



CITY COUNCIL WORK SESSION
Tuesday, September 3, 2024 - 10:00 AM
City Council Chambers, Elks Civic Building - 107 S. Cascade Ave.

Public participation for this meeting will be in person in the City Council Chambers. The meeting can be [viewed online via livestream](#) and video recordings of the meetings can be viewed on our [YouTube page](#).

Hearing assistance devices are available for public use. Please let us know if you need accommodation. The City also offers interpretation for Spanish speakers. Schedule time to book this resource, by [emailing the City](#) at least 3 days before the meeting.

1) DISCUSSION ITEMS

- A) Update on Design of New Public Works Facility (20 minutes)
Staff: City Manager Bill Bell and Public Works Director Jim Scheid
- B) Ogden Road Loutsenhizer Bridge Replacement Project Contract Award (20 minutes)
Staff: City Engineer Scott Murphy
- C) Leonard Farm Addition (10 minutes)
Staff: Planner II William Reis
- D) Possible Amendments to Ordinance 2670 Regarding Unauthorized Camping, Sleeping in Public and Park Hours (30 minutes)
Staff: Assistant City Attorney Matt Magliaro
- E) Discussion Related to the City's Role in Accommodating the Unhoused Population (30 minutes)

2) GENERAL CITY COUNCIL DISCUSSION

3) STAFF COMMENTS

MEMORANDUM

TO: Honorable Mayor and Members of the City Council
FROM: Jim Scheid, Public Works Director
DATE: September 3rd, 2024
RE: **Public Works Facility Design Update**
CC: William Bell, Ann Morgenthaler



Dear Council Members,

At the work session on September 3rd, 2024, we will be discussing the progress that has been made on the design of the new public works facility.

The City began the design process for the new public works facility following the design authorization that was approved in March of 2024. The design team selected was Blythe Group from Grand Junction. Blythe has partnered with local consultants like Del Monte Consultants and Motley Architecture and Design as well as Stantec Architecture from Denver, CO.

The design team has been working closely with City staff to verify the space and needs program, investigate efficiencies and determine the most effective use of the site to create the site plan (attached). The first major milestone in the design process is the site plan and since this has been recently completed City staff would like to share the progress with City Council.

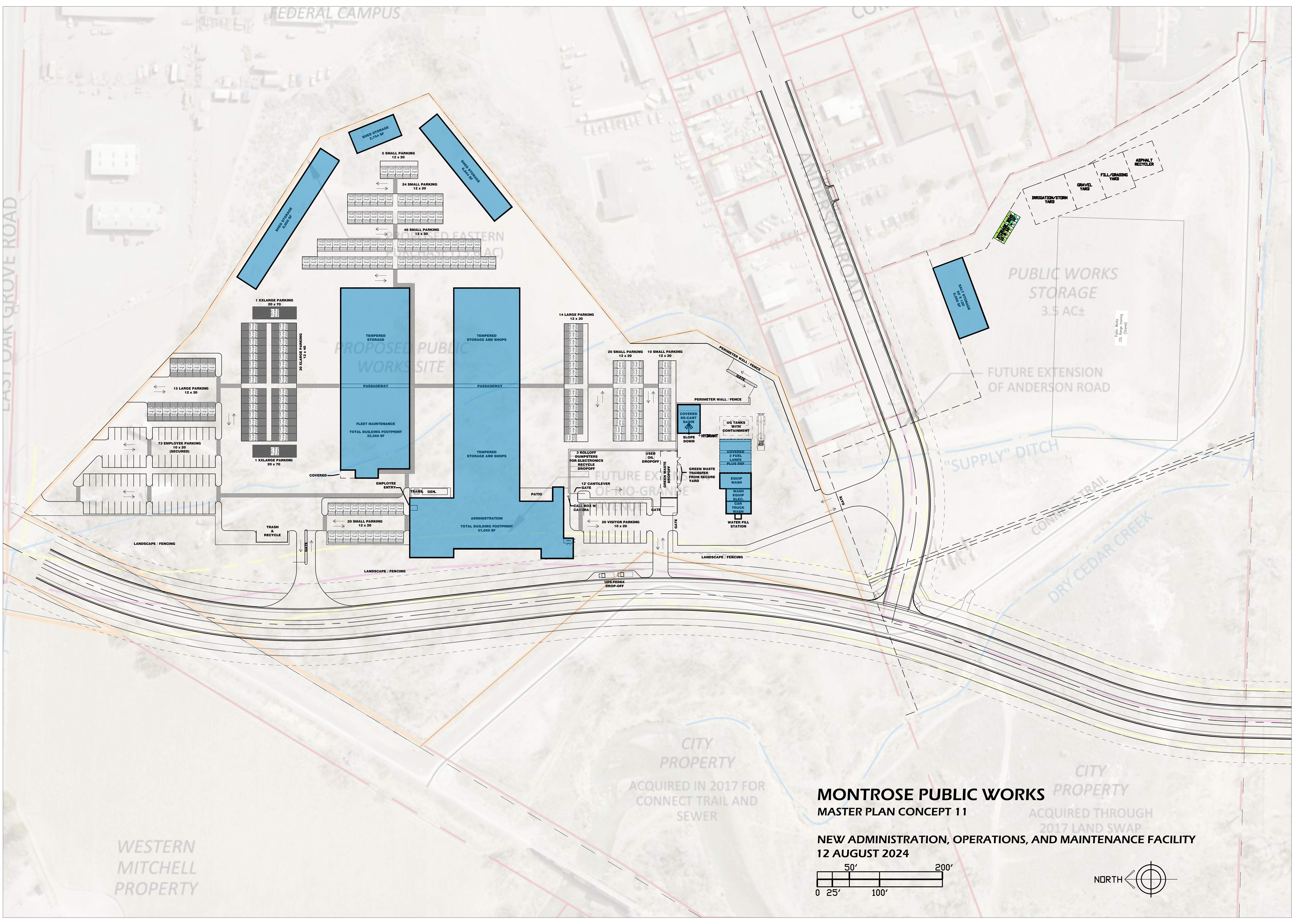
We will discuss the elements of the site plan, the progress in design, the next steps for design, and the next steps for the site preparation and construction.

Thank you and I look forward to our discussion.

Respectfully,

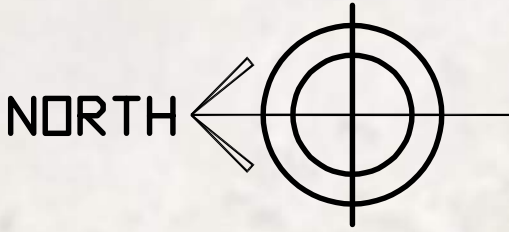
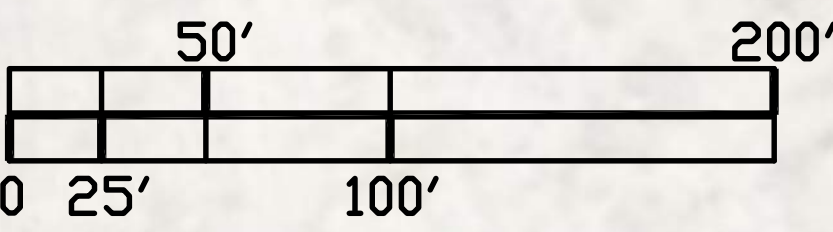
A handwritten signature in black ink that reads "Jim Scheid". The signature is written in a cursive, flowing style.

Jim Scheid
Public Works Director



MONTROSE PUBLIC WORKS
MASTER PLAN CONCEPT 11

NEW ADMINISTRATION, OPERATIONS, AND MAINTENANCE FACILITY
12 AUGUST 2024



CONTRACT AWARD CONSIDERATION



TO: Honorable Mayor and Members of the City Council
FROM: Scott Murphy, *City Engineer*
DATE: August 27, 2024
RE: Ogden Road Loutsenhizer Culvert Replacement Construction Contract Award
CC: William Bell, Shani Wittenberg

Action

Consider the approval of \$988,964.84 in expenditures for construction of the Ogden Road Loutsenhizer Canal Culvert Replacement Project. This includes the award of a construction contract to K&D Construction in the amount of \$944,464.84 and a survey and engineering support contract to Del-Mont Consultants in the amount of \$44,500.00.

Background

The Loutsenhizer Canal crosses Ogden Road within the City of Montrose through twin five-foot diameter corrugated metal culverts at the location shown in Figure 1. The roadway is currently approximately 25 feet wide with no shoulder and no headwall or flared ends on the culverts (see Photo 1). An existing 12 inch diameter waterline pipeline also spans the canal immediately north of the roadway. The culverts are currently experiencing corrosion and structural deformations that have led to soil loss and erosional failures of the roadway embankment. It is felt that this erosion is expected to continue to the point that failure and closure of the roadway is possible in the near future.

Aware of the relatively poor condition of the existing culverts, the City of Montrose had been planning to replace the Ogden Road Loutsenhizer crossing during the canal's winter shutdown in 2025/2026. However, once the erosional failures were observed to be accelerating in recent months, this project was rescheduled to occur this upcoming winter as we do not expect the roadway embankment to last through another full irrigation season without experiencing failure.

The culvert replacement project is planned to include a single-span precast concrete box culvert, cast-in-place concrete wingwall structures, relocation of the waterline span below ground, extension of a sewerline across the canal to support continued multi-family development towards the east, a reconstructed irrigation diversion, protective railings, and widening of the bridge to include larger shoulders and pedestrian sidewalks on both sides. The addition of sidewalks on both sides supports the City's continued efforts to advance pedestrian facilities eastward on Ogden Road and the sidewalk will connect to the recently-completed sidewalk extension on the southern side of Ogden Road along the Residences at Dry Cedar Creek. An excerpt from the project plans is included in Attachment 1.

Project Bidding

Following the completion of an emergency project design by Del-Mont Consultants in two weeks' time (thank you Del-Mont), construction of the culvert replacement project was put out for bid on August 1st and bids were publicly received on August 27, 2024 from seven contractors as summarized in Table 1 below. Bid totals presented include a 10 percent contingency.

TABLE 1		
Summary of Bid Results		
Contractor	Location	Bid Total
K&D Construction	Grand Junction, CO	\$944,464.84
Kuboske Construction	Montrose, CO	\$953,220.55
Ridgway Valley Enterprises	Montrose, CO	\$998,198.30
Dietrich Dirtwork	Crested Butte, CO	\$1,138,473.60
Consy	Grand Junction, CO	\$1,154,363.10
Haynes Excavation	Montrose, CO	\$1,194,019.07
Williams Construction	Norwood, CO	\$1,202,492.50

Contractor Selection and Project Expenditures

As part of all engineering department capital projects, the bid documents include criteria for bidders regarding the contractor selection process. Award recommendations are made for the best-value contractor through a rating system taking into account the following weighted selection criteria.

- Price (40%)
- Reference Considerations/Past Performance with the City (30%)
- Qualifications/Experience of Team (20%)
- Quality of Contractor Work Plan and Approach (10%)

Typically this selection becomes relatively obvious when the bid spread is large; however, in the case of this bid and as shown in Table 1, the low bid and second low bid were within one percent of each other, warranting a thorough review and selection process by engineering staff and the project design team. Through this rating and selection process, the highest-rated, best-value contractor was determined to be the low bidder, K&D Construction. It should be noted that this process accounts for the City's local preference policy within the price scoring category. In this instance the second bidder received a higher score in that category but still had a lower overall score than the low bidder due to lower scores in other categories.

The City has recent positive experience working with K&D Construction on the Miami-Hillcrest Roundabout construction project.

In addition to the award of a construction contract, we are also recommending award of an engineering support and survey stakeout contract to the project designer, Del-Mont Consultants. This scope of work is budgeted at \$44,500 on an as-needed, time-and-materials basis.

Project Schedule and Traffic Control

The project is scheduled to take place between November 2024 and February 2025 while the Loutsenhizer Canal is shutoff for the winter season. Once under construction, it will be necessary to close Ogden Road to all through traffic and detour traffic as shown on the plan excerpt in Attachment 1. On the eastern leg of the project, traffic will be detoured to Bridges Drive. Although Odelle Road is closer to the project, it is not considered a viable detour route given limitations of its bridge over the Loutsenhizer Canal and

capacity limitations at its intersection with Woodgate Road. If shortcutting becomes a problem through this area, it will be necessary to close Odelle to all traffic at its intersection with Ogden Road.

Once the bridge crossing is completed, Ogden Road is scheduled to be reopened with a temporary gravel surface until asphalt batch plants open in the spring. Once asphalt is available, final paving will take place one lane at a time utilizing flaggers in order to avoid a second closure of the roadway.

Because it would not be prudent to close both Ogden and East Oak Grove Roads at the same time, the Woodgate/East Oak Grove Roundabout project (which was originally planned to start in the fall of 2024) has been rescheduled to start in March of 2025 immediately after Ogden Road is reopened to through traffic.

Contract Administration and Project Financials

Contract administration, project management, and inspection will be performed by the City of Montrose engineering department with support from the design engineer as needed.

Because this project was originally anticipated to start in the fall of 2025, it was not included in the City's 2024 budget. However, the 2024 budget did include \$1.15M to start on construction of the Woodgate/East Oak Grove Roundabout within various general, water, and sewer capital funds. Because the roundabout project has now been shifted to all occur in 2025, these 2024 funds can be reallocated to the culvert replacement project. Because the culvert project will span multiple budget years, the proposed 2025 budget also includes \$650,000 for expenditures that may occur after January 1.

Ongoing Permitting

The Loutsenhizer Canal is owned by the United States Bureau of Reclamation (BOR) and operated by the Uncompahgre Valley Water Users' Association. As a result, a replacement of this type requires formal permitting through the BOR with permitting elements related to jurisdictional wetlands, cultural, and historic resources. This permitting is well underway and expected to be complete by November in time to start the project; however, this does remain a risk for the project should the permitting timeline extend out. Fortunately, the BOR has given initial approval of the structure type and sizing which will allow the long-lead box culvert materials to be ordered immediately following award of the contract. If permitting timelines do not work out, City staff will re-evaluate interim options for stabilization of the roadway and revisit capital project sequencing in the area.

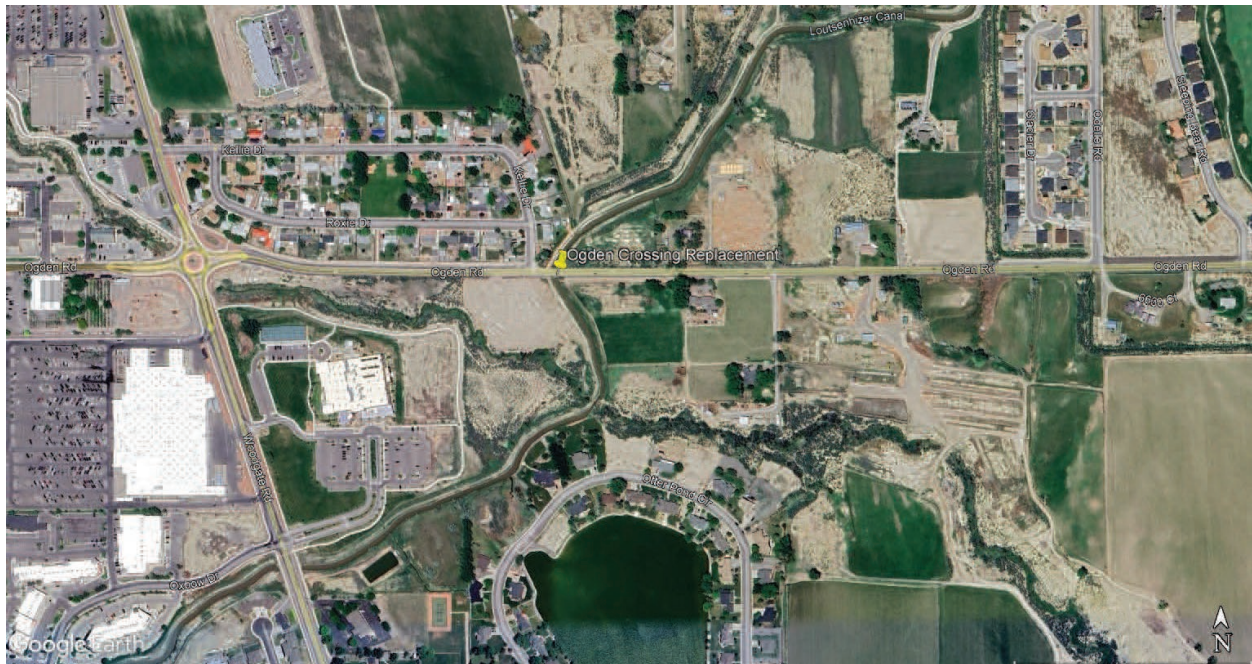
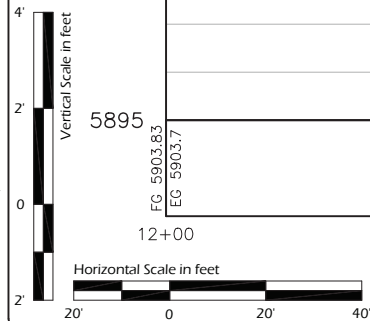
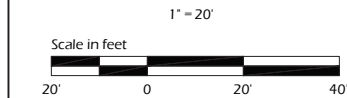


Figure 1: Culvert Replacement Location



Photo 1: Existing Ogden Road Culvert Crossing

ATTACHMENT 1 - PLAN EXCERPT

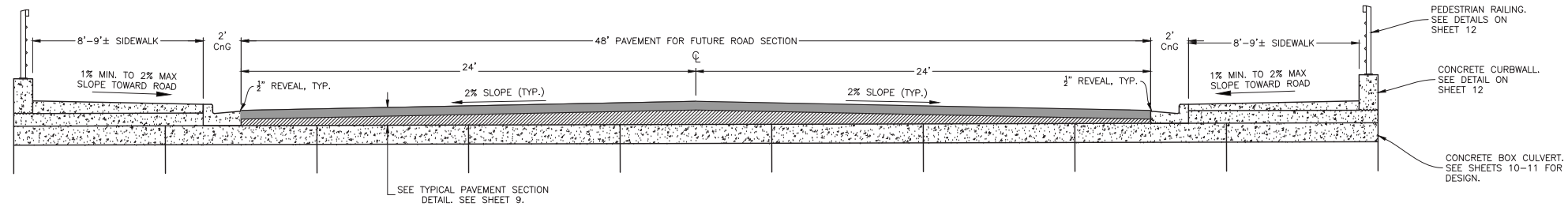


DWGS	DEL-MONT CONSULTANTS, INC. 120 GLENVIEW AVE., SUITE 600 MONTGOMERY, AL 36107-2801 www.del-mont.com ▼ service@del-mont.com
CUSTOMER ID:	SHEET NO:
SCALE:	DATE ISSUED:
FILE NAME:	24151C JAME.DWG
RDD	RDD
DRAWN BY:	DWS/S/M
	2024-08-01

DMC JOB NO.:
24121

SHEET NO.:
5

OF 12 SHEETS



TYPICAL OGDEN RD BRIDGE SECTION
N.T.S.

FOR BIDDING PURPOSES ONLY
NOT APPROVED FOR CONSTRUCTION

[illegible]



CITY OF MONTROSE

Planning Services

MEMO

TO: City Council
FROM: William Reis, Planner II
DATE: September 3, 2024
RE: Leonard Farm Addition Annexation
ATTACHMENTS:

- Exhibit A: Maps
- Exhibit B: Zoning Code Excerpt

City Council Consideration:

City Council is considering the Pallante Addition annexation application and the associated zoning. Council will consider all of the information in this memo in making a decision.

Proposed schedule:

September 3:	Council Work Session Overview
September 17:	Council Resolution to set a hearing date
September 25:	Planning Commission zoning hearing
November 5:	City Council Annexation hearing, 1st reading of annexation ordinance, and 1st reading of zoning ordinance
November 19:	2nd reading of annexation and zoning ordinances

Application Background:

The Leonard Farm Addition is a proposed annexation approximately 71.22 acres in size. The parcel is located south of Ogden Road, near its intersection with Sleeping Bear Road. It is within the City's Urban Growth Boundary, City of Montrose Sewer Service Area, and City of Montrose Water Service Area. Annexation of this property will allow for connection to City utilities. An Annexation Agreement is required.

Proposed Zoning: "R-3A" Medium High Density Residential District



Applicant: Ogden Views, LLC

Staff Analysis:

1. The City-County IGA gives the City the option to annex properties within the IGA. The area is urbanizing and more than 1/6 of the perimeter is contiguous to the city limits. These factors support annexation.
2. An annexation agreement is required as a condition of this annexation.
3. Zoning Regulations
 - a. Municipal Code, Section, 11-7-12 (B), Zoning of Additions: The zoning of additions for all property annexed to the City not previously subject to City zoning may be requested or initiated by the City Manager or the owner of any legal interest in the property or such owner's representative. Proceedings concerning the zoning of property to be annexed may commence at any time prior to the effective date of the annexation ordinance, or thereafter as allowed by law. The Planning Commission shall either recommend approval or denial of the requested zoning to the City Council, which can either ratify the Planning Commission's decision, or reverse it. The zoning of additions shall be subject to the review procedures of Chapter 11-4 and standards of Section 11-7-4 of this Title, and shall be allowed only upon findings as follows:
 - i. The amendment is not averse to the public health, safety and welfare; and
 - ii. The amendment is in substantial conformity with the Comprehensive Plan;
or
 1. Such zoning is compatible with conditions in the area, which have changed materially since the Comprehensive Plan was last updated.
 - iii. The City shall not impose conditions on the zoning of an addition unless otherwise required by this Title.
 - b. Municipal Code, Section 11-7-5: The "R-3A" Medium High Density District is intended to provide for an area which is suitable for single-family homes, duplexes and multifamily residences, along with certain other compatible land uses.
 - c. The proposed zoning is compatible with existing zoning and general conditions in the area. The property is adjacent to properties that are zoned "R-1" Very Low Density District, "R-2" Low Density District, "R-3" Medium Density District, "R-3A" Medium High Density District, "B-4" Neighborhood Shopping District, and areas outside of City limits.
4. The Comprehensive Plan Future Land Use Map designates the area of the Leonard Farm Addition as Residential Mixed Density Low and Residential Mixed Density Medium. The Residential Mixed Density Medium district provides for a variety of residential types, mixed within a neighborhood, including single-family homes, townhomes, duplexes and triplexes.

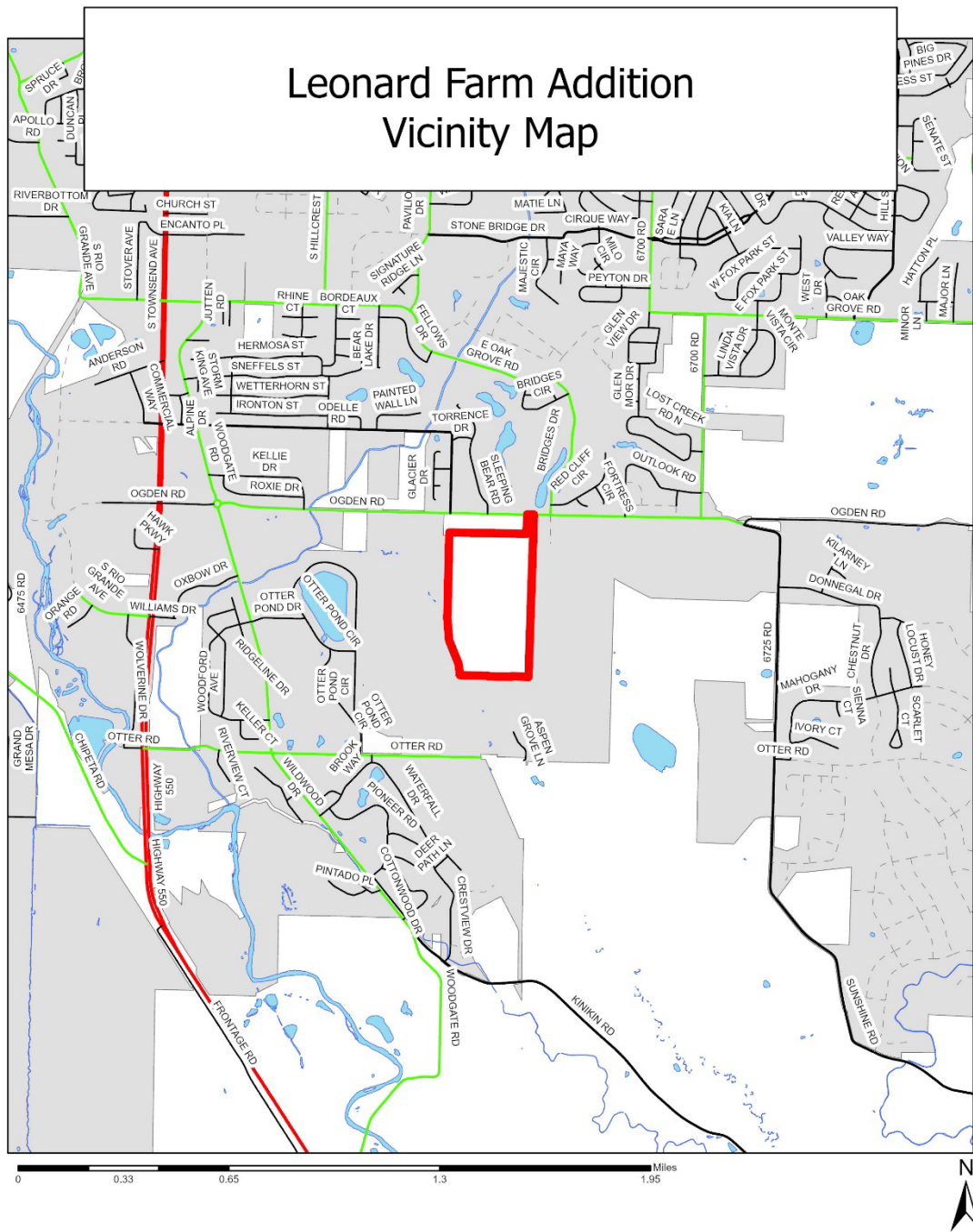


The majority of the mixed-density medium residential land uses are designated in areas that are not yet developed. The Residential Mixed Density Low district provides primarily for single-family homes, as well as small amounts of attached residential dwelling units (such as duplexes and even small groups of townhomes). This low-density residential land use is intended to preserve the traditional building pattern of the existing residential development in Montrose. It will continue to be the predominant density in the City.

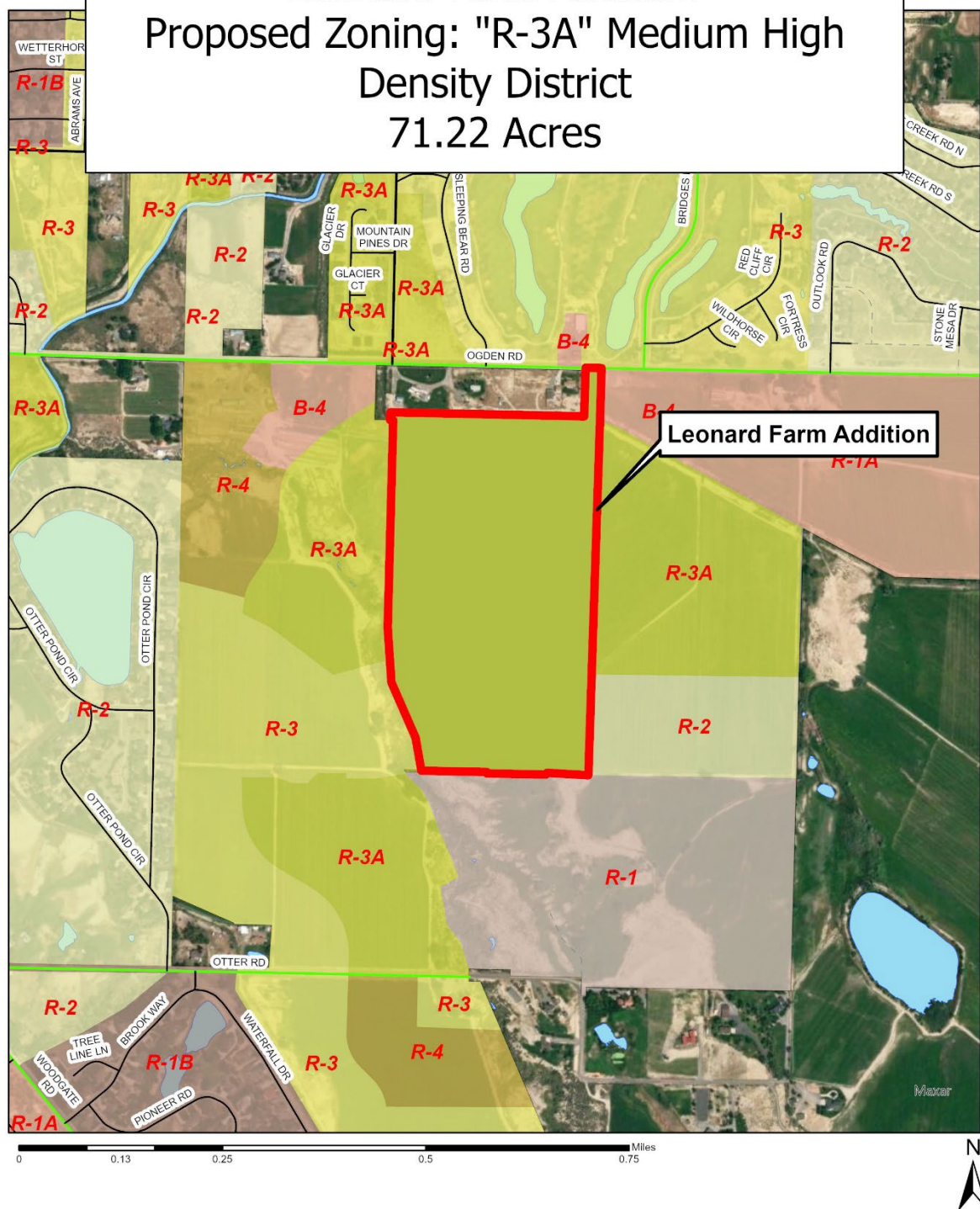
5. The property is located within Growth Area 2. According to the Comprehensive Plan, Growth Area 2 has some level of, or moderate proximity to, existing infrastructure.
6. The “R-3A” zoning does not appear to be adverse to the public health, safety and welfare.



EXHIBIT A: Maps

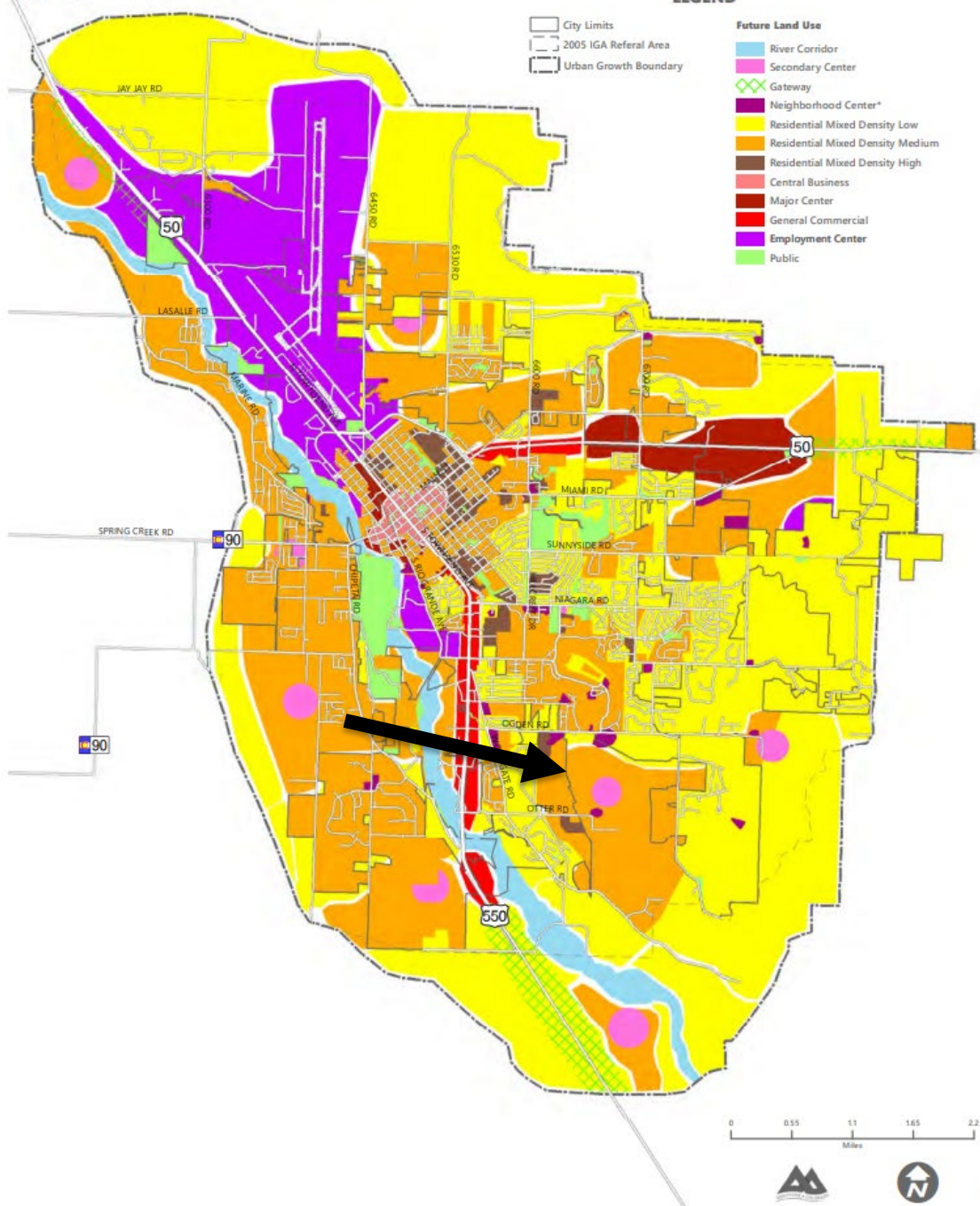


Leonard Farm Addition
Proposed Zoning: "R-3A" Medium High
Density District
71.22 Acres



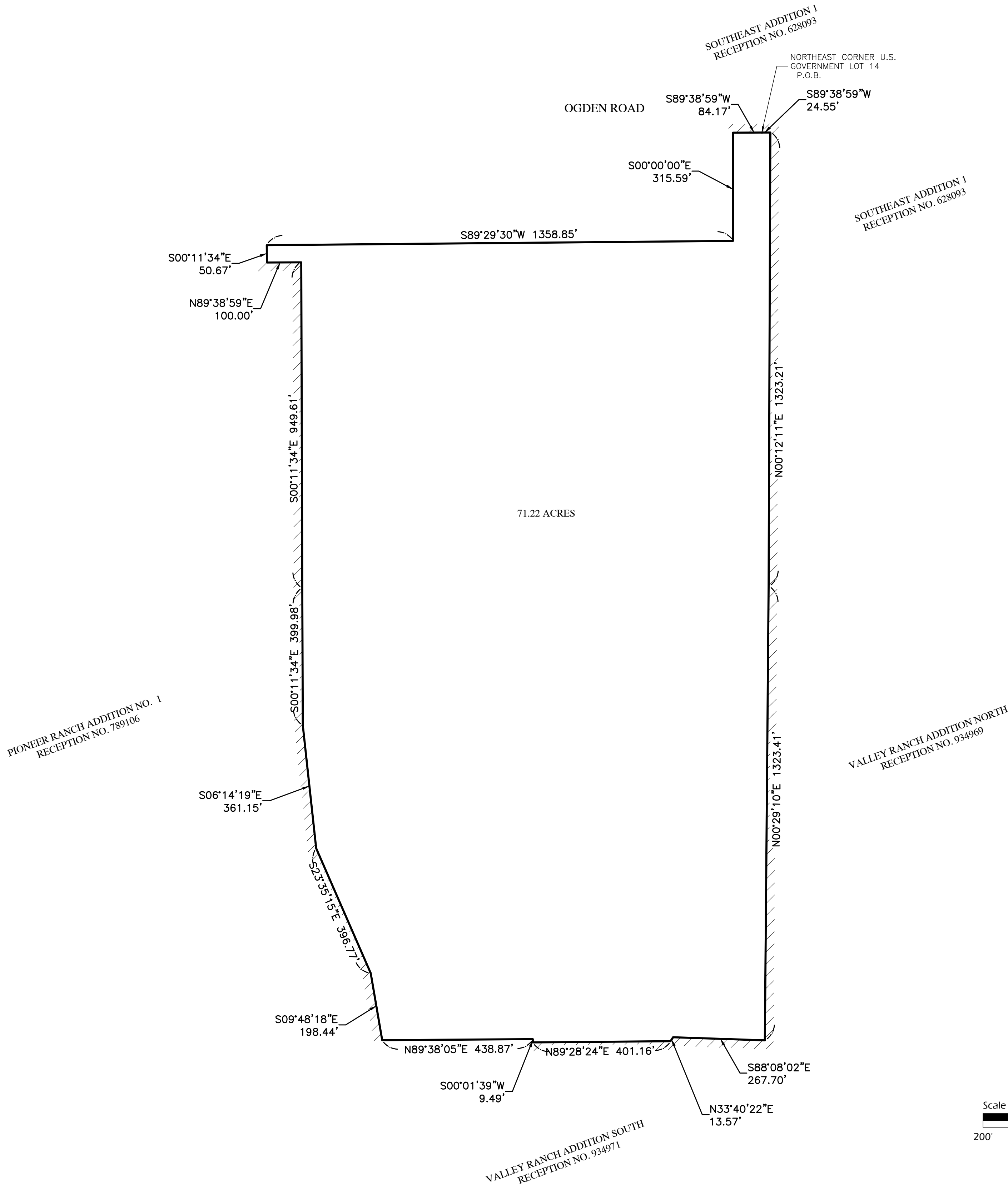
FUTURE LAND USE

MAP 5.1



LEONARD FARM ADDITION

SITUATED IN SECTION 3, TOWNSHIP 48 NORTH, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN
COUNTY OF MONTROSE, STATE OF COLORADO



LEGEND

- ////// CITY LIMITS
———— PROPERTY BOUNDARY / LIMITS OF ANNEXATION

CITY LIMITS

TOTAL PERIMETER = 8017.19'
PERIMETER CONTIGUOUS TO CITY LIMITS = 5843.72'

NOTE:

THIS PLAT DOES NOT CONSTITUTE A BOUNDARY SURVEY. IT IS A COMPILATION OF EXISTING RECORDS FOR THE PURPOSE OF ANNEXATION.



VICINITY MAP
N.T.S.

PROPERTY DESCRIPTION

A TRACT OF LAND SITUATED IN U.S. GOVERNMENT LOTS 13, 14, 15, 18 AND 19 AND IN THE E1/2 NE1/4 SW1/4 AND IN THE NW1/4 SE1/4 SECTION 3, TOWNSHIP 48 NORTH, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID U.S. GOVERNMENT LOT 14;
THENCE SOUTH 89°38'59" WEST ALONG THE NORTH LINE OF SAID U.S. GOVERNMENT LOT 14, 84.17 FEET TO THE NORTHEAST CORNER OF R.E. LEONARD MINOR SUBDIVISION RECORDED IN PLAT BOOK 12 AT PAGE 1022, MONTROSE COUNTY RECORDS; THENCE SOUTH 315.59 FEET TO THE SOUTHEAST CORNER OF SAID R.E. LEONARD MINOR SUBDIVISION; THENCE SOUTH 89°29'30" WEST, 1358.85 FEET TO THE SOUTHWEST CORNER OF SAID R.E. LEONARD MINOR SUBDIVISION; THENCE SOUTH 00°11'34" EAST, PARALLEL TO THE WEST LINE OF SAID U.S. GOVERNMENT LOT 14, 50.67 FEET TO A POINT WHICH IS SOUTH 00°11'34" EAST, 370.00 FEET FROM THE NORTH LINE OF SAID U.S. GOVERNMENT LOT 13; THENCE NORTH 89°38'59" EAST, PARALLEL TO SAID NORTH LINE OF U.S. GOVERNMENT LOT 13, 100.00 FEET TO A POINT ON THE WEST LINE OF SAID U.S. GOVERNMENT LOT 14;
THENCE SOUTH 00°11'34" EAST, ALONG SAID WEST LINE, 949.61 FEET TO THE NORTHWEST CORNER OF SAID U.S. GOVERNMENT LOT 19;
THENCE SOUTH 00°11'34" EAST, ALONG THE WEST LINE OF SAID U.S. GOVERNMENT LOT 19, 399.98 FEET TO A POINT OF THE CENTERLINE OF CEDAR CREEK;
THENCE THE FOLLOWING COURSES ALONG SAID CENTERLINE;
SOUTH 06°14'19" EAST, 361.15 FEET;
SOUTH 23°35'15" EAST, 396.77 FEET;
SOUTH 09°48'18" EAST, 198.44 FEET TO A POINT ON THE SOUTH LINE OF SAID U.S. GOVERNMENT LOT 19; THENCE NORTH 89°38'05" EAST, 438.87 FEET TO THE NORTHWEST CORNER OF SAID E1/2 NE1/4 SW1/4 AND THE NORTHWEST TERMINUS OF THE BOUNDARY AGREEMENT LINE AS SHOWN ON BOUNDARY AGREEMENT PLAT RECORDED AUGUST 6, 2202 AT RECEPTION NO. 691076, MONTROSE COUNTY RECORDS;
THENCE THE FOLLOWING COURSES ALONG SAID BOUNDARY AGREEMENT LINE;
SOUTH 00°01'39" WEST, 9.49 FEET;
NORTH 89°28'24" EAST, 401.16 FEET;
NORTH 33°40'22" EAST, 13.57 FEET;
SOUTH 88°08'02" EAST, 267.70 FEET;
NORTH 00°29'10" EAST, 1323.41 FEET;
NORTH 00°12'11" EAST, 1323.21 FEET TO A POINT ON THE NORTH LINE OF SAID U.S. GOVERNMENT LOT 15; SOUTH 89°38'59" WEST, 24.55 FEET TO THE POINT OF BEGINNING, ALSO SHOWN ON PLAT OF SURVEY RECORDED OCTOBER 18, 2000 AT RECEPTION NO. 667610, COUNTY OF MONTROSE, STATE OF COLORADO

SURVEYOR'S CERTIFICATE

I, Frederick A. Ballard, a Registered Land Surveyor in the State of Colorado, do hereby certify Leonard Farm Addition Annexation Map was prepared under my direct supervision.

PRELIMINARY

Frederick A. Ballard, P.L.S.
Registration No. 37690

MAYOR'S CERTIFICATE

This is to certify that the City of Montrose, a municipal corporation in the County of Montrose, State of Colorado has by its Ordinance No. _____ adopted on the _____ day of _____, 2023, annexed the property hereon to the City of Montrose.

Mayor

Attest: _____
City Clerk

CLERK AND RECORDER'S CERTIFICATE

This map was filed for record in the office of the Clerk and Recorder of Montrose County, Colorado, at the time of _____ on the _____ day of _____, 2023 under Reception No. _____

Clerk and Recorder
Montrose County, Colorado

Deputy

NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.

FILE LOCATED AT: \\DMS14\PROJECTS\ACTIVE PROJECTS\2023\23083-LEONARD FARM BOUNDARY\C3D

DMC		DEL-MONT CONSULTANTS, INC. ENGINEERING & SURVEYING 125 Colorado Ave. Montrose, CO 81401 (970) 249-2251 www.del-mont.com service@del-mont.com	
FIELD BOOK:		DRAWN BY: DCC	
SHEET: 1 of 1		DATE: 2023-07-13	
FILE: 23083V_ANNX		JOB NO.: 23083	
TITLE: LEONARD FARM ADDITION		CLIENT: LEADERSHIP CIRCLE, LLC	
ADDRESS & PHONE: P.O. BOX 239 MONTROSE, CO 81402 970-249-3398		TYPE: ANNEX	

EXHIBIT B: Zoning Code Excerpt

Sec. 11-7-6. District uses.

- (A) *Permitted uses.* Those uses designated as permitted uses on the schedule of uses in Subsections 11-7-6(G) and 11-7-6(H) are allowed as a matter of right subject to approval of a site development plan per Section 11-8-1 of this Title.
- (B) *Conditional uses.* Uses listed as conditional uses on the schedule of uses in Subsections 11-7-6(G) and 11-7-6(H) shall be allowed only if the Planning Commission determines, following review pursuant to Chapter 11-4 of this Title, that the following criteria are substantially met with respect to the type of use and its dimensions:
- (1) The use will not be contrary to the public health, safety, or welfare.
 - (2) The use is not materially adverse to the City's Comprehensive Plan.
 - (3) Streets, pedestrian facilities, and bikeways in the area are adequate to handle traffic generated by the use with safety and convenience.
 - (4) The use is compatible with existing uses in the area and other allowed uses in the district.
 - (5) The use will not have an adverse effect upon other property values.
 - (6) Adequate off-street parking will be provided for the use.
 - (7) The location of curb cuts and access to the premises will not create traffic hazards.
 - (8) The use will not generate light, noise, odor, vibration, or other effects which would unreasonably interfere with the reasonable enjoyment of adjacent property.
 - (9) Landscaping of the grounds and the architecture of any buildings will be reasonably compatible with that existing in the neighborhood.
- (C) *Principal uses.* The primary use of a lot is referred to as a principal use which may be a land use or a structure. Only one principal use per lot is allowed except where a mix of residential and nonresidential uses may be permitted in a specified zone district.
- (D) *Accessory uses.* Accessory uses shall comply with all requirements for the principal use, except where specifically modified by this Chapter, and shall also comply with the following limitations:
- (1) An accessory use shall be clearly incidental, customary to and commonly associated with the operation of the permitted use.
 - (2) An accessory use shall be operated and maintained under the same ownership as the permitted use.
 - (3) An accessory use shall be located on the same lot as a principal use.
- (E) *Temporary Use Permits.*
- (1) The City Manager or his designee may issue a permit authorizing a temporary use of premises in a district for a use which is otherwise not allowed in such a district for a period of up to one year in accordance with this Subsection.
 - (2) The temporary use permit may be issued by the City Manager only after it determines that unusual circumstances exist, not created by the applicant, such as damage, destruction or delay in construction of applicant's permanent premises, which results in significant hardship, and that the temporary use



will not unreasonably interfere with the use of other property, or result in any permanent adverse effects to other property, or create a safety or health hazard.

- (3) The City Manager or his designee shall hold such hearings concerning the application and provide such notice thereof as the circumstances merit in his opinion. The permit may be granted subject to conditions appropriate to ensure compliance with this Subsection.
- (4) *Temporary Construction or Sales Office.* A building within a subdivision may be utilized as a temporary construction or sales office for a period up to one year by the developer of that subdivision during the period of the construction and initial sales respectively of the building and improvements within the area encompassed by the preliminary plat for each subdivision. The City Manager may authorize additional one-year periods for use as a construction office if construction is continuing in the area after the preceding year, or as a sales office if not all of the houses in the area have been sold during the year preceding.

(F) *Uses Not Listed.*

- (1) Uses not listed in a zone district are prohibited except that such uses may be approved by the City Manager provided such uses are found to be similar to a permitted use.
- (2) Any person aggrieved by a decision of the City Manager pursuant to this Subsection may appeal that decision to the City Council under the following procedure:
 - (a) The appeal must be made in writing and filed within 30 days of the decision being appealed.
 - (b) The City Council shall consider the appeal at a public hearing held within 30 days of receipt of the written appeal, notice of which shall be given to the appellant by US mail at least 15 days prior to the hearing.
 - (c) The City Council shall approve or deny the appeal.
 - (d) The decision of the City Council shall be the final decision of the City on the matter, appealable only to the district court.

(G) *Schedule of Residential Zone District Uses.*

Land Use	R L	R- 1	R- 1A/B	R- 2	R- 3	R- 3A	R- 4	R- 5	R- 6	MH R
<i>COMMERCIAL USES</i>										
Bed and breakfast (See Sec. 11-11-1)					C		C		C	
Farms and ranches, excluding commercial greenhouses, and commercial feedlots, fur farms, fish farms, poultry houses, hog farms, dairies and similar operations with a high density of animals.	P									
Rental storage units with a maximum rental unit size of 200 square feet.										C
Short-term rentals	P	P	P	P	P	P	P	P	P	P
<i>INSTITUTIONAL USES</i>										
Assisted living facilities					C	C	C		C	C
Childcare facilities	C	C	C	C	C	C	C	C	C	C



Family childcare home	P	P	P	P	P	P	P	P	P	P
Government buildings and facilities	P	P	P	P	P	P	P	P	P	P
Religious assembly	C	C	C	C	P	P	P	C	C	P
Schools	C	C	C	C	C	C	C	C	C	C
<i>RECREATIONAL USES</i>										
Golf courses	P									
Parks, open space and recreation facilities	P	P	P	P		P	P	P	P	P
<i>RESIDENTIAL USES</i>										
Duplex					P	P	P		P	
Group homes—handicapped/disabled 8 persons or less (see Sec. 11-11-2)	P	P	P	P	P	P	P	P	P	P
Group homes—handicapped/disabled > 9 persons (see Sec. 11-11-2)	C	C	C	C	C	C	C	C	C	C
Group homes, other (see Sec. 11-11-2)	C	C	C	C	C	C	C	C	C	C
Home occupation (See Sec. 11-11-3)	A	A	A	A	A	A	A	A	A	A
Manufactured housing				¹				P	P	P
Mobile homes (See Sec. 11-13)										P
Mobile home parks (See Sec. 11-13)										P
Modular housing								P	P	P
Multi-family dwelling					C	P	P		C	
Single-family dwelling	P	P	P	P	P	P	P	P	P	P
<i>UTILITIES AND TELECOMMUNICATION FACILITIES</i>										
Antennas (See Sec. 11-14-6)	C	C	C	C	C	C	C	C	C	C
Public utility service facilities	P	P	P	P	P	P	P	P	P	P
Towers (See Sec. 11-14-5)	C	C	C	C	C	C	C	C	C	C
<i>OTHER USES</i>										
Accessory uses (See Sec. 11-7-6(D))	A	A	A	A	A	A	A	A	A	A
Temporary use (See Sec. 11-7-6(E)(1-3))	T	T	T	T	T	T	T	T	T	T
Temporary Construction or Sales Office (See Sec. 11-7-6(E)(4))	T	T	T	T	T	T	T	T	T	T
Travel home (See Sec. 11-13-6(2))		T	T	T	T	T	T	T	T	T

Legend: Use Type

P: Permitted Use

C: Conditional Use

A: Accessory Use

T: Temporary Use

¹ Manufactured housing is prohibited except for the following subdivision which was under development on July 1, 1998: Rainbow Meadows Subdivision.

(Ord. No. 2626 , § 3(exh. A), 5-16-2023)



MEMORANDUM



TO: Honorable Mayor and Members of the City Council
FROM: Matthew Magliaro, Assistant City Attorney Public Safety
DATE: August 20, 2024
RE: Proposed Ordinance Change Adding Unauthorized Camping, Sleeping in Public Right-of-Ways, and Amending Park Hours
CC: William Bell, Chris Dowsey, Dan Payne, Blaine Hall

Action

The consideration of two new ordinances in Title 6, Chapter 1, and the amendment of one existing ordinance in Title 9, Chapter 10 of the Official Code of the City of Montrose, Colorado. The purpose of the latter code amendment is to clarify the current code's allowance of camping in designated areas, as well as to specify other circumstances where the City may allow camping on its property. The purpose of these proposed code changes is to strengthen the City's tools to discourage unauthorized camping without permit upon public property, to discourage unlawfully remaining after notice for sleeping in public rights-of-way, and to declare both activities a nuisance.

Background

The City of Montrose as a property owner has a governmental interest in the maintenance and preservation of its property, including to but not limited to the city parks, for the general health, welfare, and benefit of all members of the public. At the beginning of 2024, the City's legal department was asked to research camping ordinances around the state and country. Park safety was raised by members of the public on the 2023 community-wide survey as an item of concern, and has been raised by citizens as a concern to various city departments through to present writing. The size and impact on the land of some of the encampments the police department have encountered this year in areas such as Cerise Park, under the West Main trailhead bridge, and on private property at Colorado Outdoors informed this research. The legal department examined municipal ordinances from cities throughout the State of Colorado, including but not limited to the City of Grand Junction; City of Delta; Durango; Fort Collins; Arvada; Aurora; and Colorado Springs. We also examined prohibitions for persons camping in state park land or state recreational areas outside of designated camping areas in Colorado Revised Statute.

In a decision reached on June 28th, 2024, at the end of its most recent term, the United States Supreme Court held that municipalities may pass and enforce generally applicable legislation prohibiting camping on public property. *City of Grants Pass, Oregon v. Johnson*, 603 U.S. ___, 144 S.Ct. 2202 (2024). This decision overruled a circuit decision from the 9th Circuit Court of Appeals, *Martin v City of Boise*, 920 F.3d 584 (9th Cir. 2019), that while not binding in Colorado

was looked at persuasively in this topic area by federal trial courts around the country. The United States Supreme Court held that generally applicable laws may be enforced without violating the constitutional prohibition on cruel and unusual punishment, with the majority opinion of the Court recognizing that civil and criminal penalties for unauthorized camping are a necessary tool for local governments. Governments may not criminalize mere status under the law, but government may permissibly impose fines and incarceration as sanctions for conduct. The majority opinion from Justice Gorsuch discussed the distinction: “Rather than criminalize mere status, Grants Pass forbids actions like ‘occupy[ing] a campsite’ on public property ‘for the purpose of maintaining a temporary place to live.’ Under the city’s laws, it makes no difference whether the charged defendant is homeless, a backpacker on vacation passing through town, or a student who abandons his dorm room to camp out in protest on the lawn of a municipal building. In that respect, the city’s laws parallel those found in countless jurisdictions across the country. And because laws like these do not criminalize mere status, [an earlier 8th Amendment case *Robinson v California*, 370 US. 660 (1962)] is not implicated.” *City of Grants Pass*, at *13 (internal citation omitted).

Like the ordinances in Grants Pass, staff’s proposal here is for the adoption of generally applicable ordinances to the conduct of unauthorized camping and remaining after notice of a cease and desist order for sleeping in public rights-of-way or in pedestrian or vehicular entrances to property. The proposed ordinances do not apply a penalty for mere status.

Executive Summary

One part of the Official Code of the City of Montrose currently addresses park hours and camping in the parks, MC § 9-10-1. This section declares it to be unlawful for persons to enter upon or remain upon any of the municipal parks outside the hours of 11:00 p.m. and 5:00 a.m. unless other hours are posted, with four separate carve-out exceptions. This Section sets forth an ordinance citable into the Montrose Municipal Court, carrying the penalties under MC § 1-2-3 upon conviction. The proposed ordinance change leaves the section on hours as is, but builds out the exceptions to provide more detail and clarity. It also takes the prohibition within MC § 9-10-1(B) and moves it into Title 6 of the Code, where most of the ordinances commonly cited into the Montrose Municipal Court are located. The proposal strikes the placeholder title ‘Reserved’ in both MC § 6-1-10 and MC § 6-1-12 and creates two new sections: Unauthorized Camping and Sleeping on Sidewalks, Streets, Curbs, Parking Spaces, Alleys, Public Rights-of-Way or Within Doorways.

The unauthorized camping ordinance proposal covers both camping on public property without the authorizations in MC § 9-10-1, as well as for private property when done without the express consent of the property owner or agent of owner. It is separately prohibited conduct to construct or erect structures on municipal property without authorization to do so. Thorough definitions of

camping, shelter and public property are included to specify the conduct at issue. The penalty structure of a first offense of a fine only is congruent with the treatment of this conduct passed on favorably by the United States Supreme Court in *City of Grants Pass* decision, as well as with how the state treats like offenses on state-owned land within statute, C.R.S. § 33-15-107; C.R.S. § 25-13-110, C.R.S. § 25-13-114. Second or successive violations are subject to jail sentencing, again consistent with the municipal ordinance structure in the *City of Grants Pass* decision. There is a declaration that unauthorized camping is a nuisance that may be abated. Separate convictions beyond a reasonable doubt for nuisance cited under MC § 6-4-1 may also be addressed by the municipal court with separate orders abating the nuisance condition. One addition here from the work session version is the code enforcement officer with the Montrose Police Department may issue citations for this offense, in addition to officers on patrol.

The sleeping on sidewalks, streets, curbs, parking spaces, alleys, public rights-of-way or within doorways ordinance proposal in MC § 6-1-12 has seven sections. Subsections (B) and (C) are the citable provisions constituting the ordinance violation, but both are modified by subsection (D) that requires before citation is issued that a police officer, firefighter or property owner or owner's agent to issue a cease and desist warning, and that the person nonetheless remains. These are prerequisite conditions for the issuance of a citation. The penalty section likewise sets out a civil infraction for a first offense, with second or subsequent violations proven beyond a reasonable doubt subject to the full range of penalties in the Code, as well as abatement as nuisance.

Additional Considerations

None.

ORDINANCE NO. 2670

AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, UPDATING TITLE 6 CHAPTER 1, OF THE OFFICIAL CODE OF THE CITY OF MONTROSE, COLORADO: REPEALING AND REPLACING TITLE 6 CHAPTER 1 SECTION 10 (6-1-10), REGARDING UNAUTHORIZED CAMPING; REPEALING AND REPLACING TITLE 6 CHAPTER 1 SECTION 12 (6-1-12), REGARDING SLEEPING ON SIDEWALKS, STREETS, CURBS, PARKING SPACES, ALLEYS, PUBLIC RIGHT-OF-WAY OR WITHIN DOORWAYS PROHIBITED; AND AMENDING TITLE 9 CHAPTER 10 SECTION 1 (9-10-1), REGARDING PARK HOURS

WHEREAS, the City of Montrose is a home rule municipal corporation operating under adopted charter pursuant to § 6 of Article XX of the Colorado Constitution; and

WHEREAS, the State of Colorado has recognized the authority of municipal governments, in relation to their general police powers enumerated in C.R.S. § 31-15-401(1)(a)-(q), to “do all acts and make all regulations which may be necessary or expedient for the promotion of health” as well as to declare what is a nuisance, to set punishments and abate declared nuisances; and

WHEREAS, the City of Montrose as property owner has a governmental interest in the preservation of its public property, including but not limited to its parks, for the general health, welfare, and benefit of all of its citizens, and recognizes the need to have a clear system of regulation to allow for authorized, permitted camping while establishing rules to ensure safe access to the general public of its rights-of-ways on public property; and

WHEREAS, the conduct of unlawful camping on municipal-owned land raises health, welfare and safety concerns as well as negatively impacts the public land as a use; and

WHEREAS, the conduct of unlawfully remaining after notice to cease and desist sleeping in public and private rights-of-way used for pedestrian and vehicular traffic raises health, welfare and safety concerns as well as impacts the safety of all users of those spaces; and

WHEREAS the United States Supreme Court recently held the enforcement by municipal governments of generally applicable laws prohibiting camping on public property does not constitute cruel and unusual punishment proscribed by the Eighth Amendment of the Constitution of the United States, *City of Grants Pass, Oregon v Johnson*, 603 U.S. ___, 144 S.Ct. 2202 (2024); and

WHEREAS, the City of Montrose updates the Municipal Code from time to time;
and

WHEREAS, the City Council of the City of Montrose has determined that the changes to the Municipal Code will further the health, safety, and welfare of the people of the City of Montrose.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO that:

SECTION 1:

Title 6, Chapter 1 Section 10. (6-1-10) (Reserved.) of the Official Code of the City of Montrose, Colorado, is hereby repealed and replaced to read in its entirety as follows:

6-1-10. - Unauthorized camping.

- (A) It shall be unlawful for any person to camp on any public property within the municipal limits of the City of Montrose, except in a location where camping has been expressly authorized as a permitted activity in compliance with Title 9 of the Official Code of the City of Montrose.
- (B) It shall be unlawful for any person to camp on private property without the express consent of the property owner or the owner's agent.
- (C) It is unlawful for any person to construct or erect any building or structure, whether permanent or temporary, on any public property owned by the City of Montrose without express permission from the City to do so.
- (D) For purposes of this section, the following definitions are applicable:
 - (1) *Camp or camping* means the use of property for the purpose of unauthorized overnight occupancy, or to reside or dwell on public property with shelter overnight, or the use of public property for the purpose of overnight occupancy or longer occupancy. The term "shelter" as used in this definition includes, without limitation, any tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of cover or protection from the elements other than clothing. The term "reside or dwell" includes, without limitation, conducting such activities as eating, sleeping, or the storage of personal possessions. Evidence of unauthorized camps includes, but is not limited to, sleeping, or making preparations to sleep by laying out personal belongings, bedding, bedroll(s), blanket(s), sleeping pad(s), sleeping bag(s), erecting or occupying a tent, makeshift shelter, lean-to, tarpaulin,

enclosure, or other structure used for overnight living purposes, or any form of cover or protection from the elements other than clothing, or making preparations for a fire or making a fire except for fires at sites specifically designated or authorized for a fire by the City of Montrose's Parks Department, setting up or using a camp stove, cooking device, or other type of heating source except for grills and personal grills permitted in designated areas by Parks Department. Camp or camping can include using a vehicle for overnight occupancy where overnight occupancy or overnight camping violates City Code or regulation or is not otherwise authorized by the City. Camping does not include napping during the day or picnicking.

(2) *Public property* means, by way of illustration, but not limited to, a highway, highway median, any street, street median, road, road median, alley, sidewalk, strips of land between streets and sidewalks, lanes, catch basins, pedestrian or transit mall, bike path, greenway, public parking lot, or any other structure or area encompassed within the public right-of-way; any park, parkway, mountain park, open space, natural area, all City owned or managed trails or hard surface trails and areas adjacent to those areas, beach, playground, or other publicly owned recreation facility; a municipal watercourse, bodies of water, watercourses, stormwater infrastructure such as, but not limited to, bridges, pipes, inlets and culverts; or any other grounds, buildings, or other facilities owned or leased by the City or by any other public entity, regardless of whether such public property is vacant or occupied and actively used for any public purpose.

- (E) For a first violation of this Section, the Court shall impose a fine of \$100.00 only. A first violation of this Section shall constitute a civil infraction. An adult defendant convicted of a second or subsequent offense in violation of this Section shall be punished by imprisonment in the county jail for at least 10 days but no more than the penalties in accordance with Section 1-2-3 of the Official Code of the City of Montrose, Colorado. The Court does not have discretion to suspend imposition of the mandatory minimum period of incarceration under this Section.
- (F) Unauthorized camping in violation of this Section is declared a nuisance under Section 6-4-1 of the Official Code of the City of Montrose. If the unauthorized camping occurred in a City park, the Court shall issue, for a first offense, an order of abatement limited to a written exclusion order from the City of Montrose's parks for a period of thirty (30) days. The Court has authority under this Section to issue any other orders for abatement of nuisance under Section 6-4-2 of the Official Code of the City of Montrose for second or subsequent violations. Nothing in this Section limits the discretion of the Municipal Court to enter separate orders it deems appropriate for a separate conviction for Nuisance under Chapter 4 of this Title.

- (G) A separate offense shall be deemed committed each day on which a violation of this Section continues. The Montrose Municipal Court may impose consecutive sentences for multiple violations proven beyond a reasonable doubt.
- (H) The affirmative defense of necessity, as codified in C.R.S. § 18-1-702 (2024), may be raised to a prosecution under this Section should sufficient evidence justify the defense.
- (I) The Code Enforcement Officer of the City shall be deemed a peace officer, as defined in Rule 203 of the Colorado Municipal Court Rules of Procedure, for the limited purpose of enforcing the provisions of this Section under the direction of the City Manager or their designee. The Code Enforcement Officer may exercise the authority of a peace officer in the enforcement of these provisions, including the power to issue summons and complaints and initiate prosecution of violations thereof.

SECTION 2:

Title 6, Chapter 1 Section 12. (6-1-12) (Reserved.) of the Official Code of the City of Montrose, Colorado, is hereby repealed and replaced to read in its entirety as follows:

6-1-12. - Sleeping on sidewalks, streets, curbs, parking spaces, alleys, public right-of-way or within doorways prohibited.

- (A) Sleeping on a public sidewalk, street, curb, parking space, alley, lane, breezeway, public right-of-way or in a space within a doorway or entryway abutting a public sidewalk is prohibited as unsafe, as this conduct may obstruct pedestrian and/or vehicular traffic, may inhibit the use of these spaces by the disabled in violation of federal and state law, and may place the person sleeping and/or the public in danger of harm.
- (B) No person may sleep on a public sidewalk, street, curb, parking space, alley, lane, breezeway or public right-of-way.
- (C) No person may sleep in any pedestrian or vehicular entrance to public or private property abutting a public sidewalk, to include spaces within a doorway or entryway on either public or private property.
- (D) No law enforcement officer shall issue a citation, make an arrest, or otherwise enforce this Section against any person unless a request to cease and desist is first made either verbally or in writing by any police officer or firefighter displaying or presenting indicia of acting under the color of their official authority, or by the

property owner or their authorized agent, and the person unlawfully remains in violation of this Section.

- (E) For a first violation of this Section, the Court shall impose a fine of \$100.00 only. A first violation of this Section shall constitute a civil infraction. Second or subsequent offenses in violation of this Section may be punished in accordance with Section 1-2-3 of the Official Code of the City of Montrose, Colorado.
- (F) Any violation of this Section is hereby declared to be a nuisance which may be abated, pursuant to Chapter 4 of this Title of the Official Code of the City of Montrose.
- (G) Notwithstanding any other provision of law, any person found in violation of this Section may be immediately removed from the premises.

SECTION 3:

Title 9, Chapter 10 Section 1. (9-10-1.(A), (B)) (Park hours.) of the Official Code of the City of Montrose, Colorado, are hereby amended to read in their entirety as follows:

9-10-1. Park hours, permitted camping authorized.

- (A) All parks shall be closed between the hours of 11:00 p.m. and 5:00 a.m., unless other hours of closure are posted, in which case the posted hours shall control.
- (B) It shall be unlawful for any person to enter upon or remain upon any of said parks or City property during hours which they are closed pursuant to this Section, and such violation(s) may be cited under Title 6 of the Official Code of the City of Montrose or other applicable law. The official operations of the City of Montrose, persons acting under the direction of the City, and contractors or agents acting with the authorization of the City of Montrose are exempt from this Section.

SECTION 4:

New subsections (C), (D), (E), and (F) are hereby added to Title 9, Chapter 10 Section 1. (9-10-1.(C), (D), (E), (F)) (Park hours.) of the Official Code of the City of Montrose, Colorado, to read in their entirety as follows:

- (C) Camping may be authorized on public property for persons attending events held at the City parks allowed pursuant to an events use permit or festival event permit

obtained in advance from the City Clerk's Office and with the approval of the City Manager's Office.

- (D) Camping may be authorized by the City Manager or designee for those persons on authorized business for the City of Montrose.
- (E) Camping is authorized and no person shall be cited under this Section if a formal declaration of an emergency requires the use of temporary shelter space in accordance with City Charter or a declaration of the Governor of the State of Colorado.
- (F) The City Manager or designee is authorized to make such additional regulations as are necessary and convenient for the administration and enforcement of this Section, including the development of required forms.

SECTION 5:

Except as specifically amended hereby, the Official Code of the City of Montrose, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

SECTION 6:

The City Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the City of Montrose and the inhabitants thereof by clarifying the current code's allowance of camping in designated areas and circumstances, and to codify generally applicable laws prohibiting unauthorized camping upon public property as well as remaining after notice for sleeping in public rights-of-way or in pedestrian or vehicular entrances to property.

SECTION 7:

The City Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the City of Montrose Charter.

SECTION 8:

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the 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.

SECTION 9:

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 10:

This Ordinance shall become effective as set forth in the City of Montrose Charter. You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and on the question of its passage on first reading on Tuesday, the 20th day of August, 2024, at the hour of 6:00 p.m. at the Elks' Civic Building in Montrose, Colorado.

INTRODUCED, READ and PASSED on first reading this 20th day of August, 2024.

J. David Reed, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk

INTRODUCED, READ and ADOPTED on second reading this 3rd day of September, 2024.

J. David Reed, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, UPDATING TITLE 6 CHAPTER 1, OF THE OFFICIAL CODE OF THE CITY OF MONTROSE, COLORADO: REPEALING AND REPLACING TITLE 6 CHAPTER 1 SECTION 10 (6-1-10), REGARDING UNAUTHORIZED CAMPING; REPEALING AND REPLACING TITLE 6 CHAPTER 1 SECTION 12 (6-1-12), REGARDING SLEEPING ON SIDEWALKS, STREETS, CURBS, PARKING SPACES, ALLEYS, PUBLIC RIGHT-OF-WAY OR WITHIN DOORWAYS PROHIBITED; AND AMENDING TITLE 9 CHAPTER 10 SECTION 1 (9-10-1), REGARDING PARK HOURS

WHEREAS, the City of Montrose is a home rule municipal corporation operating under adopted charter pursuant to § 6 of Article XX of the Colorado Constitution; and

WHEREAS, the State of Colorado has recognized the authority of municipal governments, in relation to their general police powers enumerated in C.R.S. § 31-15-401(1)(a)-(q), to “do all acts and make all regulations which may be necessary or expedient for the promotion of health” as well as to declare what is a nuisance, to set punishments and abate declared nuisances; and

WHEREAS, the City of Montrose as property owner has a governmental interest in the preservation of its public property, including but not limited to its parks, for the general health, welfare, and benefit of all of its citizens, and recognizes the need to have a clear system of regulation to allow for authorized, permitted camping while establishing rules to ensure safe access to the general public of its rights-of-ways on public property; and

WHEREAS, the conduct of unlawful camping on municipal-owned land raises health, welfare and safety concerns as well as negatively impacts the public land as a use; and

WHEREAS, the conduct of unlawfully remaining after notice to cease and desist sleeping in public and private rights-of-way used for pedestrian and vehicular traffic raises health, welfare and safety concerns as well as impacts the safety of all users of those spaces; and

WHEREAS the United States Supreme Court recently held the enforcement by municipal governments of generally applicable laws prohibiting camping on public property does not constitute cruel and unusual punishment proscribed by the Eighth Amendment of the Constitution of the United States, *City of Grants Pass, Oregon v Johnson*, 603 U.S. ___, 144 S.Ct. 2202 (2024); and

WHEREAS, the City of Montrose updates the Municipal Code from time to time;
and

WHEREAS, the City Council of the City of Montrose has determined that the changes to the Municipal Code will further the health, safety, and welfare of the people of the City of Montrose.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO that:

SECTION 1:

Title 6, Chapter 1 Section 10. (6-1-10) (Reserved.) of the Official Code of the City of Montrose, Colorado, is hereby repealed and replaced to read in its entirety as follows:

6-1-10. - ~~Reserved.~~ Unauthorized camping.

- (A) It shall be unlawful for any person to camp on any public property within the municipal limits of the City of Montrose, except in a location where camping has been expressly authorized as a permitted activity in compliance with Title 9 of the Official Code of the City of Montrose.
- (B) It shall be unlawful for any person to camp on private property without the express consent of the property owner or the owner's agent.
- (C) It is unlawful for any person to construct or erect any building or structure, whether permanent or temporary, on any public property owned by the City of Montrose without express permission from the City to do so.
- (D) For purposes of this section, the following definitions are applicable:
 - (1) *Camp or camping* means the use of property for the purpose of unauthorized overnight occupancy, or to reside or dwell on public property with shelter overnight, or the use of public property for the purpose of overnight occupancy or longer occupancy. The term "shelter" as used in this definition includes, without limitation, any tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of cover or protection from the elements other than clothing. The term "reside or dwell" includes, without limitation, conducting such activities as eating, sleeping, or the storage of personal possessions. Evidence of unauthorized camps includes, but is not limited to, sleeping, or making preparations to sleep by laying out personal belongings, bedding, bedroll(s), blanket(s), sleeping pad(s), sleeping bag(s), erecting or occupying a tent, makeshift shelter, lean-to, tarpaulin,

enclosure, or other structure used for overnight living purposes, or any form of cover or protection from the elements other than clothing, or making preparations for a fire or making a fire except for fires at sites specifically designated or authorized for a fire by the City of Montrose's Parks Department, setting up or using a camp stove, cooking device, or other type of heating source except for grills and personal grills permitted in designated areas by Parks Department. Camp or camping can include using a vehicle for overnight occupancy where overnight occupancy or overnight camping violates City Code or regulation or is not otherwise authorized by the City. Camping does not include napping during the day or picnicking.

(2) *Public property* means, by way of illustration, but not limited to, a highway, highway median, any street, street median, road, road median, alley, sidewalk, strips of land between streets and sidewalks, lanes, catch basins, pedestrian or transit mall, bike path, greenway, public parking lot, or any other structure or area encompassed within the public right-of-way; any park, parkway, mountain park, open space, natural area, all City owned or managed trails or hard surface trails and areas adjacent to those areas, beach, playground, or other publicly owned recreation facility; a municipal watercourse, bodies of water, watercourses, stormwater infrastructure such as, but not limited to, bridges, pipes, inlets and culverts; or any other grounds, buildings, or other facilities owned or leased by the City or by any other public entity, regardless of whether such public property is vacant or occupied and actively used for any public purpose.

- (E) For a first violation of this Section, the Court shall impose a fine of \$100.00 only. A first violation of this Section shall constitute a civil infraction. An adult defendant convicted of a second or subsequent offense in violation of this Section shall be punished by imprisonment in the county jail for at least 10 days but no more than the penalties in accordance with Section 1-2-3 of the Official Code of the City of Montrose, Colorado. The Court does not have discretion to suspend imposition of the mandatory minimum period of incarceration under this Section.
- (F) Unauthorized camping in violation of this Section is declared a nuisance under Section 6-4-1 of the Official Code of the City of Montrose. If the unauthorized camping occurred in a City park, the Court shall issue, for a first offense, an order of abatement limited to a written exclusion order from the City of Montrose's parks for a period of thirty (30) days. The Court has authority under this Section to issue any other orders for abatement of nuisance under Section 6-4-2 of the Official Code of the City of Montrose for second or subsequent violations. Nothing in this Section limits the discretion of the Municipal Court to enter separate orders it deems appropriate for a separate conviction for Nuisance under Chapter 4 of this Title.

- (G) A separate offense shall be deemed committed each day on which a violation of this Section continues. The Montrose Municipal Court may impose consecutive sentences for multiple violations proven beyond a reasonable doubt.
- (H) The affirmative defense of necessity, as codified in C.R.S. § 18-1-702 (2024), may be raised to a prosecution under this Section should sufficient evidence justify the defense.
- (I) The Code Enforcement Officer of the City shall be deemed a peace officer, as defined in Rule 203 of the Colorado Municipal Court Rules of Procedure, for the limited purpose of enforcing the provisions of this Section under the direction of the City Manager or their designee. The Code Enforcement Officer may exercise the authority of a peace officer in the enforcement of these provisions, including the power to issue summons and complaints and initiate prosecution of violations thereof.

SECTION 2:

Title 6, Chapter 1 Section 12. (6-1-12) (Reserved.) of the Official Code of the City of Montrose, Colorado, is hereby repealed and replaced to read in its entirety as follows:

6-1-12. - ~~Reserved.~~ Sleeping on sidewalks, streets, curbs, parking spaces, alleys, public right-of-way or within doorways prohibited.

- (A) Sleeping on a public sidewalk, street, curb, parking space, alley, lane, breezeway, public right-of-way or in a space within a doorway or entryway abutting a public sidewalk is prohibited as unsafe, as this conduct may obstruct pedestrian and/or vehicular traffic, may inhibit the use of these spaces by the disabled in violation of federal and state law, and may place the person sleeping and/or the public in danger of harm.
- (B) No person may sleep on a public sidewalk, street, curb, parking space, alley, lane, breezeway or public right-of-way.
- (C) No person may sleep in any pedestrian or vehicular entrance to public or private property abutting a public sidewalk, to include spaces within a doorway or entryway on either public or private property.
- (D) No law enforcement officer shall issue a citation, make an arrest, or otherwise enforce this Section against any person unless a request to cease and desist is first made either verbally or in writing by any police officer or firefighter displaying or presenting indicia of acting under the color of their official authority, or by the

property owner or their authorized agent, and the person unlawfully remains in violation of this Section.

- (E) For a first violation of this Section, the Court shall impose a fine of \$100.00 only. A first violation of this Section shall constitute a civil infraction. Second or subsequent offenses in violation of this Section may be punished in accordance with Section 1-2-3 of the Official Code of the City of Montrose, Colorado.
- (F) Any violation of this Section is hereby declared to be a nuisance which may be abated, pursuant to Chapter 4 of this Title of the Official Code of the City of Montrose.
- (G) Notwithstanding any other provision of law, any person found in violation of this Section may be immediately removed from the premises.

SECTION 3:

Title 9, Chapter 10 Section 1. (9-10-1.(A), (B)) (Park hours.) of the Official Code of the City of Montrose, Colorado, are hereby amended to read in their entirety as follows:

9-10-1. Park hours, permitted camping authorized.

- (A) All parks shall be closed between the hours of 11:00 p.m. and 5:00 a.m., unless other hours of closure are posted, in which case the posted hours shall control.
- (B) It shall be unlawful for any person to enter upon or remain upon any of said parks or City property during hours which they are closed pursuant to this Section, **and such violation(s) may be cited under Title 6 of the Official Code of the City of Montrose or other applicable law. The official operations of the City of Montrose, persons acting under the direction of the City, and contractors or agents acting with the authorization of the City of Montrose are exempt from this Section.** ~~except for authorized overnight campers at Lions Park, persons on authorized City business, persons attending events allowed pursuant to a special permit, or persons traveling the bike paths.~~

SECTION 4:

New subsections (C), (D), (E), and (F) are hereby added to Title 9, Chapter 10 Section 1. (9-10-1.(C), (D), (E), (F)) (Park hours.) of the Official Code of the City of Montrose, Colorado, to read in their entirety as follows:

- (C) Camping may be authorized on public property for persons attending events held at the City parks allowed pursuant to an events use permit or festival event permit obtained in advance from the City Clerk's Office and with the approval of the City Manager's Office.
- (D) Camping may be authorized by the City Manager or designee for those persons on authorized business for the City of Montrose.
- (E) Camping is authorized and no person shall be cited under this Section if a formal declaration of an emergency requires the use of temporary shelter space in accordance with City Charter or a declaration of the Governor of the State of Colorado.
- (F) The City Manager or designee is authorized to make such additional regulations as are necessary and convenient for the administration and enforcement of this Section, including the development of required forms.

SECTION 5:

Except as specifically amended hereby, the Official Code of the City of Montrose, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

SECTION 6:

The City Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the City of Montrose and the inhabitants thereof by clarifying the current code's allowance of camping in designated areas and circumstances, and to codify generally applicable laws prohibiting unauthorized camping upon public property as well as remaining after notice for sleeping in public rights-of-way or in pedestrian or vehicular entrances to property.

SECTION 7:

The City Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the City of Montrose Charter.

SECTION 8:

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or

applications of the 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.

SECTION 9:

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 10:

This Ordinance shall become effective as set forth in the City of Montrose Charter. You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and on the question of its passage on first reading on Tuesday, the _____ day of _____, 2024, at the hour of 6:00 p.m. at the Elks' Civic Building in Montrose, Colorado.

INTRODUCED, READ and PASSED on first reading this _____ day of _____, 2024.

J. David Reed, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk

INTRODUCED, READ and ADOPTED on second reading this _____ day of _____, 2024.

J. David Reed, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk