

SPECIAL MEETING

- I. CALL TO ORDER
- II. ROLL CALL
- III. REVIEW AGENDA
- IV. OLD BUSINESS
 - a. Ordinance 383 Approving an IGA and Consent to Provide Service with Deep Creek Water and Sanitation District
 - b. Ordinance 384 Approving a Domestic Water Service Agreement - Creede School District
 - c. Accept 2013 Audit - Blair & Associates [Please see final audit online]
- V. ADJOURN

REGULAR WORK SESSION

- Marijuana Research Packet Draft [Invite public to contribute? Other information desired?]
 - Recycle Creede
 - Flume
 - Cities and Towns Week
- Economic Development: Online Business Center, Leading Edge Class
 - Sponsorship, E-Zone Promotion
 - General Fund Budget Work Session
 - Any Other Business

Posted 10/17/14

OPEN TO THE PUBLIC

**ORDINANCE NO 383
CITY OF CREEDE, COLORADO**

**AN ORDINANCE APPROVING AN INTERGOVERNMENTAL
AGREEMENT WITH DEEP CREEK WATER AND SANITATION
DISTRICT AND THE CREEDE SCHOOL DISTRICT REGARDING
PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT
K-12 SCHOOL**

WHEREAS, the Creede School District has requested domestic water service for a new School building located outside the boundaries of the City of Creede and located within the Deep Creek Water and Sanitation District (“DCWSD”) service boundaries; and

WHEREAS, the authority and process for the Deep Creek Water and Sanitation District to provide consent to the City of Creede to provide water service within the DCWSD boundaries are stated in the recitals in the INTERGOVERNMENTAL AGREEMENT REGARDING PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL dated October 21, 2014 (“DCWSD IGA”); and

WHEREAS, the Board of Trustees of the City of Creede finds that the attached DCWSD IGA enables the City to provide essential water service to a valued and essential public facility that serves the Creede community, is determined to be fair and acceptable in its terms to the Board of Trustees, and shall support and advance the health, safety and general welfare of the Creede community.

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the City of Creede:

Section 1. Recitals Incorporated. The above and foregoing recitals as well as the recitals contained in the attached **EXHIBIT A: INTERGOVERNMENTAL AGREEMENT REGARDING PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL** are incorporated herein by reference and adopted as findings and determinations of the Board of Trustees.

Section 2. DCWSD IGA Approved. The DCWSD IGA attached as **Exhibit A: INTERGOVERNMENTAL AGREEMENT REGARDING PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL** is hereby approved. The Mayor and Town Clerk are authorized to execute and attest the DCWSD IGA and to take such other actions as may be reasonably necessary to implement the actions in this Ordinance. The Mayor, Town Manager and Town Attorney may collectively review and correct typos, grammatical errors, cross-reference errors, and revisions which do not alter the substantive terms of the DCWSD approved in this Ordinance.

Section 4. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Board of Trustees hereby declares that it would have passed this Ordinance

and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City.

Section 5. Effective Date. This Ordinance shall take effect thirty days after the date of final passage.

Section 6. Safety Clause. The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City of Creede, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 7. Publication by Posting. The Town Clerk is ordered to publish this Ordinance by title only in the Mineral County Miner and by posting in the official designated places of posting notices along with a statement that a copy of the Ordinance in full is available for public inspection at the office of the Town Clerk during normal business hours.

INTRODUCED, APPROVED, PASSED ON FIRST AND FINAL READING.

By: _____
Eric Grossman, Mayor

Attest: _____
Randi Snead, Town Clerk

APPROVED AS TO FORM:

By: _____
Eric J. Heil, Town Attorney

EXHIBIT A: INTERGOVERNMENTAL AGREEMENT REGARDING
PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL

**INTERGOVERNMENTAL AGREEMENT REGARDING PROVISION OF
WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL**

This INTERGOVERNMENTAL AGREEMENT (the “**Agreement**”) is made and entered into as of October 21, 2014 by and between the DEEP CREEK WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**DCWSD**”), the CITY OF CREEDE, a statutory town of the State of Colorado (the “**City**”), and the CREEDE SCHOOL DISTRICT, a political subdivision of the State of Colorado (the “**School District**”) (collectively, the “**Parties**,” and each individually a “**Party**”).

WHEREAS, DCWSD was formed and exists as a special district pursuant to the Colorado Special District Act, §§ 32-1-101 *et seq.*, C.R.S., for the purpose of providing certain public improvements, facilities and services, to and for the use and benefit of its residents, users, property owners and the public as more specifically provided by DCWSD’s service plan, as the same may be amended from time to time; and

WHEREAS, DCWSD provides water service and sanitary sewer service within and without its boundaries, in accordance with DCWSD’s rules and regulations; and

WHEREAS, the City also provides water service and is authorized to provide water service extraterritorially; and

WHEREAS, the School District is the record owner of the following property located in Mineral County, Colorado:

TRACT 2, NAVAJO DEVELOPMENT
SCHOOL PARCEL DIVISION
PORTIONS OF THE S 1/2 SECTION 1
AND THE N 1/2 SECTION 12, TOWNSHIP 41 NORTH,
RANGE 1 WEST, NEW MEXICO PRINCIPAL MERIDIAN,
MINERAL COUNTY,
STATE OF COLORADO

(the “**School Site**”); and

WHEREAS, the School Site consists of 15.01 acres, more or less; and

WHEREAS, the School District is planning to construct a new K-12 school on the School Site; and

WHEREAS, DCWSD is not able to provide sufficient water supply to meet required fire flow protection for the School Site; and

WHEREAS, the School District has requested that the City provide potable water service and irrigation water to the School Site; and

EXHIBIT A: INTERGOVERNMENTAL AGREEMENT REGARDING
PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL

WHEREAS, the City desires to provide extraterritorial water service to the School Site;
and

WHEREAS, DCWSD desires to consent to the City providing water service to the School
Site in accordance with the provisions of Section 31-35-402, C.R.S.; and

WHEREAS, Section 31-35-402(1)(b), C.R.S. authorizes any municipality:

“[t]o operate and maintain water facilities or sewerage facilities
or both for its own use and for the use of public and private
consumers and users within and without the territorial boundaries
of the municipality, but no water or sewerage service or
combination of them shall be furnished in any other municipality
unless the approval of such other municipality is obtained as to
the territory in which the service is to be rendered”; and

WHEREAS, DCWSD is a quasi-municipal corporation formed principally to acquire,
operate, and maintain water facilities or sewerage facilities or both and is therefore a
“municipality” within the definition of Section 31-35-401(4), C.R.S. and,

WHEREAS, the Board of Trustees of the City adopted Ordinance No. 384 approving this
Agreement October 21, 2014; and

WHEREAS, the Board of Directors of DCWSD approved this Agreement on _____,
2014; and,

WHEREAS, the Board of Directors of the School District approved this Agreement on
_____, 2014.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and promises set forth
herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as
follows:

1. Water Service Connection to School Site. The City and the School District shall
enter into an extraterritorial water service contract (the “**Service Contract**”) which shall set forth
the terms and conditions under which the City shall supply potable water service and irrigation
water to the School Site. The City shall require the installation and maintenance of a water meter to
measure the potable water used at the School Site to assist DCWSD with calculating the sewer fees.
DCWSD shall not be party to the Service Contract.

2. Limited Purpose. The purpose of this Agreement is to memorialize DCWSD’s
consent to the City providing potable water service and irrigation water to the School Site, as
required by Section 31-35-402(1)(b), C.R.S. Following the date of mutual execution of this

EXHIBIT A: INTERGOVERNMENTAL AGREEMENT REGARDING
PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL

Agreement, the City shall be authorized to provide water facilities, as that term is defined in Section 31-25-401(7), C.R.S., within the boundaries of DCWSD for the limited purpose of supplying potable water service and irrigation water to the School Site (the “**City Water System Improvements**” or “**Improvements**”). The City shall not be authorized to provide water service to any other property within the service area of DCWSD without first having obtained DCWSD’s consent in a manner similar to this consent and consistent with statutory requirements.

3. Sewer Service. Sewer service by the City within the boundaries of DCWSD is not authorized by this Agreement. The Parties agree that DCWSD shall provide sanitary sewer service to the School Site in accordance with DCWSD’s rules and regulations.

4. Installation of City Water System Improvements; Ownership and Maintenance. DCWSD’s engineer, Williams Engineering, shall review the final plans for the City Water System Improvements prior to installation in order to ensure that the Improvements will not interfere with DCWSD’s facilities in the vicinity of the School Site. The City shall cause the final plan(s) for the Improvements to be delivered to DCWSD’s engineer for review. Within twenty (20) business days of receipt of the final plans, DCWSD’s engineer shall deliver to the City any written objection(s) to and/or comment(s) on the final plans. The Parties shall meet as necessary to revise the final plans to address the concerns of DCWSD’s engineer. The final plans shall be considered complete on such date as DCWSD’s engineer has issued written approval of the same. The Parties agree that following the end of the applicable warranty period(s) and the City’s final acceptance of the City Water System Improvements, the City shall own and shall be solely responsible for the ongoing maintenance, repair, and replacement of the Improvements following final acceptance. The City shall allocate the cost for ongoing maintenance, repair, and replacement of the Improvements to the School as set forth in the Service Contract.

5. Modification. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by the Parties.

6. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

7. Governing Law/Venue. This Agreement shall be governed by, and enforced in accordance with, the laws of the State of Colorado. Any suit or proceeding arising from or relating in any way to the subject matter of this Agreement shall be brought only in the District Court for Mineral County, Colorado. Each Party hereby consents to the exclusive personal jurisdiction and venue of the Mineral County District Court. The Parties hereby waive any and all right any may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement in order to reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement.

8. Rule of Ambiguities. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement.

EXHIBIT A: INTERGOVERNMENTAL AGREEMENT REGARDING
PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL

9. Binding Agreement. This Agreement shall inure to and be binding on the heirs, executors, administrator, successors, and permitted assigns of the Parties hereto.

10. Authority to Enter Into Agreement. Each Party hereby confirms it is lawfully authorized to enter into this Agreement, and has taken all steps necessary to authorize the execution of the Agreement by the respective signatories below.

11. No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, consultant or sub-consultant or contractor of a Party. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

12. No Agency or Other Relationship. This Agreement is not intended to create any partnership or agency between the Parties.

13. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby; and in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable.

14. Assignment. This Agreement shall benefit the School Site and shall run with the land and may be assigned by the School to successors and assigns of the School Site.

15. Notice. All notices, consents or other instruments or communications provided for under this Agreement will be in writing, signed by the party giving the same, and will be deemed properly given and received (a) when actually delivered and received personally, by messenger service, by fax or telecopy delivery; (b) upon confirmation of delivery if sent by an overnight courier service such as Federal Express or United Parcel Service; (c) three business days after deposit in the United States mail, by registered or certified mail with return receipt requested; or, (d) upon acknowledgement of receipt if sent by e-mail. All such notices or other instruments will be transmitted with delivery or postage charges prepaid, addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other parties:

City: City of Creede
2223 North Main St.
P.O. Box 457
Creede, CO 81130
Attn: Town Manager

creedemanager@centurytel.net

EXHIBIT A: INTERGOVERNMENTAL AGREEMENT REGARDING
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With a copy to: City of Creede
2223 North Main St.
P.O. Box 457
Creede, CO 81130
Attn: Town Attorney

eric@heillaw.com

School District: Creede School District
[address]

With a copy to: [name and address]

DCWSD: Deep Creek Water and Sanitation District
2043 S. Washington Street
Denver, CO 80210

With a copy to: Widner, Michow & Cox LLP
13133 E. Arapahoe Road, Suite 100
Centennial, Colorado 80112

16. Recording. A copy of this Agreement shall be recorded in the real property records of Mineral County, Colorado.

EXHIBIT A: INTERGOVERNMENTAL AGREEMENT REGARDING
PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the date(s) set forth below.

CITY OF CREEDE, COLORADO, a
Colorado statutory municipality

By: _____
Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
City Clerk or Deputy City Clerk

By: _____
City Attorney

EXHIBIT A: INTERGOVERNMENTAL AGREEMENT REGARDING
PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL

CREEDE SCHOOL DISTRICT, a
political subdivision of the State of Colorado

By: _____

Name: _____

Title: Board President

Dated: _____, 2014

ATTEST:

Secretary or Assistant Secretary

EXHIBIT A: INTERGOVERNMENTAL AGREEMENT REGARDING
PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL

**DEEP CREEK WATER AND
SANITATION DISTRICT**, a quasi-
municipal corporation and political
subdivision of the State of Colorado

By: _____
John H. Parker, II, President

ATTEST:

Secretary or Assistant Secretary

**ORDINANCE NO 384
CITY OF CREEDE, COLORADO**

**AN ORDINANCE APPROVING A WATER SERVICE AGREEMENT
WITH THE CREEDE SCHOOL DISTRICT**

WHEREAS, the Creede School District has requested domestic water service for a new School building located outside the boundaries of the City of Creede and located within the Deep Creek Water and Sanitation District service boundaries; and

WHEREAS, the Deep Creek Water and Sanitation District, Creede School District and City of Creede have entered into an INTERGOVERNMENTAL AGREEMENT REGARDING PROVISION OF WATER SERVICE TO CREEDE SCHOOL DISTRICT K-12 SCHOOL dated October 21, 2014, as approved by the City of Creede by Ordinance No. 383; and

WHEREAS, the Creede Municipal Code Section 13-3-30 states that no service of utility systems outside the City shall be permitted except pursuant to the terms of a written agreement with the City approved by the Board of Trustees; and

WHEREAS, the Creede School District has requested domestic water service only, does not desire irrigation water service at this time and has indicated that the Creede School District intends to pursue a separate agreement with the City in the future for the provision of irrigation water service, and that this attached INTERGOVERNMENTAL WATER SERVICE AGREEMENT dated October 22, 2014 does not in fact include any agreement by the City to provide irrigation water service; and

WHEREAS, the Board of Trustees of the City of Creede finds that the attached INTERGOVERNMENTAL WATER SERVICE AGREEMENT with the Creede School District is in compliance with Chapter 13 Municipal Utilities of the Creede Municipal Code, provides essential water service to a valued and essential public facility that serves the Creede community, is determined to be fair and acceptable in its terms to the Board of Trustees, and shall support and advance the health, safety and general welfare of the Creede community.

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the City of Creede:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board of Trustees.

Section 2. Water Service Agreement Approved. The Water Service Agreement attached as **Exhibit A: Water Service Agreement** is hereby approved. The Mayor and Town Clerk are authorized to execute and attest the Water Service Agreement and to take such other actions as may be reasonably necessary to implement the actions in this Ordinance. The Mayor, Town Manager and Town Attorney may collectively review and correct typos, grammatical errors, cross-reference errors, and revisions which do not alter the substantive terms of the Water Service Agreement approved in this Ordinance.

Section 4. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Board of Trustees hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term "provision" means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term "application" means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City.

Section 5. Effective Date. This Ordinance shall take effect thirty days after the date of final passage.

Section 6. Safety Clause. The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City of Creede, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 7. Publication by Posting. The Town Clerk is ordered to publish this Ordinance by title only in the Mineral County Miner and by posting in the official designated places of posting notices along with a statement that a copy of the Ordinance in full is available for public inspection at the office of the Town Clerk during normal business hours.

INTRODUCED, APPROVED, PASSED ON FIRST AND FINAL READING.

By: _____
Eric Grossman, Mayor

Attest: _____
Randi Snead, Town Clerk

APPROVED AS TO FORM:

By: _____
Eric J. Heil, Town Attorney

EXHIBIT A: INTERGOVERNMENTAL WATER SERVICE AGREEMENT

INTERGOVERNMENTAL WATER SERVICE AGREEMENT

THIS INTERGOVERNMENTAL WATER SERVICE AGREEMENT (“Agreement”) is made and entered into on October 22, 2014, by and between the CITY OF CREEDE, a statutory town of the State of Colorado (“City”), and the CREEDE SCHOOL DISTRICT, of the State of Colorado (“School”) (individually referred to as a “Party” and collectively as “Parties”).

WHEREAS, the School has acquired Tract 2, Navajo Development School Parcel Division, Mineral County, Colorado, according to the plat recorded on August 8, 2013 at Reception No. 68294 (“Property”) and is constructing a new school facility to serve the community; and

WHEREAS, the Creede School District has requested water service from the City; and

WHEREAS, the Parties desire to enter into an agreement under which the City will provide the School with domestic, irrigation and fire protection water in accordance with the terms of this Agreement; and

WHEREAS, this IGA is authorized pursuant to §29-1-201 and §30-11-101, Colorado Revised Statutes, as amended, and Article XIV, Section 18, of the Colorado Constitution; and

WHEREAS, the Property is located within the Deep Creek Water and Sanitation District (“DCWSD”) and DCWSD has provided consent to the City to provide water service within its jurisdiction to the Property; and

WHEREAS, the Parties have entered into this Agreement in order to ensure that the City continues to supply domestic, irrigation, (as limited herein) and fire protection water and to ensure that the City and School participate equitably in the future needs to increase, expand, replace, and/or other Capital Improvement Projects involving supplying the School with their water needs; and

WHEREAS, the Parties have determined that this Agreement serves a public use and promotes the health, safety and general welfare of both the City and the School.

NOW, THEREFORE, in consideration of the mutual advantages accruing to the parties, the performance of promises contained herein and other good and valuable consideration, the Parties agree as follows:

ARTICLE I DEFINITIONS

1.1. Definitions. The following definitions shall apply throughout this Agreement.

- (a) “**Domestic Water**” means indoor water use with a return flow to the Creede wastewater system (thru the Deep Creek District).

EXHIBIT A: INTERGOVERNMENTAL WATER SERVICE AGREEMENT

- (b) **“Equivalent Residential Unit”** or **“EQR”** means for purposes of this Agreement, EQR as defined in the Municipal Utility Regulations, as the same may be amended from time to time.
- (c) **“Inspector”** shall mean the Administrator, Superintendent, Engineer, agent, officers, and employees of the City or other person so designated by the Administrator to perform inspections pursuant to these Ordinance provisions.
- (d) **“Irrigation Water”** shall mean outdoor water use that does not return to the Creede wastewater system.
- (e) **“Municipal Utility Regulations”** means the Municipal Utility regulations adopted in Chapter 13 of the Creede Municipal Code, as the same may be amended from time to time.
- (f) **“Property”** means Tract 2, Navajo Development School Parcel Division, Mineral County, Colorado as described in the first recital above and also described as a tract of land located in the SE ¼ of Section 1, Township 41 North, Range 1 West, N.M.P.M., Mineral County, Colorado, being more particularly described by metes and bounds as follows: Beginning at the SE corner of the tract herein described, whence the SE corner of said Section 1, a 1940 G.L.O. brass cap, bears S01°05’44”W a distance of 854.78 feet; thence S79°41’03”W a distance of 934.00 feet to the SW corner of the tract herein described; thence N01°05’44” E, along a line parallel with the East line of the said SE ¼ of said Section 1, a distance of 714.12 feet to the NW corner of the tract herein described; thence N79°41’03”E a distance of 934.00 feet to the NE corner of the tract herein described; thence S01°05’44”W, along the East line of the said SE¼ of Section1, a distance of 714.12 feet to the place of beginning, containing 15.31 acres more or less.

ARTICLE II TERM

2.1. Term. This Agreement shall remain in full force and effect in perpetuity unless and until terminated by either Party, as provided herein. Notwithstanding anything herein to the contrary, the School’s obligations under this Agreement are subject to and contingent upon funds for that purpose being budgeted, appropriated and otherwise made available by the School. If the School is at any time unable or unwilling to appropriate the funds required to satisfy its obligations under this Agreement, for whatever reason, this Agreement shall terminate as of the end of the then current fiscal year without further action of any party. The School will notify the City prior to the end of the then-current fiscal year in the event of such non-appropriation. Either party may terminate this Agreement if there is a material breach of this Agreement that is not cured in accordance with the provisions of Section 6.10. Notwithstanding the above, the City may terminate this Agreement if:

- (a) the School is at any time dissolved or fails to maintain its legal status as a school district under the laws of the State; or,

EXHIBIT A: INTERGOVERNMENTAL WATER SERVICE AGREEMENT

- (b) the Property is conveyed, in whole or part, to any other party, without the prior consent of the City to assignment of this Agreement; or,
- (c) the School ceases to operate a public school on the Property for a period of more than one year.

2.2. Purposes and Interpretation. The purposes of this Agreement is to provide water service to the Property in accordance with the terms of this Agreement and the Municipal Utility Regulations related to water service. The express terms of this Agreement shall control. Where specific terms concerning water service are not stated, the Municipal Utility Regulations shall apply.

ARTICLE III WATER SERVICE

- 3.1. Water Service.** Upon full and timely satisfaction of all requirements of this Agreement by the School, the City will provide domestic and fire protection water service to the Property. Nothing in this paragraph shall prohibit the City from adopting regulations not inconsistent herewith, dealing with any aspect of water delivery and water service, as more fully described elsewhere in this Agreement. The School agrees to conform to the provisions of the City Utility Ordinance No. 334.
- 3.2. Irrigation Water.** The School has not paid any System Development or Water Resource Fees for Irrigation Water service and has not conveyed water rights or paid any cash-in-lieu of conveying water rights for Irrigation Water. The City is not providing any Irrigation Water through this Agreement. School agrees that any provision of Irrigation Water shall be through a separate agreement with the City. Any usage of water for Irrigation Water by the School shall be a default and violation of this Agreement.
- 3.3. City Operations.** The City will operate their Water Supply Facilities and distribution lines in conformity with applicable Federal, State and local laws, rules and regulations. Within such requirements, the City shall retain full discretion to determine the method and manner of its operations. The City may not interrupt Domestic Water Service to the School unless ordered to do so by the Colorado Department of Public Health and Environment or unless required under applicable Federal or State regulations. Notwithstanding the foregoing, the City may temporarily interrupt water service due to system breaks, repairs, maintenance, and emergency circumstances.
- 3.4. Applicable Law.** In the event of any conflict between the City's regulations pertaining to the operation and maintenance of their Water Supply Facilities and/or distribution lines and applicable Federal and State laws, rules or regulations, the more stringent laws, rules or regulations shall apply.
- 3.5. Testing.** The City may perform water quality and/or quantity tests on any of the supply lines at any time.
- 3.6. No Unauthorized Users.** The School will prevent any and all unauthorized users and unlawful connections at all times during the term of this Agreement.

EXHIBIT A: INTERGOVERNMENTAL WATER SERVICE AGREEMENT

ARTICLE IV WATER SYSTEM IMPROVEMENTS

- 4.1. Extension of Water Main.** The School, at School expense, shall construct and install a water main and meters in the dedicated county right-of-way from the Property, along Corsair Drive, and to the point of connection with the City’s water main. The School will also obtain a thirty (30) foot utility easement from Mineral County for this water main and water meters. The School shall convey the completed water main, water meters, and utility easement to the City before water service is begun in accordance with plans attached hereto as Exhibit [X] and made part of this Agreement (“**Water System Improvements**”).
- 4.2. Inspection Fees.** Fees for inspections (including inspections of corrective work during the warranty period) shall be paid by the School within sixty (60) days after delivery of written invoice for such fees to cover the cost of inspections by the City. The fees, if any, will be based on direct (out-of-pocket) costs of the City.
- 4.3. Warranty.** The Water System Improvements shall be warranted to be free from defects in workmanship or quality for a period of two (2) years after acceptance of all the work by the City. In the event of any such defect, the City may require School to correct the defect in material or workmanship. In the event any corrective work is performed during the two (2) year warranty period then the warranty on such corrected work shall be extended for two (2) years from the date on which the corrected work is completed. If the School fails or refuses to correct defects in the Water System Improvements during the warranty period, the City may perform such corrections and may bill the School in accordance with the procedures, authority and policy in the Municipal Utility Regulations, including but not limited to the ability to attach a lien on the Property.
- 4.4. Improvement Ownership and Responsibility.** Improvements other than the Water System Improvements that are constructed by the School for delivery of water to the Property, including, but not limited to, fire hydrants, pressure reducing valve, and on-site water lines to the point or points of connection with the Water System Improvements and the City’s main water lines, shall be the sole property and responsibility of the School and the City shall have no responsibility therefore of any kind or character after construction. On-site pipelines and ancillary water facilities downstream of the meters shall be considered as School owned and maintained service lines. Design shall be approved by the City Engineer prior to construction, and construction must be inspected and acceptable to the City. The City water line and meters, including the Water System Improvements, shall remain under the City’s exclusive ownership, care and control of the City, subject to the School’s obligations under Section 4.3.
- 4.5. Non-Liability of Town; Indemnification.** The City shall not, nor shall any officer, agent, or employee thereof, be liable or responsible for any accident, loss or damage related to the construction and installation of the Water System Improvements or other improvements specified in this Agreement, nor shall the City, nor any officer, agent or employee thereof, be liable for any persons or property injured by reason

EXHIBIT A: INTERGOVERNMENTAL WATER SERVICE AGREEMENT

of the nature of constructing and installing the Water System Improvements. To the extent permitted by law, School hereby agrees to indemnify and hold harmless the City, and any of its officers, agents and employees against any losses, claims, damages or liabilities to which the City or any of its officers, agents or employees may become subject, because of any losses, claims, damages or liabilities (or actions in respect thereof) that arise out of, or are based upon, any acts or omissions in the performance of the obligations of School, as hereinbefore stated.

ARTICLE V FEES

- 5.1. Fees.** Based upon the projected water usage as represented by the School and as consideration for the provision of domestic, irrigation and fire protection water supply agreement, the fees set forth in this Article V shall apply to School. The School agrees that the billing and collection procedures, authority and policy set forth in the Municipal Utility Regulations, including but not limited to the ability to attach a lien on the Property, shall apply to the all fees and any other amounts due in accordance with this Agreement or the Municipal Utility Regulations.
- 5.2. Connection Fees.** The School shall pay all connection fees prior to connecting to the City's water distribution and/or the wastewater collection system of Deep Creek Water and Sanitation District in the Municipal Utility Regulations and the Intergovernmental Agreement with the Deep Creek Water and Sanitation District. The Connection Fees shall include the following:
- (a) **Wastewater System Development Fee.** The School shall pay a one-time Sewer System Development Fee of \$2,750.00 per EQR (5.88) for the proposed project.
 - (b) **Domestic Water Tap Fee.** The School shall pay a one-time tap inspection fee of \$250.00.
 - (c) **Domestic Water System Development Fee.** The School shall pay a one-time Domestic Water System Development Fee of \$2,750.00 per EQR (5.88).
 - (d) **Domestic Water Resource Fee.** The School shall pay a one-time Domestic Water Resource Fee of \$3,150.00 per EQR (5.88).
 - (e) **Fire Protection Water Tap Fee.** The School shall pay a one-time tap inspection fee of \$250.00
 - (f) **Irrigation Water Tap Fee.** The School shall pay a one-time tap inspection fee of \$250.00.
 - (g) **Water Meter Assemblies.** The School shall pay for and construct a meter station containing separate water meters and pressure reducing valves for the Domestic, Irrigation and Fire Protection lines in accordance with plans and specifications approved by the City Engineer.

EXHIBIT A: INTERGOVERNMENTAL WATER SERVICE AGREEMENT

5.3. User Fees.

- (a) **Domestic Water Use.** The School shall be billed monthly at the City's out-of-town metered rate of 1.5 times the rate for users within the City, as set forth in the Municipal Utility Regulations, unless and until the Property is annexed into the City, and then the School shall be billed at the same rate as users within the City. The rates may be amended from time to time by the City, provided that the Domestic Water Use rate for the School shall not exceed 1.5 times the rate for users within the City.
- (b) **Fire Protection Water Use.** There is currently no use fee associated with Fire Protection Water Use.

ARTICLE VI

- 6.1. **No Assignment.** This Agreement may not be assigned by the School without the prior written consent of the City, which consent shall not be unreasonably withheld.
- 6.2. **Relationship of Parties.** This Agreement does not and shall not be construed as creating a relationship of joint venturers, partners or employer-employee between the Parties.
- 6.3. **Modification.** This Agreement may be modified, amended, changed or terminated, except as otherwise provided herein, in whole or in part, only by an Agreement in writing duly authorized and executed by both Parties.
- 6.4. **Waiver.** The waiver of a breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver or a waiver of any subsequent breach by the other Party of the same or another provision of this Agreement.
- 6.5. **Integration.** This Agreement contains the entire Agreement between the Parties and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Agreement shall be valid or binding.
- 6.6. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provision of this Agreement will not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable.
- 6.7. **Governing Law and Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, and the Parties agree that the venue and jurisdiction over any claim arising from this Agreement shall lie in the District Court of Mineral County.
- 6.8. **Headings for Convenience Only.** The headings and captions contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any of the provisions of this Agreement.

EXHIBIT A: INTERGOVERNMENTAL WATER SERVICE AGREEMENT

- 6.9. Government Authority.** The Parties shall comply with any and all valid Federal, State or local laws or regulations covering the subject of this Agreement and any and all valid orders, regulations or licenses issued pursuant to any Federal, State or local law or regulation governing the subject of this Agreement.
- 6.10. Default and Remedies.** If either Party believes the other is in default hereunder, a written notice specifying the default shall be sent from the non-defaulting Party to the defaulting Party and the defaulting Party shall have thirty (30) days from the date the notice is mailed to respond to the default and ninety (90) days to cure the default, unless the Parties agree in writing to a different cure period under the circumstances then existing. The non-defaulting Party shall be entitled to all remedies permitted at law or in equity.
- 6.11. Costs and Attorney's Fees.** In the event of litigation arising out of this Agreement or an alleged default hereunder, in addition to any other remedies, each Party shall be responsible for its own attorney fees.
- 6.12. Non-Liability of City for Indirect or Consequential Damages or Lost Profits.** The Parties agree that the City shall not be liable for indirect or consequential damages, including lost profits, which result or arise from the City's declaration that School is in default of the Agreement, so long as the City acts in good faith.
- 6.13. Force Majeure.** Performance of this Agreement shall be delayed or excused to the extent that Acts of God, labor or material shortages, strikes, wars, insurrections or other circumstances beyond the control of the parties, including but not limited to adverse public finance market conditions or the inability of the Parties to secure State or other available grant monies, either delay or prevent performance hereof.
- 6.14. Notice.** Notices under this Agreement shall be by certified, return receipt requested mail and shall be effective and deemed received two (2) business days after deposit in the U.S. Mails. Notices shall be as follows:
- If to the City: City of Creede
 Attn: City Manager
 P.O. Box 457
 Creede, Colorado 8
- If to the School: Creede School District
 Attn: Buck Stroh
 PO Box 429
 Creede, Colorado 81130
- 6.15. Governmental Immunity.** Nothing in this Agreement shall be deemed to waive or otherwise limit any and all defenses available to the Parties pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.
- 6.16. No Third Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relation with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of

EXHIBIT A: INTERGOVERNMENTAL WATER SERVICE AGREEMENT

the School. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

6.17. Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which will constitute an original agreement, but all of which together will constitute a single agreement. A facsimile transmitted copy of this Agreement executed by one of the Parties hereto will be accepted as a copy of this Agreement originally executed by such Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written, with an effective date of _____, 2014.

CITY OF CREEDE, COLORADO,
a Municipal Corporation of the State of Colorado

By: _____
Mayor, Eric Grossman

Attest: _____
Randi Snead, City Clerk

CREEDE SCHOOL DISTRICT

By: _____
Buck Stroh, Superintendent

Attest: _____
_____, Secretary

MARIJUANA RESEARCH

CREEDE'S CURRENT REGULATIONS

Prior to the legalization of retail marijuana, the City of Creede adopted several temporary moratoriums and finally one permanent (unless changed by ordinance and/or legislation) moratorium during October of 2010 on allowing medical marijuana related facilities with Ordinance 361. Please note that regulation of medical marijuana is currently completely separate from retail marijuana regulation.

Once Amendment 64 was approved, Colorado municipalities had to either prohibit or regulate retail marijuana. We opted to prohibit operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores within city limits on May 7, 2013 with Ordinance 375.

DISTANCE REGULATIONS

As our attorney pointed out several months ago, federal regulations prohibit any MJ facilities within 1000 feet of a school, youth center, swimming pool, playground or other medical or retail marijuana stores. I've attached a satellite map and a zoning map imposed with approximate 1000 foot distances in red from the current school playground and the current school preschool, both of which may remain in town. This distance is measured as the crow flies rather than the shortest possible pedestrian route as applicable to liquor license distances.

Here is a possible complication: the 1000 foot restriction could arguably apply to the skate park and/or the baseball field. The federal regulations define "playgrounds" as:

-Any out-door facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swing-sets, and teeterboards

and

-The term "youth center" means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), in-tended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

This would further limit available space for marijuana operations; I've outlined this possible area of restriction in blue on the maps. Several municipalities allowing retail marijuana have put additional distance restrictions in place, for example, stores must be at least 200 feet from a residence. Municipalities do not have the ability to reduce this restriction as with liquor license distances.

RETAIL MJ TAX STRUCTURE

Unlike medical marijuana sales, which are subject to standard state sales tax of 2.9%, retail marijuana is subject to total taxes of 27.9%, including a 10% state sales tax, the standard 2.9% state sales tax, and a 15% excise tax. Unlike all our other business activities, local taxes are not added to that number, but included in the 10%. One local entity receives 15% of the 10% state sales tax, typically the municipality in which the retail marijuana store is located. Counties only receive tax revenue if the store is in an unincorporated area of their county. Extensive information on this tax structure is available at the [Department of Revenue's Taxation Division](#).

Additional local sales or excise taxes may be imposed, but are not collected, administered, or enforced by the Department of Revenue as with our other taxes. Such additional taxes would require voter approval and the creation of a tax collection process.

LOCAL LICENSING, AUTHORITY, AND FEES

Should some form of retail marijuana facility be allowed in city limits, a marijuana local licensing authority would need to be established. As the town board serves as the liquor LLA without any problems, they would be the most likely candidate for marijuana LLA.

State licensing fees set forth in the July 7, 2014 Fee Schedule are as follows:

LICENSE TYPE	RETAIL STORE	CULTIVATION FAC.	PRODUCTS MANUF.	TESTING FACILITY
APPLICATION FEE	\$5,000 (1/2 to local juris.)	\$5,000 (1/2 to local juris.)	\$5,000 (1/2 to local juris.)	\$1,000 (1/2 to local juris.)
INITIAL LIC. FEE	\$3,000	\$2,200	\$2,200	\$2,200
RENEWAL FEE	\$3,300	\$2,500	\$2,500	\$2,500

Municipalities may set their own fees for retail marijuana. A wide range of fees exist. For a retail store, here are some sample fees from other communities:

MUNICIPALITY	LICENSE FEE	RENEWAL
Eagle	\$3,000.00	\$500.00
Steamboat Springs	\$9,650.00	\$9,650.00
Lafayette	\$8,000.00	\$3,000.00
Fort Collins	\$3,000.00	\$500.00
Fraser	\$2,500.00	\$500.00
Durango	\$5,000.00	\$3,000.00
Nederland	\$575.00	\$575.00

WHICH TOWNS HAVE APPROVED RETAIL MARIJUANA?

- Alma
- Aspen
- Aurora
- Black Hawk
- Boulder
- Breckenridge
- Carbondale
- Central City
- Crested Butte
- Denver
- Dumont
- Durango
- Eagle
- Edgewater
- Empire
- Fort Collins
- Frisco
- Garden City
- Georgetown
- Glendale
- Glenwood Springs

This document is for informational purposes only and is not intended for use or substitution as legal advice. Contributions are welcome and can be submitted to the Creede Town Clerk at clerk@creedetownhall.com.

- Greeley
- Idaho Springs
- Pueblo
- Lafayette
- Larimer County
- Leadville
- Louisville
- Moffat
- Nederland
- Northglenn
- Oak Creek
- Red Cliff
- Ridgway
- Salida
- Silt
- Silverthorne
- Silverton
- Steamboat Springs
- Telluride
- Wheat Ridge

Please see [CML's Retail Marijuana Page](#) for more detailed information on municipal actions.

WHICH COUNTIES HAVE APPROVED RETAIL MARIJUANA?

- Archuleta
- Boulder
- Clear Creek
- Costilla
- Denver
- Eagle
- Grand
- Huerfano
- La Plata
- Park
- Pitkin
- Pueblo
- Saguache
- San Juan
- San Miguel
- Summit

ZONING

One thing that I didn't expect was a repeated warning from clerks who have permitted RMJ/MMJ to pay careful attention to zoning concerns as resident complaints centered on the change of the nature of a neighborhood. There have been issues with storefronts & traffic with retail, but more than that, issues with cultivation concentrations in towns. Allowing retail marijuana stores may require some work with the land use code and/or heavy restrictions on signage, zoning, etc., and is, again, strongly recommended by those that jumped in right away. Allowing cultivation and/or packaging/testing facilities may require additional zoning and/or building code regulations.

MINERAL COUNTY VOTING RECORDS

Mineral County voted narrowly in favor of Colorado Amendment 64 legalizing the sale of marijuana for recreational use with 338 voters or 52.5% voting yes and 305 voters or 47.4% voting no. Mineral County voters supported Proposition AA imposing a 15% excise tax on recreational marijuana sales with 414 voters or 70.5% voting yes and 173 voters or 29.4% voting no.

To date no ballot issues related to local marijuana regulation have been submitted to the Mineral County or the City of Creede electorate.

HELPFUL LINKS:

An enormous amount of information exists in regards to health concerns and marijuana. Please do your own research to determine your stance on whether allowing retail marijuana establishments represents a public health risk or benefit.

Similarly, arguments for and against broad legalization are innumerable, and again, please do your own research to determine your stance on it. Here are some links to various news stories and opinions that are specific to LOCAL legalization.

An [extremely comprehensive packet](#) prepared for the consideration of retail recreational marijuana in Avon...in the 4.22.14 Packet, pages 88-200. Be patient, the document takes several minutes to load.

Great FAQ and other info from Nederland (small town, one of the first to approve recreational)
<http://nederlandco.org/government/town-hall/other-permits-licenses/>

[CML's Retail Marijuana Information Page](#)

[Quinnipiac University Polls](#) - A wide array of polling questions related to marijuana legalization in Colorado.

[How Colorado Towns Have Diverged on Marijuana Legalization](#)

ATTACHED:

Zoning Map & Satellite Map showing 1000-foot distance areas.

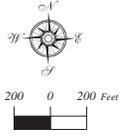
Federal Distance Regulations

Heil email re: retail marijuana

Public submissions



The City of Creede,
Colorado
Zoning Map



Mineral County, Colorado

Legend

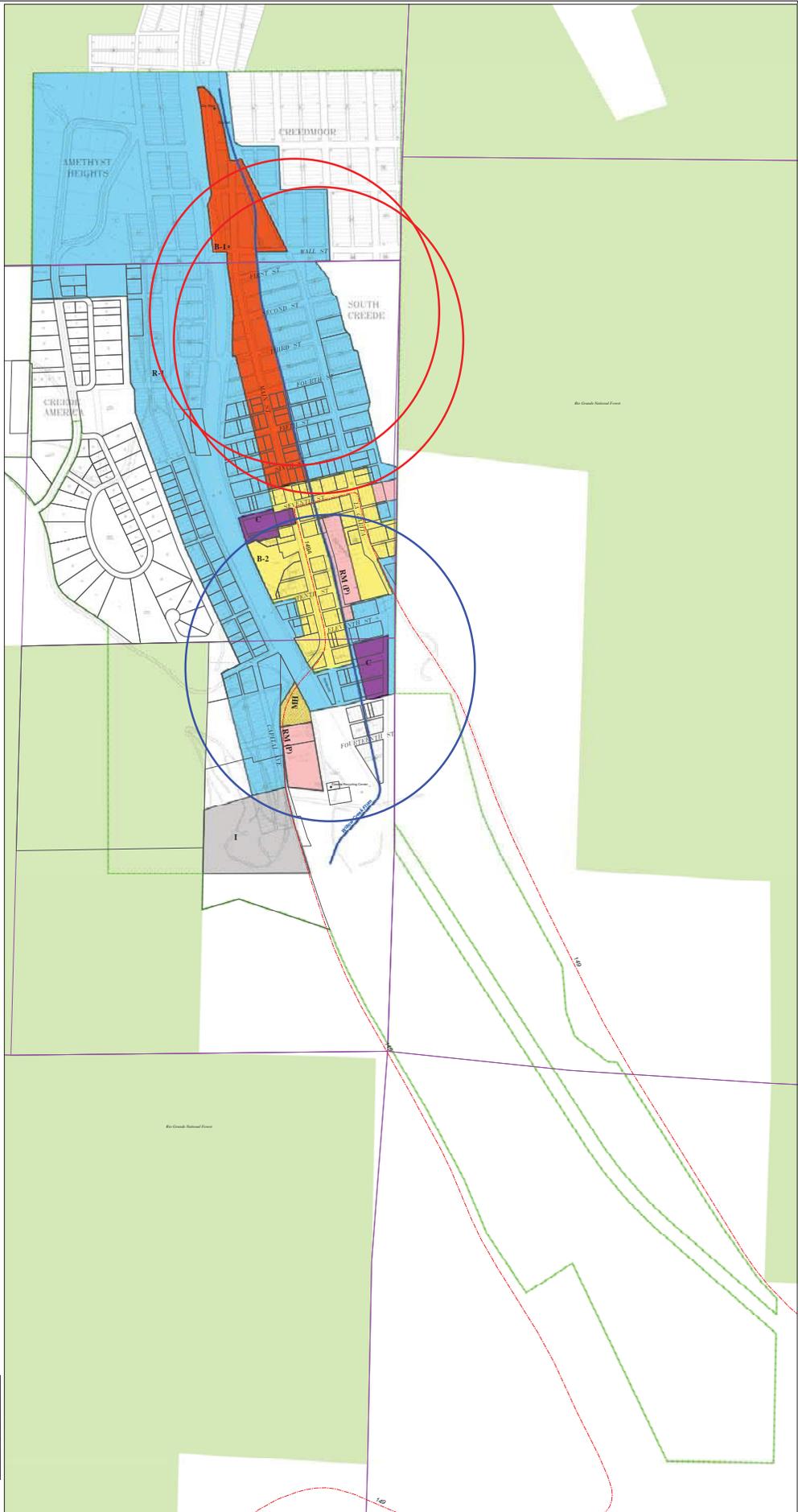
- CITY OF CREEDE ZONING**
- R-1 - Residential
 - RM (P) - Residential Medium Density
 - MH
 - B-1 - Business 1
 - B-2 - Business 2
 - C - Commercial
 - I - Industrial
- CREEDE CITY LIMITS**
- CREEDE CITY LIMITS
- PARCELS**
- PARCELS
- ABANDONED RAILROAD**
- ABANDONED RAILROAD
- WILLOW CREEK FLUME**
- WILLOW CREEK FLUME



City of Creede



DISCLAIMER:
This map is for illustrative purposes only, and is not intended to constitute a legal document. THE CITY OF CREEDE, COLORADO, AND THE ENGINEERING FIRM SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE ENGINEER HAS CONDUCTED VISUAL VERIFICATION OF THE INFORMATION PROVIDED AND HAS NOT CONDUCTED A FIELD SURVEY. THE ENGINEER HAS BEEN ADVISED BY THE CITY OF CREEDE THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT. THE CITY OF CREEDE AND THE ENGINEERING FIRM SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE CITY OF CREEDE AND THE ENGINEERING FIRM SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE CITY OF CREEDE AND THE ENGINEERING FIRM SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS.



Pub. L. 99-570, §1004(a), substituted “term of supervised release” for “special parole term”.

1984—Subsecs. (a), (b). Pub. L. 98-473, §503(b)(3), substituted “Except as provided in section 845a of this title, any” for “Any”.

Pub. L. 98-473, §224(b), which directed amendment of this section effective Nov. 1, 1987 (see section 235(a)(1) of Pub. L. 98-473 set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure) was repealed by Pub. L. 99-570, §1005(b)(1).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1004(a) of Pub. L. 99-570 effective on date of taking effect of section 3583 of Title 18, Crimes and Criminal Procedure (Nov. 1, 1987), see section 1004(b) of Pub. L. 99-570 set out as a note under section 841 of this title.

§ 860. Distribution or manufacturing in or near schools and colleges

(a) Penalty

Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b) of this section) subject to (1) twice the maximum punishment authorized by section 841(b) of this title; and (2) at least twice any term of supervised release authorized by section 841(b) of this title for a first offense. A fine up to twice that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marijuana.

(b) Second offenders

Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, after a prior conviction under subsection (a) of this section has become final is punishable (1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section 841(b) of this title for a first offense, and (2) at least three times any term of supervised release authorized by section 841(b) of this title for a first offense. A fine up to three

times that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than three years. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

(c) Employing children to distribute drugs near schools or playgrounds

Notwithstanding any other law, any person at least 21 years of age who knowingly and intentionally—

(1) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to violate this section; or

(2) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this section by any Federal, State, or local law enforcement official,

is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 841 of this title.

(d) Suspension of sentence; probation; parole

In the case of any mandatory minimum sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section.

(e) Definitions

For the purposes of this section—

(1) The term “playground” means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swings, and teeterboards.

(2) The term “youth center” means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

(3) The term “video arcade facility” means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.

(4) The term “swimming pool” includes any parking lot appurtenant thereto.

(Pub. L. 91-513, title II, §419, formerly §405A, as added Pub. L. 98-473, title II, §503(a), Oct. 12, 1984, 98 Stat. 2069; amended Pub. L. 99-570, title I, §§1004(a), 1104, 1105(c), 1841(b), 1866(b), (c), Oct. 27, 1986, 100 Stat. 3207-6, 3207-11, 3207-52, 3207-55; Pub. L. 99-646, §28, Nov. 10, 1986, 100 Stat. 3598; Pub. L. 100-690, title VI, §§6452(b)(1), 6457, 6458, Nov. 18, 1988, 102 Stat. 4371, 4373; renumbered

§ 419 and amended Pub. L. 101-647, title X, §§ 1002(b), 1003(b), title XII, § 1214, title XV, § 1502, title XXXV, § 3599L, Nov. 29, 1990, 104 Stat. 4827, 4829, 4833, 4836, 4932; Pub. L. 103-322, title XIV, § 140006, title XXXII, § 320107, title XXXIII, § 330009(a), Sept. 13, 1994, 108 Stat. 2032, 2111, 2143.)

CODIFICATION

Section was classified to section 845a of this title prior to renumbering by Pub. L. 101-647.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322, § 320107, substituted “playground, or housing facility owned by a public housing authority, or within” for “playground, or within”.

Subsec. (b). Pub. L. 103-322, §§ 320107, 330009(a), substituted “playground, or housing facility owned by a public housing authority, or within” for “playground, or within” and inserted a period at end of penultimate sentence.

Subsecs. (c) to (e). Pub. L. 103-322, § 140006, added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1990—Subsec. (a). Pub. L. 101-647, § 1502(1), inserted “or a playground,” after “university,” and struck out “playground,” after “within 100 feet of a”.

Pub. L. 101-647, § 1214(1)(C), substituted “a person shall be sentenced under this subsection to a term of imprisonment of not less than one year” for “a term of imprisonment under this subsection shall be not less than one year”.

Pub. L. 101-647, § 1214(1)(B), inserted “A fine up to twice that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection.”

Pub. L. 101-647, § 1214(1)(A), which directed the amendment of par. (1) by striking out “, or a fine, or both,” could not be executed because those words did not appear. See note below.

Pub. L. 101-647, § 1003(b)(1), which directed the substitution of “subject to (1) twice the maximum punishment authorized by section 841(b) of this title” for “punishable (1) by a term of imprisonment, or a fine, or both, up to twice that authorized by section 841(b) of this title”, was executed by making the substitution for “punishable (1) by a term of imprisonment, or fine, or both, up to twice that authorized by section 841(b) of this title” to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 101-647, § 3599L, substituted “has become final” for “have become final”.

Pub. L. 101-647, § 1502(2), inserted “or a playground,” after “university,” and struck out “playground,” after “within 100 feet of a”.

Pub. L. 101-647, § 1214(2)(B), inserted after first sentence “A fine up to three times that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than three years”.

Subsec. (b)(1)(B). Pub. L. 101-647, § 1214(2)(A), which directed the amendment of subpar. (B) by striking “, or a fine up to three times that” through “or both”, could not be executed because the language did not appear after execution of the intervening amendment by Pub. L. 101-647, § 1003(b)(2). See below.

Pub. L. 101-647, § 1003(b)(2), substituted “three times the maximum punishment authorized by section 841(b) of this title for a first offense” for “a term of imprisonment of up to three times that authorized by section 841(b) of this title for a first offense, or a fine up to three times that authorized by section 841(b) of this title for a first offense, or both”.

Subsec. (c). Pub. L. 101-647, § 1214(3), inserted “mandatory minimum” after “In the case of any”, struck out

“subsection (b) of” after “imposed under”, and substituted “An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section” for “An individual convicted under subsection (b) of this section shall not be eligible for parole under chapter 311 of title 18 until the individual has served the minimum sentence required by such subsection”.

1988—Subsec. (a). Pub. L. 100-690, §§ 6457, 6458(a), inserted “, possessing with intent to distribute,” after “distributing” and “, or within 100 feet of a playground, public or private youth center, public swimming pool, or video arcade facility,” after “university”.

Subsec. (b). Pub. L. 100-690, §§ 6452(b)(1), 6457, 6458(a), inserted “, possessing with intent to distribute,” after “distributing”, and “, or within 100 feet of a playground, public or private youth center, public swimming pool, or video arcade facility,” after “university”, substituted “a prior conviction” for “a prior conviction or convictions”, and inserted at end “Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.”

Subsec. (d). Pub. L. 100-690, § 6458(b), added subsec. (d).

1986—Subsec. (a). Pub. L. 99-570, §§ 1104(a), (b), 1105(c), 1841(b)(1), inserted “or section 856 of this title” and “or manufacturing”, substituted “a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university” for “a public or private elementary or secondary school”, struck out “involving the same controlled substance and schedule” after “for a first offense”, and inserted “Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.”

Pub. L. 99-570, § 1004(a), substituted “term of supervised release” for “special parole term”.

Subsec. (b). Pub. L. 99-646 which directed that “parole” be inserted after “(2) at least three times any special” could not be executed in view of prior amendment by Pub. L. 99-570, § 1104(c) below.

Pub. L. 99-570, § 1166(b), which directed that “term of supervised release” be substituted for “special term” could not be executed in view of prior amendment by Pub. L. 99-570, § 1104(c) below.

Pub. L. 99-570, §§ 1104(a), 1841(b)(2), inserted reference to section 856 of this title, inserted “or manufacturing” after “distributing” and substituted “a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university” for “a public or private elementary or secondary school”.

Pub. L. 99-570, § 1104(c), amended cls. (1) and (2) generally. Prior to amendment, cls. (1) and (2) read as follows: “(1) by a term of imprisonment of not less than three years and not more than life imprisonment and (2) at least three times any special term authorized by section 841(b) of this title for a second or subsequent offense involving the same controlled substance and schedule.”

Subsec. (c). Pub. L. 99-570, § 1866(c), substituted reference to chapter 311 of title 18 for reference to section 4202 of that title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1004(a) of Pub. L. 99-570 effective on date of taking effect of section 3583 of Title 18, Crimes and Criminal Procedure (Nov. 1, 1987), see section 1004(b) of Pub. L. 99-570 set out as a note under section 841 of this title.

§ 860a. Consecutive sentence for manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine on premises where children are present or reside

Whoever violates section 841(a)(1) of this title by manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine or its salts, isomers or salts of isomers on premises in which an individual who is under the age of 18 years is present or resides, shall, in addition to any other sentence imposed, be imprisoned for a period of any term of years but not more than 20 years, subject to a fine, or both.

(Pub. L. 91-513, title II, §419a, as added Pub. L. 109-177, title VII, §734(a), Mar. 9, 2006, 120 Stat. 270.)

§ 861. Employment or use of persons under 18 years of age in drug operations

(a) Unlawful acts

It shall be unlawful for any person at least eighteen years of age to knowingly and intentionally—

(1) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to violate any provision of this subchapter or subchapter II of this chapter;

(2) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to assist in avoiding detection or apprehension for any offense of this subchapter or subchapter II of this chapter by any Federal, State, or local law enforcement official; or

(3) receive a controlled substance from a person under 18 years of age, other than an immediate family member, in violation of this subchapter or subchapter II of this chapter.

(b) Penalty for first offense

Any person who violates subsection (a) of this section is subject to twice the maximum punishment otherwise authorized and at least twice any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

(c) Penalty for subsequent offenses

Any person who violates subsection (a) of this section after a prior conviction under subsection (a) of this section has become final, is subject to three times the maximum punishment otherwise authorized and at least three times any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

(d) Penalty for providing or distributing controlled substance to underage person

Any person who violates subsection (a)(1) or (2) of this section¹

(1) by knowingly providing or distributing a controlled substance or a controlled substance analogue to any person under eighteen years of age; or

(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than \$50,000, or both, in addition to any other punishment authorized by this section.

(e) Suspension of sentence; probation; parole

In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of title 18² until the individual has served the mandatory term of imprisonment as enhanced by this section.

(f) Distribution of controlled substance to pregnant individual

Except as authorized by this subchapter, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this subchapter. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e) of this section.

(Pub. L. 91-513, title II, §420, formerly §405B, as added Pub. L. 99-570, title I, §1102, Oct. 27, 1986, 100 Stat. 3207-10; amended Pub. L. 100-690, title VI, §§6452(b)(1), 6459, 6470(d), Nov. 18, 1988, 102 Stat. 4371, 4373, 4378; renumbered §420 and amended Pub. L. 101-647, title X, §§1002(c), 1003(c), title XXXV, §3599L, Nov. 29, 1990, 104 Stat. 4827, 4829, 4932.)

REFERENCES IN TEXT

Section 4202 of title 18, referred to in subsec. (e), which, as originally enacted in Title 18, Crimes and Criminal Procedure, related to eligibility of prisoners for parole, was repealed and a new section 4202 enacted as part of the repeal and enactment of a new chapter 311 (§4201 et seq.) of Title 18, by Pub. L. 94-233, §2, Mar. 15, 1976, 90 Stat. 219. For provisions relating to the eligibility of prisoners for parole, see section 4205 of Title 18. Pub. L. 98-473, title II, §§218(a)(5), 235(a)(1), (b)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, 2032, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), chapter 311 of Title 18 is repealed, subject to remaining effective for five years after Nov. 1, 1987, in certain circumstances. See Effective Date note set out under section 3551 of Title 18.

CODIFICATION

Section was classified to section 845b of this title prior to renumbering by Pub. L. 101-647.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-647, §1003(c)(1), which directed the substitution of “is subject to twice the maximum punishment otherwise authorized” for “is punishable by a term of imprisonment up to twice that authorized, or up to twice the fine authorized, or both,” was executed by making the substitution for “is pun-

¹ So in original. Probably should be followed by a dash.

² See References in Text note below.

From: [Clyde Dooley](#)
To: [REDACTED]
Subject: FW: Recreational Marijuana
Date: Monday, June 23, 2014 9:47:10 AM
Attachments: [21 USC 860 HL.pdf](#)
[Certification .htm](#)

From: Eric Heil [REDACTED]
Sent: Friday, April 25, 2014 8:28 AM
To: Eric Grossman
Cc: Elizabeth Zurn; Creede Manager
Subject: Re: Recreational Marijuana

Eric, if the current school closes and the playground is also closed then the Federal distance requirement does not apply to this property. I've attached the Federal regulations with the relevant sections highlighted. Note that "Playground" is defined as containing 3 pieces of playground equipment. I think a preparing a rough map is your best first step to get an idea of where retail marijuana establishments may be possible. Recreational marijuana is a complicated and extensive subject as well as divisive. There are some good examples of regulations in Colorado. In Avon's review we felt at the staff level that it was much better to have a high license application fee (like \$10k to \$15k) and a high annual license renewal fee to restrict proposed shops to the more capable and sophisticated businesses rather than give licenses to anyone who wanted to give a go. Eagle County has taken the open approach and they have a planner position who is spending half his time dealing with all aspects of business licensing for marijuana establishments.

Several communities in Colorado have referred the question of allowing marijuana establishments to the voters. The deadline to refer a ballot question is Friday, September 5. The deadline to send a notification to Mineral County about intent to participate in a general election is Friday, July 25.

If desired, I can provide a comprehensive presentation and facilitate a community meeting which would include an overview of Amendment 64, examples of regulations in Colorado communities that are permitting marijuana establishments, administrative practicalities, and a list of important policy considerations and choices.

I offer the following thoughts and direct advice:

- Permitting Marijuana Establishments will affect the character of Creede. Whether good or bad is a matter of opinion.
- Permitting Marijuana Establishments for revenue is bad idea, it should be done because it reflects the will of the public.
- Marijuana Establishments will generate new, complicated and continuous administrative and legal issues - this is simple a fact because Colorado is way out in the forefront nationally in legalizing and regulating marijuana, the rules are constantly evolving in Colorado and the Federal reaction to states legalizing marijuana is constantly evolving. Think liquor licensing times 50.
- If there is desire to pursue permitting marijuana establishments I would strongly recommend a solid community presentation and discussion process in June, July and August and referral to the Creede voters in November.

Eric

Eric J. Heil, Esq., A.I.C.P.
Heil Law & Planning LLC
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This message contains confidential and privileged information. If you have received this message in error, please contact Heil Law & Planning LLC immediately and promptly delete this message.

From: Eric Grossman [REDACTED]
Reply-To: Eric Grossman [REDACTED]
Date: Thursday, April 24, 2014 at 5:59 PM
To: Eric Heil <[REDACTED]>
Cc: Elizabeth Zurn [REDACTED] >, Clyde Dooley <[REDACTED]>
Subject: Re: Recreational Marijuana

question:
how would the school leaving town affect the conversation? they are due to move into the new school in the fall of 2015.

From: Eric Heil [REDACTED]
To: mountain lion [REDACTED]
Cc: Elizabeth Zurn [REDACTED]; Creede Manager
[REDACTED]
Sent: Thursday, April 24, 2014 5:49 PM
Subject: Re: Recreational Marijuana

Here is some valuable and pointed advice - Avon just went through a full blown process to consider Recreational Marijuana - you can go to Avon.org and look at the April 22 Council meeting packet to get an extremely comprehensive report on all aspects of the subject. MOST IMPORTANT is the zoning map that depicts a minimum 1,000' separation, property line to property line, from any school, public or private, and any playground from any potential area for recreational marijuana. If someone can pull out a box of crayons and draw in buffer areas from the school and playgrounds I think you'll find that there is very little, if any, commercial areas in Creede where Recreation Marijuana could be sold at retail. The 1,000' separation is a Federal requirement under the Controlled Substances Act which they have recently enforced in Boulder, so I strongly advise adhering to that setback. It is a good place to start with the analysis and it may answer the question just on that issue in a small town.

Eric

On Thu, Apr 24, 2014 at 4:50 PM, mountain lion <[REDACTED]>

wrote:

since we've sufficiently put off the demographic but not allowing atv's the way they wanted, why not rec pot?

it will be a fascinating conversation.

- da mayor creede

From: Elizabeth Zurn [REDACTED]
To: Creede City Clerk [REDACTED]; Creede City
Manager <[REDACTED]>; Eric Grossman
<[REDACTED]>

Sent: Wednesday, April 23, 2014 1:17 PM
Subject: Recreational Marijuana

Hello,

I'm wondering if it would be alright to put a discussion of recreational marijuana on the May work session. I've had three people recently talk to me about the possibility of opening up a recreation marijuana facility in town, and I'd love to know staff's thoughts on the possibility of opting back in. I know there could potentially be a lot of administrative time and risk in licensing for these types of facilities, but now that other municipalities have done it, could there be a template out there that would make this an option for Creede? I think the economic potential for this is really great, and I'd love to see Creede start this conversation before other area municipalities so that we can get in on the beginning of the market.

Thanks,
Elizabeth

--

Eric J. Heil, Esq., A.I.C.P.
Heil Law & Planning, LLC

[REDACTED]

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8/14/14

OPINION

Legal Pot Is a Public Health Menace

By William J. Bennett
And Robert A. White

The great irony, or misfortune, of the national debate over marijuana is that while almost all the science and research is going in one direction—pointing out the dangers of marijuana use—public opinion seems to be going in favor of broad legalization.

For example, last week a new study in the journal *Current Addiction Reports* found that regular pot use (defined as once a week) among teenagers and young adults led to cognitive decline, poor attention and memory, and decreased IQ. On Aug. 9, the American Psychological Association reported that at its annual convention the ramifications of marijuana legalization was much discussed, with Krista Lisdahl, director of the imaging and neuropsychology lab at the University of Wisconsin-Milwaukee, saying: "It needs to be emphasized that regular cannabis use, which we consider once a week, is not safe and may result in addiction and neurocognitive damage, especially in youth."

Since few marijuana users limit themselves to use once a week, the actual harm is much worse for developing brains. The APA noted that young people who become addicted to marijuana lose an average of six IQ points by adulthood. A long line of studies have found similar results—in 2012, a decades-long study of more than 1,000 New Zealanders who frequently smoked pot in adolescence pegged the IQ loss at eight points.

Yet in recent weeks and months, much media coverage of the marijuana issue has either tacitly or explicitly supported legalization. A CCN/ORC International survey in January found that a record 55% of Americans support marijuana legalization.

The disconnect between science and public opinion is so great that in a March WSJ/NBC



The Maggle's Farm recreational-marijuana store in Manitou Springs, Colo.

News poll, Americans ranked sugar as more harmful than marijuana. The misinformation campaign appears to be succeeding.

Here's the truth. The marijuana of today is simply not the same drug it was in the 1960s, '70s, or '80s, much less the 1930s. It is often at least five times stronger, with the levels of the psychoactive ingredient tetrahydrocannabinol, or THC, averaging about 15% in the marijuana at dispensaries found in the states that have legalized pot for "medicinal" or, in the case of Colorado, recreational use. Often the THC level is 20% or higher.

With increased THC levels come increased health risks. Since Colorado legalized recreational use earlier this year, two deaths in the state have already been linked to marijuana. In both cases it was consumed in edible form, which can result in the user taking in even more THC than when smoking pot. "One man jumped to his death after consuming a large amount of marijuana contained in a cookie," the Associated Press reported in April, "and in the other case, a man allegedly shot and killed his wife after eating marijuana candy." Reports are coming out of Colorado in what amounts to a parade of horrors

from more intoxicated driving to more emergency hospital admissions due to marijuana exposure and overdose.

Over the past 10 years, study after study has shown the damaging effect of marijuana on the teenage brain. Northwestern School of Medicine researchers reported in the *Schizophrenia Bulletin* in December that teens who smoked marijuana daily for about three years showed abnormal brain-structure changes. Marijuana use has clearly been linked to teen psychosis as well as decreases in IQ and permanent brain damage.

The response of those who support legalization: Teenagers can be kept away from marijuana. Yet given the dismal record regarding age-restricted use of tobacco and alcohol, success with barring teens from using legalized marijuana would be a first.

The reason such a large number of teens use alcohol and tobacco is precisely because those are legal products. The reason more are now using marijuana is because of its changing legal status—from something that was dangerous and forbidden to a product that is now considered "medicinal," and in the states of

Colorado and Washington recreational. Until recently, the illegality of marijuana, and the stigma of lawbreaking, had kept its use below that of tobacco and alcohol.

Legality is the mother of availability, and availability, as former Health, Education and Welfare Secretary Joseph A. Califano Jr. put it in his 2008 book on substance abuse, *"High Society,"* is the mother of use. According to the Substance Abuse and Mental Health Services Administration, currently 2.7 million Americans age 12 and older meet the clinical criteria for marijuana dependence, or addiction.

Mark A.R. Kleiman, a professor of public policy at the University of California, Los Angeles, has estimated that legalization can be expected to increase marijuana consumption by four to six times. Today's 2.7 million marijuana dependents (addicts) would thus expand to as many as 16.2 million with nationwide legalization. That should alarm any parent, teacher or policy maker.

There are two conversations about marijuana taking place in this country: One, we fear, is based on an obsolete perception of marijuana as a relatively harmless, low-THC product. The other takes seriously the science of the new marijuana and its effect on teens, whose adulthood will be marred by the irreversible damage to their brains when young.

Supporters of marijuana legalization insist that times are changing and policy should too. But they are the ones stuck in the past—and charting a dangerous future for too many Americans.

Mr. Bennett is a former secretary of education (1985-88) and was the first director of the National Drug Control Policy (1989-90). Mr. White is an attorney in Princeton, N.J.

Dan Henninger is away.

Submitted by Mary Rich 8/15/14

RECYCLE-CREEDE, INC.

P.O. Box 245
Creede, CO 81130
303-503-9975

OVERVIEW OF BUSINESS MODEL

Prepared for
Creede Board of Trustees
Mineral County Commissioners
September 21, 2014

Overview of Recycle Creede

Recycle-Creede is a 501(c)(3) non-profit organization dedicated to providing recycling services for the residents of Creede, Mineral County, adjacent counties and tourists and transporting recycled materials to end users, thus significantly extending the life of the local landfill and making Creede environmentally conscious. Recycle-Creede is the only recycling project within 70 miles of the City of Creede. No recycling is offered by local trash haulers, nor by the City or County, the Town of Del Norte or Rio Grande County. For a rural drop off non-profit recycling company, Recycle-Creede is unique in that it accepts and diverts almost all recyclable items rather than just a small number of items. For instance, the Alamosa center does not accept glass. The nearest center that will accept all items is several hours away. This service has grown over the past 8 years, surpassing all expectations, and the service has become extremely popular in Creede. We are at a crossroads, however, as to the future viability of the expanded project and need the financial assistance of the City and County.

History and Current Status of Recycle-Creede

Recycle-Creede was born in the summer of 2007 of the vision of Cary Bush. There had never been a viable recycling effort in Creede and Cary felt that there was enough interest to make this project work. It started in Cary and Randy's 1-car garage in town, collecting and hauling recyclables for her neighbors. The project quickly outgrew the garage. Recycle-Creede became a Colorado non-profit corporation in December of 2007 and received Federal tax exempt status in February of 2009. With the help of a grant from the state (who provided approximately 80% of the funds) the City of Creede providing a small piece of land, and the County providing a portion of the initial dirt work, we built a 1600 square foot recycling drop off center which opened in June of 2010.

Originally, all materials were taken to Boulder Eco-Cycle, a regional recycling center. Comprehensive MRFs did not exist in Colorado Springs or Pueblo at that time. We knew this was not cost effective originally because we paid more in fuel than we made selling the materials to Eco-Cycle. However, we hoped, that in time, with the implementing of the business vision we had, we could get the project to the point where it could support itself. We eventually acquired a vertical baler, a fork lift, a flatbed gooseneck trailer and a fleet of four 14 foot closed trailers,

again with a great deal of state grant money. The baler was put into service in November of 2012. Having this equipment allows us to bale all of our materials except for glass and transport baled materials to end users, where we are paid considerably more than when we were taking materials loose to Boulder. We now take our materials to the following manufacturers:

Glass is shipped to Miller Coors/Rocky Mountain Bottling in Wheat Ridge, Colorado where it is remanufactured into glass bottles within 30 days. Metal cans, aluminum cans, appliances and scrap metal are taken to Dionisio, a metal wholesaler in Pueblo. We separate mixed paper from chipboard and cardboard, which can be baled together, and take both products to BioPappel in Colorado Springs from where it is transported to New Mexico and Mexico for remanufacture. We also separate mixed plastic into #1 (clear screw top bottles like water bottles) and #2 (opaque milk bottles and colored hard plastic bottles like laundry detergent) and #3 through 7 plastics. We take #1s to Alpine in Denver and #2s to Repsco in Denver, both remanufacturers of plastic products. The #3s through 7s are shipped to China by Alpine. By separating and selling materials to end users, we receive far more per ton than we would by not separating materials. For instance, #1 and 2 plastic pays \$200 to \$250 per ton while mixed plastic pays \$15 per ton. Besides getting more for the materials, we are also able to transport 12 to 15 bales at a time on the flatbed trailer significantly cutting down on the number of trips necessary to haul materials, cutting down on expenses, and making those trips far more efficient.

From a start of diverting just over 40,000 pounds of material in 2007, we have grown to the point where we are diverting that much monthly. Recycle-Creede broke even for the first time in 2013, but that included a significant grant from a local foundation which gave us a grant of \$16,000. That foundation has not committed to a donation this year. The 2013 Profit & Loss statement is attached. This shows revenue of just over \$65,000 and expenses in the same amount.

On the income side, there were \$32,540 in deductible donations received, \$16,000 of which was from that one local foundation. Almost \$6,000 of the donations were received in response to our annual fundraising letter. Additionally, we brought in almost \$3000 from satellite operations where we pick materials up, \$16,000 in state rebate money and \$14,000 in materials sales. This year, so far through mid-September, we have almost \$15,000 in material sales including one receivable and are ready to bill another \$1700. Our donations are only \$18,000 (including a \$10,000 from Cary and Randy) so far but we still have money coming in daily responding to the fundraising letter. We will also be receiving an additional \$8,000 in the next few weeks from the second half of the State Rebate program. On the expense side, our expenses through September are just over \$32,000 so we are on track to have a much lower overhead this year.

Currently, besides the Creede drop off center, we pick up materials in Crestone two times per month where we operate as a “pay as you throw” program, requesting donations when people drop recycling with us. We have been doing this for several years now and the program has caught on in Crestone. We also pick up privately from the Crestone Baca POA, the Crestone Charter School, the Dharma Zen Center, the Orient Land Trust and from several businesses in South Fork. We haul glass-only from Adams State College. All of these entities pay a monthly fee for this service. We also partner with WeRecycle in Pueblo to haul their glass. We have a

contract worker who hauls this for us directly from Pueblo to Miller Coors and we turn a small profit per trip.

Where we go from here

As is apparent, Recycle-Creede in its present form is dependent on donations and State grant programs to continue. While our sales of recyclables continues to grow, that source alone does not produce enough revenue to cover the expenses of running the center. The vast majority of non-profit recycling businesses in the state owned by or subsidized by local governments. Other private haulers use a pay-as-you-throw method and either require payment at the drop off center to leave materials or charge a monthly fee for curbside pickup as opposed to having a free to the public drop off center. We did not think either of these models would work in Creede as a startup, although this could be an option in time. We felt that if we charged people initially every time they dropped off recyclables, most people would go back to throwing everything away. These models also both require full time employees, thus greatly increasing the cost of the operation. Recycle-Creede operates with only one paid employee who bales materials and hauls the materials. Everything else (particularly sorting of materials) depends on volunteers and some interim part-time employees we have been using. Cary does all the administrative and fundraising work.

As you can see from the Profit & Loss, it takes a considerable amount of money for an employee, insurances, fuel, vehicle maintenance and repair and other expenses to make this project work, amounting to \$65,000 in 2013 although that did include a \$6,000 capital expenditure. Neither Cary nor Randy has ever taken any kind of salary. Instead, over the last eight years, Randy and Cary put over \$60,000 of their own money into this project and bought and donated the 2006 Ford F-350 diesel truck that hauls the materials. That truck now has over 300,000 miles on it and will have to soon be replaced. While the project broke even last year, a big issue is that Recycle-Creede remains \$37,000 in debt for past operating losses (monthly credit card use for fuel, supplies, and maintenance is approximately \$2,500/month) and our share of the building projects and capital purchases. The building cost over \$55,000 of which the State provided \$45,000. The three phase electric to run the baler cost almost \$10,000 to install and the State only reimbursed us just over \$3000. Each time we bought a trailer, we had to put up \$1000. We have not been able to make a lot of headway in paying the debt off and it costs the project over \$3000 a year in interest. The debt is in the names of Cary and Randy personally as no one would loan money to the project that has yet to show a significant profit so we remain responsible for that debt.

If we could pay the debt off and increase materials sales, we believe the project could become self-supporting with continued donations from the residents and financial assistance from the City and County. As we increase the amount of materials we receive and become more efficient in sorting and baling, our profit margin from shipping materials should increase.

Most of our original business plan is in place – we have the baler which we bought new and a fleet of trailers so that we sell baled materials rather than haul loose materials as we did originally. Sooner or later, we will need to replace the truck.

Ideally, we would like to see the City or County take this project over as a municipal service. The County benefits in that we have extended the life of the landfill and the people of this community have embraced this service and do not want to see it stop. The City could add a modest amount to the current City utility bill and both the City and County already have a public works department in place that could take over the staffing of the operation. We would, however, have to “sell” the operation in order to be able to pay off the existing debt and hopefully make back a portion of our personal loss. Numerous recyclers have offered their support to the idea of including recycling in the monthly City invoice, and/or to have a portion of landfill dollars go to recycling, or even to include a recycling fee in their County Property Taxes. The down side there is that any billing scenario would eliminate donations from local sources.

A second option is to receive help in paying off the large existing debt. If we were even with the board financially, we feel we could pay expenses from current income, although we do not pay our employee market value and his salary should be raised and we could use a second employee. Again, we always come back to the issue of the aging truck.

Basically, we’ve achieved our original business plan and now need to refine our current operations. We welcome the opportunity to discuss the issues surrounding the continued operation of Recycle-Creede personally and would be available to do so at a joint meeting of the City Trustees and County Commissioners.

2007-2014 comparisons of recyclable materials diverted

<u>month/year</u>	<u>lbs</u>								
	2007	2008	2009	2010	2011	2012	2013	2014	2015
Jan/Feb	0	7,300	17,160	9,120	8,780	25,572	34,580	44,052	
March	0	5,760		9,260	22,180	18,720	23,180	25,280	
April	0	8,320	14,280	9,220	9,383	21,901	36,180		
May	0	6,400	10,240	2,060	10,370	29,029	36,680		
June	2,240	9,960	11,740	12,100	9,040	47,964	44,080		
July	4,880	12,440	10,320	9,091	27,460	37,100	42,320		
Aug	9,060	15,660	8,420	11,640	27,465	49,984	71,298		
Sep	8,660	15,020	12,000	18,447	15,560	39,507	39,140		
Oct	8,580	10,040	3,640	15,283	14,385	23,277	33,360		
Nov/Dec	8,360	10,120	3,600	14,375	35,120	79,620	66,113		
TOTALS	41,780	101,020	91,400	110,596	179,743	372,674	426,931	69,332	

This spreadsheet gives
 a good indication of the
 exponential growth we've gone through.

I apologize there is no more info on
 2014 yet, but haven't had time to do it.

Feb 2014 lbs is only through February 14, 2014.

Thanks, *Cary*

FLUME UPDATE

TO: Planning Commission/Flume Committee/Board of Trustees
FROM: Clyde Dooley
SUBJECT: Flume Clarification/Update
DATE: October 14, 2014

I've attached some info the Flume Committee has been working on to help clarify where we are at this point.

The most current recommendation from the flume committee and Planning Commission [confirm this with Lauri] was to engage Bohannon Huston as the engineering firm to help us rehabilitate our flume.

I'm guilty of rushing this to the Board of Trustees before they were adequately briefed and some good solid questions were asked by the Trustees. Basically how does this compare to McLaughlin's proposal.

The first document is a brief summary I gave the Flume Committee this past June followed by documents supporting the remaining interest of the Flume Committee.

In June or July, Robert joined the Flume Committee and he began a dialogue with Bohannon Huston and began investigating a remedy for some sections of the flume that are already failing.

Craig Hoover with Bohannon Huston attended one of the Flume Committee meetings and from that he provided us with a rough construction schedule and estimate of about \$600,000 [8/22/14 email]. At the same meeting he impressed everyone with their relationship with USACE and knowledge of the 404 permitting process.

The Flume Committee was interested in engaging Bohannon Huston not only for the above reasons, but because they also said they would work with us throughout the rehabilitation in regards to phasing the project if funding was an issue.

So in my excitement I threw a resolution in front of the Trustees asking that very question, when on the same day of the meeting I received the 10/7/14 proposal for engineering and survey services from Bohannon Huston.

This proposal for survey, design and permitting is \$43,535. The construction will be around \$618,484 as mentioned in his 8/22/14 email for a total estimate of \$662,019.

McLaughlin's 2005 estimate was \$940,625 and their 2008 estimate was \$1,845,000. The 2008 estimate equates to approximately \$2,100,000 in 2013 dollars estimated in Bohannon Huston's April proposal.

After the BOT meeting last Tuesday I asked Ron to give us a 2014 dollar estimate on his 2008 proposal. He's not a fan of the concrete blanket idea and I asked him to check into it more and give us a comparable bid if he thought Merrick could be competitive. As of today I've not received his reply.

For work session

MEMORANDUM

TO: Mayor and Board of Trustees
FROM: Clyde Dooley
SUBJECT: Proposals
DATE: October 21, 2014

In August, Bohannon Huston (BHI) met with Flume Committee to answer concerns including the anchoring & life expectancy of the blankets (drilling holes & 25). They also gave us some efficiency & financing ideas and a revised construction estimate of around \$600,000.

In September Bohannon Huston defined the revised schedule and construction estimate of \$618,484. With the recommendations of the Flume Committee and Planning Commission we asked BHI to provide us with an engagement proposal to get started.

On October 7, 2014 BHI sent us a proposal for engineering, survey, and permitting services totaling \$45,535. This was the day of our meeting so it wasn't ready for consideration. We took it back to the Planning Commission for clarification on 10/14/14 and to the Trustees work session on 10/21/14.

If all goes well, we hope to have a resolution to engage BHI to begin the flume rehabilitation project starting with the \$45,535 for engineering, survey, and permitting services. Once that's done we'll move on to the construction phase, option currently estimated at \$618,848.

The biggest problem facing construction on the flume goes all the way back to 1950 when the flume was built with existing encroachments. The easement deeds prepared for the project were never recorded virtually rendering them void. The impact of this oversight prevents a complete replacement plan being practical. As shown when BHI installed the test blankets their proposal is more flexible with those deficiencies.

Will this project go smoothly without any problems - of course not, but we'll finally doing something !!! Plus, BHI's proposed design lends itself to a maintenance plan and schedule that will benefit us in the future.

I've also attached the memo I gave the Planning Commission last Tuesday on the next page.

Below is the brief summary of the proposals I listed for the Flume Committee when they were trying to consider a recommendation.

~~Aug. 2003 — NRCS did a very comprehensive complete replacement plan. They provided four (4) design alternatives ranging from \$3,665,600 to \$7,092,600. The most practical design for capacity and safety reasons was \$3,665,600. Expected life: 50 plus years.~~

Nov. 2005 McLaughlin's first proposed repair of filling the toes of the flume for \$940,625. Expected life: 50 plus years.

Feb. 2008 McLaughlin's proposal consists of replacing the flume invert with a 12" reinforced concrete slab including a 12" high curb at both toes for \$1,845,000. Expected life: 50 plus years.

~~June 2008 — Peter Calendruccio presented a three phased repair plan that received a lot of attention for \$787,728. Attached are his thoughts. Expected life: ?~~

~~July 2008 — Dwayne's Engineering presented a 5 to 10 year plan to completely rebuild the flume w/ hydro-electric facilities for \$450,000. Expected life: ?~~

~~May 2012 — The Concrete Doctor also recommended a liner rehabilitation plan for \$985,000. Expected life: ?~~

April 2013 Bohannon Huston (BHI): Installed concrete blankets last fall to be tested thru our winter and high run-off. They recommend Option 1 at \$1,600,000 which includes a concrete energy dissipater at the downstream end of the flume.

1	GENERAL FUND		2013	2014	2014	2015
2	Revenues		Actual	Proposed	Revised	Proposed
3	General Property Tax	1410.10	68,391	70,000	72,000	72,000
4	Delinquent Taxes	1410.20	153	250	100	125
5	Delinquent Interest	1410.30	329	250	250	250
6	Specific Ownership Tax	1410.50	8,703	5,000	6,500	6,000
7	1/2 City Sales Tax	1410.61	93,614	87,000	95,000	90,000
8	County Sales Tax	1410.62	104,237	105,000	120,000	110,000
9	Franchise Tax	1410.80	8,301	8,000	9,000	8,500
10	Liquor Licenses	1440.30	1,910	3,000	4,000	4,000
11	Building Permits	1440.40	16,676	5,000	7,000	7,000
12	Building User Tax	1440.50	6,496	6,000	9,000	8,000
13	Highway User's Tax	1450.10	20,872	18,000	19,000	18,000
14	Motor Vehicle Sales Tax	1450.20	156	100	100	100
15	Cigarette Tax	1450.30	1,685	1,200	1,400	1,200
16	Motor Vehicle Fees	1450.40	2,679	2,400	2,500	2,400
17	Severance Tax	1450.50	11,511	5,000	-	-
18	Mineral Lease Royalty	1450.60	225	-	-	-
19	Road and Bridge	1450.70	3,888	3,800	3,900	3,800
	Fuel Tax Refund	1450.80	-	-	270	250
20	Grants	1450.90	-	-	-	-
21	Court Fines	1460.00	-	-	-	-
22	Interest Income	1470.00	366	700	240	300
23						
24	Recreation Fees	1480.10	3,737	3,200	3,700	3,200
25	Recreation Grants	1480.20	-	-	-	-
26	Recreation Donations	1480.30	3,264	5,800	500	1,000
27	Recreation Misc.	1480.90	796	5,500	-	1,000
28	Refunds	1490.20	170	1,200	25	25
29	Rec. (300x3)	1490.40	-	-	-	-
30	Miscellaneous	1490.90	17,187	20,000	15,000	20,000
31						
32	Operating Revenues		375,346	356,400	369,485	357,150

33 GENERAL FUND		2013	2014	2014	2015
34 Expenses		Actual	Proposed	Revised	Proposed
35	Administrative Salaries	1510.10	35,869	40,164	42,172
36	Payroll Taxes	1510.21	2,847	3,170	3,265
37	Benefits	1510.23	8,192	8,580	8,840
38	Operating Supplies	1510.31	1,531	2,000	4,000
39	Postage	1510.32	655	400	600
40	Telephone	1510.33	2,837	3,000	2,500
41	Dues & Subscriptions	1510.34	3,447	3,100	3,000
42	Printing & Advertising	1510.35	2,194	2,000	3,000
43	Building & Plant	1510.40	1,710	2,000	2,000
44	Insurance & Bonds	1510.50	2,960	8,500	8,500
45	Professional Services	1510.60	24,861	20,000	25,000
46	Travel	1510.70	1,363	3,100	5,000
47	Board of Trustees	1511.00	16,468	17,000	17,000
48	Judicial	1512.00	-	1,500	1,500
49	Elections	1513.00	-	200	-
50	Treasurers Fees	1514.00	1,378	2,400	2,500
51	Miscellaneous (+1519)	1519.00	8,275	5,400	5,500
52	Code Enforcement	1520.50	-	10,000	10,000
53 PUBLIC WORKS					
54	Public Works Payroll	1530.10	40,913	46,720	49,088
55	Payroll Taxes	1530.21	3,232	3,495	3,832
56	Benefits	1530.23	8,529	10,863	12,875
57	Operating Expenses	1530.31	5,641	5,000	5,000
58	Telephone	1530.33	712	600	1,000
59	Repairs & Maintenance	1530.40	2,105	6,000	6,000
60	Insurance & Bonds	1530.50	3,557	6,500	6,500
61	Streets & Alleys	1530.70	12,102	15,000	15,000
62	Electricity	1530.81	11,928	14,000	14,000
63	Propane	1530.82	7,304	9,000	9,000
64	Miscellaneous	1530.90	1,720	5,000	5,000
65 Parks & Recreation					
66	Park Payroll	1540.10	16,100	13,650	17,000
67	Park Taxes	1540.20	1,256	1,292	1,300
68	Park Benefits --- Not used	0.00	-	-	-
69	Park Maintenance (+1580.70)	1540.50	7,481	20,000	20,000
70	Rec. Salaries	1580.10	16,653	16,228	16,715
71	Rec. Taxes	1580.21	1,191	1,308	1,340
72	Recreation Program Expenses	1580.50	8,585	15,000	15,000
73	Donations	1580.60	10,000	10,000	10,000
74	Hatchery Utilities	1580.80	1,439	2,000	2,000
75	Operating Expenses		275,035	351,073	355,027

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Operating Income/Loss

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Operating Revenues		375,346	356,400	369,485	357,150
Operating Expenses		275,035	351,073	326,212	355,027
Operating Income/Loss		100,311	5,327	43,273	2,123

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GENERAL FUND (Cont.)

82

Non-Operating

2013

2014

2014

2015

Actual

Proposed

Revised

Proposed

83

Transfer In (Parks -from VC)	1498.00	20,000	20,000	20,000	30,000
Transfer in (Recreation - from VC)	1499.00	-	-	-	30,000
Non-Operating Revenues		20,000	20,000	20,000	60,000

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Transfer Out (to CI)	1598.20	-	-	-	-
Non-Operating Expenses		-	-	-	-

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Total Revenues		395,346	376,400	389,485	417,150
Total Expenses		275,035	351,073	326,212	355,027
Net Income/Loss		120,311	25,327	63,273	62,123
Fund Balance Beginning of Year		617,272	737,583	737,583	800,856
Fund Balance End of Year		737,583	762,910	800,856	862,979

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