

**GRAND JUNCTION CITY COUNCIL
ADDITIONAL WORKSHOP AGENDA**

**MONDAY, JUNE 30, 2003, 11:30 A.M.
CITY HALL, 250 N. 5TH STREET
2ND FLOOR, ADMINISTRATION CONFERENCE ROOM**

- 11:30 am **UPCOMING PERSIGO MEETING ISSUES FOR JULY 10,
MEETING** [Attach 1](#)
- 12 NOON **SMOKING IN PUBLIC PLACES ORDINANCE** [Attach 2](#)
- 1:00 pm **ADJOURN**

**Attach W-1
Persigo Issues**

CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA									
Subject		Clifton Sanitation District #2							
Meeting Date		June 30, 2003							
Date Prepared		June 24, 2003				File #			
Author		Greg Trainor			Utility Manager				
Presenter Name		Mark Relph			Public Works and Utility Director				
Report results back to Council		<input checked="" type="checkbox"/>	No		Yes	When			
Citizen Presentation			Yes	<input checked="" type="checkbox"/>	No	Name			
<input checked="" type="checkbox"/>	Workshop (Additional)		Formal Agenda				Consent	<input type="checkbox"/>	Individual Consideration

Summary: Discussion of response to Clifton Sanitation District #2 as to financial alternatives to connect to the Persigo Sewer System versus construction of their own treatment plant.

Budget: N/A

Action Requested: Update only and preparing for Council direction at the Joint Persigo meeting on July 10, 2003. At issue is direction to allow staff to communicate to Clifton Sanitation District #2 a response to their financial proposal that is consistent with current City policy.

Attachments:

1. March 15, 2003 offer from Clifton Sanitation District #2 to consolidate with the Persigo System.

Background Information: In late 2002, the Clifton Sanitation District #2 requested information from the City as to the financial alternatives of Clifton connecting to the Persigo Sewer System or constructing their own plant in the vicinity of 32 Road and the Colorado River. This issue was discussed at the City Council-County Commissioners joint Persigo Meeting In November of 2002. Staff was instructed by both policy-making bodies to “keep them informed” and that the Clifton Board of Directors was to be in the “driver’s seat” as to the political issues of incorporating the Clifton Districts into the 201

Sewer Service Area Boundary and the Persigo Agreement implications. A similar message was conveyed to the legal counsel of the Clifton Districts at the April 24, 2003 joint Persigo meeting. However, the Clifton Districts need to make a decision as to whether the connection into the Persigo System is financially possible before they would proceed with the political issues.

Staff is seeking direction from Council that would allow staff to provide Clifton Sanitation District #2 a response that is in alignment with current City policy. Once this information is submitted to the Clifton, additional discussion surrounding the financial policies of the issue is likely. When necessary, staff would be seeking additional Council direction at that time.

Clifton Sanitation District #2 has submitted a proposal dated March 15, 2003 (Attachment #1) that would compensate the Persigo System \$6,702,737 in exchange for connecting to the system. The staff's review of the proposal would suggest that the cost is \$9,877,504 based upon currently polices. Staff seeks approval to submit to Clifton Sanitation #2 the details of our proposal.

**BECKNER, ACHZIGER, McINNIS,
RAAUM & SHAVER, LLC**

Attorneys at Law

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John A. Achziger
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March 15, 2003

Kelly Arnold, City Manager
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

Re: Clifton Sanitation District #2

Dear Kelly:

On behalf of Clifton Sanitation District #2, I am tendering to the City a draft proposal for allowing the District to tap into the City's Persigo system.

As the City is aware, Clifton must either proceed with the construction of a new treatment facility or tap its system into the City system and utilize the Persigo Plant for treatment. The District has spent a number of months collecting data for the cost of construction of a new plant and for the cost of constructing a new interceptor line from the District to the City system. The decision on which option will be selected is primarily driven by cost.

The enclosed analysis quantifies the various costs of tapping into Persigo. Under this proposal, Clifton Sanitation #2 would tender to the City \$3,359,737 for its portion of the construction of the new interceptor line. Additional funding may be available from the Central Grand Valley Sanitation District to cost share that Interceptor. The City would be responsible for the actual construction of the Interceptor.

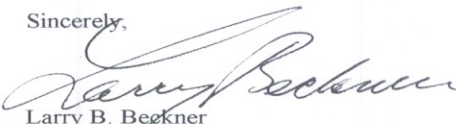
The analysis also proposes paying to the City a total tap fee of \$3,343,000 for the 3,343 tap equivalents. This number would change based on the actual tap equivalents at the time of completion of construction of the Interceptor but would continue to be based on the current tap fee of \$1,000 per tap equivalent. For purposes of these discussions, Clifton #2 requests that the tap fee be fixed at the current rate even though construction of the Interceptor may not be completed until 2004.

Kelly Arnold
March 18, 2003
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The District understands that the City will need more information regarding the calculation of costs and other matters. The District is ready to meet with a City representative to discuss the proposal in more detail. The District is under a time constraint to make a final decision on whether to move forward with the construction of its own treatment plant or to prepare to move into the Persigo system. Since time is of the essence, this District requests a response to this proposal within 60 days.

Thank you for your time and consideration. Please feel free to contact me directly with any questions or issues involving this matter.

Sincerely,



Larry B. Beckner

LBB:lb
Enclosure

CLIFTON SANITATION DISTRICT #2

3222 HWY 6 & 24
P.O. BOX 186
CLIFTON, COLORADO 81520
PHONE 434-7422

Robert King, President
Dale Welch, Secretary-Treasurer
Greg Martin, Director
Edna Charlesworth, Director
Kent Brumback, Director

RECOMMENDED ALTERNATIVES TO CONSOLIDATE WITH THE CITY OF GRAND JUNCTION

EXISTING CONDITIONS

- 1) Combined influent flow from Clifton Sanitation District #2 (CSD#2) East and West lagoons is **936,000** gal/day (2002 annual average).
- 2) CSD#2 has **3,343** flow proportioned taps based on **936,000** gal/day and the City of Grand Junction's (City) definition of **280** gal/day per flow proportioned tap.

$$\text{Flow proportioned tap} = \frac{936,000}{280} = 3,343$$

- 3) Current City tap fees are \$1,000.00. A recent study performed by Black and Veatch stated the tap fees should be \$2,300.00 per tap. The City will be raising their tap fees by \$250.00 per year per tap (Tap fee for yr. 2004 = \$1,250.00, tap fee for yr. 2005 = \$1,500.00)

ALTERNATIVE

- 1) Cost of the interceptor based on the Gerald Williams (GW) update without Central Grand Valley Sanitation District (CGV) participation (costs include design engineering fees, legal fees, testing and construction inspection fees).
\$4,877,504.00
- 2) Construction costs of interceptor built to **City** road specifications (GW report)
\$3,818,859.00
- 3) Construction costs of interceptor built to **County** road specifications (GW report)
\$3,301,092.00

- 4) Difference in construction costs of interceptor between City and County specifications: $\$3,818,859.00 - \$3,301,092.00 = \$517,767.00$
- 5) Total costs of interceptor built to **County** specifications:
 $\$4,877,504.00 - \$517,767.00 = \$4,359,737.00$
- 6) Costs of the interceptor allowing the City to construct interceptor and negotiate with CGV to obtain their financial contribution to the interceptor;
 $\$4,359,737.00 - \$1,000,000.00^* = \$3,359,737.00$

*CGV has verbally offered CSD#2 approximately \$1,000,000.00 as their financial contribution toward interceptor construction costs.
- 7) Costs of purchasing 3,343 flow proportion taps @ \$1,000.00/tap;
 $3,343 \times \$1,000.00 = \$3,343,000.00$

PROPOSAL

Costs of taps	\$3,343,000.00
Costs of Interceptor	\$3,359,737.00
	<hr/>
Total offer to City	<u>\$6,702,737.00</u>

CONDITIONS

- 1) City constructs and owns/operates the interceptor.
- 2) CSD#2 will pay the in-City monthly user fees.
- 3) CSD#2 will not participate in any down stream sewer line modifications and/or increases in capacity.
- 4) City will modify the 201 Boundaries

March 13, 2003

CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA									
Subject		Revenue Sharing for Backbone Capital Improvements Within the Special Sanitation Districts.							
Meeting Date		June 30, 2003							
Date Prepared		June 24, 2003					File #		
Author		Greg Trainor			Utility Manager				
Presenter Name		Mark Relph			Public Works and Utility Director				
Report results back to Council		X	No		Yes	When			
Citizen Presentation			Yes	X	No	Name			
X	Workshop (Additional)		Formal Agenda				Consent		Individual Consideration

Summary: Revenue sharing for backbone capital improvements within the Special Sanitation Districts in consideration for dissolution at a future date.

Budget: To be determined.

Action Requested: Update only and prepare for direction at the Joint Persigo meeting of July 10, 2003. At issue is a review of the concept for revenue sharing with the Special Sanitation Districts with direction on the Council's value with dissolution as part of a possible agreement.

Attachments:

1. Black & Veatch memorandum dated 9/18/2000; "Financing Backbone System Facilities in Special Sanitation Districts".
2. October 14, 2002 Persigo meeting staff report; "Backbone System capital improvements in Special Sanitation Districts and Persigo System participation in costs".
3. April 10, 2003, Letter from City Manager to Special Districts; "Special Sanitation Districts Funding for Capital Improvements".
4. Proposed Inter-Governmental Agreement from special districts.

Background Information: Backbone system funds are sewer revenues assessed to all users of the sewer system that have their sewage transported and treated at the Persigo Plant.

The sewer system has two types of customers: those that are within the special sanitation districts that contract with the Persigo System for backbone system services

(transportation and treatment) and those customers that are outside of the special sanitation districts. As to the operation and management of the sewer system there is no distinction made as to whether a customer is within the City or outside of the City. All customers outside of the special sanitation districts are treated the same.

For many years the special sanitation districts have questioned the use of Sewer System backbone system funds for projects in areas outside of the special sanitation districts. This use of backbone system funds outside of the special sanitation districts is the result of the various contracts for service signed between the City and the special districts when they were formed. In essence, the districts agreed to operate, maintain and replace their collection systems within their district boundaries and the City agreed to take their sewage at their boundaries and treat that sewage. Persigo System budgets and the long-range financial plans of the Persigo System have been predicated on these arrangements. In the last rate study by Black and Veatch in September of 2000, this issue was evaluated by the consultant (Attachment 1).

The District issue was raised anew in October 15, 2001 letter to the City and the County shortly after the City proposed the use of Persigo Sewer System funds for the separation of combined storm and sanitary sewage flows. Although, the separation project had a sanitary sewage benefit by increasing the capacity of sewage interceptors and the Persigo Treatment Plant, the Districts viewed the benefit as having more of a "general fund" benefit as it dealt with storm water flows. Based on this view, the District requested consideration of the City and the County that backbone funds also be used within the Districts for backbone system improvements.

The District request is a basic change in direction from the original concepts embedded in the existing contracts among the Districts and the City. Nevertheless, the request was subject of a meeting among the City Manager, County Manager, and the special districts in late October of 2001. This meeting resulted in a list of issues that each were to discuss with their respective Boards, including the issue of dissolution of the Districts in exchange for use of Persigo backbone system funds within the District boundaries.

Between October of 2001 and the October 14, 2002 joint City-County annual Persigo meeting, there was continuing discussion of the issues. Nothing was settled as to either side's objectives. At the October 14, 2002 Persigo meeting there was a staff report drafted for the joint Boards (Attachment 2). In addition the general counsel for the Districts asked that the Districts' request be resolved within "six months" and that he be allowed to pursue this issue with Mark Relph the Public Works Director.

Since October of 2002, the financial issue has become further refined but there are still divergent views as to the issue of dissolution of the Districts. The City Manager in a letter dated April 10, 2003, communicated to the Special Districts the values the City held with respect to this issue (Attachment 3). The offers discussed during the past six-months can be summarized as follows:

City key points: The joint sewer system will consider providing backbone system funds to the Districts in the amount of \$500,000 per year in exchange for

agreement that the Districts will dissolve in 3 to 5 years and the Persigo System will take over the operation and maintenance of the District systems at that time.

Districts' counter points: The Districts would like to enter into a new Intergovernmental Agreement, superceding the original agreements, providing for backbone system funding of \$500,000 per year with dissolution of the Districts to be put to District voters at the general election in November 2012 and the Persigo System will take over the operation and maintenance of the District systems if and when a vote confirms dissolution.

The Districts' have submitted a draft inter-governmental agreement (attachment 4). Staff is requesting Council direction on the value of dissolution and would carry that forward into future discussions with the Districts.

BLACK & VEATCH CORPORATION

MEMORANDUM

Grand Junction, Colorado
Wastewater Rates and Policies Review

September 18, 2000

Subject: Financing Backbone System Facilities in Special Sanitation Districts

As requested, Black & Veatch is providing this memorandum to outline issues to consider when determining whether the Joint Sewer System (System) should provide financial assistance for backbone system improvements in the Fruitvale, Central Grand Valley, and Orchard Mesa Sanitation Districts (Districts). Direction by the Grand Junction City Council and the Mesa County Board of Commissioners on this issue will allow finalization of System financial data on this subject.

For clarity, the issues are discussed in two broad categories, "financial considerations" and "policy considerations." The issues are intertwined, and decisions in each category affect issues in the other.

Financial Considerations:

1. At the present time, the long-term financial plan of the System has no provision for funding backbone improvements into the Districts. Providing financial assistance to the Districts will result in increased costs. Increased costs must be recovered through increased revenues in order for the System to remain financially healthy and carry out objectives already approved for the System.
2. If the System were to finance backbone improvements into the Districts, the costs would be borne either by (a) only district users or (b) all System users.
 - a. If costs are borne by District users only, System rates charged to District users would have to be increased. Is there any advantage to either the System or the Districts for increasing System rates charged to District users (to fund extension of backbone facilities into the District), rather than the Districts themselves increasing rates (or mill levy) to fund the extensions or replacements. Possible advantages might include the System's capabilities in managing construction contracts and ensuring backbone facilities are built to System standards.
 - b. If costs are borne by all users of the System through increased rates, is it fair for all System users to pay for facilities that benefit only District users? If the philosophy is that all users of the System should pay for all facilities that serve all users, including those in the Districts, what would be the financial advantage of continuing the Districts?

BLACK & VEATCH CORPORATION

MEMORANDUM

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Grand Junction, Colorado
Wastewater Rate and Policy Review

September 18, 2000

Policy Considerations:

Given the fact that the original purpose of the Districts have been met (i.e. construction and financing of original infrastructure), consideration might be given to whether the Districts should remain as service providers. Decisions on this issue will guide financial considerations of assistance to the Districts.

1. If the Districts will not continue to provide service in the long term, perhaps consideration should be given to tying financial assistance for construction of backbone facilities into the Districts to an agreement for dissolution of the Districts at a specific future time.
2. If the Districts are to continue to provide service in the future, even after possible future annexation of the property served by the City, responsibility for facilities to provide services to the District customers would be maintained by the districts. Given this expectation, responsibility for planning, funding, constructing, and maintaining facilities needed to serve District customers would seem to continue to reside with the Districts.

Preliminary Conclusion

The Districts have served the Grand Valley well by furnishing a vehicle to provide sanitary sewer service in areas that developed outside of the City of Grand Junction. The growth and development of recent years has created more and more urbanization of the service area, leading the Districts to consider the need for new and replacement facilities. However, sufficient information regarding the future needs of the Districts for new and replacement backbone facilities and the associated costs is not presently available.

BLACK & VEATCH CORPORATION

MEMORANDUM

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Grand Junction, Colorado
Wastewater Rate and Policy Review

September 18, 2000

Preliminary Recommendation

The first step would be to request that the Districts determine their future needs for new and replacement backbone facilities and to estimate what District financial resources would be available, without System participation, to fund construction of those facilities. Although recent requests for assistance have come from Central Grand Valley and Fruitvale Sanitation Districts, the System could also expect requests from Orchard Mesa Sanitation District. This information would allow staff and elected officials to assess the effects on the System financial plan of various funding alternatives.

With more complete information available, System staff, City Council, the Board of County Commissioners, and the District Boards could begin a process of policy-level discussions. These discussions would likely include a candid assessment of whether the Districts have essentially fulfilled their initial purposes and dissolution should be considered or whether the Districts will continue to play an important role in providing long-term wastewater services. Once some consensus has been reached on this fundamental question, the issue of "who pays" for backbone system work in the Districts may follow logically.

JAG:alh

STAFF REPORT FROM
OCTOBER 14, 2002
JOINT PERSIGO MEETING WITH CITY COUNCIL
AND COUNTY COMMISSIONERS

Backbone System capital improvements in Special Sanitation Districts and Persigo System participation in costs.

Introduction

In October of 2001, a number of issues were raised by the Central Grand Valley Sanitation District and the Orchard Mesa Sanitation District concerning how the “backbone system” is defined and the extent of potential backbone system improvements within these two districts. The Fruitvale Sanitation District was not a part of these discussions.

There are a number of contractual, technical and financial issues which have to be resolved. In summary, these include the City contracts with the Districts which obligate the Persigo System to treat sewage from the districts and that the districts operate and maintain their collection systems. The technical issue of the definition of “backbone” have to be resolved. Discussions earlier this year show that the special district definition and the City’s definition are widely divergent. A decision on the definition affect the extent of Persigo’s possible financial participation inside of the districts and the rate structure for backbone capital outside of the special districts. To take on additional capital improvements within the special districts-capital not anticipated in long-range financial plans of the Persigo System- would require rate increases for all Persigo system users, both inside and outside of the special districts.

The budget for the years 2002 and 2003 has been established. Staff would recommend a timely discussion of the issues during 2003 for resolution during the next budget for 2004, 2005.

Background

Contracts for service exist between the City of Grand Junction and the three special sanitation districts. These agreements provide for treatment of sewage by the Persigo System and the maintenance of collections systems by the Districts. Rates are charged to the special districts for “backbone services,” that is, for treatment and carriage of their flows in interceptors from the boundaries of their districts to the Persigo Plant. The rate is modified somewhat in the case of Orchard Mesa Sanitation District in that they do their own billing, and in the case of Central Grand Valley Sanitation District where

the Persigo System contracts with the District to maintain their D Road Lift Station and provide after- hours emergency response.

All rate studies conducted since the creation of the Joint Sewer System in 1980 assume that the Districts pay for the operation, maintenance, and replacement of collection systems inside of their districts. The long-range financial plan of the Sewer Enterprise Fund also assumes such a scenario.

The questions are:

1. What is the purpose in maintaining and replacing backbone and collection systems?
2. What gets replaced? That is, what "definition" is used.
3. Who pays?
4. What is the financial impact on the Sewer Enterprise Fund and those paying the rates?

What is the purpose in maintaining and replacing backbone and collection systems?

For the districts it is to insure capacity and reliability for delivering sewage away from homes to central treatment facilities.

For the Persigo System it is the elimination of infiltration that consumes capacity in interceptors and at the Persigo Plant.

What gets replaced?

Westwater Engineering, representing the Central Grand Valley District, defines "backbone" by a functional definition, which results in a large portion of their system being defined as "backbone." Applying the same definition to the Persigo System, outside of the special districts, would result in a larger portion of the Persigo System being defined as "backbone." Such a definition would result in a greater portion of what all users pay for backbone, including the districts, being allocated to backbone rather than collection systems.

The City's definition, based on size, would allow those portions of the Persigo System, outside of the special districts, to remain as they are, but would result in a smaller portion of the special districts being defined as backbone.

Either definition is valid. The impacts of either or both need evaluation as there are financial consequences for either definition.

Within the Districts there ought to be an evaluation of pipe replacement needs and which portions to be replaced by the Districts and which portions to be replaced by the Persigo System.

Who pays?

Backbone expenses are paid by all users of the Persigo System. With an increase in capital construction and financial participation by the Persigo System within the special districts(regardless of which definition is used), rates would have to be adjusted to all Persigo System users. With such a plan, would there be consideration to the Persigo System that backbone, thus replaced, would be owned by the Joint System?

Financial impact on Sewer Enterprise Fund?

Increased capital construction within the special sanitation districts are expenses that are not presently calculated into the long-range financial plan of the Sewer Fund for rate setting purposes. An increase in capital construction would be reflected in increased backbone system rates to all users.

Conclusions

The technical and financial aspects of providing capital construction services within the special districts can be solved.

Central to this discussion, however, are legal issues not addressed in this paper:

What are the purposes of the special sanitation districts?

Have these purposes been fulfilled?

Are funds for construction, requested of the Persigo System, funds that the District's, under their long-term contracts, should have been accumulating themselves for replacement of their systems?



FILE

City of Grand Junction, Colorado
250 North 5th Street
81501-2668
Phone: (970) 244-1501
FAX: (970) 244-1456

April 10, 2003

Mr. Larry Beckner
Alpine Bank Building
225 North 5th Street, Suite 850
P.O. Box 220
Grand Junction, Colorado 81502

Re: Special Sanitation Districts Funding for Capital Improvements

Dear Larry:

Through your office, the Central Grand Valley Sanitation District and the Orchard Mesa Sanitation District have engaged in discussion and developed proposals that would allow the Districts to fund additional capital improvements within their Districts while partnering with the City of Grand Junction. This was done after giving support for attaining loan funds for the significant combined storm sewer project (CSEP) that is currently under construction. We have also discussed some revenue sharing concepts. Most of the discussion, to date, has centered on these two primary values:

District value: Reduce Persigo System "backbone" rate so more funds could be devoted to capital improvements within the District.

City value: Primary caretaker of the entire system which directly impact the Persigo system.

After many discussions on how these two values can be met, here is a proposal with these two key elements:

- 1) Capital Revenue sharing payments for 5 years;
- 2) District dissolution within 3 years.

Proposal

If the District's customers voted within the next year to dissolve within three (3) years after the vote, the Persigo system would guarantee funds for capital improvements for each year of a five year period, starting with the first year following the vote of dissolution. The vote for dissolution would be critical in order to insure that firm commitments, by all parties including the City, were made prior to the allocation of Persigo funds. The mechanism would be agreement on this

District letter – page 2

proposal, followed by a revised agreement between the City and the Districts, followed by a vote of customers on the revised agreement. A revised agreement would be essential so that District customers would know their benefits.

Persigo funds for capital would be set aside based on the following two factors: That portion of the CSEP debt attributable to the special sanitation districts (\$217,000 per year and, in essence, giving that amount *back* to the Districts) and an additional reallocation of funds from the Persigo capital plan for a total of \$500,000 per year. These funds would be prorated among the Districts, including Fruitvale, based on their number of EQU's to the total EQUs of the Persigo system. An additional factor might be applied as to the Districts' current capital commitment of their *own* funds. Those currently allocating more funds than the others would get a larger amount of Persigo funding.

At dissolution, "fund balances" of the Districts would transfer to the capital plan of the Districts, providing supplemental funding to the Persigo amounts. The Districts would continue to allocate their capital funds during the three year period. Thus, there would be three sources of capital funding. If the District had outstanding debt, the District's fund balance would be applied to that debt first, then to capital funding after the debt was retired.

Besides meeting the two most important values to the entities (Districts and City) this proposal has merit for the following reasons:

- It is better to administer.
- There would be a clear matching of shared revenues with specific backbone system improvements within the Districts.
- Funding capital projects rather than reducing rates relieves the Persigo System from straying from its "utility concept" of charging all customer classes the same for the same service. In other words, it is consistent with our current practices.
- It allows a definite period of transition for unification of systems which will reduce operational expenses to the Districts.
- It will equalize rates throughout the Persigo system which will result in a rate reduction for all Districts except for the Fruitvale District.
- The Persigo system would provide supplemental funds to replace and upgrade backbone systems within the Districts over time as part of the Persigo Capital Improvement Program.

Immediate dissolution by the Districts is something that the Persigo System would not be prepared for. Knowing that dissolution would occur at a time certain would allow the Persigo system to prepare, purchase equipment, and add

District letter – page 3

collection system staff in order to take on collection system operations. Treatment would not be an issue as treatment services are already being provided. This period would also allow the Districts to prepare for changes within their own administrations. We are open to discuss equivalent time periods, such as 6 year capital revenue sharing with 4 years towards dissolution.

Please give this proposal your most serious consideration. I would suggest, perhaps, a series of individual meetings with the District boards to review these ideas.

Sincerely,



Kelly Arnold
City Manager

Cc: City Council
Bob Jasper, Mesa County Administrator

INTERGOVERNMENTAL AGREEMENT

CENTRAL GRAND VALLEY SANITATION DISTRICT ORCHARD MESA SANITATION DISTRICT FRUITVALE SANITATION CITY OF GRAND JUNCTION

This Agreement is entered into effective the ____ day of _____, 2003, by and among the Central Grand Valley Sanitation District ("CGVSD"), the Orchard Mesa Sanitation District ("OMSD"), the Fruitvale Sanitation District ("Fruitvale") and the City of Grand Junction ("City"). The three districts are referred to jointly in this Agreement as the "Districts".

Recitals

A. On November 4, 1970, CGVSD entered into an Agreement (AGVSD Agreement) for the construction of sanitary sewer lines within the boundaries of that District and for the treatment of such effluent by the City of Grand Junction. The CGVSD Agreement has been modified on several occasions.

B. On November 19, 1975, OMSD entered into an Agreement (AOMSD Agreement) for the construction of sanitary sewer lines within the boundaries of that District and for the treatment of such effluent by the City of Grand Junction. The OMSD Agreement has been modified on several occasions.

C. On the 28th day of September, 1959, Fruitvale entered into an Agreement ("Fruitvale Agreement") for the construction of sanitary sewer lines within the boundaries of that District and for the treatment of such effluent by the City of Grand Junction. The Fruitvale Agreement has been modified on several occasions.

D. The parties now desire to enter into this new Intergovernmental Agreement which will (except as otherwise specifically provided herein) supercede the original CGVSD Agreement, as modified, the OMSD Agreement, as modified, and the Fruitvale Agreement, as modified. This Intergovernmental Agreement will govern the relationship of the parties from and after the effective date of this Agreement.

Now, therefore, in consideration of the covenants herein, the parties agree as follows:

1. Joint Persigo Sewer System Agreement. The City and Mesa County have entered into a Joint Policy Making Agreement for the Persigo Sewer System ("Persigo Agreement"). The parties acknowledge that the Persigo Agreement controls the relationship between the City and the County regarding the operation, management and

control of the Persigo Sewer System as that System is defined in the Persigo Agreement. Nothing in this Intergovernmental Agreement is intended to modify or supercede the Persigo Agreement and if a conflict exists, then the provisions of the Persigo Agreement will prevail.

2. CGVSD Lines and Fixtures. CGVSD has constructed and currently owns, operates and maintains approximately 95 miles of lines, most of which are located within its boundaries. In addition to all lines within its boundaries, CGVSD owns discharge lines that carry effluent from the District to City Lines. Those discharge lines are commonly referred to as the 29 Road and the 29 3/8 Road lines. CGVSD currently serves several out-of-District customers through an intergovernmental agreement with Fruitvale Sanitation District. In addition, certain properties in WestPark and in Eastbury are within the CGVSD boundaries but are serviced by Fruitvale. All properties within the District boundaries are also within the 201 Service Area. The District will continue to own, operate and maintain all of its current lines and will own any lines that are constructed in the future by the District, whether located within or outside of the District boundaries. All such lines, and any facilities attached to or used in connection with such lines (including lift stations) are referred to in this Agreement as the CGVSD Lines.

3. OMSD Lines and Fixtures. OMSD has constructed and currently owns, operates and maintains approximately 46 miles of lines, most of which are located within its boundaries. In addition to all lines within its boundaries, OMSD owns the B Road Line which services the Valle Vista subdivision and certain other properties between that subdivision and the District boundaries. The District also owns certain major lateral lines that carry effluent from the District and discharge the effluent to City Lines. All properties serviced by OMSD are also within the 201 Service Area. OMSD will continue to own, operate and maintain all of its current lines and will own any lines which are constructed in the future by the District and which connect to OMSD Lines or which are located within the OMSD boundaries. All such lines, and any facilities attached to or used in connection with such lines (including lift stations) are referred to in this Agreement as the OMSD Lines.

4. Fruitvale Lines and Fixtures. Fruitvale has constructed and currently owns, operates and maintains approximately 9 miles of lines, most of which are located within its boundaries. In addition to all lines within its boundaries, Fruitvale owns what is referred to as the Grand Avenue outfall line which carries effluent from the District to City Lines. Fruitvale currently serves properties in WestPark subdivision and in Eastbury subdivision under the terms of an intergovernmental agreement with Central Grand Valley. Under that agreement, several Fruitvale customers are serviced by CGVSD. All District customers and all properties within the District boundaries are also within the 201 Service Area. The District will continue to own, operate and maintain all of its current lines and will own any lines which are constructed in the future by the District or which are located within the Fruitvale boundaries. All such lines, and any facilities attached to or used in connection with such lines (including lift stations) are referred to in this Agreement as the "Fruitvale Lines".

5. Construction Standards. Each District is responsible for the proper construction and maintenance of all lines within its system. All such construction shall comply with all rules and regulations of each respective District and with all local, County and state laws and regulations. In addition, such construction shall meet the standard construction specifications as adopted from time to time by the City.

6. City Lines and Fixtures. All sanitary sewer lines, and any facilities attached to or used in connection with such lines (including lift stations) which are not CGVSD Lines, OMSD Lines or Fruitvale Lines will be referred to in this Agreement as the "City Lines". The Districts acknowledge that they do not have any ownership interest in such City Lines and the City Lines are under the control of the City, either by virtue of actual ownership or by virtue of agreements with other parties. The City is responsible for the maintenance of the City Lines.

7. Acceptance of Effluent for Treatment. The Districts will continue to discharge their effluent into the City Lines at the currently existing locations. If additional discharge points are required in the future, then the City will negotiate with the respective District regarding the terms and locations of such additional discharge points. In addition, the City will continue to treat all District effluent at the Persigo Plant in accordance with the provisions for treatment contained in the Persigo Agreement.

8. Rates For Treatment. All rates for treatment and for maintenance and operation of all parts of the Persigo system, except for the OMSD Lines, the CGVSD Lines and the Fruitvale Lines, shall be established pursuant to the Persigo Agreement and shall be assessed equally to all users of the Persigo System, including District users ("Standard Uniform Rates"). The Standard Uniform Rates will be modified in subsequent provisions of this Agreement for each District based on services provided by the City and by each District. Such modified rates are referred to as the "City Rates".

9. District Rates. In addition to the City Rates as established for each District for service provided under the Persigo Agreement, each District may set such rates for its customers as may be determined from time to time by the Board of each District. Each District may establish its own procedures for setting rates, fees, tolls and charges to be assessed against its customers for services. In addition, each District may incur such debt, enter into such contracts and establish such ad valorem taxes as each Board may determine is needed or proper for the administration of its services.

10. Plant Investment Fee. In addition to the City Rates, the City, through the Persigo Agreement, shall assess a Plant Investment Fee to be charged against every new tap issued by the City, by any of the Districts or by any other entity or individual which taps into the Persigo System. Such PIF shall be uniform throughout the Persigo System and shall be paid at the time of issuance of a tap. In addition to the PIF, each District may establish its own tap fee or system development charges in such amounts

and payable under such terms as determined by each District's respective Board. All tap fees assessed by the Districts shall be retained by the respective District and shall be used in accordance with the rules and regulations of such District.

11. Operation of District Lines. Each District will be responsible for the operation, maintenance and control of its respective Lines. Each District will endeavor to minimize inflow and infiltration of surface or ground waters. Each District will monitor its lines to locate areas of inflow in infiltration and will take reasonable steps to reduce such I & I. All costs for the operation and maintenance of the District Lines will be paid by the respective District. In addition, each District will police its own lines to minimize the discharge of substances which may be detrimental to the treatment process employed at the Persigo Plant, including oils, acids or other such matters. The City may also perform such inspections as it deems appropriate to identify and locate the source of any illegal discharges into the Persigo System.

12. Pretreatment. The Districts hereby delegate to the City, and the City hereby accepts, the administrative, managerial and enforcement authority concerning pretreatment programs as applied to industrial users of the Persigo Sewer System. The City will act as the agent for each District in pretreatment matters to the extent necessary to allow direct regulatory and health-related control by the City over industrial users within each respective District. It is the intent of the parties that the City be given such pretreatment authority throughout the Persigo Sewer System as may be reasonably required to comply with all federal and state grant and discharge permit requirements applicable to the Persigo Sewer System. The City hereby holds the Districts harmless from any and all liability whatsoever which may result either directly or indirectly from the City's acts or omissions arising from or related to the administrative, managerial or enforcement authority concerning pretreatment programs.

13. Participation in Joint Funds. All users of the Persigo System, including all District users, pay a monthly service fee, the amount of which is determined in accordance with the Persigo Agreement. A portion of that monthly fee consists of capital reserves used to pay for capital improvements to the City collection system and to pay for other costs of providing sewer service to non-District users. The parties have reached an agreement regarding annual rebates to be paid by the City, from the Joint Sewer Fund, to the Districts for use in capital improvements to their systems. Those rebates are divided into two categories and each category shall be administered as follows:

- a. CSEP Debt Service. The City has borrowed funds for the reconstruction of some of the City Lines to separate certain sanitary sewer lines from certain storm sewer lines and to otherwise reduce inflow and infiltration ("CSEP Debt"). The parties have agreed that the average payment on that debt over the next 9 years is approximately \$603,500 each year. The parties have also agreed that the Districts' combined account for 36% of the total EQUs within the Persigo

Sewer System and that this percentage will remain relatively constant over the next 9 years. Using this percentage, the parties agree that the Districts are entitled to an annual rebate from the Joint Fund of \$217,000 each year ("CSEP Funds"). The CSEP Funds will be divided among the Districts based on the relative number of EQUs currently managed by each District. Those relative EQU amounts are as follows: CGVSD - 51%; OMSD - 20%; Fruitvale - 29%. On or before December 20 of each calendar year, beginning with the 2003 calendar year, the City will pay to each District its pro rata share of the CSEP Funds. The Districts will be entitled to rely on the amount of such distributions in the preparation of their annual budgets. All money from such distributions must be used for repairs to existing capital systems or for capital improvements of District systems; provided, however, permissible capital improvements shall not include the construction of new line extensions that are required to be funded by developers under each District's current rules and regulations. Money received from the CSEP Funds must be spent within the two calendar years following the year of distribution. If a District does not spend the funds within this time frame, then the City may withhold distribution of funds to the offending District until such time as the funds are used in accordance with this Agreement.

Additional Capital Funds. In addition to the CSEP Funds, the Districts are entitled to receive \$283,000 of Additional Capital Funds. The Additional Capital Funds will be distributed to each District on the same pro-rated basis as CSEP Debt funds. Each District may receive no more than its pro-rated share of these funds. In order to qualify for distribution from these Additional Capital Funds, a District must expend the funds on Capital improvements to the existing District Lines or in the construction of new collector lines that are not funded by developers under the current line extension policy of each District. In addition, each District must match dollar-for-dollar the Additional Capital Funds with District Funds. The matching District Funds may not include amounts received through the CSEP Fund distributions. Each District must submit to the City by August 1 of each year a plan for future capital improvements to be funded with the Additional Capital Funds. Such plan may be up to a seven year plan. If such capital improvements are reflected in the plan, then the City shall disburse to such District its pro-rated share of the Funds up to the allocated share of the distribution no later than December 20 of such calendar year. The District is not required to spend the Additional Capital Funds in any given year and the funds may be accrued over several years for the funding of projects. However, such funds will be segregated in the accounting of District assets and records will be maintained and submitted to the City reflecting the proper use of such funds. If upon the eventual dissolution of each District (as described below for each District) any funds remain in the Additional Capital Fund account, then any plan of dissolution must show a return to the City of such unused funds. If a District does not provide the capital improvement plan by August 1 of each year, then the District will not be eligible for distribution of its pro-rated portion of the

Additional Capital Funds for that calendar year; however, the District will be eligible to participate in following years if the plan is properly submitted.

Change in Percentage Participation. Later provisions of this Agreement contemplate the eventual dissolution of each District. Upon the dissolution of a district, the participation of the remaining districts in the joint fund amount will be recalculated.

14. Provisions Relating Specifically to CGVSD. The provisions of this paragraph 14 shall apply only to CGVSD.

Customer Billing. The City will bill all District customers on a monthly basis. Included in the billing are the monthly City Rates and such additional charges as are assessed by the District. The District is responsible for the collection of all delinquent accounts. The City will provide to the District on a monthly basis information on delinquent accounts.

Emergency Call Outs. The District and the City currently have a separate agreement for emergency call out services. The terms of that separate agreement shall remain in effect and may be modified from time to time as provided in that agreement.

Line Cleaning. The District is responsible for cleaning and televising its own lines and for paying the costs thereof. The City has historically reduced the amount of the Standard Uniform Rates, which amount reflects the costs not incurred by the City for cleaning and televising the District's lines. That reduction will continue to maintain the City Rates for this District.

Dissolution of the District. On or before the general election to be held in November of 2012, the Board of Directors of the District shall pass a resolution approving a plan of dissolution and recommending to its voters that the plan be adopted and that the electors vote in favor of the dissolution. Any plan of dissolution will call for the transfer of sewer related assets (including sewer lines, lift stations, taps, fittings, records, video tapes, easements and rights of way) to the City of Grand Junction free and clear of any liens or encumbrances. The plan will call for the final dissolution of the District and the transfer of such sewer related assets to the City within one year of the date of the election. If the election is unsuccessful, the Directors agree to take the same matter to the voters two years later.

15. Provisions Relating Specifically to OMSD. The provisions of this paragraph 15 shall apply only to OMSD.

Customer Billing. The District will continue to be responsible for billing its customers for all monthly sewer charges, including District charges and City Rate charges. The City will send to the District a single bill for all sewer charges payable to

the City for customers serviced by the District based on an EQU calculation. The bill is to be received by the District by the 15th of each month and the District will pay the bill to the City by the last business day of each month. If not paid by the last business day of the month, the bill will be delinquent and will accrue interest at the rate of 9% per annum until paid. It will be the sole responsibility of the District to bill its customers. The City will not send bills to any of the individual customers of the District, except for industrial pre-treatment charges. If there are any customers within the District that require industrial pre-treatment, all pre-treatment charges will be billed separately by the City.

The amount to be billed and collected by OMSD for its single family customers as of the date of this Agreement shall be the base rate charged for other single family residential users connected to the 201 System less eight percent (8%) which represents the savings to the City in customer billing costs. OMSD Customers other than single family residents will continue to be charged by the City at the rate charged for such customers under the City Code less the per customer reduction for the billing charge at the rate calculated for single family residents.

At least once each twelve month period, the District shall provide to the City, at no cost to the City, a current customer and address list and each month the District will provide to the City a list of new connects and disconnects.

Emergency Call Outs. The District and the City currently have a separate agreement for emergency call out services. The terms of that separate agreement shall remain in effect and may be modified from time to time as provided in that agreement.

Line Cleaning. The District is responsible for cleaning and televising its own lines and for paying the costs thereof. The City has historically reduced the amount of the Standard Uniform Rate, which amount reflects the costs not incurred by the City for cleaning and televising the District lines. Such reductions in billing will continue to establish the City Rate for this District.

District System Expansion.

All of the area serviced by OMSD is within the 201 Service Area. No future amendment of the 201 boundary on Orchard Mesa between 30 Road and 32 Road shall be permitted without the express approval of the City, the County and OMSD. No property on Orchard Mesa east of 30 Road shall be entitled to receive sewer service unless the property is at least 2.5 acres in size, except for the following:

- properties subdivided or receiving sewer service as of July 1, 1995;
- properties currently improved with a business or residence being serviced with a septic tank system;
- any tax parcel which is currently less than 2.5 acres in size;
- any property which hold a paper tap issued by the District in exchange for granting easements for the construction of the Valle Vista line extension.

(ii) All plans for extensions or enlargements shall be submitted to the City for engineering review, and if the design meets City engineering standards, the City shall approve the submittal within 10 working days and no further concurrence from the City shall be required. If the City does not respond to a submittal within 10 working days, concurrence shall be presumed.

Dissolution of the District. On or before the general election to be held in November of 2012, the Board of Directors of the District shall pass a resolution approving a plan of dissolution and recommending to its voters that the plan be adopted and that the electors vote in favor of the dissolution. Any plan of dissolution will call for the transfer of sewer related assets (including sewer lines, lift stations, taps, fittings, records, video tapes, easements and rights of way) to the City of Grand Junction free and clear of any liens or encumbrances. The plan will call for the final dissolution of the District and the transfer of such sewer related assets to the City within one year of the date of the election. If the election is unsuccessful, the Directors agree to take the same matter to the voters two years later.

16. Provisions Relating Specifically to Fruitvale. The provisions of this paragraph 16 shall apply only to Fruitvale.

Customer Billing. The District shall continue to bill its own customers and will remit monthly payments to the City. All billings will continue as they have been done in

the past The District applies the same EQU formula as used by the City for all properties which the District serves.

Emergency Call Outs. This District will remain responsible for responding to all emergency call outs for its customers.

Line Cleaning. The District will remain responsible for the periodic cleaning of its lines. Such cleaning will be done on the same basis as the District has historically performed such cleaning.

Determination of City Rate. The Standard Uniform Rate will be reduced based on historic reductions to account for the services provided by the District in order to determine the City Rate.

Dissolution of the District. On or before the general election to be held in November of 2008, the Board of Directors of the District shall pass a resolution approving a plan of dissolution and recommending to its voter that the plan be adopted and that the electors vote in favor of the dissolution. Any plan of dissolution will call for the transfer of sewer related assets (including sewer lines, lift stations, taps, fittings, records, video tapes, easements and rights of way) to the City of Grand Junction free and clear of any liens or encumbrances. The plan will call for the final dissolution of the District and the transfer of such assets to the City within one year of the date of the election. If the election is unsuccessful, the Directors agree to take the same matter to the voters two years later.

17. Limitation of Liability. No party shall be liable to the other(s) for any damages for failure to deliver or receive sanitary sewer discharges if such failure is due to war or civil strife, broken lines, accidents, fires, strikes, lockouts or other such occurrences beyond the reasonable control of such entity. Nothing in this Agreement is intended to waive any of the rights and privileges of the Colorado Governmental Immunity Act.

18. Term of Agreement. This Agreement shall continue for a period of 12 years from the date hereof and shall terminate at that time unless extended by the parties.

Attach W-2 Smoking Ordinance

WHAT THE CURRENT DRAFT REGULATES AND WHAT IT DOES NOT (and how it compares with the existing City ordinance)

- The current draft (Alternative 1C) states that all smoking in public places is prohibited unless a specific exception allows smoking.
- The current draft prohibits smoking in restaurants, except that smoking is allowed in free standing bars and in bars that are attached to a restaurant if the attached bar is physically separated from dining areas.
 - The existing City ordinance requires that restaurants of more than 30 seats have designated non-smoking areas, but the areas do not have to be physically separated from smoking areas;
 - Restaurants with fewer than 30 seats are not required to set aside a non-smoking area; the entire restaurant may be smoking, under the current City ordinance.
- The current draft Alternative 1C provides that a business is defined as a restaurant if more than 25% [40%?] of total sales is food or meals. Smoking is prohibited if the business is defined as a restaurant.
 - Under the existing City ordinance if less than 50% of total sales is for food the establishment is a bar, not a restaurant.
- The current draft would allow smoking in bingo halls, except in the area where tickets are sold and a physically separated non-smoking room must be provided.
 - Under the existing City ordinance, bingo halls are treated as is any other public place, and a designated non smoking area is all that is required, without physical separation between smoking and non-smoking areas.
- The current draft Alternative 1C would prohibit smoking in bowling alleys, except in an attached bar that is physically separated from the rest of the bowling alley.
 - The existing City ordinance only requires that bowling alleys designate non-smoking areas, but there is no requirement for physical separation.
- The current draft (Alternative 1C) give existing restaurants with designated smoking areas three-years to come into compliance. This is termed a “3 year amortization period.” At the end of the 3 year period, the restaurant must be non-smoking, or construct an attached bar that is physically separated in which smoking could be allowed.
 - The existing City ordinance does not have an amortization clause
- The current draft and the City’s existing ordinance are the same regarding workplace protection. For places of employment of three or more people; the

employer has a duty to provide a smoke free workplace for any worker who requests it.

- Both the existing City ordinance and the draft ordinance Alternative 1C require that signs are conspicuously posted for all smoking areas and all public places where smoking is prohibited.
- The draft ordinance has a “no retaliation” clause protecting workers who request that the employer provide a smoke-free work place.
- The draft ordinance prohibits smoking in any City building or vehicle.
- Other provisions that have been discussed over the past several weeks, but which are not in the current draft nor in the current existing ordinance:
 - No provision that prohibits minors in smoking areas
 - No requirements regarding no smoking hotel or motel rooms

ORDINANCE NO. _____

**Ordinance Prohibiting Smoking
In workplaces and Public Places
In the City of Grand Junction
(Alternative 1C; June 18, 2003)**

[Note:This draft reflects the initial City Council discussion of June 16, 2003. Rules regarding smoking in the presence of children, smoking allowed late in the evenings until 5 a.m., and enforcement remedies by private citizens have been removed. Significant issues that were discussed at that public hearing are highlighted for easy reference. The City Council will review this draft at its July 2, 2003 regular meeting.]

Recitals.

- A. Cigarette smoking is dangerous to human health. Substantial scientific evidence has clearly established that smoking tobacco products causes cancer, chronic pulmonary disease, heart disease, and various other life threatening and life-impairing medical disorders. The U.S. EPA has classified secondhand smoke as a Class A human carcinogen.
- B. Reputable studies have identified that secondhand smoke contains almost 5,000 chemicals, 60 which are known toxins and 43 of which are known carcinogens, including arsenic, formaldehyde, hydrogen cyanide and radioactive elements.
- C. The damage and dangers of smoking extend to those who passively inhale cigarette smoke.
- D. State law, § 25-14-101, C.R.S., *et seq.*, prohibits smoking in elevators, museums, libraries, on school properties, and other listed places. Restaurants and taverns are exempted from that law, although the owners are encouraged to separate smokers from non-smokers.
- E. Section 105 of that state law authorizes towns, cities and counties to regulate smoking.
- F. Based on the foregoing authority, and the authority granted by the City's charter, we determine that this ordinance pertains to and is in the furtherance of health, welfare and safety of the residents of Grand Junction.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

1. Definitions

The following words and phrases, whenever used in this ordinance shall have the following meanings:

- a. “Attached Bar” means a bar area of a restaurant. An “attached bar” shall not include any area where full meals are served, but may include the service of appetizers and snacks. Although a restaurant may contain a bar, the term “bar” shall not include any restaurant dining area.
- b. “Bingo Hall” means any enclosed area used for the management, operation or conduct of a game of bingo by any organization holding a license to manage, operate or conduct games of bingo pursuant to Colorado law, and in which food service for consumption on the premises is incidental to the primary activity of the establishment.
- c. “Bowling Alley” means a business open to the public which offers the use of bowling lanes, typically equipped with operable automatic pin setting apparatus and in which food service for consumption on the premises is incidental to the primary activity of the establishment.
- d. “Business” means any sole proprietorship, partnership, joint venture, corporation or other entity formed for profit-making or non-profit purposes, including retail establishments where goods or services are sold, as well as professional corporations, limited liability companies. “Business” includes entities where legal, accounting, financial, planning, medical, dental, engineering, architectural or other professional services are delivered.
- e. “Enclosed Area” means all space between a floor and ceiling within a structure or building which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling. “Enclosed Area” includes all space that is not physically separated from any areas in which smoking occurs or is allowed.
- f. “Freestanding Bar” means a liquor licensee whose establishment is an enclosed area that is physically separated from restaurants and other public places in which smoking is prohibited. Taverns, nightclubs, cocktail lounges and cabarets are typical examples of Freestanding Bars.
- g. “Licensee” means any person licensed by, or subject to regulation pursuant to, the Colorado Liquor Code, including proprietors and businesses within the definition in § 12-47-401, C.R.S.
- h. “Person” means a human or any entity or business recognized by law or formed to do business of any sort.
- i. “Physically Separated” means separated from smoke-free public places by continuous floor-to-ceiling walls which are interrupted only by entrances or exits to smoking areas, or which are separately ventilated, cooled, and/or heated such

that smoke does not drift, permeate or re-circulate into any area in which smoking is prohibited.

- j. "Private Club" means any establishment which restricts admission to members of the club and their guests.
- k. "Private Function" means any activity which is restricted to invited guests in a non-public setting and to which the general public is not invited.
- l. "Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, schools, health facilities, laundromats, public transportation facilities including bus stations and stops, taxis, shelters, airports, train stations, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters and waiting rooms. A private club is considered a "public place" when functions are held at the club which are open to the general public and are not restricted to the members of the club. A private residence is not a "public place" except during times when it is being used as a child care, adult care or health care facility, and for thirty minutes before such uses.
- m. "Restaurant" means, if not less than twenty five percent (25%) [40%?] of the gross income from the sale of food, meals and drinks of the business during the prior six months of the time of the calculation: any coffee shop, cafeteria, sandwich stand, private or public school or other cafeteria, and any other eating business which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.
- n. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- o. "Service Line" means any indoor or outdoor line at which one or more (≥ 1) persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- p. "Smoke-free" means that air in an enclosed area is free from smoke caused by smoking.
- q. "Smoke" or "Smoking" means the carrying or possession of a lighted cigarette, lighted cigar or lighted pipe of any kind, and includes lighting of a pipe, cigar, cigarette, tobacco, weed or other combustible plant.
- r. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

- s. "Structure" is defined in the International Building Code, and includes the International Residential Code, ("IBC") as adopted by the City from time-to-time. The term "structure" includes the term "building," also defined by the IBC.
- t. "Tobacco" is defined in § 25-14-103.5(1)(c), C.R.S.
- u. "Workplace" means an enclosed area in which **three or more persons** work at gainful employment.

2. Application to City Property

All enclosed areas and motor vehicles that are owned or leased by the City shall be subject to the provisions of this article as though such areas and vehicles were public places.

3. Prohibition of Smoking in Public Places

- a. Smoking shall be prohibited in all public places within the City, including, but not limited to, the following:
 - 1. Elevators.
 - 2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
 - 3. Buses, taxicabs, other means of public transit while operating within the City limits, and ticket, boarding and waiting areas of public transit systems including stops, bus benches, shelters and depots.
 - 4. Service lines.
 - 5. Retail stores.
 - 6. All areas available to and customarily used by the public in all businesses and non-profit entities patronized by the public, including, but not limited to, professional and other offices, banks, and laundromats.
 - 7. Restaurants except that **smoking is allowed: in an attached bar that is physically separated** from enclosed areas of the business in which smoking is prohibited; and in outdoor areas of restaurants that are not enclosed areas, such as patios.
 - 8. Public areas of aquariums, galleries, libraries, museums and similar facilities.

9. Any structure primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance except as covered in Section 6(a)(v) of this ordinance.
10. Whether enclosed or outdoors: sports arenas, convention halls and bowling alleys; except that smoking is allowed in attached bars in bowling alleys that are physically separated from areas in which smoking is prohibited.
11. During such time as a public meeting is in progress: every room, chamber, place of meeting or public assembly; including school buildings under the control of any board, council, commission, committee, and including joint committees and agencies of the City and political subdivisions of the State.
12. Waiting rooms, hallways, wards and semi-private rooms of health facilities, including hospitals, clinics, therapists' offices and facilities, physical therapy facilities, doctors' offices, dentists' offices and the offices and facilities of other health care providers.
13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
14. Bingo halls except that smoking is permitted in a bingo hall so long as: (a) a portion of the hall is physically separated so that non-smokers may play bingo in a smoke free enclosed area and (b) no smoking is allowed within fifteen feet of the area where the bingo packets are purchased.
15. Polling places.

- b. Notwithstanding any other provision of this section, any person or business who controls any business or facility may declare that entire establishment, facility or grounds as smoke-free.

4. Smoke-free Workplace

In a workplace in which smokers and nonsmokers work in the same office or room, it shall be the responsibility of the employer to provide smoke-free work areas to accommodate an employee who requests a smoke-free workplace. The employer, or other person in charge, shall make reasonable efforts to obtain compliance with this section in such places by asking any smokers to refrain from smoking upon request of an employee making such request.

5. Smoke-free Exits and Entrances

Smoking shall not occur in or so close to exterior exits or entrances that the free flow of pedestrian traffic is affected or so close that the operation of the doors, exits or entrances is affected or diminished.

6. Where in-door smoking is not prohibited

- a. Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the prohibition contained in section 3:
 - (i) Private residences; except when used as a child-care, adult day care or health care facility and during the thirty (30) minutes in advance of such use(s).
 - (ii) Retail tobacco stores.
 - (iii) Only while being used for private functions: restaurants, bars, hotel and motel conference or meeting rooms and public and private assembly rooms.
 - (iv) When smoking is part of a stage production and then only by the actors as a part of the role: any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance,.
 - (v) Freestanding bars, and attached bars that are physically separated from non-smoking areas.
 - (vi) Bingo halls, but only if a physically separated enclosed area within the hall is provided for bingo players in which smoking is prohibited and if smoking is prohibited within fifteen feet (15') of the area where bingo packets are purchased.
 - (vii) Attached bars in a bowling alley if the attached bar is physically separated from the rest of the bowling alley.
- b. Notwithstanding any other provision of this ordinance, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment, facility, or grounds as smoke-free.

7. Signs

- a. Each owner, operator, manager and other person having control of an enclosed area or public place subject to the provisions hereof shall be jointly and severally responsible to clearly and conspicuously post:
 - (i) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar

across it) in every public entrance or other areas where smoking is prohibited by this article.

(ii) In public places where smoking is allowed pursuant to this article, a sign with the words "Smoking is Allowed Inside" at each public entrance or in a position clearly visible on entering the enclosed area in which smoking is permitted.

b. All signs referred to in this section shall be a minimum size of twenty (20) square inches and must be placed at a height of between four to six feet (4' – 6') above the floor.

8. No Retaliation

No person or employer shall discharge, refuse to hire or retaliate in any manner against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to, or complains about the lack of, a smoke-free environment afforded by this ordinance.

9. Violations and Penalties

a. It shall be unlawful for any person or business who owns, manages, operates or otherwise controls the use of any premises or enclosed area or place of employment subject to regulation under this ordinance to fail to comply with any of its provisions.

b. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this ordinance.

c. Each day of a continuing violation of any provision of this ordinance shall be deemed to be a separate violation.

10. Other Applicable Laws

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

11. Severability

If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

12. Amortization

Any restaurant in which smoking was lawfully in use as of May 1, 2003 shall be entitled to continue such lawful use, without adding any additional seats or tables and without increasing the square footage of the designated smoking area, until January 1, 2006, notwithstanding the provisions of section 3 hereof.

14. Effective Date

This ordinance shall be effective on January 1, 2004.

INTRODUCED for PUBLICATION this 4th day of June, 2003.

Adopted on SECOND READING this _____ day of _____, 2003

ATTEST:

City Clerk

President of City Council