Quince, Old North Boulder, Orchard Park, Park East, Parkside, Pinon, Poplar, Sale Lake, San Juan del Centro, Shanahan Ridge, South 45th, Steel Yards-Boulder Junction, Table Mesa North, Table Mesa South, Tantra Park, Telluride, University Heights, University Hill, Vista Village, West Pearl, Whittier, Wonderland Hills

END OF SECTION

ATTACHMENT B

Ballot Question No. 301

New Development Shall Pay Its Own Way:

Initiative petition language

The purpose of this Section is to ensure that City levels of service are not diminished by new development. Examples of City facilities and services affected by this Section include police, fire-rescue, parks and recreation, public libraries, housing, human services, senior services, parking services, transportation, and open space and mountain parks.

To the extent allowed by Federal and state law, the City shall not approve new development that does not fully pay for or otherwise provide all the additional facilities and services required to fully offset the burdens that otherwise would have been imposed by such new development on City facilities and services.

For purposes of this Section, "new development" shall be defined as:

- (a) Any residential or non-residential construction that results in additional floor area in a building or on a site, except for modifications to residential buildings that do not add additional dwelling units and that have a de minimis effect on the facilities and services referred to in this Section, or
- (b) Any change in use of an existing building or site, except for changes of use that have a de minimis effect on the facilities and services referred to in this Section.

For purposes of this Section, "City facilities and services" shall be defined as all of those that are material and provided by all City departments or divisions, except the departments or divisions supplying City water, wastewater, flood control, and electric utility services, as these already have service standards, and the departments of finance and human resources (personnel), the offices of the city manager and city attorney, and the municipal court.

The City Council shall adopt and apply standards and practices that are reasonably designed to achieve the requirements of this Section and that are consistent with generally accepted professional standards and practices where such exist. These standards and practices shall include without limitation consideration of indirect revenues and contributions from new development, such as sales and use tax paid by occupants, and consideration of multiple developments evaluated in aggregate.

Standards for transportation facilities and services shall include without limitation emergency response times, daily vehicle miles traveled within the City, and travel times on the streets for which the City measured travel times as of the passage of this Section, and any additional streets that may be warranted. These travel time measurements shall be expanded to include the hour before and the hour after the morning and evening peak hours.

The City Council, by an affirmative vote of six members, may exempt the development of permanently affordable housing units, or the affordable housing portions of new developments, or publicly-owned new developments from the requirements of this Section.

New development with a complete and properly submitted application for a building permit, or a change of use permit, as of the date of passage of this Section, shall be exempt from the requirements of this Section, but only for the construction or change of use covered by the permit or change of use application as submitted.

The City Manager shall report annually at a City Council meeting all standards used and a summary of the measurements and actions taken and analyses performed to satisfy the intent of this Section?