



BOARD OF TRUSTEES
September 8, 2020
6:30 PM

Regular Meeting

Please click the link below to join the webinar:

<https://zoom.us/j/91067028627>

Webinar ID: 910 6702 8627

Or iPhone one-tap :

US: +12532158782,,91067028627# or +13462487799,,91067028627#

Or Telephone:

US: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 9128

AGENDA

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Amendments to Agenda
4. Conflict of Interest

B. COMMUNITY PARTICIPATION

1. Public Comment -
2. Presentation
Water Rate Survey Results - Hallie Sheldon, Town Intern
3. Presentation
B-Dam Project Status Update - Bob Gowing, Public Works Director

C. CONSENT AGENDA

1. July 28, 2020 Regular Board of Trustees Meeting Minutes

D. ACTION ITEMS

1. Resolution No. - 29-2020 Bulk Water Rate Increase
 - Staff presentation: Tyler Sexton, Interim Finance Director
2. Annexation Agreement and Development Agreement for Poudre School District Subdivision

- Staff presentation: Cody Bird, Planning Director
- 3. Proposed Ordinance - An Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington
 - Staff presentation: Brad March, Town Attorney
- 4. Proposed Ordinance - An Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington, Colorado
 - Staff presentation: Brad March, Town Attorney
- 5. Resolution No. 30-2020 - A Resolution Calling a Special Election in the Town of Wellington, Colorado
 - Staff presentation: Brad March, Town Attorney
- 6. Resolution No. 31-2020 - A Resolution Authorizing the Town Clerk to Appoint Election Judges for the Special Election
 - Staff presentation: Brad March, Town Attorney
- 7. Resolution No. 32-2020 - A Resolution Designating the Municipal Judge as the Initiative Referendum Protest Hearing Officer
 - Staff presentation: Brad March, Town Attorney
- 8. Resolution No. 33-2020 - A Resolution Authorizing the Temporary Road Closure for the Annual Trick or Treat Down Main Street Event
 - Staff presentation: Kelly Houghteling, Interim Town Administrator
- 9. CARES Funding Allocation
 - Staff presentation: Kelly Houghteling, Interim Town Administrator and Tyler Sexton, Interim Finance Director

E. OTHER BOARDS

1. Liquor License Review Board
Annual Renewal - Sol de Jalisco

F. REPORTS

1. Town Attorney
2. Town Administrator

3. Staff Communications

a. *Larimer County Sheriff's Office - July 2020 Report*

4. Board

G. EXECUTIVE SESSION

H. ADJOURN

The Town of Wellington will make reasonable accommodations for access to Town services, programs, and activities and special communication arrangements. Individuals needing special accommodation may request assistance by contacting at Town Hall or at 970-568-3380 ext. 110 at least 24 hours in advance.

Water Rate Survey Results

*TOWN OF WELLINGTON
BOARD OF TRUSTEES MEETING
SEPTEMBER 8, 2020*



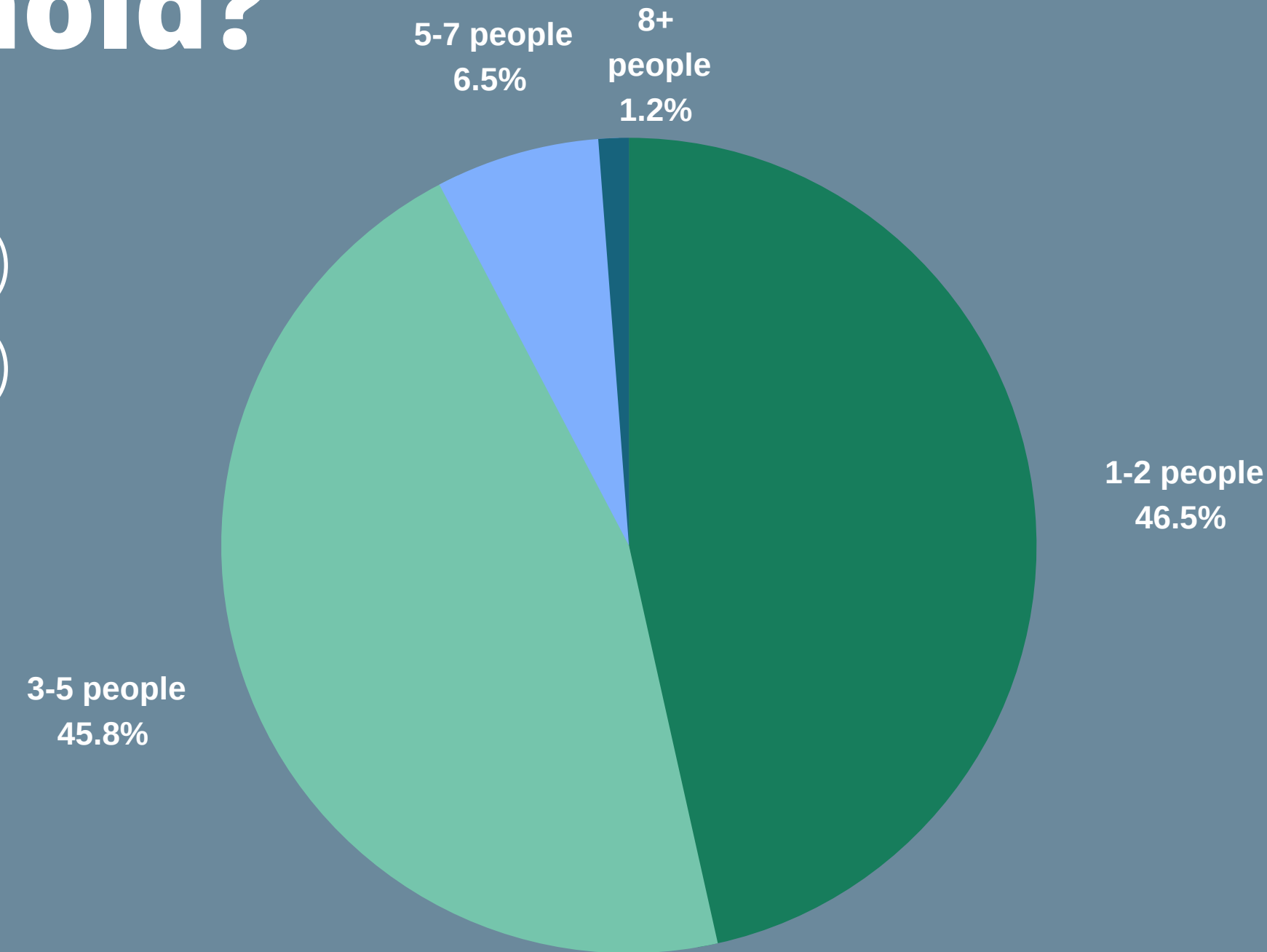
Survey Overview

- 12 Questions Asked
- 727 Surveys Taken
- 207 Public Comments/Questions



Q2: How many individuals live in your household?

- 1-2 People: 46.5% (338 survey-takers)
- 3-5 People: 45.8% (333 survey-takers)
- 5-7 People: 6.5% (47 survey-takers)
- 8+ People: 1.2% (9 survey-takers)



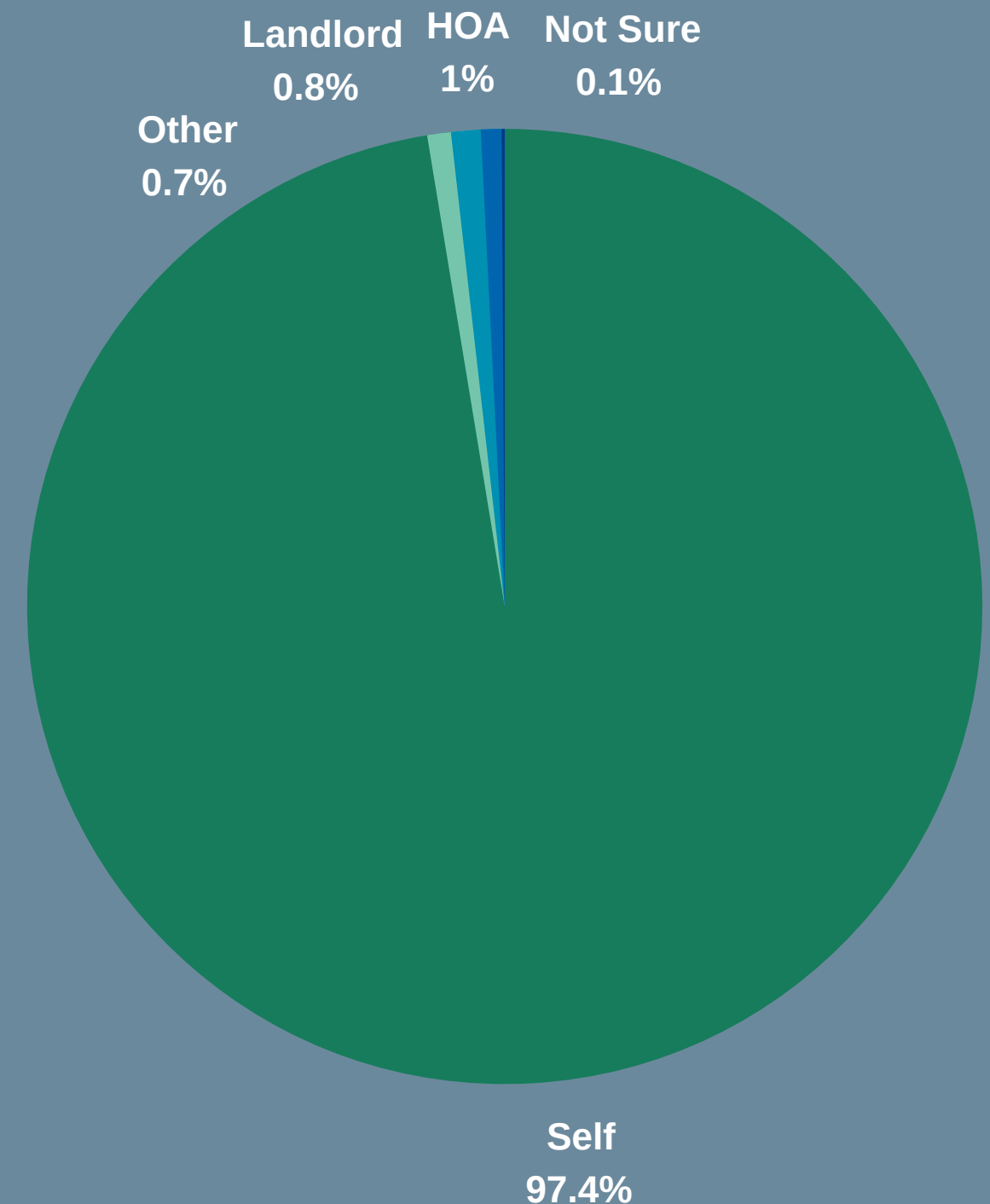
Q3: Do you own your home or rent your home?

- Own: 93% (676 survey-takers)
- Rent: 7% (51 survey-takers)



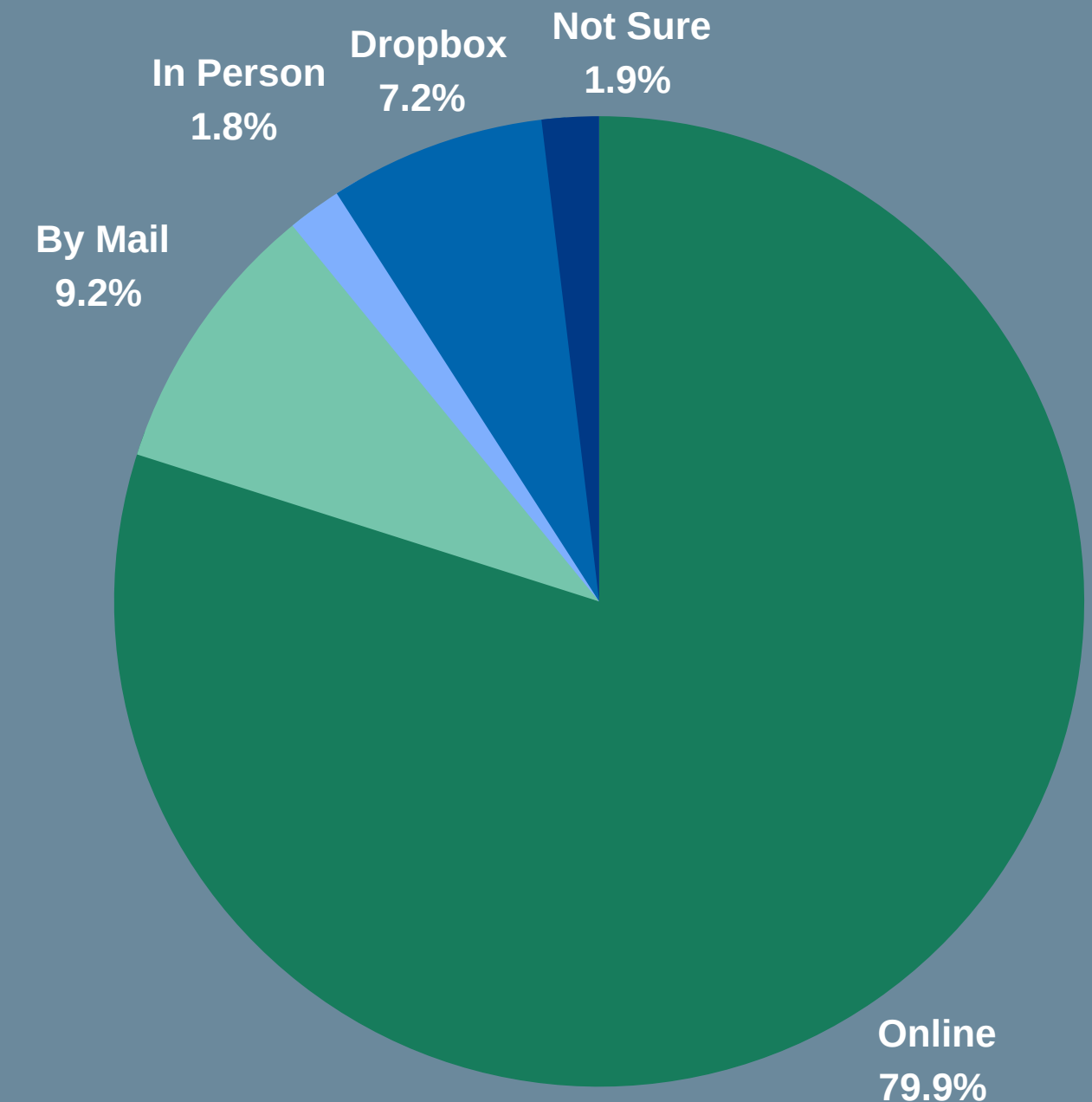
Q4: Who pays your water bill?

- Self: 97.4% (708 survey-takers)
- Landlord: 0.8% (6 survey-takers)
- HOA: 1% (7 survey-takers)
- Not Sure: 0.1% (1 survey-taker)
- Other: 0.7% (5 survey-takers)



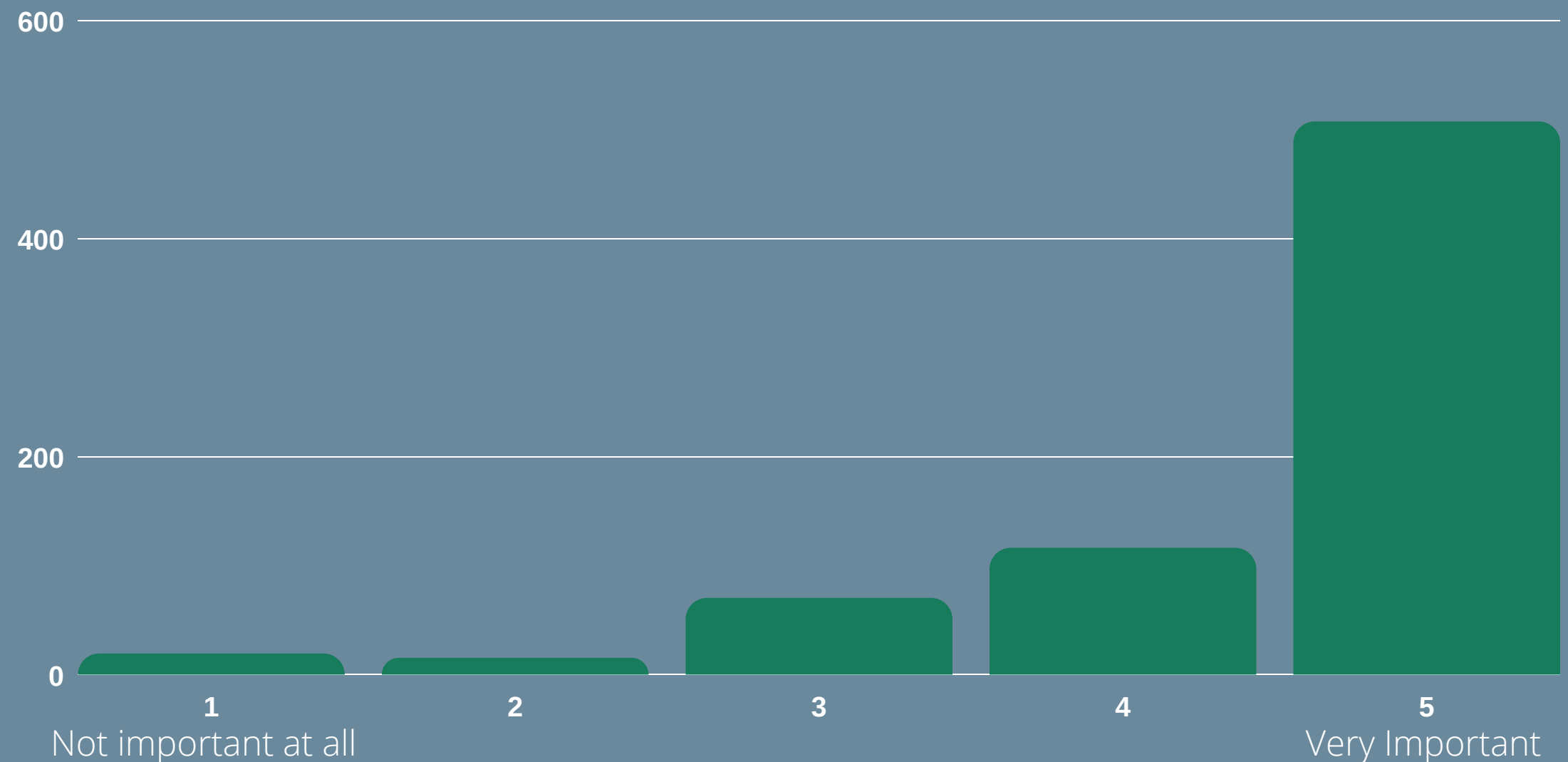
Q5: How do you pay your water bill?

- Online: 79.9% (581 survey-takers)
- By Mail: 9.2% (67 survey-takers)
- In Person: 1.8% (13 survey-takers)
- Dropbox: 7.2% (52 survey-takers)
- Not Sure: 1.9% (14 survey-takers)



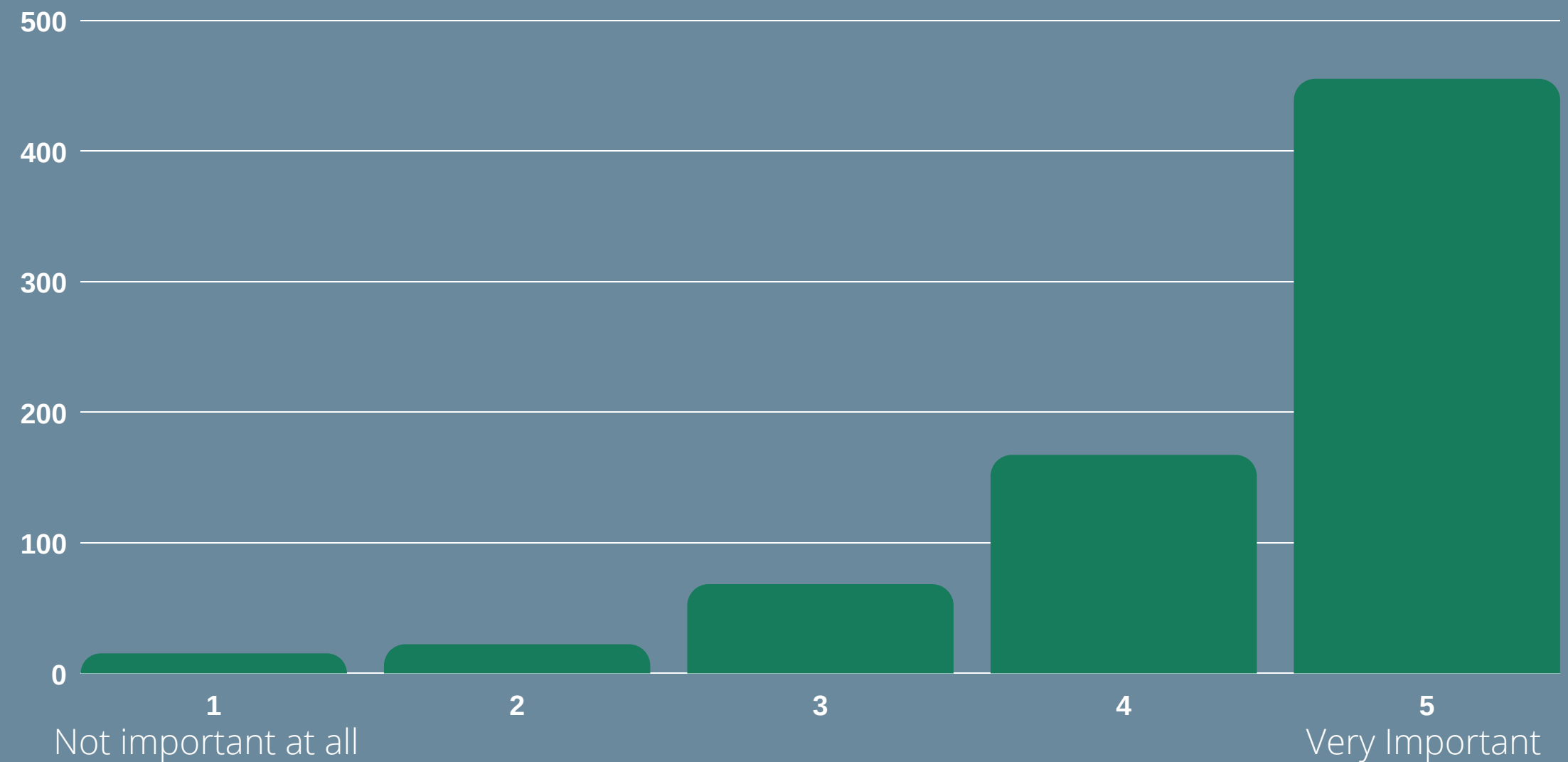
Q6: How important is it for Wellington Water to have enough funding to keep our water safe to drink?

- 1- (2.6%) 19 survey-takers
- 2- (2.1%) 15 survey-takers
- 3- (9.6%) 70 survey-takers
- 4- (16%) 116 survey-takers
- 5- (69.7%) 507 survey-takers



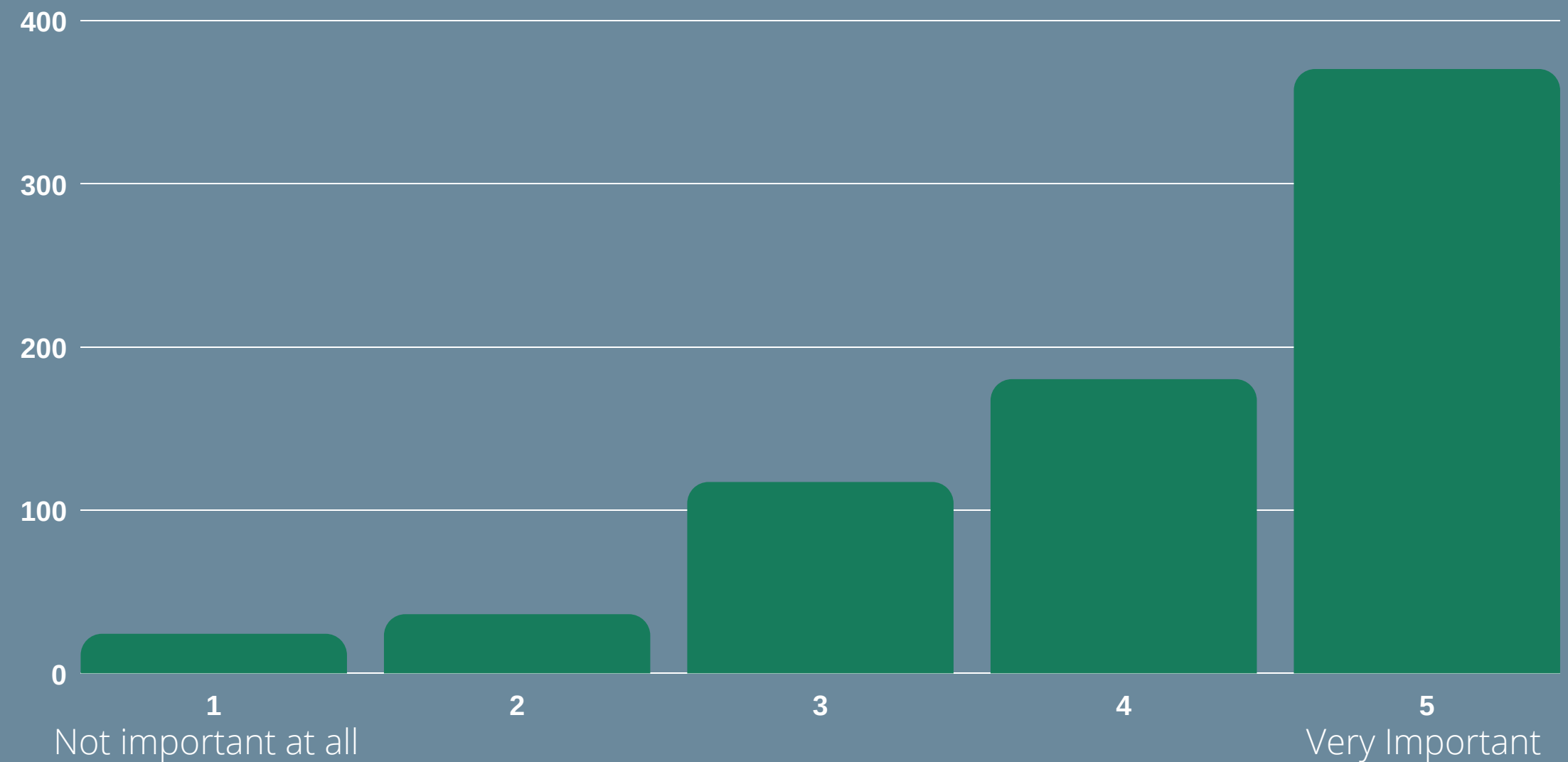
Q7: How important is it for Wellington Water to have enough funding to ensure dependability of water service?

- 1- (2.1%) 15 survey-takers
- 2- (3%) 22 survey-takers
- 3- (9.4%) 68 survey-takers
- 4- (23%) 167 survey-takers
- 5- (62.6%) 455 survey-takers



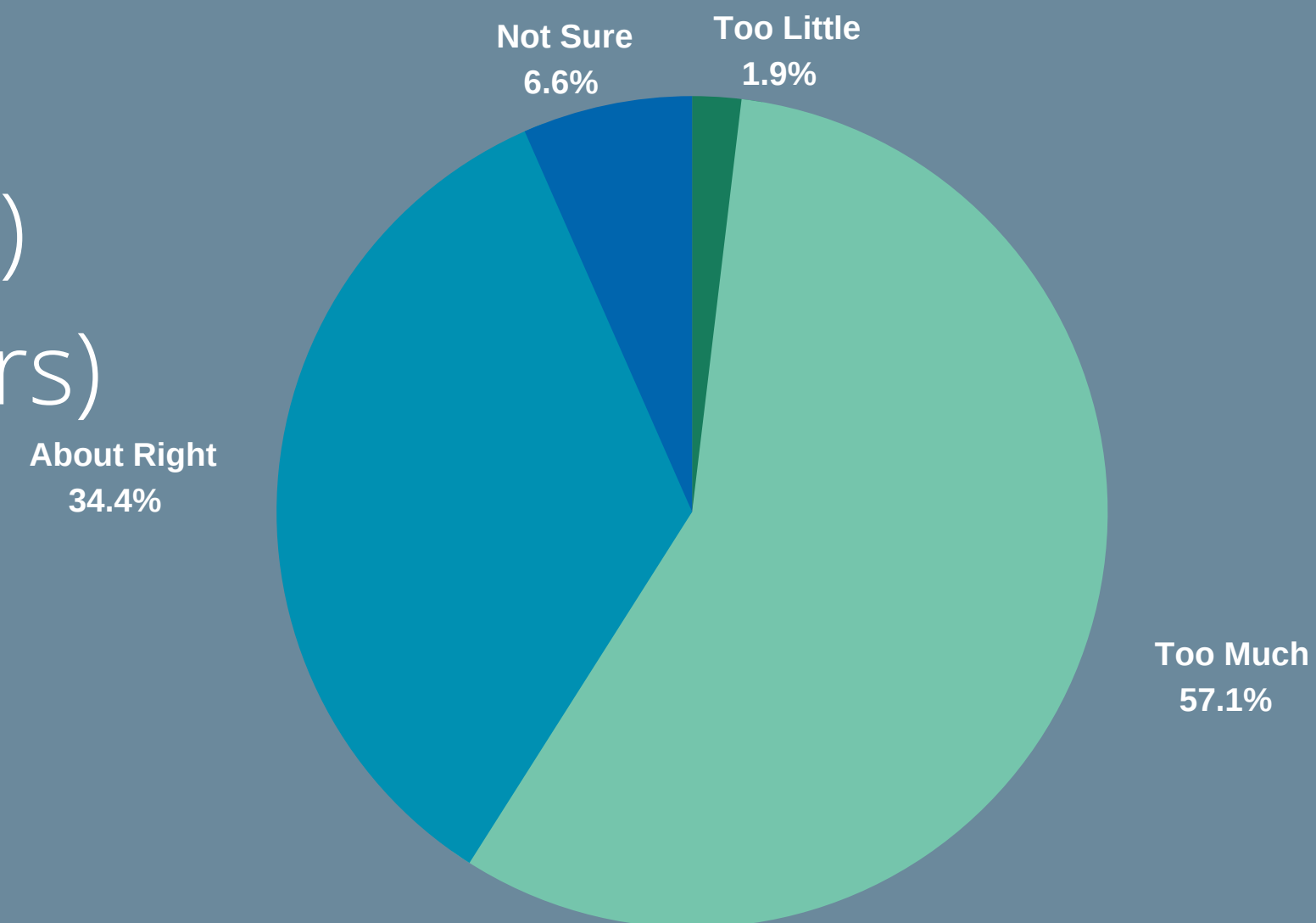
Q8: How important is it for Wellington Water to have enough funding for conservation and watershed sustainability (maintaining our water source capacity for future uses)?

- 1- (3.3%) 24 survey-takers
- 2- (5%) 36 survey-takers
- 3- (16.1%) 117 survey-takers
- 4- (24.8%) 180 survey-takers
- 5- (50.9%) 370 survey-takers



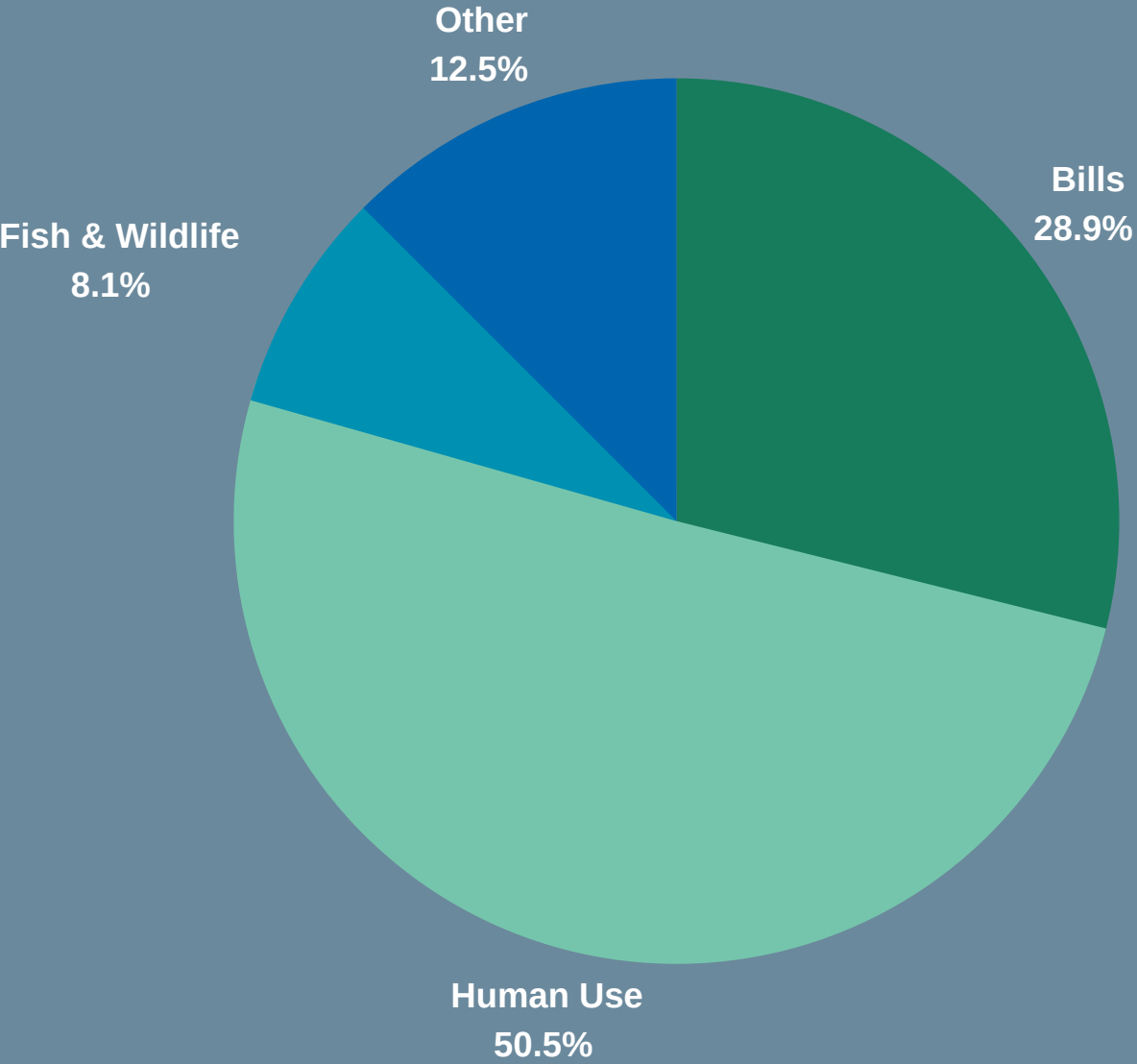
Q10: In terms of water rates, do you think the amount you pay each month for water is:

- Too Little: 1.9% (14 survey-takers)
- Too Much: 57.1% (415 survey-takers)
- About Right: 34.4% (250 survey-takers)
- Not Sure: 6.6% (48 survey-takers)



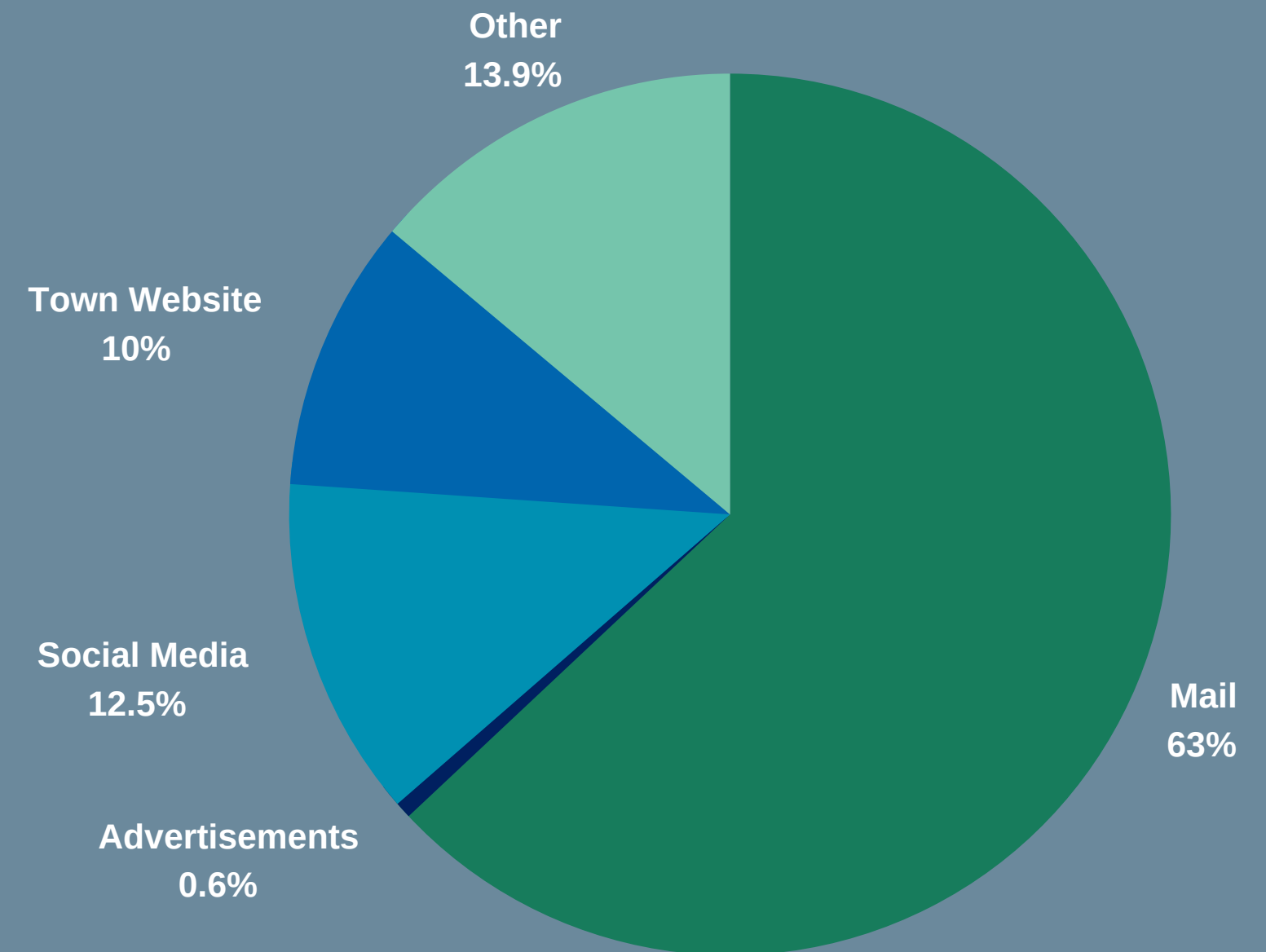
Q11: Which of the following do you believe is the most important reason to conserve water?

- Saving money on water and water-related heating bills 28.9% 210 survey-takers
- Ensuring that there is enough water for human use (agriculture, business, and future needs) 50.5% 367 survey-takers
- Ensuring that there is enough water for fish and wildlife 8.1% 59 survey-takers
- Other: 12.5% 91 survey-takers



Q12: How do you prefer to get information about Wellington Water programs and services?

- Mail: 63% (458 survey-takers)
- Advertisements around town: 0.6% (4 survey-takers)
- Social media: 12.5% (91 survey-takers)
- Town Website: 10% (73 survey-takers)
- Other: 13.9% (101 survey-takers)



Q9: Please read the scenarios below and choose which one you would prefer (based on 7,000-gallon use/month).

- **Scenario I**

- Increase an average of \$63/month all at once on January 1st

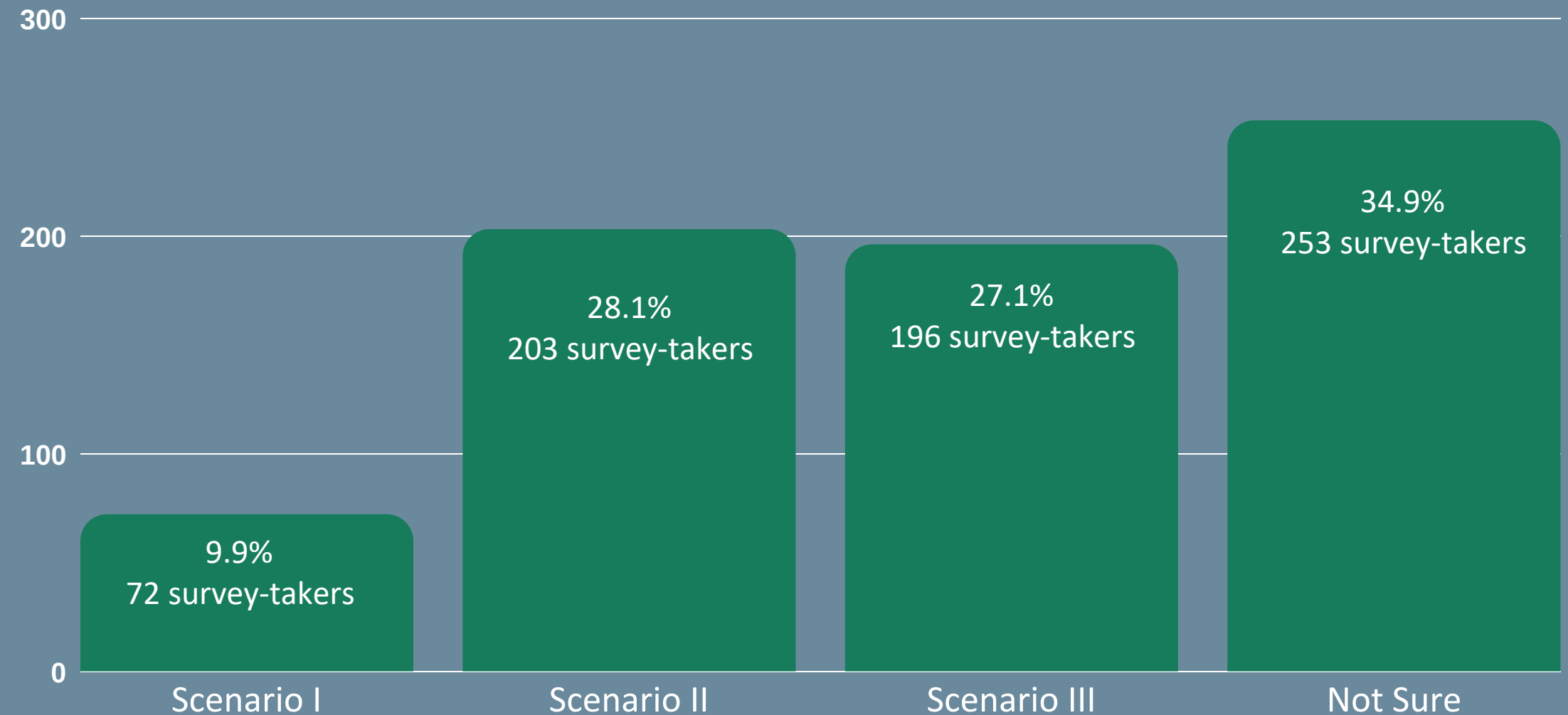
- **Scenario II**

- Increase an average of \$17/month on October 1st and then an additional \$35/month (minimum) on January 1st

- **Scenario III**

- Increase an average of \$42/month on October 1st and then an additional \$2/month (minimum) on January 1st

- **Not Sure**



Public Comment General Themes

- General frustration with the survey and the lack of option for “no rate increase”
- General frustration with the rate increase and requests for other options
- Requests to charge developers more to build
- Request to get treatment plant built faster
- Pandemic is already causing strain on residents
- This issue should have been addressed sooner
- We need to bring some bigger businesses to the area to increase tax base
- Force HOAs to allow more xeriscaping
- Water cost is already high, and quality of water is not good
- Would like to see rebate program for efficient toilets and water heads
- Would like more conservation methods
- Would like to see payment plan options for residents who struggle with paying bills
- Request for increase to consumption rate, not base rate.

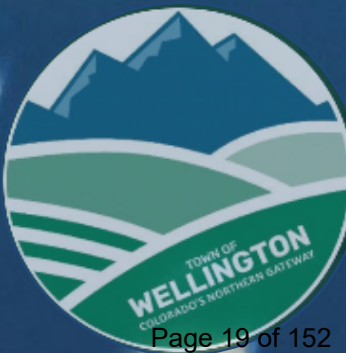
② Most Common Questions ②

- Will we be charged for 7,000 gallons regardless of how much water we use?
- When is the water plant being built?
- Why is the base rate increasing so much?
- Why is it so expensive and why are there restrictions when other communities are not having the same problems?
- Can we ban grass lawns?
- Where can we find an explanation of why rates are being increased?
- Why isn't there an option of just a \$2-\$3 increase starting in October?
- How is Town Planning affecting the conservation of water and water prices?
- Why aren't developers charged more to develop in Wellington?

[FAQ](#)

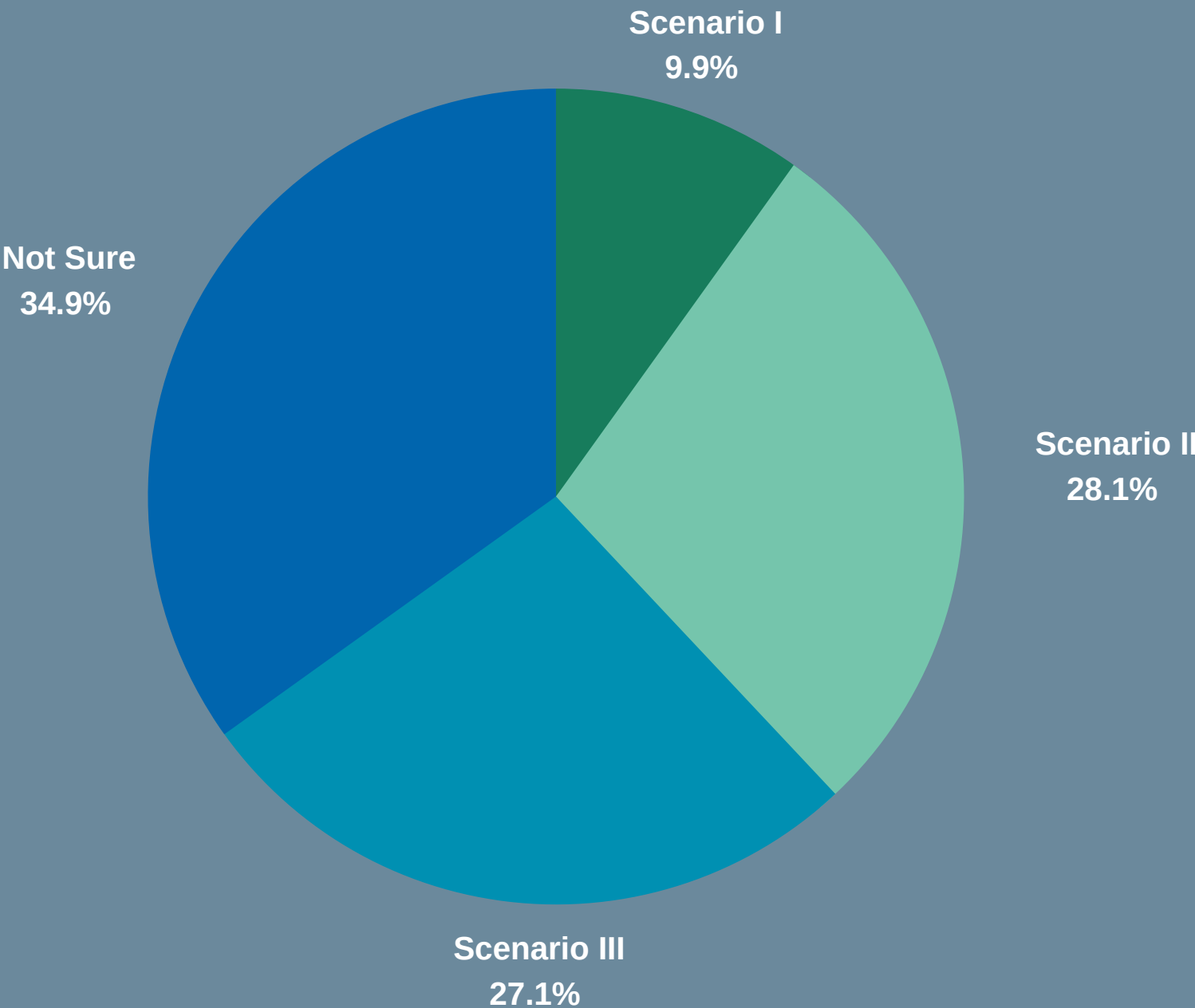


Thank You!



Q9: The Town of Wellington has developed three scenarios for water utility base rate increases that the Board of Trustees will vote on at their September 22nd meeting. The average Wellington resident uses 7,000 gallons of water a month. This unit will be used for reference in this example. Please read the scenarios below and choose which one you would prefer.

- Scenario I: Your base rate bill will increase an average of \$63/month all at once on January 1st 9.9% - 72 survey-takers
- Scenario II: Your base rate bill will increase an average of \$17/month on October 1st and then an additional \$35/month (minimum) on January 1st 28.1% - 203 survey-takers
- Scenario III: Your base rate bill will increase an average of \$42/month on October 1st and then an additional \$2/month (minimum) on January 1st 27.1% - 196 survey-takers
- Not Sure 34.9% - 253 survey-takers





Board of Trustees Meeting

Date: September 8, 2020
Submitted By: Bob Gowing, Public Works Director
Subject: Presentation
B-Dam Project Status Update - Bob Gowing, Public Works Director

EXECUTIVE SUMMARY

Staff would like to present a status update on the improvement project. Please see attached presentation.

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. Board Presentation final

B-Dam Project Status Update

September 8, 2020

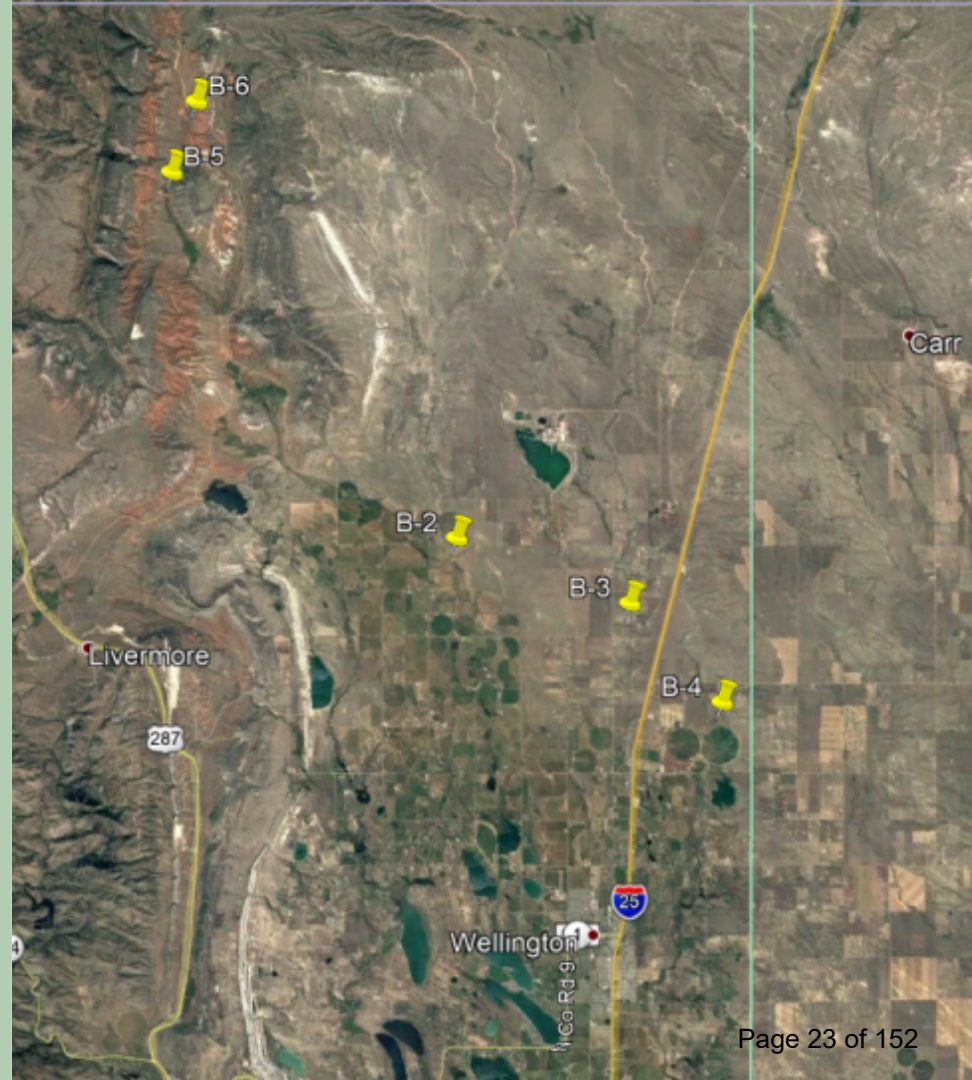


What are they?

The B-Dams are a series of five flood control structures designed and constructed in the 1970's by the Soil Conservation Service.

Each B-Dam generally consists of very large earthen dam, outlet works and an emergency spillway.

These dams are currently maintained by NPIC.

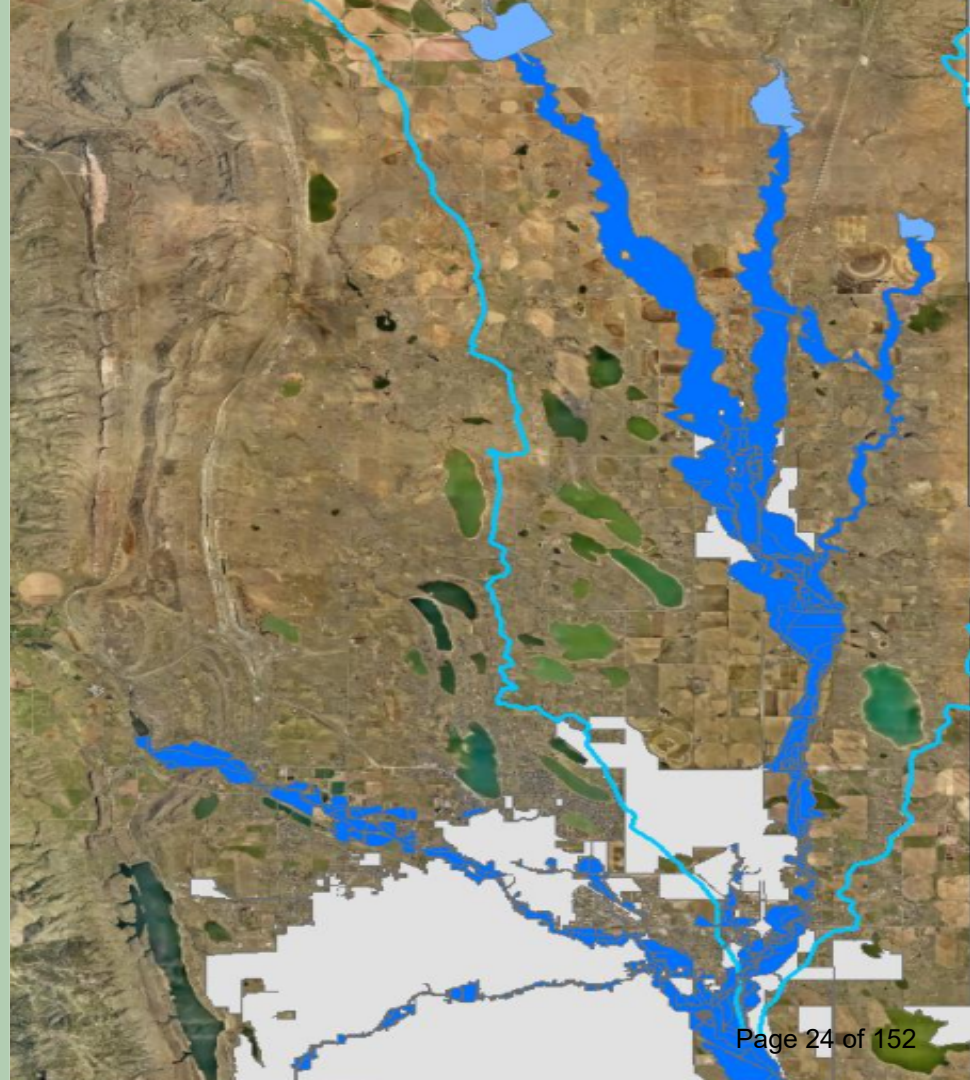


The B-Dams work together to provide extremely effective flood control for downstream properties.

Communities that primarily benefit from that flood control include Wellington, Fort Collins, Timnath and Larimer County.

Without the B-dams, approximately 75% of the Town would lie within the regulatory 100-year floodplain.

The Box Elder projects were designed assuming the B-Dams stay in place.



In the mid 2010's, B-2, B-3 and B-4 were reclassified as "High Hazard Dams" by the State, meaning the dams must either be improved to a higher performance standard or be removed.

In 2016, the NRCS completed studies for B-2 and B-3 to identify the improvements required. Estimated costs ranged from \$25,000,000 to \$30,000,000, with a potential NRCS match of 65%.

Participating communities were not able to agree on cost sharing to complete the improvements, and the project was put on hold.



In 2019, the communities were informed by the NRCS that the project must progress or funding for the match would be discontinued.

The communities and NPIC agreed to an IGA to fund a study to refine the design and develop a rational cost share approach. The total budget was \$250,000, to be shared equally by the 5 partners. A Stakeholder Group and a Technical Evaluation Committee were formed including the following:

- ☐ NPIC
- ☐ Town of Wellington
- ☐ Town of Fort Collins
- ☐ City of Fort Collins
- ☐ Larimer County



SEH was hired to accomplish the following tasks under the direction of the Stakeholders:

- ☐ Review and update previous hydrologic and hydraulic modeling for B-2 and B-3.
- ☐ Analyze B-4 and develop recommendations for improvement.
- ☐ Determine if additional modeling was needed for B-5 and B-6.
- ☐ Work with the Stakeholders and the State Engineer's Office to re-evaluate the previous recommendations using new State criteria.
- ☐ Prepare conceptual improvement plan and cost estimates.
- ☐ Develop a potential cost sharing proposal for stakeholder review and potential future use.



Results of Study

The SEO worked closely with the team to “pilot” a new approach to dam safety hazard mitigation, based on:

- ☐ State modeling techniques
- ☐ Probable failure modes
- ☐ Consequences of failure
- ☐ Potential mitigation measures

Results indicate B-2, B-3, and B-4 have low failure likelihood with a high probability of loss life and property damage.

Mitigation measures required:

- ☐ Early Warning System
- ☐ Emergency Action Plan
- ☐ Operations and Maintenance Plan





Board of Trustees Meeting

Date: September 8, 2020

Submitted By:

Subject: July 28, 2020 Regular Board of Trustees Meeting Minutes

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. 07.28.20 Minutes Draft

BOARD OF TRUSTEES - REGULAR MEETING

July 28, 2020 – 6:30 p.m.

Zoom Meeting

MINUTES**A. CALL TO ORDER**

Mayor Hammon called the regular meeting of the Board of Trustees to order at 6:35 p.m.

1. Pledge of Allegiance

Mayor Hammon asked that all rise for the pledge of allegiance.

2. Roll Call

Mayor Troy Hammon

Trustee Jon Gaiter

Trustee John Jerome

Trustee Rebekka Kinney

Trustee Wyatt Knutson

Trustee Ashley Macdonald

Trustee Tim Whitehouse

Also Present:

Kelly Houghteling, Interim Town Administrator

Tyler Sexton, Interim Finance Director

Cody Bird, Director of Planning

Bob Gowing, Director of Public Works

Krystal Eucker, Town Clerk

3. Amendments to Agenda

Mayor Hammon asked if there were any amendments to the agenda to which there was none.

4. Conflict of Interest

Mayor Hammon asked if there were any conflicts of interest on this evening's agenda to which there was none.

B. COMMUNITY PARTICIPATION

1. Public Comment

Mayor Hammon asked if there was anyone wishing to make a public comment agenda to which there was none.

2. Presentation

a. Town Hall Space Needs Study Update

Randell Johnson with Infusion Architects gave an overview of the concept drawings of the proposed new Wellington Town Hall. The proposed new Wellington Town Hall will consist of the following:

- Site – 3.72 acres
- Building – 28,000 sq. ft.
- Parking –
 - Required in Phase 1 – 94 spaces
 - Required in Phase II – 52 spaces
 - Required Parking Total: 146 spaces
 - Phase I provided parking- 120
 - Phase II provided parking – 60-90
 - Provided parking total – 145-200
- Ingress/Egress
 - After-hours access area
 - Secure Sheriff and Fire entrance
 - Staff entrance
 - Delivery entrance

b. 2019 Financial Audit Needs Study Update

- Speaker: Tyra Litau, ACM

Ms. Litau reviewed the 2019 Financial Audit that is included in packet material. Ms. Litau informed the Board that we have substantially completed our audit of the financial statements as of and for the year ended December 31, 2019. Our audit was conducted in accordance with auditing standards generally accepted in the United States of America. This audit of the financial statements does not relieve management or those charged with governance of their responsibilities.

- The objective of our audit was to obtain reasonable - not absolute - assurance about whether the financial statements are free from material misstatements whether due to error or fraud. While the scope of our work was substantially the same as previously communicated to you, there were changes to our planned audit strategy that resulted from the COVID-19 Pandemic in 2020.
- We expect to issue an unmodified opinion on the financial statements with an emphasis of matter paragraph due to the COVID-19 outbreak in 2020 which has caused business disruption in a variety of industries, markets and geographic regions and has resulted in considerable uncertainty as to the financial impact and duration, which cannot be reasonably estimated at this time.
- Our responsibility for other information in documents containing the Town's audited financial statements does not extend beyond the financial information identified in the audit report, and we are not required to perform procedures to corroborate such other information. However, in accordance with professional standards, we have read the information included by the Town and considered whether such information, or the manner of its presentation, was materially inconsistent with its presentation in the financial statements. Our responsibility also includes calling to management's attention any information that we believe is a material misstatement of fact. We have not identified any material inconsistencies or concluded there are any material misstatements of facts in the other information that management has chosen not to correct.
- All records and information requested by ACM LLP ("ACM") were freely available for our inspection.
- Management's cooperation was excellent. We received full access to all information that we requested while performing our audit, and we acknowledge the full cooperation extended to us by all levels of Town personnel throughout the course of our work.

Primary Areas of Focus and Considerations and Findings

- **Revenue Recognition:** The Town's major source of revenue consists of property taxes. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as soon as all eligibility requirements imposed by the provider have been met.
- **Capital Assets and Depreciation:** Capital assets of the Town and related capital outlay expenditures, continue to be a significant area of the Town's financial statements. Accordingly, as part of the audit, we paid particular attention to the costs of newly acquired assets, repairs and maintenance expenditures on existing capital assets, and the depreciation expense of these assets.
- **Debt Obligations:** The Town currently has one outstanding bank loan totaling approximately \$1.5 million in the governmental activities and six outstanding bonds and loans with Colorado Water Conservation Board and Colorado Water Resource and Power Development Authority totaling approximately \$27.4 million in the business-type activities. Accordingly, we have applied certain procedures over balances, future maturities, accrued interest, along with compliance with individual agreements. It appears that the Town is properly accounting for these obligations.
- **Accounts Receivable and Allowances:** Accounts receivable represents amounts due from citizens and businesses for property taxes. No allowance is made for bad debts as collection is considered assured.
- **Evaluation of Going Concern:** No going concern issues were noted during our audit. Evaluation of
- **Estimates:** DRAFT Estimates were determined to be reasonable, and free of bias.

c. Wellington Main Streets Program - Quarterly Report

- **Speaker:** Kallie Cooper, Executive Director Wellington Main Street Program
Ms. Cooper gave an overview of the report included in the Board of Trustees packet.

Current projects

- **Murals:**
 - The "Greetings from Wellington" mural was completed by Josh Griffin and his staff at Dynamic Image on May 22nd. The new mural is located at 3906 Cleveland Ave on the South wall of The Filling Station. Our live ribbon cutting ceremony reached 3,149 people on social media and was shared 23 times.
 - New railroad-themed landscaping was installed by Northern Colorado Landscaping in front of the "Historic Train Depot" mural on the corner 1st Street and Cleveland Avenue. The new landscaping utilized recycled railroad ties, donated by BNSF Railroad and added the finishing touches to last year's project, painted by Daphne Potter with DL Designs.
- **Annual Color:**
 - Downtown flowers were installed on Monday, May 18th.
 - The annual project is supported by 22 local business sponsorships totaling \$2,200.
- **Publications:**
 - "Wellington Comes Together to Raise \$20,000 for Local Businesses," published on May 13th in North Forty News
 - "Greetings from Wellington" Mural Brings Life, Color and Joy to The Community, published on May 29th in North Forty News
 - "Annual Flowers and Window Decorating Contest Brighten Downtown Wellington," published on June 5th.
 - "Wellington Takes Steps to Improve Pedestrian Safety" published on July 24th.
 - Featured in The Main Thing and Local PPE How To: Colorado Main Street

Economic Impact Toolkit for our “Show Us Your Mask” Challenge

- 2020 DOLA Mini Grant: Crosswalk Project
 - Thank you to the Town of Wellington for the installation of the first phase of the crosswalk project. These new signs have slowed traffic and are helping kids cross over by the skatepark safely!
 - We will receive the \$5,000 in mini-grant funds at the completion of the project to redirect to the Town of Wellington. A project update was submitted on June 30th.
- *COVID-19 Promotion and Resource Efforts*
 - Virtual Town Hall:
 - Hosted on May 6th and 7th with representatives from Larimer County Public Health, SBDC, Town of Wellington and the Fire Protection District
 - We had 61 participants over the two sessions
 - Presented information on safety restrictions and reopening guidelines as well as facilitated a Q&A for business owners
 - Serve 6.8 Fundraiser:
 - Thanks to contributions from individuals and from four of our local churches, the Serve 6.8 fundraiser was able to provide \$1,000 checks to 11 local businesses, as well as purchase \$4,000 worth of gift cards from our restaurants!
 - All of the gift cards from the businesses and restaurants are being distributed all around our community, beginning with First Responders and essential workers.
 - “Show Us Your Mask” Challenge
 - Winners were drawn daily to receive a \$5 gift card to a downtown business
 - We had 43 social media posts for the challenge and 20 winners!
 - We have seen 15 of the gift cards used so far (initial investment of \$75) with a return of \$221.60. That is an average of increase of \$14.44 per \$5.00 gift card.
 - #WellingtonStrong Window Decorating Contest
 - We had several business participants in the #WellingtonStrong Window Decorating Contest.
 - Meridian Trust Federal Credit Union was chosen as the winner of the \$25 gift card for their beautiful butterfly window

Events

- *The Wellington 0.5K Fun Run*: Cancelled for 2020. This event will be back on April 10th, 2021.
- *Wellington Brewfest*: Cancelled for 2020. The event will return on June 5th, 2021!
- *Well-O-Rama*:
 - After careful consideration by the MS Board and Committee, the Well-O-Rama Music Festival has been cancelled for 2020. This event will return on August 7th, 2021!
 - Sponsorship dollars have been refunded. The \$2,500 grant awarded by the Bohemian Foundation can be retained and used for an alternative event or added to the award for 2021.

Other:

- Window and Store Display Consultation:
 - The Main Streets Program utilized \$865 in training funds to host window display expert and Rawlins, WY Main Street Manager, Pam Thayer on June 23rd.
 - Pam met with five of our downtown businesses to consult with the owners on how to enhance their curb appeal and improve their visual marketing.

- Tastemade “Beyond the Block” Filming:
 - The film crew from Tastemade and Realtor.com returned to downtown Wellington on Thursday, July 16th.
 - In preparation for their visit, the Main Streets Program organized a Downtown Clean Up Day on Thursday July 8th. We had 18 volunteers over two hours to help clear weeds and debris, sweep sidewalks, and clean up landscaping.
 - THANK YOU to the Public Works Department for providing the materials we needed to make this happen and giving your time to make our downtown look great for filming!
- *DOLA Funding:*
 - The Main Streets Program has signed a five-year contract with the Department of Local Affairs for Mini-grant funds (\$5,000 annually) and Training and Scholarship Awards (\$2,200 annually). These funds are secured through 2025 as long as we remain a Main Street Program in good standing. Training and Scholarship funds will be distributed on an annual basis. Mini-grants funds can be banked if they are not used and can be awarded in advance (up to three years, totaling \$15,000) if we submit a proposal to DOLA outlining the project and guarantee our program status for the length of the mini- grant fund advance.
- Main Street Strategic Plan
 - On Monday, June 29th the Main Street Board of Directors met with Matt Ashby from Ayers and Associates to make recommendations on changes to the 2020-2025 Wellington Main Streets Strategic Plan.
 - The 2020-2025 Strategic Plan will be finalized before July 31st.

C. CONSENT AGENDA

1. Minutes of the June 23, 2020 Regular Meeting of the Board of Trustees
Trustee Gaiter moved to approve the consent agenda; Trustee Knutson seconded the motion. Roll call on the vote resulted as follows:
 Yeas – Gaiter, Jerome, Kinney, Knutson, Macdonald, Whitehouse, Hammon
 Nays – None
 Motion carried

D. ACTION ITEMS

1. Ordinance No. 14-2020 - An Ordinance Modifying the Virtual Meetings Ordinance to Allow Quasi-Judicial Matters
 Mr. March informed the Board that Ordinance 14-2020 is an amendment to the virtual meeting ordinance to allow quasi-judicial matters to be considered during any virtual meeting.

Trustee Gaiter moved to approve Ordinance 14-2020; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:
 Yeas – Gaiter, Jerome, Kinney, Knutson, Macdonald, Whitehouse, Hammon
 Nays – None
 Motion carried
2. Ordinance No. 15-2020 - An Ordinance Repealing and Reenacting Chapter 13 of the Wellington Municipal Code Addressing Municipal Utilities
 Mr. March informed the Board that Ordinance 15-2020 is an amendment to the municipal utilities portion of the code. The amendments to the code will address compliance issues with certain federal and state requirements.

Trustee Whitehouse moved to approve Ordinance 15-2020; Trustee Knutson seconded the motion.

Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Knutson, Macdonald, Whitehouse, Hammon

Nays – None

Motion carried

3. Special Water Counsel Engagement Letter: Moses, Wittemyer, Harrison and Woodruff

Ms. Houghteling reviewed the Agreement for Legal Services from Moses, Whittemyer, Harrison and Woodruff to provided legal services as Water Counsel to the Town of Wellington.

Trustee Gaiter moved to accept the Special Water Counsel Letter; Trustee Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Knutson, Macdonald, Whitehouse, Hammon

Nays – None

Motion carried

4. Contract Approval: Executive Search Services Agreement

Ms. Houghteling reviewed the Executive Search Firm Agreement between the Town of Wellington and Peckham and McKinney for the Town Administrator position.

Trustee Gaiter moved to approve the Executive Search Firm Contract; Trustee Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Knutson, Macdonald, Whitehouse, Hammon

Nays – None

Motion carried

5. Contract Approval: Ayres Economic Development Services

Trustee Gaiter moved to remove the Ayers Economic Development Services Contract from the Agenda; Trustee Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Knutson, Macdonald, Whitehouse, Hammon

Nays – None

Motion carried

E. REPORTS

1. Town Attorney
None

2. Town Administrator
None

3. Staff Communications
a. Treasurer Report

4. Board
None

F. ADJOURN

Krystal Eucker, Town Clerk



Board of Trustees Meeting

Date: September 8, 2020

Submitted By: Tyler Sexton, Finance Director

Resolution No. - 29-2020 Bulk Water Rate Increase

Subject:

- **Staff presentation: Tyler Sexton, Interim Finance Director**

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

The Town has evaluated its fees for water cost for both citizens and development. Staff believes the bulk water rates needed to be evaluated to ensure fair equity among all water user. This resolution brings the bulk water fee to reflect current costs.

STAFF RECOMMENDATION

Staff recommends approval of Resolution 29-2020 to increase bulk water rates to \$15.20 per 1,000 gallons.

ATTACHMENTS

1. bulk water slides
2. Bulk Water Rates - Calculation
3. Bulk Water Rate Resolution

Bulk Water Station Rate Increase



TOWN OF
WELLINGTON

Board of Trustee Meeting 09-08-2020

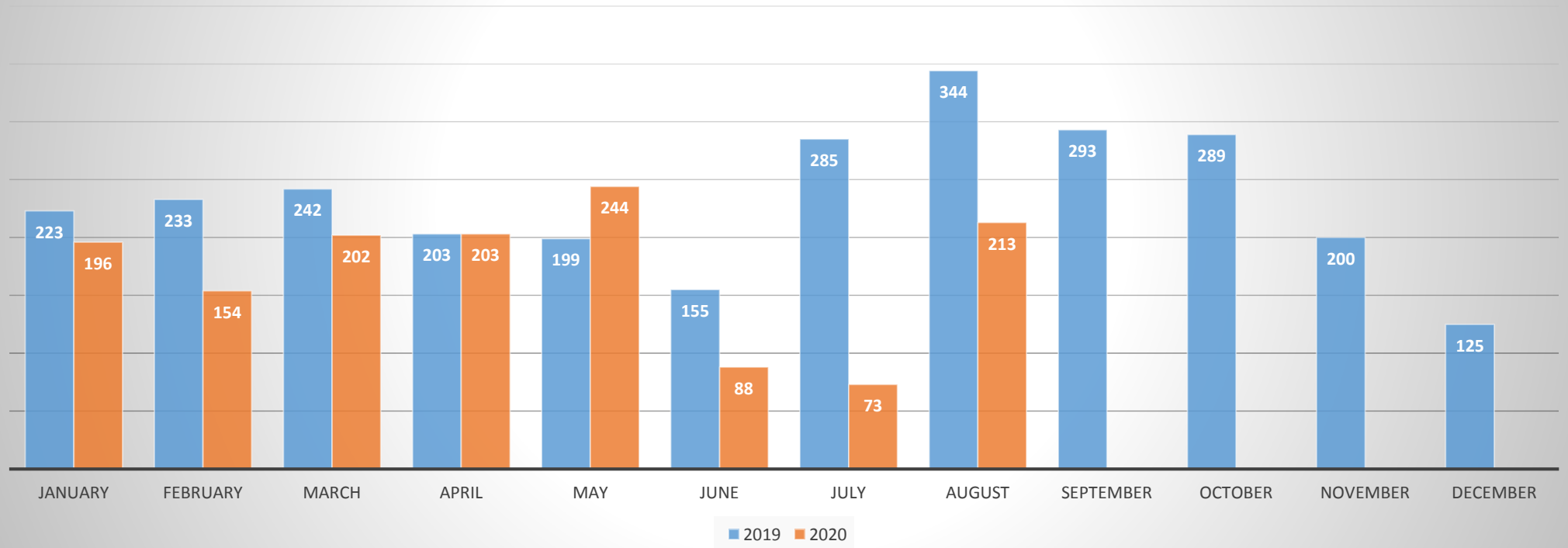
Bulk Water Station Information

- Located at 4021 Grant Avenue (Public Works Shop)
- \$6.25 per thousand gallons (cash only)
 - Treated potable water

2019 – 2,601
2020 – 2,145 (Projection)

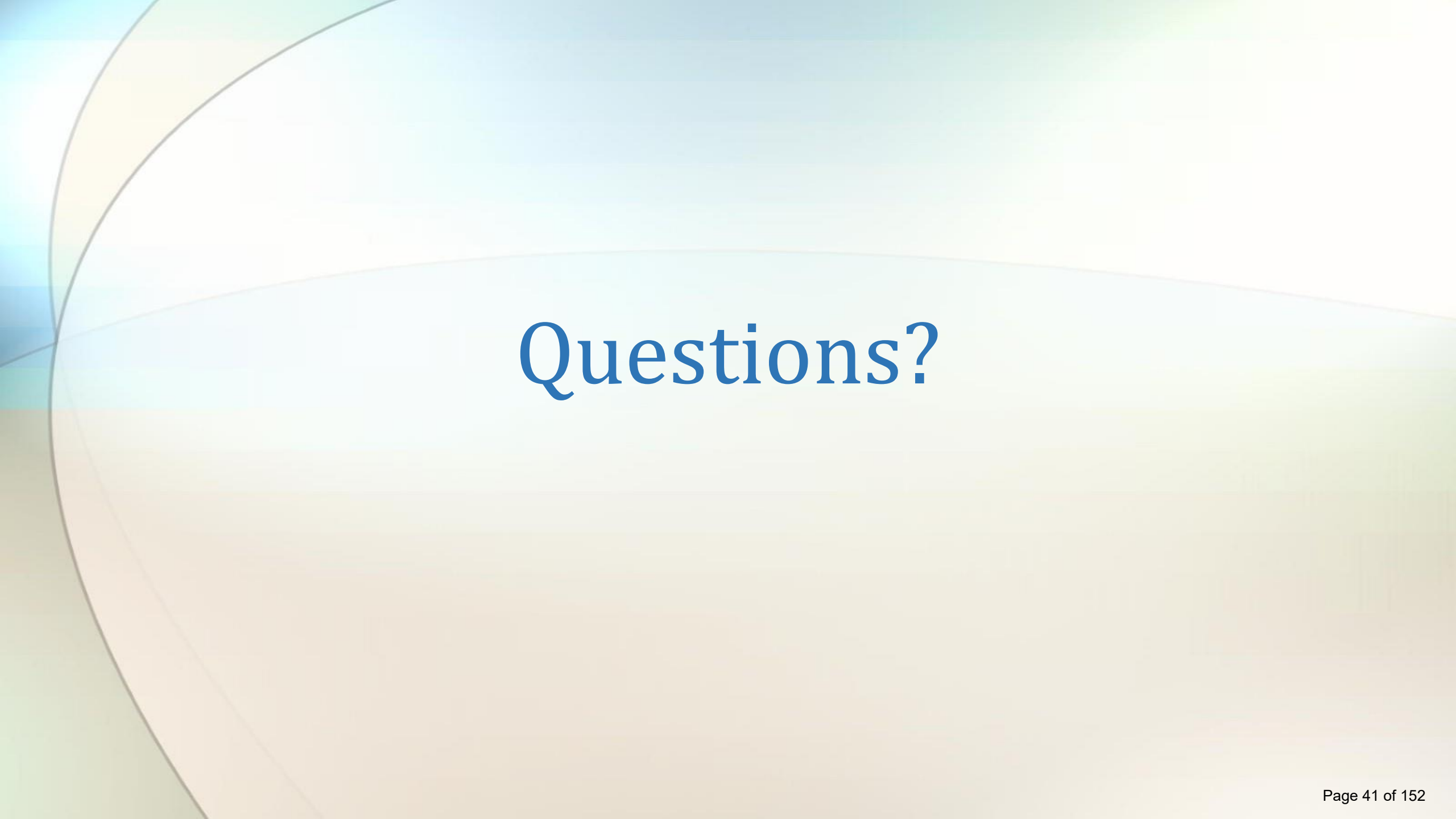
Bulk Water Usage

(per thousand gallons)



Projected Increase

- \$15.20 per thousand gallon
 - Bulk water uses .84% (2,601,000 gallons) of our total water usage.
 - Current market value of 1-acre foot is \$2,180.85.
 - Bulk water station uses 7.98-acre foot a year.
 - Cost to treat \$39,535.00
 - 143% increase



Questions?

Formula $C(((MV * \text{Interest rate} / 100) + A) / 5.5 \text{ acre feet per share})$

Values
2019

				Per acre foot charge
C	Charge per acre foot of annual water use in excess of 275 AF			
MV	Market value of one share of NPIC (annual average)	MV	200,000	2180.85 951.03
Int	Interest rate for farm and ranch loans	Int	5.50	
A	NPIC annual assessment per share	A	210	
APP	Appropriation (is set at 5.5 - No variable)	APP	5.5	

Wellington water use	726.85	AF
Less: Base use	275.00	AF
Use in excess of base use	451.85	AF
* per AF charge	2,180.85	
Charges for excess use	985,419.13	

2019 Use	951.03
Acre Into Gallon	326,000
Total Gallons Used 2019	310,035,780
Bulk Water Used	2,601
Convert to 1,000	1,000
Total Gallons Used	2,601,000

Percentage of usage 0.84%

Total Cost of Water Fund (2)	3,347,739
Less Water Payment	709,318
Total Cost	2,638,421

Allocation of Bulks cost	22,134.65
Convert Gallons used to Acre Foot	7.98
Cost Per acre Foot at new rates	17,400.01

Total Cost for Bulk Water	39,535
Convert to Per 1,000 Cost	\$ 15.20

TOWN OF WELLINGTON
RESOLUTION NO. 29-2020

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
WELLINGTON, COLORADO ESTABLISHING BULK WATER SALES RATES AND
ALLOWING IMPOSITION OF LIMITATION OF WATER DISPENSED FROM THE
BULK WATER FACILITY.**

WHEREAS, the Town Code (the “Town Code”) of the Town of Wellington, Colorado (the “Town”) provides that the Board of Trustees (the “Board”) of the Town shall set fees for various utility services provided by the Town by ordinance or resolution; and

WHEREAS, the Town has for many years maintained a bulk water dispensing facility (the “Bulk Water Facility”) which is located on property owned by the Town; and

WHEREAS, the Town has for more than fifteen years maintained a price for bulk water (“Bulk Water”) purchases of water from the Bulk Water Facility at \$6.25 per 1,000 gallons; and

WHEREAS, many owners living in areas surrounding the Town have unreliable water sources, notably underground water wells, and the Bulk Water dispensed through the Bulk Water Facility is relied upon by these residential property owners surrounding Wellington as a primary water supply source; and

WHEREAS, the Town has suffered water shortages and increased water costs and has evaluated the potential of shutting the Bulk Water Facility, but, for the immediate future the Board has elected to continue operating the Bulk Water Facility to provide for essential domestic water needs of residents living in outlying areas surrounding the Town; and

WHEREAS, Town Engineer and Town Treasurer were directed by the Board to provide an analysis of Bulk Water, costs of supply and impact on other water supplies and to recommend a revised rate for Bulk Water purchases; and

WHEREAS, the Town Engineer and Town Treasurer have recommended that the cost of Bulk Water supplied by the Town through the Bulk Water Facility be increased to \$15.20 per 1,000 gallons; and

WHEREAS, the Town Code at section §10-4-10 provides that the Town may adopt restrictions or limitations of the use of public property and permitted activities;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, THAT:

- 1) Rates for the sale of Bulk Water shall be established at to \$15.20 per 1,000 gallons.
- 2) The Town Administrator or Town Engineer are authorized to put in place restrictions and limitations on the use of Bulk Water dispensed from the Bulk Water Facility,

including limitations on use of such Bulk Water, which limitations shall prohibit the use of Bulk Water dispensed from the Bulk Water Facility for construction purposes.

Upon a motion duly made, seconded and carried, the foregoing Resolution was adopted by the Board of Trustees this 8th day of September, 2020

TOWN OF WELLINGTON, COLORADO

Troy Hamman, Mayor

ATTEST:

Krystal Eucker, Town Clerk

Board of Trustees Meeting

Date: September 8, 2020
Submitted By: Cody Bird, Planning Director
Subject: Annexation Agreement and Development Agreement for Poudre School District Subdivision

- **Staff presentation: Cody Bird, Planning Director**

EXECUTIVE SUMMARY

The Town Board is in ongoing consideration of a draft annexation agreement and a draft development agreement for development of land owned by Poudre School District. The draft agreements were tabled to the September 8, 2020 Town Board meeting to allow additional coordination. Current drafts of both agreements are attached. Additional coordination is needed to finalize consideration of water contribution requirements and off-site road costs. It is recommended that the agreements be tabled to a later meeting.

BACKGROUND / DISCUSSION

The Town and Poudre School District (PSD) have coordinated on annexation of approximately 132 acres of land at the northwest corner of County Road 9 and County Road 62E for the purpose of constructing a new middle/high school.

The Town Board of Trustees adopted Ordinance 4-2020 annexing the property into the Town, and Ordinance 7-2020 approving a subdivision plat dividing the property into lots and streets. Execution of an annexation agreement and development agreement are conditions of approval of the ordinances.

Draft agreements are attached. Remaining topics that are being coordinated between the Town and PSD include:

- Final raw water contribution requirement (final details of water demand analysis being coordinated by staff).
- Consideration of water share dedication or cash in-lieu of shares or a combination of both share dedication and cash in-lieu (policy consideration by Board of Trustees).
- Amount of costs and timing of making payments for off-site road improvements at the intersections of County Road 9 and 62E and Highway 1 (policy consideration by Board of Trustees).
- Public improvement cost estimates to determine amount of fiscal security for 2-year warranty period (coordinated by staff).

The Town and PSD are continuing to coordinate on the above topics. It is recommended that this agenda item be tabled to the regular Board meeting of September 22, 2020 to allow additional coordination.

STAFF RECOMMENDATION

Move to table the annexation agreement and development agreement to September 22, 2020.

ATTACHMENTS

1. Annexation Agreement



2. Development Agreement

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made and entered into this ____ day of _____, 2020 between the TOWN OF WELLINGTON, COLORADO, a Colorado municipal corporation, hereinafter referred to as the "Town" and Poudre School District R-1, 2407 LaPorte Ave., Fort Collins, CO, 80521, a Colorado public school district and political subdivision of the State of Colorado referred to as the "Owner".

WITNESSETH:

WHEREAS, Owner is the owner of property more fully described on Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Owner has filed a petition to annex the Property to the Town; and

WHEREAS, the Town passed Ordinance No. 4-2020 annexing the Property with execution of the Annexation Agreement by the Owner and the Town of Wellington a precondition to the Ordinance becoming effective; and

WHEREAS, Colorado's Courts have recognized that the Municipal Annexation Act of 1965 contemplates annexation agreements as a routine step in the annexation process; and

WHEREAS, the parties are desirous of entering into an annexation agreement to set forth various obligations of the parties including obligations for development and use of the property in the future;

NOW, THEREFORE, the parties agree as follows:

1. Dedications. Owners acknowledge that the Development Agreement, as defined in Section 6 below, requires dedication of property necessary to install Public Improvements, as defined in the said Development Agreement and as shown on the annexation map and on any subsequent subdivision or other plat. Owner warrants title to such dedicated property against claims by any party claiming by, through, or under the Owner, subject only to exceptions of record.
2. Infrastructure. Owner agrees to install all infrastructure improvements that are included in the definition and listing of Public Improvements set forth in the Development Agreement and make all dedications as set forth in this agreement and the Development Agreement and as may be reasonably required by the Town for any subdivision of the Property and for extensions of any Public Improvement necessary to serve building improvements on the Property.

All such infrastructure improvements installed by Owner shall be installed in accordance with the direction of the Town Engineer and Public Works Department and the Town's Standard Design Criteria as adopted by the Town dated March 10, 2015 and which may

from time to time be amended (the "Standards"); provided, however, that no amendment to the Standards shall be binding upon the Owner unless such amendment has been provided to the Owner prior to approval of final construction drawings. Owner agrees to pay all costs to underground all utility lines that have been installed in order to extend service to the Property at the time the Property, or any part of the Property, is subdivided or otherwise developed.

Owner acknowledges and agrees that any off-site costs set forth in the Development Agreement will be payable within sixty (60) days (unless otherwise provided in the Development Agreement) following mutual execution of this Annexation Agreement and the Development Agreement.

3. Landscaping. Owner shall install street trees and landscaping along the perimeter of the Property near the public sidewalk which complies with the landscaping plan to be submitted to the Town as part of the platting process. Owner shall maintain street trees and landscaping in good and live condition, including proper watering, fertilization, pest control, and pruning necessary for the health and structural integrity of the trees and vegetation, and shall replace any dead trees or vegetation no later than the following planting season.

4. Development Impact Fees and Review Expenses. Owner agrees to pay development impact fees imposed by the Town including water and sewer tap, road impact, administration, and storm drainage as set forth in the Development Agreement. Development Impact Fees will be payable within sixty (60) days of mutual execution of the Annexation Agreement and Development Agreement. Owner and the Town will enter into a separate agreement on the Town's form D-5 for payment of review expenses. Off-site road improvement costs may be paid by Owner as agreed to in the Development Agreement, or other agreement as may be entered into by Owner and the Town.

Notwithstanding the foregoing, Owner Poudre School District R-1 will not be assessed building inspection fees because the School District receives the building inspections and certificate of occupancy through the State of Colorado per CRS 22-32-124(1)(c).

5. Water Contributions.

- A. Raw water: Owner agrees to meet the raw water dedication requirements as adopted by the Town or as may be agreed to in a Development Agreement.
- B. In-Building Water Supply. If conveyance of water rights and/or payment in lieu thereof pursuant to paragraph A. above is satisfied and a water tap permit is issued prior to November 1, 2020, the Town shall provide potable water service as is required to supply the improvements to be constructed by the School District on the Property. The amount of water required shall be determined at the time of final plat approval or at such other time as may be agreed upon in writing by the parties hereto. The water resources to be

contributed may or may not already be adjudicated for municipal use at the time of contribution, provided that there are no known impediments to the legal or physical availability of such water resources for use in and delivery to and from the Town's water system.

- C. Irrigation by Tributary Water. Notwithstanding subsection B above, the Owner shall retain all tributary water rights including all wells and tributary groundwater rights appurtenant to said wells located on the Property (including as needed all areas of the Property dedicated to the Town), and any ditch company shares that may be associated with such land, and the Town will cooperate in allowing the irrigation of the turf grass and landscaped areas of the Property with non-potable tributary water supplies, notwithstanding C.R.S. § 37-90-137(8) or any other law. Owner will convey to the Town all nontributary groundwater rights, including all nontributary groundwater rights in the Muddy Sandstone, Entrada Sandstone and Dakota Sandstone aquifers underlying and appurtenant to the Property.

6. Development agreement. The Town and Owner shall enter into a Development Agreement, which shall contain the agreed upon public improvements to be constructed by Owner and shall address the dedication and improvement of roads including sidewalks, signage and traffic control, the installation and maintenance of water and sewer services, including lift stations and related facilities, the installation and maintenance of storm drainage facilities and, if applicable, provisions for the construction and maintenance of bridges and similar structures and provisions for the payment of off-site improvement expenses. Owner Poudre School District R-1 and the Town have entered into a Memorandum of Understanding (the "MOU") which sets forth certain agreements concerning public improvements. The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the MOU and also will execute such additional amendments to the MOU or other documents as necessary to effectuate the same. Notwithstanding the foregoing, it is expressly understood and agreed that the School District may proceed with overlot grading of the Annexed Property without any further notice to, or approval by, the Town.

7. Road construction and dedication. All roads and road improvements upon or related to the Property shall be funded and constructed as agreed to in the Development Agreement.

The Town has requested, and the Owner has agreed to dedicate road right-of-way at the northwest corner of the intersection of County Road 9 and County Road 62E for future intersection improvements, such additional right-of-way to be dedicated on the final plat.

Owner agrees to pay a portion of costs for improvement of the intersections of State Highway 1 and County Road 9, State Highway 1 and County Road 62E, and County Road 9 and County Road 62E (collectively, the "Intersection Improvements"). Funding amounts for Owner costs shall be determined in the Development Agreement, or other

agreement as may be entered into between the Owner and Town. For purposes of this Annexation Agreement, Owner costs for Intersection Improvements will be determined for each Lot within the development at the time that Lot is developed, subdivided or otherwise improved.

8. Water/Sewer improvements. Owner shall install water and sewer improvements and related facilities as may be necessary to serve the Property which improvements shall be further defined by the development agreement. The Town shall not be obligated to provide water or sewer service to any portion of the Property and in no event will the Town approve water service until it is confirmed that the Town has adequate water and sewer capacity to serve the Property. All water and sewer mains and appurtenant facilities shall be constructed in accordance with applicable Town ordinances, rules, regulations, Standards and engineering specifications as may be in effect at the time of development, and upon completion and acceptance by the Town, any such improvements shall be conveyed to the Town, and the Town shall thereupon assume the responsibility for the maintenance, repair, and replacement of said mains and facilities. Owner will pay all costs associated with obtaining water and sewer service for the Property and will grant, without cost, all necessary easements for construction and maintenance of any sewer or water improvements necessary serve the Property.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED THAT THE NORTHERN COLORADO WATER ASSOCIATION WILL NOT PROVIDE DOMESTIC WATER SERVICE TO THE PROPERTY AND THAT THE NORTHERN COLORADO WATER ASSOCIATION HAS CONSENTED TO THE TOWN PROVIDING WATER SERVICE TO THE PROPERTY.

9. Non-municipal Dedications. Owner agrees to provide appropriate and standard easements or rights-of-way for non-municipal utilities as recommended by the Town Engineer including easements for gas, electric, cable TV and irrigation water service.

10. Storm Drainage Improvements. Owner shall construct and maintain such storm drainage improvements identified in the MOU and as may be required during subdivision/development of the Property in accordance with applicable Town regulations and Standards. Unless it otherwise consents, the Town shall not be obligated to provide storm drainage improvements for any portion of the Property.

11. Agricultural use. As of the date of this Agreement, portions of the Property are being used for agricultural purposes. The Property may continue agricultural uses legally existing at the time of annexation including grazing livestock and maintenance of fences (including barbed wire fences) until the earlier of commencement of construction of any structural improvement on the property or approval of a development agreement or subdivision/final plat.. Thereafter, the Owner shall discontinue agricultural uses of the Property unless otherwise agreed to in writing by the Town. The Town and other governmental authorities have adopted certain weed control, dust control and other nuisance standards. If the Property is not farmed or Owner does not otherwise ensure

that sources of weed, dust and nuisance violations are addressed, the Town shall have the right to address the sources of such violations and Owner shall reimburse any costs the Town reasonably incurs in addressing such violations.

12. Initiative/Referendum. If the annexation of the Property, or any portion thereof, is challenged by initiative or referendum, all provisions of this Agreement, together with the duties and obligations of each party (including payment of all taxes imposed by the Town and enforcement of any Town ordinances on the Property), shall be suspended pending the outcome of the initiative/referendum election. If the initiative/referendum challenge results in disconnection of the Property from the Town, then this Annexation Agreement and all provisions contained herein shall be null and void and have no further effect. If the initiative/referendum challenge fails, then the Owner and the Town shall continue to be bound by all the terms and conditions of this Annexation Agreement.

If any citizen-initiated or referred ordinance becomes effective in the Town within eleven (11) months after the effective date of the annexation ordinance, which substantially alters or limits Owner's right to use its portion of the Property as contemplated by this Agreement, then the Town, upon the written request of Owner, will proceed to take all necessary action to disconnect the Owner's Property from the Town.

The provisions of this section 12 are subject to the laws and rights, authority, and prerogatives of Poudre School District R-1 pertaining to the location of public schools.

13. Disconnection. Owner may not petition the Town to disconnect any portion of the Property if the effect of that disconnection would be that any other property in the Town would no longer have the contiguity to the Town. Absent approval by Town, Owner waives any right to disconnect the Property for failure on the part of the Town to provide services as would otherwise be allowed by C.R.S. §31-12-119. If Owner properly disconnects any portion of the Property as provided for herein, this Agreement shall continue to bind the Owner and Property to the extent that the Town has incurred obligations in reliance on this Agreement and the annexation petition.

14. Court Action. If the annexation of all or any portion of the Property is voided by action of any court (excluding any action arising as a result of an initiative or referendum) the Town and Owner shall cooperate to cure any legal defect which resulted in disconnection and upon cure this Agreement shall be deemed an agreement to annex such property to the Town as provided for by C.R.S. §31-12-120. Owner shall reapply for annexation with the property becomes eligible for annexation as determined by the Town.

15. Town's Ordinances. Development of the Property shall be governed by the Town's ordinances, resolutions, standards, fees and policies currently in effect and as may be adopted or amended in the future. Except as set forth in this Agreement, land use issues remain subject to the police power and legislative authority of the Town; provided, however, that development of the Property by Poudre School District R-1 shall be subject to CRS §22-32-124.

16. Enforcement. This Agreement shall be specifically enforceable by a court of competent jurisdiction. In the event of a material breach of any material provision of this Agreement, the nonbreaching party may ask a court of competent jurisdiction to enter a writ of mandamus, temporary or permanent restraining orders, temporary or permanent injunctions, or orders of specific performance to compel the breaching party to perform its duties under this Agreement and to grant such other relief as may be afforded by law, it being the intent of this provision to supplement the law of remedies.

17. Further agreements. The parties agree to sign any further documents reasonably required by Owner or the Town to carry out the terms of this Agreement.

18. Recordation. This Agreement and any amendments to this Agreement may be recorded with the Larimer County Clerk and Recorder and shall be binding upon and inure to the benefit of the heirs, transferees, successors, and assigns of the Owner. Upon conveyance of any interest in the Property, the previous Owners shall be released of any future obligation hereunder as to the portion of the Property conveyed. This Agreement shall constitute a covenant running with the Property.

19. Entire agreement. Subject to the Town code and other properly adopted authority, this Agreement represents the entire agreement between the parties. Any amendments to this Agreement to be affective shall be in writing.

20. Vesting. The Town's ordinance 16-1999 defines site specific development plans and provides that vested property rights are only created if properly requested at the time of approval of a development agreement or final subdivision plat. This Annexation agreement does not give rise to any claim of vested rights related to the Property.

21. Counterparts. This Agreement may be executed by any number of counterparts and by any number of counterpart signature pages, each of which shall be an original with the same effect as if each of the signatures were affixed to the same instrument.

22. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile transmission or registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices by hand delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission receipt. All notices by mail shall be considered effective 72 hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to Town:

Town Administrator
Town of Wellington
Post Office Box 127
Wellington, Colorado 80549

With a copy to

Wellington Town Attorney

Attn. Brad March
March and Olive, LLC
1312 S. College Avenue
Fort Collins, CO 8024

Notice to Owner:

Poudre School District R-1
Planning / Operations
2407 LaPorte Ave
Fort Collins, CO 80521

With a copy to:

Semple, Farrington, Everall & Case., P.C.
Attn. Darryl L. Farrington
1120 Lincoln Street, Suite 1308
Denver, CO 80203

23. Election. Owner agrees that they are voluntarily entering into this Agreement. Owner represents and submits that, to the extent an election would be required pursuant to C.R.S. § 31-12-112, as amended, to impose terms and conditions upon the Annexed Property, Owner owns 100 percent of the Annexed Property, excluding public streets and alleys, and would vote to approve all terms and conditions as set forth herein. Thus, any election would necessarily result in a majority of the electors' approval to the terms and conditions hereof.

24. No Third-Party Rights. This Agreement is made solely for the benefit of the parties hereto, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

25. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Larimer County, Colorado.

26. Headings. The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

27. Legal Authority of School District. Notwithstanding anything herein to the contrary, this Agreement shall not limit or alter the Poudre School District R-1's legal rights and authority with regard to the location, construction, reconstruction, or expansion of any school or school-related building or structure as provided in CRS § 22-32-124, or any other law.

IN WITNESS WHEREOF, the parties hereto have executed this Annexation Agreement the day and year first written above.

THIS AGREEMENT CREATES OBLIGATIONS FOR VARIOUS PROPERTY OWNERS AND MAY CREATE OBLIGATIONS TO MAINTAIN CERTAIN ROADS ON

**THE PROPERTY, LIENS OR OTHER RIGHTS AGAINST OWNER AND THE
PROPERTY. IT HAS BEEN RECOMMENDED TO OWNER THAT THIS
AGREEMENT BE REVIEWED WITH LEGAL COUNSEL.**

TOWN OF WELLINGTON, COLORADO

By: _____
Troy Hamman, Mayor

ATTEST:

Kelly Houghteling, Interim Town Administrator/Clerk

APPROVED AS TO FORM

March & Olive, LLC
Town Attorney

By: _____
J. Brad March

PSD Signatures Page

POUDRE SCHOOL DISTRICT R-1

By: _____

Matt Bryant

Executive Director of Operations

Authorized Signatory (Board Resolution dated 11 June 2019 and recorded with the
Larimer County Clerk and Recorder at Reception Number 20190032049)_____)

XXXXXXXX

DRAFT

EXHIBIT "A"

Description:

[Insert Legal]

DRAFT

**MEMORANDUM OF AGREEMENT
FOR PUBLIC IMPROVEMENTS
Poudre School District Subdivision**

THIS AGREEMENT, made and entered into this ____ day of _____, 2020 by and between the TOWN OF WELLINGTON, COLORADO, a municipal Corporation, hereinafter referred to as the “Town” and Poudre School District R-1 a public school district and political subdivision of the state of Colorado, hereinafter referred to as “Developer.”

WITNESSETH:

WHEREAS, Developer is the owner of certain Property situated in the Town of Wellington, County of Larimer, State of Colorado, legally described on Exhibit “A” attached hereto and incorporated herein (the “Development”);

WHEREAS, the parties hereto have agreed that the Development will require increased municipal services from the Town in order to serve such area and will further require the installation of certain public improvements that will benefit the Development and the Town as a whole; and

WHEREAS, the Planning Commission of the Town of Wellington recommended approval of the plat of Poudre School District Subdivision on February 3, 2020, and the Town Board of Trustees granted approval on February 25, 2020 by Ordinance No. 7-2020, which requires the Developer to enter into this agreement to provide for the installation of required public infrastructure improvements hereinafter described, all on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and conditions hereinafter contained, it is agreed as follows:

1. Improvements and Public Improvements; Acceptance and Ownership by Town.

The Public Improvements and the Development Improvements (as both are defined in section 4 below) (hereinafter sometimes called the “Improvements”), shall be constructed and installed in accordance with construction plans which will be approved in accordance with Section 4(b) (“Approved Plans”). The Public Improvements include the following:

- a) Street grading, paving and stabilizing (the “Street Improvements”);
- b) Storm sewers, including all necessary catch basins, inlets, pumping stations, detention areas and other appurtenances (the “Storm Sewer Improvements”);
- c) Water main laterals or extensions, including all building services, hydrants, valves and other appurtenances (the “Water Main Improvements”);

- d) Sanitary sewer laterals or extensions, including all necessary building services and other appurtenances (the “Sanitary Sewer Improvements”);
- e) Permanent street surfacing, including pavement, concrete, curb and gutter for public streets within a dedicated public right-of-way, but not including private driveways, parking lots, service courtyards or other private paving improvements (the “Permanent Street Improvements”);
- f) Standard street name signs at all newly opened intersections and such other reasonable and typical traffic control signs as required by the Town Engineer (hereinafter called “Traffic Signing Improvements”);
- g) Sidewalks; and
- h) All landscaping, irrigation improvements including well, pumping system, and private and public irrigation lines.

The Town agrees to accept for maintenance and repair all the Public Improvements contemplated by the Approved Plans upon the issuance of a final acceptance letter subject to the requirements set forth in Section 5.h) below.

2. General Conditions.

- a) The Parties acknowledge that the Development is subject to the building permitting and certification process of the Colorado Division of Public Safety (the “Division”), unless the Division has contracted with the Town for implementation and enforcement of the various applicable codes adopted by the Division. It is further agreed that, while the certificate of occupancy shall be based upon the Division’s standards and requirements, the Developer will not commence educational services to students within the Development until all utilities and related improvements required for service to the Development have been inspected and approved for Construction Acceptance.
- b) Developer agrees to install in a specified sequence and pay for all improvements and other municipal facilities determined by the Town Engineer to be necessary as shown on the Approved Plans, and as further provided under the Special Conditions section. The installation includes, but is not limited to, streets, sidewalks, curbs and gutters, landscaping, water lines, sanitary sewer, storm drainage and such other improvements as stated in this Agreement and shown on the Approved Plans on file with the Town.
- c) Street Improvements shall not be installed until all utility lines to be placed therein have been completely installed, including all service lines leading in and from the main to the property line in the Development.

- d) The installation of all utilities shown on the utility drawings shall be inspected by the Town Engineer and shall be subject to his approval. Developer shall correct any deficiencies in such installation in accordance with Section 5.h) below in order to meet the requirements of the Approved Plans.
- e) Developer shall provide the Town Engineer with copies of all drawings in digital form and certified as-built utility drawings upon completion of the construction.
- f) Developer shall install all telephone lines, electric lines, cable television lines and other like utilities underground in conformance with Sec. 16-3-260 *et seq.* of the Wellington Municipal Code. Such underground installation includes undergrounding of existing overhead lines but only to the extent that any existing overhead lines are associated with the construction of public improvements as follows: (i) Developer will convert the existing overhead electrical line to an underground electric line along the eastern boundary of the Development during construction of the associated public improvements along County Road 9 ; and, (ii) Developer will convert the existing overhead electrical line to an underground electric line along the southern boundary of the Development during construction of the associated public improvements along County Road 62E. Developer is not required to convert the existing overhead electrical line to an underground electric line along the north and west boundary of the Development unless and until such time as the adjacent Lots are developed.
- g) Developer shall install a street lighting system and associated underground street lighting supply circuits in conformance with Sec. 16-3-260 *et seq.* of the Wellington Municipal Code, or as otherwise agreed to by the Town.
- h) Developer agrees to control all weeds growing within the Development.
- g) Developer agrees to provide, install, and maintain at their expense adequate barricades, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as required by the applicable jurisdiction.
- h) Developer shall, at all times, keep the public right-of-way free from accumulation of waste material or rubbish caused by construction activities within the Development. It shall remove such rubbish no less than weekly and, at the completion of any phase of work, shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. Developer agrees to maintain the finished street surfaces free from any excessive accumulation of dirt and/or construction materials. In the event that Developer fails to adequately clean the street(s) within two (2) days after written notice, the Town may have the street(s) cleaned and charge Developer for said cost or cleaning. If the Town is notified by the health or other authoritative agency that steps must be taken to address concerns, then the Town may without notice take

such steps as necessary and may hold Developer liable for all reasonable costs of correction.

- i) Developer shall obtain a State of Colorado Stormwater Discharge Permit for Construction Activity and install and maintain erosion control in accordance with an approved Stormwater Management Plan (SWMP).

3. Special Conditions. The Town and Developer agree to the following special conditions applicable to the Development:

- a) Developer shall construct on and off-site public improvements which directly affect the Development at Developer's sole expense, except where over-sizing or enhancement of public improvements is required or desired by the Town to serve future development and the Town and Developer have agreed to the amount of the Town's financial participation.

- b) All infrastructure installed by Developer or required in conjunction with the Development must be constructed pursuant to the Approved Plans in accordance with Section 4.b).

- c) "Red line" engineering comments on the site plan shall be addressed in the final construction plans. The feasibility of proposed infrastructure, drainage, and public improvement standards shall be as agreed to by the Developer, Town Administrator, and Town Engineer, and in reference to the Wellington Standard Design Criteria and Construction Requirements as adopted by the Town on March 10, 2015 and which may from time to time be amended.

- d) Developer has requested a three-inch (3-inch) domestic water tap and the Town is willing to provide a three-inch (3-inch) water tap to serve the development. Developer shall pay a water tap fee of \$109,843 for the requested three-inch (3-inch) tap and meter within sixty (60) days following mutual execution of this Development Agreement.

The raw water contribution requirement for the requested three-inch (3-inch) tap is _____ acre feet. The Town's adopted raw water contribution requirement rate accepts North Poudre Irrigation Company (NPIC) stock shares at a rate of 2.4 acre feet per share. _____ acre feet at the Town's adopted NPIC rate results in _____ shares of NPIC stock shares required. Developer shall provide _____ (##) shares of NPIC stock shares or, upon approval by the Town Board of Trustees, a fee-in-lieu of share dedication in an amount agreed to by the Town Board of Trustees or a combination of shares and fee-in-lieu, to the Town within sixty (60) days following mutual execution of this Development Agreement.

- e) Sanitary Sewer Tap Fee. Developer has requested one (1) six-inch (6-inch) and six (6) four-inch (4-inch) sewer service taps. Developer shall pay a sewer tap fee of \$62,490

for the requested sewer taps within sixty (60) days following mutual execution of this Development Agreement.

f) Storm Drainage Impact Fee. The storm drainage impact fee is determined based upon impervious surface areas.

	Sq Ft	Factor	Cost (\$.33 / sq ft x Factor)
Building Footprint Area	164,530	0.9	\$48,865.41
Concrete Paving	427,854	0.9	\$127,072.64
Asphalt Paving	554,274	1.0	\$182,910.42
Compacted Gravel	175,869	0.4	\$23,214.71
Landscaping Areas	2,084,604	0.0	\$0.00
Native Landscaping	2,016,722	0.0	\$0.00
Total Site	5,423,853		\$382,063.18

The Storm Drainage Impact Fee is calculated at \$0.33 per sq. ft. of impervious surface area. Building and concrete areas are assessed at a factor of 0.9, asphalt at 1.0, compacted gravel at 0.4 and landscaping/native ground at 0.0.

g) Road Impact Fee. Developer has provided a Transportation Impact Study (TIS) identifying that the first phase of development is anticipated to generate 3,094 Average Daily Vehicle Trips (ADT). The Town's adopted road impact fee is \$126 per ADT. Developer shall pay a road impact fee of \$389,844 within sixty (60) days following mutual execution of this Development Agreement.

h) Off-site Road Improvements. The parties hereto agree that Developer's share of funding for offsite road improvements will be addressed in a separate agreement.

i) Park and Open Space Improvements. Development of any portion of the Property, if not used for public school or school district purposes, shall provide park and open space dedications and improvements in accordance with applicable requirements, regulations and design criteria of the Town.

j) Future Development. The parties recognize that the Development will include a middle school / high school only. Any future development of additional sites within the Property (such as for an elementary school, middle school, and/or other facilities) will not commence until the parties hereto mutually execute a separate development agreement for such project(s).

4. Public Improvements and Development Improvements. The term “Public Improvements” as used in this Agreement refers to those utilities, transmission lines, pipes, roads, drainage ways and related facilities and structures which are intended to be conveyed or dedicated to and accepted by the Town, and to be owned and maintained, repaired, and replaced by the Town in the future. Without limiting the generality of the foregoing, Public Improvements shall include on-site and off-site water lines (but not service laterals) to subdivision boundaries, on-site and off-site roads (but not internal driveways and traffic areas) to subdivision boundaries, on-site and off-site sanitary sewer lines (but not service laterals) to subdivision boundaries, sidewalks in public easements, public parks, landscaping, and on-site and off-site drainage facilities. The term “Development Improvements” refers to service laterals, internal traffic ways, and other appurtenant facilities and structures covered by this Agreement which are not intended to be conveyed or dedicated to the Town, and as to which Developer will remain responsible for the future maintenance, repair, and replacement. When a provision is applicable to both Public Improvements and Development Improvements, they are both included in the term “Improvements.” The term “Improvements” does not include any school building, athletic structure, or other facility that is part of the Development but is not listed as either a Public Improvement or a Development Improvement.
- a) Developer. Developer will construct and install at the Developer's expense the Improvements according to this Agreement, and all drawings, plats and regulations referred to herein. When a permit is issued for construction of Improvements as to which the Town has permitting responsibilities, Developer shall provide to the Town a specific sequence of work and estimated timetable.
- b) Construction Plans and Approval Thereof. Developer will engage at the Developer's expense a Colorado-registered civil engineer to prepare detailed plans and specifications for the complete installation of all Public Improvements in accordance with the Approved Plans (hereinafter “Construction Plans”). Such Construction Plans shall be designed in accordance with the Wellington Standard Design Criteria and Construction Requirements as adopted by the Town March 10, 2015 (hereinafter called the “Standards”), which may from time to time be amended. Such Construction Plans shall be based upon such engineering surveys, including such soil borings and material tests reasonably determined to be necessary by the Town Engineer and must be submitted to and be approved in writing by the Town Engineer prior to the commencement of the construction of any public improvements.
- c) Services to be Performed by the Town Engineer and Payment Therefor.
- 1) The Town will perform the following activities with respect to Public Improvements: review and approve the work of the Developer's Engineer; the Town may, but shall not be required to, inspect and test construction methods and materials including but not limited to compaction tests,

aggregate gradation tests, finished pavement density and depth tests; and conduct final job inspections. No acceptance by the Town shall relieve Developer of its obligations hereunder.

- 2) Developer shall pay the Town for costs incurred by the Town in the performance of the above said services within sixty (60) days of the Town submitting an invoice for said services. Failure by Developer to pay within the specified time shall be cause for the Town to deny future building permits and/or order a cessation of all activities on the Development.
- d) Services to be Performed by the Developer's Engineer. The Developer's Engineer shall be responsible for the preparation of the detailed construction plans, including the preparation of estimates, special contract provisions, preparation of proposal forms, and designation and description of all necessary temporary and permanent easements; for the staking out of the construction, the tie in of utility locations; testing and inspection of construction methods and materials; the preparation of as-built drawings; and other duties as may be required by the Town Engineer.
- e) Construction of Public Improvements.
- 1) Approval of Contractors. Any contractor selected by Developer to construct and install any public improvement must be determined in writing by the Town Engineer to be acceptable. The Town reserves the right to require satisfactory proof of successful experience and adequate financial status by any such contractor.
 - 2) Construction. Construction, installation, materials and equipment for Public Improvements shall be in accordance with Approved Plans. Developer will cause the contractors to furnish the Town Engineer with a schedule of proposed operations at least five (5) days prior to commencement of construction work.
 - 3) Construction Observation. All of the work shall be subject to construction observation by the Town Engineer. Costs incurred by the Town for construction observation shall be reimbursed by Developer to the Town within sixty (60) days from the date of invoice.
 - 4) Easements. Developer shall provide to the Town, at no cost to the Town, all permanent and temporary easements necessary for the installation of Public Improvements, as reasonably determined by the Town Engineer. All such easements requested by the Town Engineer shall be in writing and legally sufficient in form and substance to convey to the Town the required easement(s). If Developer is not able to obtain easements required by this article Developer shall notify the Town and may request that the Town exercise its power of eminent domain. If the Town elects to exercise its

power of eminent domain Developer will pay all costs incurred by the Town and associated with such exercise.

- 5) Insurance. Developer will furnish and will cause each person with whom Developer contracts for the construction and installation of any public improvements to furnish the Town with the same evidence of complete insurance coverage (including Workmen's Compensation, liability and Property damage) as is required on Town contracted construction jobs as determined by the general specifications now in use.
- 6) Faithful Performance of Construction Contracts; Warranty. Developer shall fully and faithfully comply with all terms of any and all contracts entered into by Developer for the installation and construction of all Public Improvements and hereby warrants the workmanship and materials of each Public Improvement for a period of 12 months after the Town issues its letter of construction approval under Section 5(f) below (the "Warranty"). Developer agrees to repair or replace, as and when directed by the Town, and at the Developers' sole cost and expense, any deficiencies noted by the Town during the Warranty period in accordance with Section 5(h) below.

Developer shall fully and faithfully discharge the Developer's obligation with respect to the Public Improvements during the installation and construction period and with respect to those that may arise as a result of the Developer's Warranty, and shall promptly and fully pay persons doing work, furnishing skills, tools, machinery, materials, insurance, equipment, or supplies in connection with the construction and installation of the public improvements, or in connection with any work thereon under the Warranty.

- f) Security for Developer's Performance. Work shall not commence on any public improvements serving the Development until Developer has provided the Town Clerk with the following:

An irrevocable and unconditional Letter of Credit, issued by a financial institution reasonably approved by the Town, in an amount determined by mutual agreement of the Parties to be equal to the estimated total cost of the Public Improvements.

All Letters of Credit shall be in substantially the form attached hereto as Exhibit B, and shall provide that funds will be paid to the Town, upon written demand from time to time of the Town, to the extent of a default under Section 6 below by Developer in the making of payments or performing of obligations, to be paid or performed by Developer pursuant hereto. Each Letter of Credit shall further provide that ten percent (10%) of the Letter of Credit shall remain fully callable by the Town for a term of twenty-four (24) months after the date of the Town Engineer's issuance of a construction letter of approval for Public Improvements. The remaining 90% of each Letter of Credit shall be released upon the Town

Engineer's issuance of a construction letter of approval for Public Improvements. The Letter of Credit, if called, may be used to complete Public Improvements included in the Approved Plans and to repair, or replace Public Improvements, including any pre-existing public improvements, damaged by Developer's work.

If the Developer is in default hereunder as defined in Section 6 of this Agreement, the Town may draw on the Letter of Credit for the whole amount or any part thereof and hold the proceeds, without interest, and use the proceeds to pay for the costs incurred by the Town in performing and paying for any or all of the obligation of Developer in the installation of the Public Improvements that are not performed or paid for by Developer pursuant hereto, including all costs incurred by the Town, including, but not necessarily limited to attorney's fees, engineering, consultants and any in-house cost incurred, including time associated with work performed by the Public Works Department and other staff of the Town.

5. General Conditions.

- a) Recording. This Agreement may be recorded by the Town with the Clerk and Recorder of Larimer County, Colorado and all recording fees, if any, shall be paid by Developer. Failure of the Town to record the Agreement shall not be in anyway treated as a waiver of any rights the Town would otherwise have.
- b) Notices. Whenever in this Agreement it shall be required or permitted that notice or demand be given or served by any party to this Agreement to or on any other party, such notice or demand shall be delivered personally or mailed by United States mail to the addresses hereinafter set forth by certified mail (return receipt requested). Such notice or demand shall be deemed given when delivered personally or when deposited in the mail in accordance with the above. The addresses of the parties hereto are as follows, until change by notice given as above:

If to the Town, at:

Town Clerk
Town of Wellington
Post Office Box 127
Wellington, Colorado 80549

With a copy to

Wellington Town Attorney
Attn. Brad March
March and Olive, LLC
1312 S. College Avenue
Fort Collins, CO 8024

If to Developer, at:

Poudre School District
2407 Laporte Ave
Fort Collins, Colorado 805

With a copy to:

Semple, Farrington, Everall & Case., P.C.
Attn. Darryl L. Farrington
1120 Lincoln Street, Suite 1308
Denver, CO 80203

- c) Release of Security. Upon performance by Developer of the terms of this Agreement, including the expiration of any Warranty period herein and the performance by Developer of Developer's obligations herein with respect to any such Warranty, the Town will release to Developer the security filed with the Town pursuant hereto, or so much thereof as has not been used by the Town pursuant hereto.
- d) Final Plan Approval. The Town has given final approval to the plat of the Development and this Agreement is executed and delivered by Developer to the Town, together with all required petitions, security, and upon fulfillment of the other conditions, if any, of the Town Board of Trustees.
- e) Incorporation by Reference. All plans, special provisions, proposals, specifications and contracts for the public improvements furnished and let pursuant to this Agreement shall be and are hereby made a part of this Agreement by reference as if set out herein in full.
- f) Construction Approval of Public Improvements. As soon as the Public Improvements are built in compliance with the Approved Plans and, to the extent they do not conflict with and are not inconsistent with the Approved Plans, Town of Wellington Standard Design Criteria and Construction Requirements required for the Development or any Development phase, Developer shall give notice to the Town requesting inspection to be made for construction approval. If the construction work complies with all requirements hereof and the Town Standards and Specifications, the Town will issue a letter of construction approval. Upon issuance of a letter of construction approval, the Developer shall provide "As Built" drawings for the public improvement in a form acceptable to the Town Engineer.
- g) Dedication of Public Improvements. Developer shall dedicate in writing to the Town, all Public Improvements constructed or erected serving the Development, free and clear of all encumbrances or liens, said dedication(s) shall be legally sufficient in form and substance to convey said improvements to the Town. The dedication(s) shall be submitted to the Town at the time of requesting final acceptance of the Public Improvements required for the Development or any Development phase as provided below.

- h) Final Acceptance of Public Improvements. A final inspection shall be required before final acceptance by the Town of the Public Improvements required for the Development. It is the Developer's responsibility to request final inspection not less than twenty-one (21) nor more than twenty-two (22) months from the date of the construction approval letter in Section 5(f) above. A list of deficiencies, if any, will be sent to Developer for correction. Within sixty (60) days of the Town issuing the list of deficiencies, Developer shall correct the deficiencies and notify the Town in writing that the deficiencies have been corrected. Upon receipt of such notice, another inspection shall be made when the improvements comply with all Town requirements, standards and Specifications, the Board of Trustees shall by resolution accept the public improvements required for the Development or any Development phase and issue a final acceptance letter stating that the improvements required for the Development or any Development phase have been accepted by the Board of Trustees for future maintenance and repair, and Developer shall be released from its Warranty obligations under Section 4(e) above.

6. Default. If Developer fails to fulfill the terms and conditions of this Agreement, including failure to correct Warranty defects, the Town of Wellington, in its sole discretion, may declare Developer in default and after giving thirty (30) days notice to Developer as provided herein, may call the security provided in Section 4.f) and exercise all remedies available to the Town. As an alternative to the Town calling the security, Developer may extend Developer Letter of Credit for an additional one year period (or such lesser time as agreed to by the Town and Developer) and, so long as Developer promptly commences and pursues correction of its default the Town will afford Developer a reasonable time to cure the default. Failure to comply with this Agreement shall further be sufficient cause for the Town to withhold building permits or certificates of occupancy until corrected to the satisfaction of the Town Engineer.

7. Indemnity. The Town shall have the right, but shall have no obligation or duty, to perform, or pay for the performance of, any of Developers' obligations hereunder concerning the construction and installation of Public Improvements, including, without limitation, payment of any subcontractors or suppliers of labor or materials, if and only if Developer is in default on such obligations and fails to cure the same as provided herein.

8. Agreement to Pay Attorney's Fees and Expenses. If either party should default under any provision of this Agreement the non-defaulting party may recover any costs incurred, including reasonable attorney's fees incurred in compelling the defaulting party's compliance with this Agreement. If either party commences litigation against the other party (the "Defendant") and does not substantially prevail in such litigation, the Court shall award costs and attorney's fees to the Defendant.

9. Severability. If any part, section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement.

10. Burden and Benefit to Development. This Agreement shall run with the land comprising the Development and shall be binding upon the parties hereto, their successors, grantees and assigns. It is agreed that all Improvements required pursuant to this Agreement touch and concern the Development regardless of whether such Improvements are located on the Development. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of Developer's real or proprietary interest in the Development, as well as any assignment of the Developer's rights to develop the Development under the terms and conditions of this Agreement.

11. Assignment. In the event Developer transfers title to the Development and is thereby divested of all equitable and legal interest in the Development, the Town hereby agrees to release said Developer from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of any such transfer of interest. In such event, the succeeding Development owner shall be bound by the terms of this Agreement. This Agreement shall be assignable by Developer.

NOTWITHSTANDING THE FOREGOING, NO OWNER (OTHER THAN THE DEVELOPER) OF ANY LOT OR OUTLOT WHICH HAS BEEN ISSUED A CERTIFICATE OF OCCUPANCY SHALL HAVE ANY PERSONAL LIABILITY FOR THE PERFORMANCE OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT AND SUCH LOT SHALL NOT BE SUBJECT TO ANY LIEN CREATED BY THE RECORDING OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

[Signature page follows]

TOWN OF WELLINGTON

Troy Hamman, Mayor

ATTEST:

_____, Town Clerk

Approved as to form:

March and Olive, LLC
Town Attorney

By: _____
J. Brad March

POUDRE SCHOOL DISTRICT R-1

Matt Bryant
Executive Director of Operations
Authorized Signatory (Board Resolution dated 11 June 2019 and recorded with the
Larimer County Clerk and Recorder at Reception Number 20190032049)

EXHIBIT A
Property Description

DRAFT

EXHIBIT B
FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

Issue Date:

Letter of Credit Number:

Amount \$ _____ (Lawful money of the United States.)

Expiration Date: _____ [Expiration date MUST be a business day.]

[Beneficiary Name] (“Beneficiary”)

[Beneficiary Street Address]

[Beneficiary City, State & Zip]

RE: [Applicant Name], [Application Address] (“Applicant”)

Ladies and Gentlemen:

We hereby open this irrevocable standby Letter of Credit in favor of the Beneficiary at the request and for the account of the Applicant. The purpose of this letter is to secure the performance of and the compliance with Beneficiary-approved construction plans (the “Plans”) related to the Applicant’s new school project, which Plans require off-site infrastructure improvements consisting of pavement, curb, gutter, signage & striping, streetlights, a fire department approved turnaround and all other appurtenances set forth in the Plans (the “Public Improvements”), as required by the Public Improvements Agreement between the Applicant and Beneficiary dated _____, 2020 (the “Agreement”). This Letter of Credit is available for payment of Beneficiary’s drafts drawn at sight on us in an aggregate amount not to exceed the amount stated above and accompanied, in the case of each draft, by the following:

A written statement addressed to us, purportedly signed by an authorized representative of Beneficiary stating: “Beneficiary, by the signature of the authorized signatory set forth below, hereby certifies that Applicant has failed to perform with, or comply in accordance with, the provisions of the Plans as required by the Development Agreement between the Applicant and Beneficiary dated _____, 2020 (the “Agreement”), and states that Applicant is obligated to pay to Beneficiary the amount demanded as provided in the Agreement, and that Beneficiary has complied with all requirements and conditions of the Agreement, including notice to Applicant and an opportunity to cure. A true copy of the notice which was mailed to Applicant by certified mail on _____, 20__, is attached hereto.”

- This original Letter of Credit and any amendments that may be in existence.

Drafts must be marked "Drawn under Irrevocable Standby Letter of Credit No. _____, dated _____, issued by _____".

We hereby agree to honor each draft drawn under and in compliance with the terms of this Letter of Credit if duly presented at: _____, on the expiration date.

Pursuant to U.S. law, we are prohibited from issuing, transferring, accepting or paying letters of credit to any party or entity identified by the Office of Foreign Assets Control, U.S Department of Treasury, or subject to the Denial of Export Privileges by the U.S. Department of Commerce.

Letter of Credit Number: _____

Issue Date: _____

Page 2 of 2

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amplified or limited by reference to any document, instrument or agreement referred to in this Letter of Credit, excepting only U.S. law, the governing law and the UCP referred to herein and any such reference shall not be deemed to incorporate herein any reference to a document, instrument or agreement.

Except as expressly stated herein, this Letter of Credit is governed by the laws of the State of Colorado, including, without limitation, the Uniform Commercial Code as adopted by the State of Colorado, as from time to time amended and enforced (the "Governing Law"), without regard to any conflict of law principles. This Letter of Credit Agreement shall be further subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision-ICC Publication No. 600, and any revisions thereto (the "UCP") and, in the event any provision of the UCP is or shall be construed to vary from or be in conflict with any provision of the Governing Law, the Governing Law shall prevail.

Sincerely,

Bank NAME

By: _____

Printed Name: _____

Title: _____

c: [Borrower/Applicant Name]

EXHIBIT C
Estimated Cost of Public Improvements

Pursuant to Section 4.f) above, estimated total costs for the below listed Public Improvements are attached on subsequent pages and are incorporated fully as if referenced herein.

County Road 62E:

Asphalt/Striping = \$400,000

Sanitary = \$675,000

Water = \$580,000

Traffic Control = \$45,000

Survey = \$25,000

Concrete = \$550,000

County Road 9:

Asphalt/Striping = \$435,000

Sanitary added next to roadway = \$450,000

Traffic Control = \$35,000

Survey = \$15,000

Concrete = \$350,000



Board of Trustees Meeting

Date: September 8, 2020

Submitted By:

Proposed Ordinance - An Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington

Subject:

- **Staff presentation: Brad March, Town Attorney**

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. Retail Marijuana Sales
2. Marijuana Proposed Ordinance Memo

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

Full Text of Measure:

Be it enacted by the Town of Wellington:

Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington

WHEREAS, in November 2012, Colorado voters approved Amendment 64 to the Colorado Constitution ("Amendment 64"), codified as Section 16 of Article XVIII of the Colorado Constitution, concerning the personal use and regulation of marijuana; and

WHEREAS, Amendment 64 generally allows persons twenty-one years of age or older to consume or possess limited amounts of marijuana and provides for the licensing of marijuana cultivation facilities, product manufacturing facilities, testing facilities and retail stores; and

WHEREAS, Amendment 64 further provides that local governments may adopt their own regulations governing certain aspects of marijuana-related businesses; and

WHEREAS, the Town of Wellington would benefit from the presence of retail and medical marijuana stores so that adults can safely purchase retail and medical marijuana and the Town can generate additional tax revenue.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO OR THE REGISTERED ELECTORS OF THE TOWN OF WELLINGTON, COLORADO, THAT:

Section 1. Article 13.6 of Chapter 2 of the Wellington Municipal Code is hereby repealed in its entirety.

Section 2. A new Article 14 is hereby added to Chapter 2 of the Wellington Municipal Code and shall read as follows:

Article 14 – RETAIL AND MEDICAL MARIJUANA STORES

Sec. 14-10 Purpose.

- A. The Board of Trustees hereby declares that this Article shall be deemed an exercise of the police powers of the Town for the protection of the economic and social welfare and the health, peace, and morals of the people of the Town.
- B. The Town further declares that it is unlawful to cultivate, manufacture, distribute, or sell Retail Marijuana or Medical Marijuana, except in compliance with the terms, conditions, limitations, and restrictions set forth in this Chapter, Section 16 of Article XVIII of the State Constitution and Article 43.4 of Title 12, C.R.S. (the Colorado Retail Marijuana Code) or Article 43.3 of Title 12, C.R.S. (the Colorado Medical Marijuana Code).

Sec. 14-20 Powers and Duties of the Local Licensing Authority.

- A. The Local Licensing Authority shall grant or refuse local Licenses for the sale of Retail Marijuana or Medical Marijuana as provided by law; suspend, fine, restrict, or revoke such Licenses upon a violation of this Article or a rule promulgated pursuant to this Article; and may impose any penalty authorized by this Article or any rule promulgated pursuant to this Article. The Local Licensing Authority may take action with respect to a License accordance with the procedures established pursuant to this Article.
- B. The Local Licensing Authority shall promulgate such rules and make such special rulings and findings as necessary for the proper regulation and control of the distribution and sale of Retail Marijuana and for the enforcement of this Article.
- C. The Local Licensing Authority hereby adopts the minimum licensing requirements of Article 43.4 of Title 12 C.R.S. to apply to the issuance of a Retail Marijuana Store License.
- D. The Local Licensing Authority hereby adopts the minimum licensing requirements of Article 43.3 of Title 12 C.R.S. to apply to the issuance of a Medical Marijuana Store License.
- E. On and after January 1, 2021, the Local Licensing Authority shall begin processing applications under this Chapter, and shall process the applications in the order they are received. The Local Licensing Authority shall administratively approve any License application under this Chapter so long as the conditions set forth in this Chapter are met and the applicant has paid the operating fee and any other fees required by this Chapter.
- F. Notwithstanding any of the foregoing, if the Local Licensing Authority received any applications submitted to the State Licensing Authority for a Retail or Medical Marijuana store in the Town prior to the effective date of this ordinance, any such applications shall be deemed “received” for purposes of establishing priority under this section, as long as the application either remains active with the State Licensing Authority or is re-submitted in substantially similar form to the State Licensing Authority within 15-days after the effective date of this ordinance.

Sec. 14-30 Definitions.

Any word or term used that is defined in any of the following provisions shall have the same meaning that is ascribed to such word or term as used in the following provisions: Article XVIII, Section 16 (2) of the Colorado Constitution; the Colorado Retail Marijuana Code, C.R.S. §12- 43.4-101, *et seq.*; Article XVIII, Section 14 (l)(f) of the Colorado Constitution; C.R.S. §25-1.5- 101, *et seq.*; or the Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, *et seq.*

Colorado Medical Marijuana Code: Article 43.3 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

Colorado Retail Marijuana Code or CRMC: Article 43.4 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

Direct Measurement: A straight line from the nearest property line of the school or campus to the nearest portion of the building used for marijuana sales.

License: A license or registration granted pursuant to this Article.

Licensed Premises: The premises specified in an application for a License under this Article, which are owned or in possession of the Licensee and within which the Licensee is authorized to distribute, or sell Retail Marijuana in accordance with the provisions of the Colorado Retail Marijuana Code.

Licensee: A person licensed or registered pursuant to the Colorado Retail Marijuana Code and this Article.

Local Licensing Authority: The Board of Trustees of the Town of Wellington.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

Location: A particular parcel of land that may be identified by an address or other descriptive means.

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

School: A public or private preschool or a public or private elementary, middle, junior high, or high school, college or principal campus of a college (and including the new Middle / High School at Wellington not open as of the adoption of this ordinance).

State Licensing Authority: The Authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical and Retail Marijuana in this State, pursuant to Articles 43.3 and 43.4 of Title 12 C.R.S.

Sec. 14-40 Applications-Licenses.

- A. Dual Operation. An applicant for a Retail Marijuana Store License under this Article may co-locate a Medical Marijuana Store and a Retail Marijuana Store at the same location as permitted by the Colorado Retail Marijuana Code.
- B. Application Forms. An application for a License shall be filed with the Local Licensing Authority on forms provided by the State and Local Licensing Authority. The application shall contain such information as the State and Local Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State and Local Licensing Authority. Upon receipt of notice from the State Licensing Authority of the application for a license under the Colorado Retail Marijuana Code (or the Colorado Medical Marijuana Code), the Local Licensing Authority shall determine whether the applicant qualifies for licensure under this Article. The Local Licensing Authority shall notify the state and the Applicant in writing of its determination as to whether the applicant qualifies for licensure as a Retail or Medical Marijuana Store no later than thirty (30) days from the date the application was originally received by the Local Licensing Authority.
- C. Other Requirements. An applicant shall file, at the time of application for a License, plans and specifications for the interior of the building, and shall also include at the time of application proof of possession of the real property where the building is or will be located.

Sec. 14-50 Denial of Application.

- A. The Local Licensing Authority shall deny a Local License only if the premises on which the applicant

proposes to conduct its business do not meet the requirements of this Article.

- B. If the Local Licensing Authority denies a Local License, the Applicant shall be entitled to a hearing pursuant to this Article. The Local Licensing Authority shall provide written notice of the grounds for denial of the Local License to the applicant.
- C. If an application is denied, the Licensing Authority shall set forth in writing the grounds for denial.

Sec. 14-60 Persons Prohibited as Licensees.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Retail Marijuana Code.

Sec. 14-70 Restrictions for Applications for Marijuana Store Licenses.

- A. The Local Licensing Authority shall not receive or act upon an application for the issuance of a State or Local License pursuant to this Article:
 - 1. Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;
 - 2. For a Location in an area where the sale of Retail or Medical Marijuana as contemplated is not permitted under the applicable zoning laws, which restrictions shall be as follows (and the Town's zoning laws shall be amended as follows):

Retail or Medical Marijuana stores shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply: Retail or Medical Marijuana stores shall not be permitted to be located within two-thousand (2,000) feet of: any parcel containing a school; and Retail or Medical Marijuana stores shall not be permitted to be located within five-hundred (500) feet of: parcels zoned P (Public District) or any parcel containing another Retail or Medical Marijuana store; and Retail or Medical Marijuana stores shall not be permitted to be located within two-hundred (200) feet of: parcels zoned R-1 (Residential District), R-2 (Residential District) or R-4 (Residential District).

- B. In addition to the requirements of C.R.S. §12-43.4-301, the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the building in which Retail or Medical Marijuana is to be sold is located within any distance restrictions established by, or pursuant to, this section.
- C. The distances referred to in this Article are to be computed by direct measurement from the nearest property line of the applicable setback parcel to the nearest portion of the Retail or Medical Marijuana Store.

Sec. 14-80 Transfer of Ownership.

- A. A State or Local License granted under the provisions of this Article shall not be transferable except as provided below, but this Section shall not prevent a change of location as provided in C.R.S. §12-43.4-309.
- B. For a transfer of ownership, a License Holder shall apply to the State and Local Licensing Authorities on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority must allow any proposed transfer approved by the State Licensing Authority, but may charge a fee not to exceed \$1,000 to process such transfer.

Sec. 14-90 Review and Approval of License.

The Local Licensing Authority adopts the provisions and restrictions set forth in C.R.S. §12- 43.4-

309 and this Article.

Sec. 14-100 Licensing Renewal.

- A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration. A Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The State Licensing Authority may extend the expiration date of the License and accept a late application for renewal of a License provided that the applicant has filed a timely renewal application with the Local Licensing Authority. All renewals filed with the State Licensing Authority and subsequently approved by the State Licensing Authority shall next be processed by the Local Licensing Authority. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day time requirement set forth in this Article. The Local Licensing Authority may hold a hearing on and/or denial of the application for renewal only if the State Licensing Authority rejects the renewal application.
- B. 1. Notwithstanding the provisions of subsection (A) of this Section, a Licensee whose License had been expired for not more than thirty (30) days may file a late renewal application upon the payment of a nonrefundable late application fee of five hundred dollars (\$500.00) to the Local Licensing Authority. A Licensee who files a late renewal application and pays the requisite fees may continue to operate until both the State and Local Licensing Authorities have taken final action to approve or deny the Licensee's Late Renewal Application.
2. Notwithstanding the amount specified for the Late Application Fee, the State and Local Licensing Authority by rule or as otherwise provided by law may, in its discretion, reduce the amount of the fee.

Sec. 14-110 Fees.

Every Retail and Medical Marijuana Store shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Board of Trustees and set by Resolution, but in no event shall either fee exceed one thousand five-hundred dollars (\$1,500.00).

Sec. 14-120 Hours of Operation.

A Retail or Medical Marijuana Store may engage in the sale of marijuana or marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Board of Trustees may at its discretion extend, but not further limit, such hours of operation.

Sec. 14-130 Disciplinary Actions: Suspension-Revocation-Fines.

- A. In addition to any other sanctions prescribed by the State Licensing Authority, the Local Licensing Authority has the power, on its own motion after investigation and opportunity for a public hearing at which the Licensee shall be afforded an opportunity to be heard; to suspend or revoke a License issued by the Local Licensing Authority for a violation specified in subsection (B) below. The Local Licensing Authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of a hearing.
- B. The grounds for the Local Licensing Authority to take disciplinary action are limited to a situation where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency regarding, the public health, welfare or the safety of the immediate neighborhood in which the establishment is located. Evidence to support such a finding must at least include: (i) a continuing pattern of convictions for offenses against the public peace, or (ii) a continuing pattern of convictions for criminal conduct under state or local law directly related to or arising from the Licensed Premises.

- C. 1. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of a suspension. When determining whether to impose a fine in lieu of a suspension, the Local Licensing Authority may make findings that:
- a. The public welfare and morals would not be impaired by permitting the Licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;
 - b. The books and records of the Licensee are kept in such a manner that the loss of sales that the Licensee would have suffered had a suspension gone into effect can be determined with reasonable accuracy; and
 - c. The Licensee has not had his or her License suspended or revoked during the 12-months immediately preceding the date of the motion or complaint that resulted in a final decision to suspend the License.
2. The fine accepted shall be: (a) not less than five-hundred dollars (\$500.00) nor more than two thousand five-hundred dollars (\$2,500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of premises of a minor nature, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars (\$1,000.00) nor more than ten-thousand dollars (\$10,000.00) for violations that have an immediate impact on the public health, safety, or welfare, including, but not limited to, a violation of C.R.S. §12-43.4-901(4)(e).
3. Payment of a fine shall be in the form of cash or in the form of a certified check or cashier's check made payable to the Local Licensing Authority, whichever is appropriate.
- D. Upon payment of the fine, the Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension. If the fine is paid to a Local Licensing Authority, the governing body of the Authority shall cause the moneys to be paid into the General Fund of the Local Licensing Authority.
- E. If the Local Licensing Authority does not make the findings required in this Section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Local Licensing Authority.

Sec. 14-140 Inspection of Books and Records-Inspection Procedures.

- A. Each Licensee shall keep a complete set of all records necessary to show fully the business transactions of the Licensee, all of which shall be open at all times during business hours for the inspection and examination by the Local Licensing Authority or its duly authorized representatives. The Local Licensing Authority may require any Licensee to furnish such information as it considers necessary for the proper administration of this Article and may require an audit to be made of the books of account and records on such occasions as it may consider necessary.
- B. The Licensed Premises, including any places of storage where Retail or Medical Marijuana is stored, sold or dispensed shall be subject to inspection by the Local Licensing Authorities and their investigators, during all business hours for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by the Licensees, access shall be required during business hours. Where any part of the Licensed Premises consists of a locked area, upon demand to the Licensee, such area shall be made available for inspection without delay, and, upon request by authorized representatives of the State or Local Licensing Authority, the Licensee shall open the area for inspection.
- C. Each Licensee shall retain all books and records necessary to show fully the business transactions of the Licensee for a period of the current tax year and the three (3) immediately prior tax years.

Sec. 14-150 Licensing Authority Established.

There is hereby established a Local Licensing Authority to issue only the following Medical and Retail Marijuana Licenses upon payment of a fee and compliance with all Local Licensing requirements to be determined by the Local Licensing Authority as set forth in Article 43.3 and 43.4 of Title 12, C.R.S.:

1. A Medical Marijuana Center License.
2. A Retail Marijuana Store License.

Sec. 14-160 Other Marijuana Licenses Prohibited.

Except for the specific licenses the Local Licensing Authority is authorized to issue pursuant to this Article, no other retail or medical marijuana licenses may be issued, including licenses for marijuana cultivation facilities, marijuana testing facilities, or marijuana products manufacturers.

Section 3. The Board of Trustees declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 4. All the provisions of the Wellington Municipal Code as heretofore adopted that are in conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

Section 5. The Town Clerk shall certify the passage of this Ordinance and cause notice of its contents and passage to be published or posted. This Ordinance shall become effective immediately upon adoption or passage by the voters.

Pursuant to §31-11-106 (2) C.R.S., each petition section shall designate by name and mailing address two persons who shall represent the proponents in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

1. **Amie Rakoczy** **5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123**
2. **Tim Morgen** **5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123**

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

1.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
2.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
3.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
4.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
5.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
6.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
7.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

8. _____
Printed last name Printed first name Date of Signing

SIGNATURE Street Address Wellington / Larimer
City / County
.....

9. _____
Printed last name Printed first name Date of Signing

SIGNATURE Street Address Wellington / Larimer
City / County
.....

10. _____
Printed last name Printed first name Date of Signing

SIGNATURE Street Address Wellington / Larimer
City / County
.....

11. _____
Printed last name Printed first name Date of Signing

SIGNATURE Street Address Wellington / Larimer
City / County
.....

12. _____
Printed last name Printed first name Date of Signing

SIGNATURE Street Address Wellington / Larimer
City / County
.....

13. _____
Printed last name Printed first name Date of Signing

SIGNATURE Street Address Wellington / Larimer
City / County
.....

14. _____
Printed last name Printed first name Date of Signing

SIGNATURE Street Address Wellington / Larimer
City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

15.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
16.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
17.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
18.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
19.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
20.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
21.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

22.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
23.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
24.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
25.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
26.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
27.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
28.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

29.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
30.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
31.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
32.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
33.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
34.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
35.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

36.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
37.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
38.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
39.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
40.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
41.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
42.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

43.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
44.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
45.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
46.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
47.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
48.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

Pursuant to §31-11-106 (2) C.R.S., each petition section shall designate two persons who shall represent the proponents in all matters affecting the petition and to whom all notices concerning the petition shall be mailed.

1.	Amie Rakoczy	5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123
2.	Tim Morgen	5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123

AFFIDAVIT OF PETITION CIRCULATOR

I, _____, hereby certify that:

1. I have read and understand the laws governing circulations of petitions in Colorado;
2. I was eighteen years of age or older at the time this section of the petition was circulated and signed by the listed electors;
3. I circulated this section of the petition;
4. Each signature thereon was affixed in my presence;
5. Each signature thereon is the signature of the person whose name it purports to be;
6. To the best of my knowledge and belief, each of the persons signing this petition section was, at the time of signing, a registered elector;
7. I have not paid or will not in the future pay and I believe that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition; and
8. I currently reside at the following address:

Street Address: _____

City, State, Zip Code: _____

County: _____

FURTHER, Affiant sayeth not.

[printed name of circulator]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Memo

March & Olive, LLC

TO: Kelly Houghteling, Interim Town Administrator; Krystal Eucker, Wellington Town Clerk; Wellington Town Board

FROM: Brad March
March and Olive, LLC
1312 S. College Avenue, Fort Collins, CO
[970-482-4322](tel:970-482-4322)(p); [970-482-5719](tel:970-482-5719)(f)

RE: Initiated election petitions

DATE: September 6, 2020

This memorandum is intended to summarize the status of the citizen proposed initiated marijuana ordinances (the Initiated Ordinances) and the election likely required as a result of the filing of the initiative petitions. Unfortunately, it was discovered late Friday (9/4) that one of the timeline dates as set out in CRS § 31-10-108¹, related to scheduling a special election was not met.

The clerk has provided a list of dates which the statute keys to, dates include:

July 30, 2020 – Petition submission date
August 20, 2020 – Statement of sufficiency issued.
Nov 3, 2020 – General election date

Assuming that the Board does not adopt the citizen proposed ordinances, the statutory scheme requires that the ordinances be sent on to the voters. Based on cost considerations a recommendation was made to the board that the town schedule its own special election on the same day as the general election to allow the voters to determine whether the initiated ordinances would be adopted. The statute provides that a special election by mail in ballot may be held at the same time as the general election, but the election must be called at least 60 days before November 3rd². That is, the election needed to be called before September 4th. The clerk prepared resolutions to call the special election to be presented to the Board on September 8th, the date however was unfortunately outside the sixty (60) day limit set by the statute. As the general election date cannot be met, the election date cannot be held until 32 days after the general election or, December 7, 2020. The TABOR election cannot be held until later in 2021 and is discussed further below.

Board action of proposed ordinances or forwarding to voters. CRS 31-11-104 provides that a proposed /initiated ordinance may be adopted by the town board as an ordinance of the town within 20 days of a finding of sufficiency by the clerk. This provision allows the board to adopt the Initiated Ordinance

¹ See clerk memo for text of statute.

² 31-10-108

without alteration on or before September 8th. If the board does not act and the Initiated Ordinance is not adopted, the ordinance must be submitted to the voters not less than 60 days and not more than 150 days after the clerk's statement of sufficiency is issued.³ By y calculation this requires the election to be held no later than January 17, 2021.

Protest. By 21-11-110(1) Any registered elector who resides in the municipality may file, a protest in writing under oath with the clerk, challenge the sufficiency of the petition, setting forth specifically the grounds for such protest. The protest must be filed within 40 days after the initiative petition was originally filed with the clerk. The protest period will expire on September 8th.⁴ The grounds for a protest may include, but are not limited to, failure of the petition or circulator to meet the requirements of the article. A resolution has been prepared and will be submitted to the board on September 8th for approval, designating the municipal judge, rather than the clerk as the hearing officer to hear any protest. If a protest is filed, the hearing officer's decision can be appealed to the Larimer County courts.

Sales tax and TABOR. Colorado law allows municipalities, in addition to charging the municipality's normally charged sales tax and taxes apportioned by the state⁵ to charge a special retail marijuana sales tax.⁶ The second proposed Initiated Ordinance provides that the Town would initially charge a 3.5% special sales tax, which could be increased by the Board to as much a 5% special sales tax. Under TABOR and the terms of the special sales tax statute tax increase measures must be approved by the voters and can only be submitted to the electorate at specified times. The TABOR amendment⁷ at part 3(a) provides:

Ballot issues shall be decided in a state general election⁸, biennial local district election, or on the first Tuesday in November of odd-numbered years. [D]istricts⁹ may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

The special sales tax statutory provision likewise provides:

§ 29-2-115. Retail marijuana sales tax - county - municipality - election - legislative declaration - definition

- (4) (a) Each municipality in the state is authorized to levy, collect, and enforce a municipal special sales tax upon all sales of retail marijuana and retail marijuana products...

- (b) No special sales tax shall be levied pursuant to subsection (4)(a) of this section until the proposal has been referred to and approved by the eligible electors of the municipality in accordance with article 10 of title 31. Any proposal for the levy of a special sales tax in accordance with subsection (4)(a) of this section must be submitted to the eligible electors of the municipality on the date of the state general election, on the first Tuesday in November of an odd-numbered year, or on the date of a municipal biennial election. Any election on the proposal must be conducted by the clerk of the municipality in accordance with the "Colorado Municipal Election Code of 1965", article 10 of title 31.

Because of the 31-10-108 scheduling issue surrounding the special meeting it is not possible to present the special tax to the voters at the upcoming general election. The first opportunity to place the issue of the special tax before the voters would be November 2, 2021, the first Tuesday in November of the odd-numbered year.

Circulator petitions. A question was raised with me as to whether the petitioners complied with 31-11-113. I was not asked to review the full petition submissions and do not know whether the report required by 31-11-113 was turned into the clerk at the time the fully signed Initiated Ordinances were filed with the Clerk's office or, if filed, whether the report was sufficient under the statute. The statute provides that the proponents must file a report disclosing the amount paid per signature and the total amount paid to each circulator. The filing is to be made at the same time the signatures on the Initiated Ordinance(s) are filed. I have had concerns surrounding the enforceability of the 31-11-113 requiring the report but, the statutory requirements, although perhaps suspect, remain a part of the statutory scheme for filing citizen-initiated ordinances and should have been complied with.

³ This is subject to the requirements of 31-10-108 that no special election may be called within sixty days before the date thereof, nor shall any special election be held within the thirty-two days before or after the date of the general election unless a mail ballot election is approved as a special election 60 days before the general election.

⁴ 31-11-110

⁵ Title 39, Article 28, Part 2

⁶ 29-2-15.

⁷ Constitution Article X sec 20

" § 1-1-104 (17) General election" means the election held on the Tuesday succeeding the first Monday of November in each even-numbered year.

31-10-101(10) Municipal election - Regular election" means: (a) Before July 1, 2004, the election held in towns on the first Tuesday of April in each even-numbered year; the election held in cities on the first Tuesday of November in each odd-numbered year; and the election held in any other municipality at which the regular election of officers takes place; (b) On and after July 1, 2004, the election held in any municipality in accordance with paragraph (a) of this subsection (10) unless a majority of the registered electors of the municipality voting on the question have voted to hold the regular election on a date different than specified in paragraph (a) of this subsection (10) pursuant to section 31-10-109(1), in which case "regular election" means, for any particular municipality, the date on which the regular election of officers takes place as determined by the registered electors of the municipality.

⁹ For purposes of TABOR the Town is a district.

The validity of placing restrictions on circulators has been the subject of challenges before various courts, most notably the United States Supreme Court in *Buckley v. American Constitutional Law Foundation*, 119 S.Ct. 636, 525 U.S. 182, 142 L.Ed.2d 599, 67 U.S.L.W. 4043 (1999). The *Buckley* case involved the state's initiative process¹⁰ and dealt with required disclosure of paid circulator identities and other paid circulator information. The legislature did not change/modify the requirements of 31-11-113 after *Buckley*.¹¹)

The statute that requires the report that is to be filed with the clerk was adopted in 1995, before the *Buckley* decision. The statute only requires disclosure of the amount paid per signature and the amount paid to circulate and does not require that the amount paid to each circulator be disclosed. The report requirement may be enforceable after *Buckley*.^{12 13}

Petition deficiencies. I have reviewed the form of the petitions with an agent of the Colorado Department of Revenue Marijuana Enforcement Division who characterized the form of the petitions, specifically the petition allowing for marijuana sales, as "a mess." The most noted concern is that the Initiated Ordinance's proposed Article 14 references the Colorado's Medical Marijuana Code as being codified at Title 12 Article 43.3 and Retail Marijuana Code as being codified at Title 12 Article 43.4. At section 14-10 the Initiated Ordinance recites that Retail Marijuana and Medical Marijuana may only be sold as allowed by the "Colorado Retail Marijuana Code" and the Colorado Medical Marijuana Code. The Colorado Retail Marijuana and the Colorado Medical Marijuana Code are currently embodied in state statutes at Title 44 article 11 (as opposed to Title 12 Article 43.3) as the Colorado Medical Marijuana

¹⁰ State initiative process at 1-40-101 et seq, municipal initiative proves at 31-11-101 et seq.

¹¹ The majority opinion of the court stated - we agree with the Court of Appeals appraisal: Listing paid circulators and their income from circulation "forc[es] paid circulators to surrender the anonymity enjoyed by their volunteer counterparts," 120 F. 3d, at 1105;^[24] no more than tenuously related to the substantial interests disclosure serves, Colorado's reporting requirements, to the extent that they target paid circulators, "fai[l] exacting scrutiny."

- ¹² For other cases involving similar initiated petition circulator issues see *Independence Inst. v. Gessler*, 936 F. Supp. 2d 1256 (D. Colo. 2013), signature compensation for petition circulators violates the first amendment of the United States constitution; *Am. Constitutional Law Found., Inc. v. Meyer*, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999); requirement that circulators be registered voters is not narrowly tailored to a compelling state interest, it unconstitutionally impinges on free expression; *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999) Badge requirement is unenforceable. *Meyer v. Grant*, 108 S.Ct. 1886, 486 U.S. 414, 100 L.Ed.2d 425, 56 U.S.L.W. 4516 (1988), state may not prohibit paid circulators.

¹³ Justice Thomas in his concurrence to the *Buckley* decision notes: "Even assuming that Colorado has a compelling interest in identifying circulators, its law does not serve that interest. The State requires that proponents identify only the names of *paid* circulators, not *all* circulators. The interest in requiring a report as to the money paid to each circulator by name, as the majority points out, *ante*, at 201, has not been demonstrated.

Code and Title 44, Article 12 (as opposed to Title 12 Article 43.4) as the Colorado Retail Marijuana Code. The Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code are to be replaced effective January 1, 2021 (the date the proposed ordinance goes into effect) and the governing statutes will be located at title 44, Article 10, and the designation as the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code will be eliminated and the code will be titled as the “Colorado Marijuana Code”^{14, 15} Throughout the Initiated Ordinance’s proposed new Article 14 to the Town Code the incorrect citations are referenced. For example, the proposed Sec 14-20, C and D provide that the Local Licensing Authority adopts the minimum licensing requirements of Title 12, Article 43.4 and 43.3. No such minimum standards exist that correspond to these citations. Further, the initiated ordinance, including at Sec 14-20 provides for a Local Licensing Authority and recites actions that are being taken by the local Licensing Authority when no Local Licensing Authority has been created by the Town¹⁶. The following references are to concerning provisions of the Initiated Ordinance proposed code (identified as SEC 14-**) and corresponding concerns with the concerns indented below each quoted Initiated Ordinance section.

Proposed Sec 14-30 defines:

Colorado Medical Marijuana Code: Article 43.3 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

This code will no longer exist after 2020 and has not existed since at least 2018 at the citation reference

Colorado Retail Marijuana Code or CRMC: Article 43.4 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto

This code will no longer exist after 2020 and has not existed since at least 2018 at the citation reference

Direct Measurement: A straight line from the nearest property line of the school or campus to the nearest portion of the building used for marijuana sales.

CRS 44-10-311(d)(II) The distances referred to in this subsection (1)(d) are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which medical marijuana is to be sold, using a route

¹⁴ Marijuana Code was re-codified in 2018 by HB1023 and is now found at Title 44, articles 11 and 22 of the Colorado statutes and in 2019 by SB 19-224 and as of January 1, 2021 will be effective at Title 44 Article 10.

¹⁵ See also references to Colorado Medical Marijuana Code and Colorado Retail Marijuana code with statutory cites as Sec 1-30 definitions.

¹⁶ By the Initiated Ordinance the Licensing Authority is created by Sec 14-150 Can the voters create the Local Licensing Authority and in the same initiated action act for the Licensing authority? Is an act of the Local Licensing Authority, a quasi-judicial body, administrative or legislative in nature?

of direct pedestrian access.¹⁷ This measurement formula inappropriately differs from the statutory scheme.

44-10-302 references time place manner and number restrictions which may be adopted by the Town in relation to Retail Marijuana licensing.

License: A license or registration granted pursuant to this Article.

The Initiated Ordinance at Sec. 14-150 (1) related to the Local Licensing Authority recites that the Local Licensing Authority is authorized (according to the prior law at title 12) to issue Medical Marijuana Center Licenses. CRS 4-10-501 references the license to be issued as a Medical Marijuana Store Licenses rather than a Medical Marijuana Center License¹⁸. Medical Marijuana Center Licenses will no longer exist after January 1, 2021.

Local Licensing Authority: The Board of Trustees of the Town of Wellington.

The statute provides that the Town Board may be the local licensing authority but allows the board to designate a separate licensing authority. The Initiated Ordinance definition requires that the Town Board must serve as the licensing authority.

44-10-103(28) "Local licensing authority" means an authority designated by municipal, county, or city and county charter, ordinance, or resolution, or the governing body of a municipality or city and county, or the board of county commissioners of a county if no such authority is designated.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

The term Local Licensing official is defined in the proposed ordinance, but the term is not used otherwise in the proposed ordinance nor does it appear that the term is used in the Colorado Marijuana Code.

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

44-10-103(48) defines a person as defined by 7-90-102 which adopts the definitions as "Person" means an individual, an estate, a trust, an entity, or a state or other jurisdiction.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

44-10-103(49) defines "Premises" means a distinctly identified, as required by the state licensing authority, and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

¹⁷ See also Sec 14-70-(c) The distances referred to in this Article are to be computed by direct measurement from the nearest property line of the applicable setback parcel to the nearest portion of the Retail or Medical Marijuana Store.

¹⁸ Medical Marijuana Center Licenses may be issued through 2020 by 44-11-401, the new Colorado Marijuana Code provides for Medical Marijuana Store Licenses, 44-10-401(2)(a). Medical Marijuana Center Licenses will no longer exist after January 1, 2021.

School: A public or private preschool or a public or private elementary, middle, junior high, or high school, college or principal campus of a college (and including the new Middle / High School at Wellington not open as of the adoption of this ordinance).

44-10-103(67) defines "School" means a public or private preschool or a public or private elementary, middle, junior high, or high school or institution of higher education.¹⁹

State Licensing Authority: The Authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical and Retail Marijuana in this State, pursuant to Articles 43.3 and 43.4 of Title 12 C.R.S.

Defined according to wrong statutory citation. Should be defined by 44-10-103(69) with reference to "regulated marijuana in this State, pursuant to section 44-10-201."

14-40 Applications-Licenses.

- A. Dual Operation. An applicant for a Retail Marijuana Store License under this Article may co-locate a Medical Marijuana Store and a Retail Marijuana Store at the same location as permitted by the Colorado Retail Marijuana Code.

§ 44-10-313 (12) provides each license issued under this article 10 is separate and distinct. It is unlawful for a person to exercise any of the privileges granted under a license other than the license that the person holds or for a licensee to allow any other person to exercise the privileges granted under the licensee's license. A separate license is required for each specific business or business entity and each geographical location.

- B. An application for a License shall be filed with the Local Licensing Authority on forms provided by the State and Local Licensing Authority. The application shall contain such information as the State and Local Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State and Local Licensing Authority. Upon receipt of notice from the State Licensing Authority of the application for a license under the Colorado Retail Marijuana Code (or the Colorado Medical Marijuana Code), the Local Licensing Authority shall determine whether the applicant qualifies for licensure under this Article. The Local Licensing Authority shall notify the state and the Applicant in writing of its determination as to whether the applicant qualifies for licensure as a Retail or Medical Marijuana Store no later than thirty (30) days from the date the application was originally received by the Local Licensing Authority.

The filing requirements seem to follow 44-10-301. The statute contains no 30-day response requirement. 44-10-302 references time place manner and number restrictions which may be adopted by the Town. Sec. 14-50, speaks to denial of licenses and it is not clear if the Town may adopt more restrictive time place manner and number restrictions beyond those set forth in the initiated ordinance

- C. If an application is denied, the Licensing Authority shall set forth in writing the grounds for denial.

This is likely compliant with the statute, § 44-10-304(3) provides that within thirty days after the public hearing or completion of the application investigation, a local licensing authority shall issue its decision approving or denying an application for local licensure. The decision must be in writing and must state the reasons for the decision. The local

¹⁹ Caveat, is a day care facility a pre-school?

licensing authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.

Sec. 14-60 Persons Prohibited as Licensees.

Sec. 14-70 Restrictions for Applications for Marijuana Store Licenses.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Retail Marijuana Code.

After January 1, 2021, there is no longer a Colorado Retail Marijuana Code. By this section the Initiated Ordinance purports to act on behalf of the Local Licensing Authority.

A(1) Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;

Seems to comply with § 44-10-311 (2) § 44-10-313(1)(b) and (8)(b)

A(2) Retail or Medical Marijuana stores and establishes 2000 foot setback form schools, (500) feet of: parcels zoned P (Public District) or another Retail or Medical Marijuana store; and two-hundred (200) feet of: parcels zoned R-1 (Residential District), R-2 (Residential District) or R-4 (Residential District)

Is this violative of single subject rules.

Zoning: § 44-10-311(d)(1) allows medical marijuana distancing at 1000' or greater if set by Town by ordinance or resolution.

The State Constitution at Article XVIII Section 16, (5) (f) allows a municipality to enact ordinances or regulations not in conflict governing time place manner, number of establishment operations and establishing procedures for issuance suspension and revocation of licenses.

Are these administrative actions that should be left to the Town, as provided for in the Colorado's Marijuana Code and are the provisions therefore improper to include in the Initiated Ordinance?

Sec. 14-80 Transfer of Ownership.

- A. A State or Local License granted under the provisions of this Article shall not be transferable except as provided below, but this Section shall not prevent a change of location as provided in C.R.S. § 12-43.4-309.

As of January 1, 2021, transfers of licenses will be addressed by 44-10-312.

- B. For a transfer of ownership, a License Holder shall apply to the State and Local Licensing Authorities on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority must allow any proposed transfer approved by the State Licensing Authority, but may charge a fee not to exceed \$1,000 to process such transfer.

44-10-803(3) provides: A local jurisdiction in which a license under this article 10 may be permitted may adopt and impose operating fees in an amount determined by the local

jurisdiction on marijuana businesses and establishments located within the local jurisdiction. Is this an administrative act and improperly taken in the Initiated Ordinance?

Requiring that the Local Licensing Authority must allow any proposed transfer invades the Local Licensing Authority's responsibilities under state law.²⁰

Sec. 14-90 Review and Approval of License.

The Local Licensing Authority adopts the provisions and restrictions set forth in C.R.S. §12- 43.4-309 and this Article.

This statute is no longer in existence and as of January 1, 2021 is at Article 44, title 10.

Sec. 14-100 Licensing Renewal.

- A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration. A Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The State Licensing Authority may extend the expiration date of the License and accept a late application for renewal of a License provided that the applicant has filed a timely renewal application with the Local Licensing Authority. All renewals filed with the State Licensing Authority and subsequently approved by the State Licensing Authority shall next be processed by the Local Licensing Authority. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day requirement set forth in this Article. The Local Licensing Authority may hold a hearing on and/or denial of the application for renewal only if the State Licensing Authority rejects the renewal application.

This section appears to be contrary to 44-10-314 and seems to invade the local licensing authority's ability to refuse a license if the licensing authority determines good cause exists.²¹

Sec. 14-110 Fees.

Every Retail and Medical Marijuana Store shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Board of Trustees and set by Resolution, but in no event shall either fee exceed one thousand five-hundred dollars (\$1,500.00).

This section and 14-100 B and C limit the ability to charge fees, 44-10-803(3) provides A local jurisdiction in which a license under this article 10 may be permitted may adopt and impose operating fees in an amount determined by the local jurisdiction on marijuana businesses and establishments located within the local jurisdiction.

Sec. 14-120 Hours of Operation.

A Retail or Medical Marijuana Store may engage in the sale of marijuana or marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Board of Trustees may at its discretion extend, but not further limit, such hours of operation.

²⁰ See 44-10-901 discussed below in relation to disciplinary action.

²¹ See 44-10-901 discussed below in relation to disciplinary action.

Article XVIII Section 16, (5) (f) allows a municipality to enact ordinances or regulations not in conflict governing time place manner, number of establishment operations and establishing procedures for issuance suspension and revocation of licenses

Sec. 14-130 Disciplinary Actions: Suspension-Revocation-Fines.

- B. The grounds for the Local Licensing Authority to take disciplinary action are limited to a situation where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency regarding, the public health, welfare or the safety of the immediate neighborhood in which the establishment is located. Evidence to support such a finding must at least include: (i) a continuing pattern of convictions for offenses against the public peace, or (ii) a continuing pattern of convictions for criminal conduct under state or local law directly related to or arising from the Licensed Premises.

44-10-901(1) grants the local licensing authority the authority to suspend or revoke a license issued by the authority for a violation by the licensee or by any of the agents or employees of the licensee of the provisions of this article 10, or any of the rules promulgated pursuant to this article 10, or of any of the terms, conditions, or provisions of the license issued by the state or local licensing authority. The subject provision dramatically limits this provision. As an example, if the licensing authority imposes conditions on a license issuance, does violation of the condition rise to an ongoing emergency? If the licensee violates operating hours, does an emergency arise? If it does not the licensing authority's ability to enforce is emaciated.

Sec. 14-130, C. 1. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of a suspension. When determining whether to impose a fine in lieu of a suspension, the Local Licensing Authority may make findings that:

44-10-901(3) addresses fines in lieu of suspension and this section is largely in keeping with the statute, except C.1.c allows a fine in lieu so long as there has been no suspension or revocation in the last 12 months, 44-10-901(3)(a)(III) provides that a fine in lieu is appropriate if there has been no suspensions or revocation in the last 2 years. Affording the ability to grant fines in lieu for the shorter period is contrary to state law.

Sec. 14-130, C.2. provides

The fine accepted shall be: (a) not less than five-hundred dollars (\$500.00) nor more than two thousand five-hundred dollars (\$2,500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of premises of a minor nature, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars (\$ 1,000.00) nor more than ten-thousand dollars (\$10,000.00) for violations that have an immediate impact on the public health, safety, or welfare, including, but not limited to, a violation of C.RS. §12-43.4-901(4)(e).

The Initiated Ordinance should reference 44-10-901

Administrative vs Legislative nature of petitions and challenges to Initiated Ordinance.

Ordinance must comply with State Law. There are initial concerns with the Initiated Ordinances in that in cases, as outlined above, are not in line with the state statutes. As a statutory municipality,

Wellington's laws may not deviate from the laws of the state. Voters, initiating an ordinance, have no greater power than the Town Board to adopt an ordinance that is contrary to state law. To the extent that the Initiated Ordinance is contrary to state law, the Ordinance is invalid.

Initiated Ordinance is not properly the subject of the right of initiative and referendum.

In *Vagneur v. City of Aspen*, 295 P.3d 493 (Colo. 2013) (2013) involved a protest filed under 31-11-110. The protesters in *Vagneur* filed written objections to the initiative petitions contending that the proposals **(1) contained administrative matters that are not subject to the initiative power; (2) included more than a single subject; and (3) contained misleading ballot titles.**

The hearing officer concluded that the proposed ordinances "encroached upon the administrative processes reserved to the administrative staff of the City of Aspen as authorized by City Council," and that "allowing citizens through the initiative process, to either dictate or negate administrative actions normally undertaken by city staff is a misuse of the process" and contrary to the initiative rights established by the Aspen City Charter. The hearing officer declined to sever any impermissible portions of the initiative because Proponents had testified that they believed the conditions were necessary to understand their proposals

The *Vagneur* court reviewed whether a citizen initiative is administrative or legislative in character, and whether an administrative initiative is a proper exercise of the initiative power.²² The court defined and set forth numerous tests from prior court decisions as to whether an ordinance was administrative or

-
- ²² In *City of Idaho Springs v. Blackwell*, 731 P.2d 1250 (1987) the court stated: An ordinance which shows an intent to form a permanent rule of government until replaced is one of permanent operation." 5 E. McQuillin, *Municipal Corporations* § 16.55, at 194 (3d ed. 1981) (emphasis added) (footnote omitted). Second, acts that are necessary to carry out existing legislative policies and purposes or which are properly characterized as executive are deemed to be administrative, while acts constituting a declaration of public policy are deemed to be legislative. *Witcher*, 716 P.2d at 449-50; *Margolis*, 638 P.2d at 303; *Zwerdinger*, 194 Colo. at 196, 571 P.2d at 1077.
-

In the *Blackwell* case Idaho Springs asserted: (1) that the petitions, although styled as "petitions for initiated ordinances," were actually petitions for referenda that were untimely (2) that the petitions addressed administrative rather than legislative matters and were therefore improper;

- The court noted The proposed initiated ordinances also must be classified as administrative matters when viewed under the second "test." The choice of location and structure for the new city hall is an act "necessary to carry out" the existing legislative policy to build a new city hall. See *Witcher*, 716 P.2d at 449; *Margolis*, 638 P.2d at 303; *Zwerdinger*, 194 Colo. at 196, 571 P.2d at 1077. The decision to raise tax revenues to be used in part for city hall construction was made in 1977 and approved by the majority of Idaho Springs voters in a special election. Implementation of the 1977 policy decision in the ordinance is administrative or executive and is not a proper subject for an initiated ordinance.
-

legislative in character. The court acknowledged that decisions surrounding the administrative/legislative determination needed to be made on a case by case basis. It can be argued that the question of whether the town should allow the sale of medical and retail marijuana is a legislative decision but the enforcement and implementation including time place manner and number restrictions are administrative in nature. Further, to the degree that the Initiated Ordinance has the Local Licensing Authority, which does not exist until the Ordinance is adopted, adopting positions, that action is likewise administrative. “When in a matter of state-wide concern, such as Marijuana Licensing, the state legislature has specifically delegated particular authority to the governing board, courts have uniformly held that the initiative processes do not ordinarily apply.” McQuillan, Law of Municipal Corporation §16.52 (3rd Ed.).

Usurpation of Administrative and enforcement Power. The Initiated Ordinance improperly limits enforcement powers which by statute are afforded to the liquor licensing authority. Particularly Sec. 14-13 limits the Local Licensing Authorities statutory ability to take disciplinary action, limiting the enforcement powers to situations where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency. Limitation of the authority’s quasi-judicial powers afforded by state law is not an appropriate exercise of the initiative power.

Impossibility of Implementation. It can be argued that implementation of the Initiated Ordinance is virtually impossible as the ordinance is presented. As noted, the Initiated Ordinance cites to laws that no longer exist. As a general rule-initiated matters, once adopted may not be changed, the initiated Ordinance as proposed adopts state laws that are no longer in place and will become increasingly difficult to enforce and implement as time goes on.

Initiative vs. Referendum. Questions were raised whether the proponents may by initiative overturn the prior actions of the Town board in prohibiting the sales of medical and retail marijuana within the limits of the Town or if this action had to be filed as a referendum within the requisite time after the town board, as allowed by the state constitution, adopted ordinances precluding local marijuana sales.

Article XVIII Section 16, (5) (f) of the constitution allowed the Town by ordinance to prohibit retail marijuana stores. Having done so the ordinance had to be challenged by referendum to be changed?

Possible Alternative Ordinances. There is some authority that suggests that the proponents could withdraw the Initiated Ordinances.²³ I tentatively made a suggestion to the proponent’s attorney that if the flawed Initiated Ordinances were withdrawn and single question ordinances along the form being submitted to the Board were alternate ordinances could be submitted. ²⁴ Initially the attorney appeared to be interested in the proposal to withdraw, and advised he would get back to me. I followed up late

²³ The ability to withdraw the petitions at this point is subject to legal questions.

²⁴ § 31-11-104 (2) Alternative ordinances may be submitted at the same election, and, if two or more conflicting measures are approved by the people, the one that receives the greatest number of affirmative votes shall be adopted in all particulars as to which there is a conflict.

Friday and was advised that he had not received a client response. We exchanged cell phone numbers, as of late Sunday I have not been contacted. The Board could elect to present an alternative ordinance to be considered by the voters at the same election as the Initiated Ordinances are presented. The Board needs to evaluate whether this causes confusion.



Board of Trustees Meeting

Date: September 8, 2020

Submitted By:

Proposed Ordinance - An Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington, Colorado

Subject:

- **Staff presentation: Brad March, Town Attorney**

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. Marijuana Proposed Ordinance Memo
2. Retail Marijuana Sales Tax

Memo

March & Olive, LLC

TO: Kelly Houghteling, Interim Town Administrator; Krystal Eucker, Wellington Town Clerk; Wellington Town Board

FROM: Brad March
March and Olive, LLC
1312 S. College Avenue, Fort Collins, CO
[970-482-4322](tel:970-482-4322)(p); [970-482-5719](tel:970-482-5719)(f)

RE: Initiated election petitions

DATE: September 6, 2020

This memorandum is intended to summarize the status of the citizen proposed initiated marijuana ordinances (the Initiated Ordinances) and the election likely required as a result of the filing of the initiative petitions. Unfortunately, it was discovered late Friday (9/4) that one of the timeline dates as set out in CRS § 31-10-108¹, related to scheduling a special election was not met.

The clerk has provided a list of dates which the statute keys to, dates include:

July 30, 2020 – Petition submission date
August 20, 2020 – Statement of sufficiency issued.
Nov 3, 2020 – General election date

Assuming that the Board does not adopt the citizen proposed ordinances, the statutory scheme requires that the ordinances be sent on to the voters. Based on cost considerations a recommendation was made to the board that the town schedule its own special election on the same day as the general election to allow the voters to determine whether the initiated ordinances would be adopted. The statute provides that a special election by mail in ballot may be held at the same time as the general election, but the election must be called at least 60 days before November 3rd². That is, the election needed to be called before September 4th. The clerk prepared resolutions to call the special election to be presented to the Board on September 8th, the date however was unfortunately outside the sixty (60) day limit set by the statute. As the general election date cannot be met, the election date cannot be held until 32 days after the general election or, December 7, 2020. The TABOR election cannot be held until later in 2021 and is discussed further below.

Board action of proposed ordinances or forwarding to voters. CRS 31-11-104 provides that a proposed /initiated ordinance may be adopted by the town board as an ordinance of the town within 20 days of a finding of sufficiency by the clerk. This provision allows the board to adopt the Initiated Ordinance

¹ See clerk memo for text of statute.

² 31-10-108

without alteration on or before September 8th. If the board does not act and the Initiated Ordinance is not adopted, the ordinance must be submitted to the voters not less than 60 days and not more than 150 days after the clerk's statement of sufficiency is issued.³ By y calculation this requires the election to be held no later than January 17, 2021.

Protest. By 21-11-110(1) Any registered elector who resides in the municipality may file, a protest in writing under oath with the clerk, challenge the sufficiency of the petition, setting forth specifically the grounds for such protest. The protest must be filed within 40 days after the initiative petition was originally filed with the clerk. The protest period will expire on September 8th.⁴ The grounds for a protest may include, but are not limited to, failure of the petition or circulator to meet the requirements of the article. A resolution has been prepared and will be submitted to the board on September 8th for approval, designating the municipal judge, rather than the clerk as the hearing officer to hear any protest. If a protest is filed, the hearing officer's decision can be appealed to the Larimer County courts.

Sales tax and TABOR. Colorado law allows municipalities, in addition to charging the municipality's normally charged sales tax and taxes apportioned by the state ⁵ to charge a special retail marijuana sales tax.⁶ The second proposed Initiated Ordinance provides that the Town would initially charge a 3.5% special sales tax, which could be increased by the Board to as much a 5% special sales tax. Under TABOR and the terms of the special sales tax statute tax increase measures must be approved by the voters and can only be submitted to the electorate at specified times. The TABOR amendment⁷ at part 3(a) provides:

Ballot issues shall be decided in a state general election⁸, biennial local district election, or on the first Tuesday in November of odd-numbered years. [D]istricts⁹ may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

The special sales tax statutory provision likewise provides:

§ 29-2-115. Retail marijuana sales tax - county - municipality - election - legislative declaration - definition

- (4) (a) Each municipality in the state is authorized to levy, collect, and enforce a municipal special sales tax upon all sales of retail marijuana and retail marijuana products...

- (b) No special sales tax shall be levied pursuant to subsection (4)(a) of this section until the proposal has been referred to and approved by the eligible electors of the municipality in accordance with article 10 of title 31. Any proposal for the levy of a special sales tax in accordance with subsection (4)(a) of this section must be submitted to the eligible electors of the municipality on the date of the state general election, on the first Tuesday in November of an odd-numbered year, or on the date of a municipal biennial election. Any election on the proposal must be conducted by the clerk of the municipality in accordance with the "Colorado Municipal Election Code of 1965", article 10 of title 31.

Because of the 31-10-108 scheduling issue surrounding the special meeting it is not possible to present the special tax to the voters at the upcoming general election. The first opportunity to place the issue of the special tax before the voters would be November 2, 2021, the first Tuesday in November of the odd-numbered year.

Circulator petitions. A question was raised with me as to whether the petitioners complied with 31-11-113. I was not asked to review the full petition submissions and do not know whether the report required by 31-11-113 was turned into the clerk at the time the fully signed Initiated Ordinances were filed with the Clerk's office or, if filed, whether the report was sufficient under the statute. The statute provides that the proponents must file a report disclosing the amount paid per signature and the total amount paid to each circulator. The filing is to be made at the same time the signatures on the Initiated Ordinance(s) are filed. I have had concerns surrounding the enforceability of the 31-11-113 requiring the report but, the statutory requirements, although perhaps suspect, remain a part of the statutory scheme for filing citizen-initiated ordinances and should have been complied with.

³ This is subject to the requirements of 31-10-108 that no special election may be called within sixty days before the date thereof, nor shall any special election be held within the thirty-two days before or after the date of the general election unless a mail ballot election is approved as a special election 60 days before the general election.

⁴ 31-11-110

⁵ Title 39, Article 28, Part 2

⁶ 29-2-15.

⁷ Constitution Article X sec 20

" § 1-1-104 (17) General election" means the election held on the Tuesday succeeding the first Monday of November in each even-numbered year.

31-10-101(10) Municipal election - Regular election" means: (a) Before July 1, 2004, the election held in towns on the first Tuesday of April in each even-numbered year; the election held in cities on the first Tuesday of November in each odd-numbered year; and the election held in any other municipality at which the regular election of officers takes place; (b) On and after July 1, 2004, the election held in any municipality in accordance with paragraph (a) of this subsection (10) unless a majority of the registered electors of the municipality voting on the question have voted to hold the regular election on a date different than specified in paragraph (a) of this subsection (10) pursuant to section 31-10-109(1), in which case "regular election" means, for any particular municipality, the date on which the regular election of officers takes place as determined by the registered electors of the municipality.

⁹ For purposes of TABOR the Town is a district.

The validity of placing restrictions on circulators has been the subject of challenges before various courts, most notably the United States Supreme Court in *Buckley v. American Constitutional Law Foundation*, 119 S.Ct. 636, 525 U.S. 182, 142 L.Ed.2d 599, 67 U.S.L.W. 4043 (1999). The *Buckley* case involved the state's initiative process¹⁰ and dealt with required disclosure of paid circulator identities and other paid circulator information. The legislature did not change/modify the requirements of 31-11-113 after *Buckley*.¹¹)

The statute that requires the report that is to be filed with the clerk was adopted in 1995, before the *Buckley* decision. The statute only requires disclosure of the amount paid per signature and the amount paid to circulate and does not require that the amount paid to each circulator be disclosed. The report requirement may be enforceable after *Buckley*.^{12 13}

Petition deficiencies. I have reviewed the form of the petitions with an agent of the Colorado Department of Revenue Marijuana Enforcement Division who characterized the form of the petitions, specifically the petition allowing for marijuana sales, as "a mess." The most noted concern is that the Initiated Ordinance's proposed Article 14 references the Colorado's Medical Marijuana Code as being codified at Title 12 Article 43.3 and Retail Marijuana Code as being codified at Title 12 Article 43.4. At section 14-10 the Initiated Ordinance recites that Retail Marijuana and Medical Marijuana may only be sold as allowed by the "Colorado Retail Marijuana Code" and the Colorado Medical Marijuana Code. The Colorado Retail Marijuana and the Colorado Medical Marijuana Code are currently embodied in state statutes at Title 44 article 11 (as opposed to Title 12 Article 43.3) as the Colorado Medical Marijuana

¹⁰ State initiative process at 1-40-101 et seq, municipal initiative proves at 31-11-101 et seq.

¹¹ The majority opinion of the court stated - we agree with the Court of Appeals appraisal: Listing paid circulators and their income from circulation "forc[es] paid circulators to surrender the anonymity enjoyed by their volunteer counterparts," 120 F. 3d, at 1105;^[24] no more than tenuously related to the substantial interests disclosure serves, Colorado's reporting requirements, to the extent that they target paid circulators, "fai[l] exacting scrutiny."

- ¹² For other cases involving similar initiated petition circulator issues see *Independence Inst. v. Gessler*, 936 F. Supp. 2d 1256 (D. Colo. 2013), signature compensation for petition circulators violates the first amendment of the United States constitution; *Am. Constitutional Law Found., Inc. v. Meyer*, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999); requirement that circulators be registered voters is not narrowly tailored to a compelling state interest, it unconstitutionally impinges on free expression; *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999) Badge requirement is unenforceable. *Meyer v. Grant*, 108 S.Ct. 1886, 486 U.S. 414, 100 L.Ed.2d 425, 56 U.S.L.W. 4516 (1988), state may not prohibit paid circulators.

¹³ Justice Thomas in his concurrence to the *Buckley* decision notes: "Even assuming that Colorado has a compelling interest in identifying circulators, its law does not serve that interest. The State requires that proponents identify only the names of *paid* circulators, not *all* circulators. The interest in requiring a report as to the money paid to each circulator by name, as the majority points out, *ante*, at 201, has not been demonstrated.

Code and Title 44, Article 12 (as opposed to Title 12 Article 43.4) as the Colorado Retail Marijuana Code. The Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code are to be replaced effective January 1, 2021 (the date the proposed ordinance goes into effect) and the governing statutes will be located at title 44, Article 10, and the designation as the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code will be eliminated and the code will be titled as the “Colorado Marijuana Code”^{14, 15} Throughout the Initiated Ordinance’s proposed new Article 14 to the Town Code the incorrect citations are referenced. For example, the proposed Sec 14-20, C and D provide that the Local Licensing Authority adopts the minimum licensing requirements of Title 12, Article 43.4 and 43.3. No such minimum standards exist that correspond to these citations. Further, the initiated ordinance, including at Sec 14-20 provides for a Local Licensing Authority and recites actions that are being taken by the local Licensing Authority when no Local Licensing Authority has been created by the Town¹⁶. The following references are to concerning provisions of the Initiated Ordinance proposed code (identified as SEC 14-**) and corresponding concerns with the concerns indented below each quoted Initiated Ordinance section.

Proposed Sec 14-30 defines:

Colorado Medical Marijuana Code: Article 43.3 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

This code will no longer exist after 2020 and has not existed since at least 2018 at the citation reference

Colorado Retail Marijuana Code or CRMC: Article 43.4 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto

This code will no longer exist after 2020 and has not existed since at least 2018 at the citation reference

Direct Measurement: A straight line from the nearest property line of the school or campus to the nearest portion of the building used for marijuana sales.

CRS 44-10-311(d)(II) The distances referred to in this subsection (1)(d) are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which medical marijuana is to be sold, using a route

¹⁴ Marijuana Code was re-codified in 2018 by HB1023 and is now found at Title 44, articles 11 and 22 of the Colorado statutes and in 2019 by SB 19-224 and as of January 1, 2021 will be effective at Title 44 Article 10.

¹⁵ See also references to Colorado Medical Marijuana Code and Colorado Retail Marijuana code with statutory cites as Sec 1-30 definitions.

¹⁶ By the Initiated Ordinance the Licensing Authority is created by Sec 14-150 Can the voters create the Local Licensing Authority and in the same initiated action act for the Licensing authority? Is an act of the Local Licensing Authority, a quasi-judicial body, administrative or legislative in nature?

of direct pedestrian access.¹⁷ This measurement formula inappropriately differs from the statutory scheme.

44-10-302 references time place manner and number restrictions which may be adopted by the Town in relation to Retail Marijuana licensing.

License: A license or registration granted pursuant to this Article.

The Initiated Ordinance at Sec. 14-150 (1) related to the Local Licensing Authority recites that the Local Licensing Authority is authorized (according to the prior law at title 12) to issue Medical Marijuana Center Licenses. CRS 4-10-501 references the license to be issued as a Medical Marijuana Store Licenses rather than a Medical Marijuana Center License¹⁸. Medical Marijuana Center Licenses will no longer exist after January 1, 2021.

Local Licensing Authority: The Board of Trustees of the Town of Wellington.

The statute provides that the Town Board may be the local licensing authority but allows the board to designate a separate licensing authority. The Initiated Ordinance definition requires that the Town Board must serve as the licensing authority.

44-10-103(28) "Local licensing authority" means an authority designated by municipal, county, or city and county charter, ordinance, or resolution, or the governing body of a municipality or city and county, or the board of county commissioners of a county if no such authority is designated.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

The term Local Licensing official is defined in the proposed ordinance, but the term is not used otherwise in the proposed ordinance nor does it appear that the term is used in the Colorado Marijuana Code.

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

44-10-103(48) defines a person as defined by 7-90-102 which adopts the definitions as "Person" means an individual, an estate, a trust, an entity, or a state or other jurisdiction.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

44-10-103(49) defines "Premises" means a distinctly identified, as required by the state licensing authority, and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

¹⁷ See also Sec 14-70-(c) The distances referred to in this Article are to be computed by direct measurement from the nearest property line of the applicable setback parcel to the nearest portion of the Retail or Medical Marijuana Store.

¹⁸ Medical Marijuana Center Licenses may be issued through 2020 by 44-11-401, the new Colorado Marijuana Code provides for Medical Marijuana Store Licenses, 44-10-401(2)(a). Medical Marijuana Center Licenses will no longer exist after January 1, 2021.

School: A public or private preschool or a public or private elementary, middle, junior high, or high school, college or principal campus of a college (and including the new Middle / High School at Wellington not open as of the adoption of this ordinance).

44-10-103(67) defines "School" means a public or private preschool or a public or private elementary, middle, junior high, or high school or institution of higher education.¹⁹

State Licensing Authority: The Authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical and Retail Marijuana in this State, pursuant to Articles 43.3 and 43.4 of Title 12 C.R.S.

Defined according to wrong statutory citation. Should be defined by 44-10-103(69) with reference to "regulated marijuana in this State, pursuant to section 44-10-201."

14-40 Applications-Licenses.

- A. Dual Operation. An applicant for a Retail Marijuana Store License under this Article may co-locate a Medical Marijuana Store and a Retail Marijuana Store at the same location as permitted by the Colorado Retail Marijuana Code.

§ 44-10-313 (12) provides each license issued under this article 10 is separate and distinct. It is unlawful for a person to exercise any of the privileges granted under a license other than the license that the person holds or for a licensee to allow any other person to exercise the privileges granted under the licensee's license. A separate license is required for each specific business or business entity and each geographical location.

- B. An application for a License shall be filed with the Local Licensing Authority on forms provided by the State and Local Licensing Authority. The application shall contain such information as the State and Local Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State and Local Licensing Authority. Upon receipt of notice from the State Licensing Authority of the application for a license under the Colorado Retail Marijuana Code (or the Colorado Medical Marijuana Code), the Local Licensing Authority shall determine whether the applicant qualifies for licensure under this Article. The Local Licensing Authority shall notify the state and the Applicant in writing of its determination as to whether the applicant qualifies for licensure as a Retail or Medical Marijuana Store no later than thirty (30) days from the date the application was originally received by the Local Licensing Authority.

The filing requirements seem to follow 44-10-301. The statute contains no 30-day response requirement. 44-10-302 references time place manner and number restrictions which may be adopted by the Town. Sec. 14-50, speaks to denial of licenses and it is not clear if the Town may adopt more restrictive time place manner and number restrictions beyond those set forth in the initiated ordinance

- C. If an application is denied, the Licensing Authority shall set forth in writing the grounds for denial.

This is likely compliant with the statute, § 44-10-304(3) provides that within thirty days after the public hearing or completion of the application investigation, a local licensing authority shall issue its decision approving or denying an application for local licensure. The decision must be in writing and must state the reasons for the decision. The local

¹⁹ Caveat, is a day care facility a pre-school?

licensing authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.

Sec. 14-60 Persons Prohibited as Licensees.

Sec. 14-70 Restrictions for Applications for Marijuana Store Licenses.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Retail Marijuana Code.

After January 1, 2021, there is no longer a Colorado Retail Marijuana Code. By this section the Initiated Ordinance purports to act on behalf of the Local Licensing Authority.

A(1) Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;

Seems to comply with § 44-10-311 (2) § 44-10-313(1)(b) and (8)(b)

A(2) Retail or Medical Marijuana stores and establishes 2000 foot setback form schools, (500) feet of: parcels zoned P (Public District) or another Retail or Medical Marijuana store; and two-hundred (200) feet of: parcels zoned R-1 (Residential District), R-2 (Residential District) or R-4 (Residential District)

Is this violative of single subject rules.

Zoning: § 44-10-311(d)(1) allows medical marijuana distancing at 1000' or greater if set by Town by ordinance or resolution.

The State Constitution at Article XVIII Section 16, (5) (f) allows a municipality to enact ordinances or regulations not in conflict governing time place manner, number of establishment operations and establishing procedures for issuance suspension and revocation of licenses.

Are these administrative actions that should be left to the Town, as provided for in the Colorado's Marijuana Code and are the provisions therefore improper to include in the Initiated Ordinance?

Sec. 14-80 Transfer of Ownership.

- A. A State or Local License granted under the provisions of this Article shall not be transferable except as provided below, but this Section shall not prevent a change of location as provided in C.R.S. § 12-43.4-309.

As of January 1, 2021, transfers of licenses will be addressed by 44-10-312.

- B. For a transfer of ownership, a License Holder shall apply to the State and Local Licensing Authorities on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority must allow any proposed transfer approved by the State Licensing Authority, but may charge a fee not to exceed \$1,000 to process such transfer.

44-10-803(3) provides: A local jurisdiction in which a license under this article 10 may be permitted may adopt and impose operating fees in an amount determined by the local

jurisdiction on marijuana businesses and establishments located within the local jurisdiction. Is this an administrative act and improperly taken in the Initiated Ordinance?

Requiring that the Local Licensing Authority must allow any proposed transfer invades the Local Licensing Authority's responsibilities under state law.²⁰

Sec. 14-90 Review and Approval of License.

The Local Licensing Authority adopts the provisions and restrictions set forth in C.R.S. §12- 43.4-309 and this Article.

This statute is no longer in existence and as of January 1, 2021 is at Article 44, title 10.

Sec. 14-100 Licensing Renewal.

- A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration. A Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The State Licensing Authority may extend the expiration date of the License and accept a late application for renewal of a License provided that the applicant has filed a timely renewal application with the Local Licensing Authority. All renewals filed with the State Licensing Authority and subsequently approved by the State Licensing Authority shall next be processed by the Local Licensing Authority. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day requirement set forth in this Article. The Local Licensing Authority may hold a hearing on and/or denial of the application for renewal only if the State Licensing Authority rejects the renewal application.

This section appears to be contrary to 44-10-314 and seems to invade the local licensing authority's ability to refuse a license if the licensing authority determines good cause exists.²¹

Sec. 14-110 Fees.

Every Retail and Medical Marijuana Store shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Board of Trustees and set by Resolution, but in no event shall either fee exceed one thousand five-hundred dollars (\$1,500.00).

This section and 14-100 B and C limit the ability to charge fees, 44-10-803(3) provides A local jurisdiction in which a license under this article 10 may be permitted may adopt and impose operating fees in an amount determined by the local jurisdiction on marijuana businesses and establishments located within the local jurisdiction.

Sec. 14-120 Hours of Operation.

A Retail or Medical Marijuana Store may engage in the sale of marijuana or marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Board of Trustees may at its discretion extend, but not further limit, such hours of operation.

²⁰ See 44-10-901 discussed below in relation to disciplinary action.

²¹ See 44-10-901 discussed below in relation to disciplinary action.

Article XVIII Section 16, (5) (f) allows a municipality to enact ordinances or regulations not in conflict governing time place manner, number of establishment operations and establishing procedures for issuance suspension and revocation of licenses

Sec. 14-130 Disciplinary Actions: Suspension-Revocation-Fines.

- B. The grounds for the Local Licensing Authority to take disciplinary action are limited to a situation where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency regarding, the public health, welfare or the safety of the immediate neighborhood in which the establishment is located. Evidence to support such a finding must at least include: (i) a continuing pattern of convictions for offenses against the public peace, or (ii) a continuing pattern of convictions for criminal conduct under state or local law directly related to or arising from the Licensed Premises.

44-10-901(1) grants the local licensing authority the authority to suspend or revoke a license issued by the authority for a violation by the licensee or by any of the agents or employees of the licensee of the provisions of this article 10, or any of the rules promulgated pursuant to this article 10, or of any of the terms, conditions, or provisions of the license issued by the state or local licensing authority. The subject provision dramatically limits this provision. As an example, if the licensing authority imposes conditions on a license issuance, does violation of the condition rise to an ongoing emergency? If the licensee violates operating hours, does an emergency arise? If it does not the licensing authority's ability to enforce is emaciated.

Sec. 14-130, C. 1. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of a suspension. When determining whether to impose a fine in lieu of a suspension, the Local Licensing Authority may make findings that:

44-10-901(3) addresses fines in lieu of suspension and this section is largely in keeping with the statute, except C.1.c allows a fine in lieu so long as there has been no suspension or revocation in the last 12 months, 44-10-901(3)(a)(III) provides that a fine in lieu is appropriate if there has been no suspensions or revocation in the last 2 years. Affording the ability to grant fines in lieu for the shorter period is contrary to state law.

Sec. 14-130, C.2. provides

The fine accepted shall be: (a) not less than five-hundred dollars (\$500.00) nor more than two thousand five-hundred dollars (\$2,500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of premises of a minor nature, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars (\$ 1,000.00) nor more than ten-thousand dollars (\$10,000.00) for violations that have an immediate impact on the public health, safety, or welfare, including, but not limited to, a violation of C.RS. §12-43.4-901(4)(e).

The Initiated Ordinance should reference 44-10-901

Administrative vs Legislative nature of petitions and challenges to Initiated Ordinance.

Ordinance must comply with State Law. There are initial concerns with the Initiated Ordinances in that in cases, as outlined above, are not in line with the state statutes. As a statutory municipality,

Wellington's laws may not deviate from the laws of the state. Voters, initiating an ordinance, have no greater power than the Town Board to adopt an ordinance that is contrary to state law. To the extent that the Initiated Ordinance is contrary to state law, the Ordinance is invalid.

Initiated Ordinance is not properly the subject of the right of initiative and referendum.

In *Vagneur v. City of Aspen*, 295 P.3d 493 (Colo. 2013) (2013) involved a protest filed under 31-11-110. The protesters in *Vagneur* filed written objections to the initiative petitions contending that the proposals **(1) contained administrative matters that are not subject to the initiative power; (2) included more than a single subject; and (3) contained misleading ballot titles.**

The hearing officer concluded that the proposed ordinances "encroached upon the administrative processes reserved to the administrative staff of the City of Aspen as authorized by City Council," and that "allowing citizens through the initiative process, to either dictate or negate administrative actions normally undertaken by city staff is a misuse of the process" and contrary to the initiative rights established by the Aspen City Charter. The hearing officer declined to sever any impermissible portions of the initiative because Proponents had testified that they believed the conditions were necessary to understand their proposals

The *Vagneur* court reviewed whether a citizen initiative is administrative or legislative in character, and whether an administrative initiative is a proper exercise of the initiative power.²² The court defined and set forth numerous tests from prior court decisions as to whether an ordinance was administrative or

-
- ²² In *City of Idaho Springs v. Blackwell*, 731 P.2d 1250 (1987) the court stated: An ordinance which shows an intent to form a permanent rule of government until replaced is one of permanent operation." 5 E. McQuillin, *Municipal Corporations* § 16.55, at 194 (3d ed. 1981) (emphasis added) (footnote omitted). Second, acts that are necessary to carry out existing legislative policies and purposes or which are properly characterized as executive are deemed to be administrative, while acts constituting a declaration of public policy are deemed to be legislative. *Witcher*, 716 P.2d at 449-50; *Margolis*, 638 P.2d at 303; *Zwerdinger*, 194 Colo. at 196, 571 P.2d at 1077.
-

In the *Blackwell* case Idaho Springs asserted: (1) that the petitions, although styled as "petitions for initiated ordinances," were actually petitions for referenda that were untimely (2) that the petitions addressed administrative rather than legislative matters and were therefore improper;

- The court noted The proposed initiated ordinances also must be classified as administrative matters when viewed under the second "test." The choice of location and structure for the new city hall is an act "necessary to carry out" the existing legislative policy to build a new city hall. See *Witcher*, 716 P.2d at 449; *Margolis*, 638 P.2d at 303; *Zwerdinger*, 194 Colo. at 196, 571 P.2d at 1077. The decision to raise tax revenues to be used in part for city hall construction was made in 1977 and approved by the majority of Idaho Springs voters in a special election. Implementation of the 1977 policy decision in the ordinance is administrative or executive and is not a proper subject for an initiated ordinance.
-

legislative in character. The court acknowledged that decisions surrounding the administrative/legislative determination needed to be made on a case by case basis. It can be argued that the question of whether the town should allow the sale of medical and retail marijuana is a legislative decision but the enforcement and implementation including time place manner and number restrictions are administrative in nature. Further, to the degree that the Initiated Ordinance has the Local Licensing Authority, which does not exist until the Ordinance is adopted, adopting positions, that action is likewise administrative. “When in a matter of state-wide concern, such as Marijuana Licensing, the state legislature has specifically delegated particular authority to the governing board, courts have uniformly held that the initiative processes do not ordinarily apply.” McQuillan, Law of Municipal Corporation §16.52 (3rd Ed.).

Usurpation of Administrative and enforcement Power. The Initiated Ordinance improperly limits enforcement powers which by statute are afforded to the liquor licensing authority. Particularly Sec. 14-13 limits the Local Licensing Authorities statutory ability to take disciplinary action, limiting the enforcement powers to situations where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency. Limitation of the authority’s quasi-judicial powers afforded by state law is not an appropriate exercise of the initiative power.

Impossibility of Implementation. It can be argued that implementation of the Initiated Ordinance is virtually impossible as the ordinance is presented. As noted, the Initiated Ordinance cites to laws that no longer exist. As a general rule-initiated matters, once adopted may not be changed, the initiated Ordinance as proposed adopts state laws that are no longer in place and will become increasingly difficult to enforce and implement as time goes on.

Initiative vs. Referendum. Questions were raised whether the proponents may by initiative overturn the prior actions of the Town board in prohibiting the sales of medical and retail marijuana within the limits of the Town or if this action had to be filed as a referendum within the requisite time after the town board, as allowed by the state constitution, adopted ordinances precluding local marijuana sales.

Article XVIII Section 16, (5) (f) of the constitution allowed the Town by ordinance to prohibit retail marijuana stores. Having done so the ordinance had to be challenged by referendum to be changed?

Possible Alternative Ordinances. There is some authority that suggests that the proponents could withdraw the Initiated Ordinances.²³ I tentatively made a suggestion to the proponent’s attorney that if the flawed Initiated Ordinances were withdrawn and single question ordinances along the form being submitted to the Board were alternate ordinances could be submitted. ²⁴ Initially the attorney appeared to be interested in the proposal to withdraw, and advised he would get back to me. I followed up late

²³ The ability to withdraw the petitions at this point is subject to legal questions.

²⁴ § 31-11-104 (2) Alternative ordinances may be submitted at the same election, and, if two or more conflicting measures are approved by the people, the one that receives the greatest number of affirmative votes shall be adopted in all particulars as to which there is a conflict.

Friday and was advised that he had not received a client response. We exchanged cell phone numbers, as of late Sunday I have not been contacted. The Board could elect to present an alternative ordinance to be considered by the voters at the same election as the Initiated Ordinances are presented. The Board needs to evaluate whether this causes confusion.

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The initiative seeks to impose a retail marijuana sales tax in the Town of Wellington.

Full Text of Measure:

Be it enacted by the Town of Wellington, Colorado

Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington, Colorado

WHEREAS, Article X, Section 20 of the Colorado Constitution, also referred to as the Taxpayer's Bill of Rights ("TABOR") requires voter approval for any new tax, any increase in any tax rate, the creation of any debt, extension of an expiring tax, and the spending of certain funds above limits established by TABOR; and

WHEREAS, November 3, 2020, is the coordinated general election for the State of Colorado and is one of the election dates at which ballot issues may be submitted to the eligible electors of the Town pursuant to TABOR; and

WHEREAS, if approved by a majority of the registered electors of the Town voting in the November 3, 2020 coordinated general election, Chapter 2 of the Wellington Municipal Code shall be amended to add a new Article 15, "Retail Marijuana Sales Tax," as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE REGISTERED ELECTORS OF THE TOWN OF WELLINGTON, COLORADO THAT:

Section 1. A new Article 15 is hereby added to Chapter 2 of the Wellington Municipal Code entitled "Retail Marijuana Sales Tax," to read as follows:

Article 15 - RETAIL MARIJUANA SALES TAX

Sec. 15-10 Administration and Enforcement.

The Retail Marijuana Sales Tax imposed pursuant to this Article shall be administered and enforced in a manner consistent with the administration and enforcement of other Town sales taxes, including, without limitation, any penalties for failure to make any return or to collect or pay any tax.

Sec. 15-20 Definitions.

When used in this Article, the following words and phrases shall have the following meanings, unless from the context it clearly appears that a different meaning is indicated:

Consumer: A person twenty-one (21) years of age or older who purchases Retail Marijuana or Retail Marijuana Products for personal use by a person twenty-one (21) years of age or older.

Retail Marijuana: All parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" does not include industrial hemp, nor fiber produced from the stalks, oil or cake made from the seeds of the plant, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product. Retail Marijuana does not include Medical Marijuana as defined under the Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, *et seq.*

Retail Marijuana Products: Concentrated Retail Marijuana Products that are comprised of Retail Marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

Retail Marijuana Sales Tax: The tax imposed on the sale of Retail Marijuana and Retail Marijuana Products pursuant to this Chapter.

Retail Marijuana Store: An entity licensed by the Colorado Department of Revenue to sell Retail Marijuana and Retail Marijuana Products to Consumers pursuant to Section 16 of Article XVIII of the Colorado Constitution and the "Colorado Retail Marijuana Code," Article 43.4 of Title 12, C.R.S., and licensed by the Local Licensing Authority pursuant to the Code.

Sec. 15-30 Imposition of tax.

- A. In addition to the sales tax imposed by Article 4, Chapter 4 of the Code, there is imposed upon all sales of Retail Marijuana and Retail Marijuana Products to a Consumer by a Retail Marijuana Store a tax at the rate of three and one-half percent (3.5%) of the amount of the sale.
- B. The maximum tax rate that may be imposed pursuant to this Section is five percent (5%). At any time on or after January 1, 2022, the Town may, by ordinance:
 1. Establish another tax rate to be imposed pursuant to this Chapter that is equal to or less than the maximum five percent (5%) tax rate provided in this subsection; or
 2. After establishing a tax rate that is lower than five percent (5%), increase or decrease the tax rate to be imposed pursuant to this Chapter; except that in no event shall the Town increase the tax rate above five percent (5%) of the amount of the sale of Retail Marijuana or Retail Marijuana Products.
- C. Nothing in this section shall be construed to impose a tax on the sale of marijuana products to any person by a Medical Marijuana Center licensed by the Colorado Department of Revenue to sell Medical Marijuana pursuant to the Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S., and licensed by the Town pursuant to this Chapter. To the extent any Retail Marijuana Establishment exists at the same location and under common ownership with a licensed Medical Marijuana Center, the retailer shall strictly segregate and account for sales of Retail Marijuana distinct from Medical Marijuana in accordance with all applicable state and city laws.

Sec. 15-40 Purpose of tax.

The Board of Trustees hereby declares that the purpose of the levy of the Retail Marijuana Sales Tax imposed by this Article is for raising funds for construction of a new community or recreation center, and/or other general operating expenses as may be designated instead by the Town on an annual basis.

Sec. 15-50 Revenue and spending limitations.

Notwithstanding any limitations on revenue , spending, or appropriations contained in Section 20 of Article X of the Colorado Constitution or any other provision of law, any revenues generated by the Retail Marijuana Sales Tax imposed pursuant to this Article, as approved by the voters at the general election on November 3, 2020, may be collected and spent as a voter-approved revenue change and shall not require further voter approval to modify the tax rate as provided in this Article.

Section 2. If any clause or provision of this ordinance is held to be invalid or unenforceable, the invalidity or unenforceability of the clause or provisions will not affect the validity of any of the remaining clauses or provisions of this ordinance.

Pursuant to §31-11-106 (2) C.R.S., each petition section shall designate by name and mailing address two persons who shall represent the proponents in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

- 1. Amie Rakoczy 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123**
- 2. Tim Morgen 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123**

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The initiative seeks to impose a retail marijuana sales tax in the Town of Wellington.

1.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
2.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
3.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
4.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
5.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
6.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
7.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The initiative seeks to impose a retail marijuana sales tax in the Town of Wellington.

8.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
9.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
10.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
11.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
12.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
13.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
14.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The initiative seeks to impose a retail marijuana sales tax in the Town of Wellington.

15.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
16.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
17.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
18.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
19.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
20.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
21.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The initiative seeks to impose a retail marijuana sales tax in the Town of Wellington.

22.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
23.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
24.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
25.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
26.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
27.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County
.....			
28.	_____	_____	_____
	Printed last name	Printed first name	Date of Signing
	_____	_____	_____
	SIGNATURE	Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The initiative seeks to impose a retail marijuana sales tax in the Town of Wellington.

29.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
30.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
31.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
32.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
33.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
34.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
35.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The initiative seeks to impose a retail marijuana sales tax in the Town of Wellington.

36.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
37.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
38.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
39.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
40.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
41.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
42.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

INITIATIVE PETITION

Petition Section ____

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR, YOU MUST BE
A CITIZEN OF COLORADO AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The initiative seeks to impose a retail marijuana sales tax in the Town of Wellington.

43.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
44.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
45.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
46.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
47.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County
.....			
48.	_____ Printed last name	_____ Printed first name	_____ Date of Signing
	_____ SIGNATURE	_____ Street Address	<u>Wellington / Larimer</u> City / County

Pursuant to §31-11-106 (2) C.R.S., each petition section shall designate two persons who shall represent the proponents in all matters affecting the petition and to whom all notices concerning the petition shall be mailed.

- | | | |
|----|--------------|---|
| 1. | Amie Rakoczy | 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123 |
| 2. | Tim Morgen | 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123 |

AFFIDAVIT OF PETITION CIRCULATOR

I, _____, hereby certify that:

1. I have read and understand the laws governing circulations of petitions in Colorado;
2. I was eighteen years of age or older at the time this section of the petition was circulated and signed by the listed electors;
3. I circulated this section of the petition;
4. Each signature thereon was affixed in my presence;
5. Each signature thereon is the signature of the person whose name it purports to be;
6. To the best of my knowledge and belief, each of the persons signing this petition section was, at the time of signing, a registered elector;
7. I have not paid or will not in the future pay and I believe that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition; and
8. I currently reside at the following address:

Street Address: _____

City, State, Zip Code: _____

County: _____

FURTHER, Affiant sayeth not.

[printed name of circulator]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public



Board of Trustees Meeting

Date: September 8, 2020

Submitted By:

Resolution No. 30-2020 - A Resolution Calling a Special Election in the Town of Wellington, Colorado

Subject:

- **Staff presentation: Brad March, Town Attorney**

EXECUTIVE SUMMARY

The Town Clerk's Office received signed petition forms for the sale of retail and medical marijuana in the Town of Wellington and to impose a 3.5% tax on retail marijuana and retail marijuana products in the Town of Wellington on July 30, 2020. The Clerk then inspected the signatures on the petitions for validity. A statement of sufficiency was completed within the 30 days allowed. A statement of sufficiency was sent to the individuals listed on the petitions as the proponents of the petitions electronically on August 20, 2020 and on August 25, 2020 as hard copies

The proposed ordinances may be adopted without alteration by the legislative body within 20 days (by 09/09/2020) following the final determination of petition sufficiency. If the proposed ordinances are not adopted by the legislative body, the proposed ordinances shall forthwith be published as other ordinances as published and shall refer the proposed ordinances, in the form petitioned for, to the registered electors of the municipality at a regular or special election.

Pursuant to C.R.S 31-10-108, Special elections shall be held on any Tuesday designated by ordinance or resolution of the governing body. No special election shall be held within the ninety days preceding a regular election. No special election shall be called within sixty days before the date thereof, nor shall any special election be held within the thirty-two days before or after the date of a primary, general, or congressional vacancy election. A special election may be held at the same time and place as a primary, congressional vacancy, or general election as a coordinated election pursuant to section 1-7-116, C.R.S., or may be conducted at the same time as a mail ballot election pursuant to article 7.5 of title 1, C.R.S. Special elections shall be conducted as nearly as practicable in the same manner as regular elections.

The special election can be called on any Tuesday between December 7, 2020 - January 17, 2021.

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

Staff recommends approval of Resolution 30-2020 with a date certain for the Special Election.

ATTACHMENTS

1. Special Election Resolution

TOWN OF WELLINGTON

RESOLUTION 30-2020

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO CALLING A SPECIAL ELECTION

WHEREAS, C.R.S. §§ 31-10-108 requires that any special election be called by resolution or ordinance of the governing body; and

WHEREAS, the Board of Trustees desires to conduct a special election, by mail ballot on _____ to present to the registered electors one or more ballot questions or issues.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, THAT:

1. Pursuant to C.R.S. §§ 31-10108, the Board of Trustees calls a special election to be held on _____. The purpose of such special election shall be to submit to the registered electors of Wellington:
 - a) Shall the Town of Wellington allow retail and medical marijuana sales in the C-3 zone district.
2. As authorized by the Municipal Election Code, the special election shall be conducted as a mail ballot election in accordance Article 10, Title 31, C.R.S.
3. The Town Clerk is hereby appointed as the Election Official of the Town for the special election. The Town Clerk shall have full authority and is hereby directed to perform and discharge all functions and duties imposed upon the Town by law.

Upon a motion duly made, seconded and carried, the foregoing Resolution was adopted by the Board of Trustees this 8th day of September, 2020

TOWN OF WELLINGTON, COLORADO

Troy Hamman, Mayor

ATTEST:

Krystal Eucker, Town Clerk



Board of Trustees Meeting

Date: September 8, 2020

Submitted By:

**Resolution No. 31-2020 - A Resolution Authorizing the Town Clerk to Appoint
Election Judges for the Special Election**

Subject:

- **Staff presentation: Brad March, Town Attorney**

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. Election Judge Resolution

TOWN OF WELLINGTON

RESOLUTION NO. 31-2020

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
WELLINGTON, COLORADO AUTHORIZING THE TOWN CLERK TO APPOINT
ELECTION JUDGES FOR THE SPECIAL ELECTION**

WHEREAS, C.R.S. §§ 31-10-401 provides the municipal election judges must be appointed at least fifteen (15) days prior to the day of the election; and

WHEREAS, the Town of Wellington has a special election scheduled for _____; and

WHEREAS, C.R.S. §§ 31-10-401 further provides that the governing body may, by resolution, delegate the town clerk the authority and responsibility to appoint the judges of the election.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

That the Town Clerk is hereby authorized to appoint the judges of election for the special election to be held on Tuesday, _____.

Upon a motion duly made, seconded and carried, the foregoing Resolution was adopted by the Board of Trustees this 8th day of September, 2020

TOWN OF WELLINGTON, COLORADO

Troy Hamman, Mayor

ATTEST:

Krystal Eucker, Town Clerk



Board of Trustees Meeting

Date: September 8, 2020

Submitted By:

Resolution No. 32-2020 - A Resolution Designating the Municipal Judge as the Initiative Referendum Protest Hearing Officer

Subject:

- **Staff presentation: Brad March, Town Attorney**

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. Initiative referendum hearing protest officer Resolution

TOWN OF WELLINGTON

RESOLUTION NO. 32-2020

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
WELLINGTON, COLORADO DESIGNATING THE MUNICIPAL JUDGE AS THE
INITIATIVE REFERENDUM PROTEST HEARING OFFICER**

WHEREAS, C.R.S. §§ 31-10-110(1) provides that within forty days after an initiative or referendum petition is filed, a protest in writing may be submitted to the Town Clerk and

WHEREAS, , C.R.S. §§ 31-10-110(3) provides the Town Clerk shall serve as the hearing officer unless some other person is designated by the Town Board of Trustees as the hearing officer.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

That the Wellington Municipal Judge rather than the Town Clerk is designated to conduct any initiative or referendum protest hearing required under C.R.S. §§ 31-10-110.

Upon a motion duly made, seconded and carried, the foregoing Resolution was adopted by the Board of Trustees this 8th day of September, 2020

TOWN OF WELLINGTON, COLORADO

Troy Hamman, Mayor

ATTEST:

Krystal Eucker, Town Clerk



Board of Trustees Meeting

Date: September 8, 2020

Submitted By:

Resolution No. 33-2020 - A Resolution Authorizing the Temporary Road Closure for the Annual Trick or Treat Down Main Street Event

Subject:

- **Staff presentation: Kelly Houghteling, Interim Town Administrator**

EXECUTIVE SUMMARY

Trick or Treat Down Main Street | Wellington, CO
Event Proposal

Event Details

Date: Saturday, October 31st

Time: 4:00 – 5:30 pm

Location: Cleveland Ave; 1st Street – 6th Street; Wellington, CO

Expected Attendees: 1,000 – 1,500 attendees over the course of two hours, not to exceed 175 per designated square footage at any one time

Safety Considerations:

- Traffic: Close off Cleveland Ave between 1st Street and 6th Street to traffic
- Facial covering: Facial coverings required for all attendees.
- Social Distancing: Designated entrance point with roped off area for check-in and traffic control. One-way uni-directional movement; Event attendees move West along the North side and East along the South side to prevent cross contact
- Main Streets will line up tables for businesses to hand out candy in the street with a minimum of 10' spacing between tables Chalk off 6' markers along the street for families to distance themselves
- No trick or treating INSIDE businesses; only along street
- Contamination: All business employees MUST wear mask and gloves (provided) to hand out candy. Kids will not be allowed to reach into communal bowls – candy must be handed out
- Signs: Arrow signs (provided by "Card My Yard" to show one-way movement. Signs for each business stand regarding communal bowls, social distancing, and mask requirement

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. A RESOLUTION AUTHORIZING THE TEMPORARY CLOSURE OF PORTIONS OF STATE HIGHWAY 1

TOWN OF WELLINGTON

RESOLUTION 33-2020

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON,
COLORADO AUTHORIZING THE TEMPORARY CLOSURE OF PORTIONS OF STATE
HIGHWAY 1/CLEVELAND AVE WITHIN THE TOWN OF WELLINGTON DURING THE
ANNUAL “TRICK OR TREAT DOWN MAIN STREET” EVENT ON
SATURDAY, OCTOBER 31ST, 2020**

WHEREAS, the Wellington Community Activities Commission, Wellington Area Chamber of Commerce and the Wellington Colorado Main Streets Program are conducting “Trick or Treat Down Main Street” for the residents of the Town of Wellington on Saturday, October 31st, 2020; and

WHEREAS, it is necessary to temporarily close a portion of State Highway 1 and Cleveland Ave within the Town of Wellington to traffic on October 31st, 2020 for the “Trick or Treat Down Main Street” event; and

WHEREAS, said temporary closure is permitted by C.R.S. 42-4-109 and Section 23-9 of the Model Traffic Code.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, THAT:

1. The following streets are to be closed to automobile traffic, except for residents and/or business owners of these streets:
 - a. Cleveland Ave from First Street to Fifth Street from 3:00 pm to 6:00 pm; and
 - b. State Highway 1 and Cleveland Ave traffic during the time of closure will be rerouted on State Highway 1 at Jefferson Avenue (County Road 62) East to Sixth Street and North to Cleveland Ave, or Cleveland Avenue at Sixth Street South to Jefferson Ave and West of Jefferson Avenue to State Highway 1.

Upon a motion duly made, seconded and carried, the foregoing Resolution was adopted by the Board of Trustees this 8th day of September, 2020

TOWN OF WELLINGTON, COLORADO

Troy Hamman, Mayor

ATTEST:

Krystal Eucker, Town Clerk



Board of Trustees Meeting

Date: September 8, 2020

Submitted By: CARES Funding Allocation

Subject:

- **Staff presentation: Kelly Houghteling, Interim Town Administrator and Tyler Sexton, Interim Finance Director**

EXECUTIVE SUMMARY

The State of Colorado is appropriating \$30,617,332.00 of CARES funding to Larimer County local governments to reimburse unbudgeted expenses through the Department of Local Affairs. In a Memorandum of Understanding signed back in June 2020 with Larimer County, Wellington is receiving \$552,720 in funding. At the meeting on Tuesday, staff will share the breakout on how we plan to spend this funding. Since we are still waiting on a response on eligible funding from the state, the information was not available for the packet.

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

None



Board of Trustees Meeting

Date: September 8, 2020
Submitted By: Krystal Eucker, Town Clerk
Subject: Liquor License Review Board
Annual Renewal - Sol de Jalisco

EXECUTIVE SUMMARY

El Mezcal Inc., d/b/a Sol de Jalisco has submitted their annual renewal for their Hotel and Restaurant liquor license. A review of the application found the establishment is in good standing with the Colorado Secretary of State, the establishment is current with sales tax and the Larimer County Sheriff's Office reported no issues directly related to the establishment's liquor license.

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

Staff recommends approval of the liquor license renewal.

ATTACHMENTS

1. Sol de Jalisco Renewal

Submit to Local Licensing Authority

**SOL DE JALISCO MEXICAN RESTAURANT
PO BOX 38
Wellington CO 80549**

Fees Due	
Renewal Fee	500.00
Storage Permit \$100 X _____	\$
Sidewalk Service Area \$75.00	\$
Additional Optional Premise Hotel & Restaurant \$100 X _____	\$
Related Facility - Campus Liquor Complex \$160.00 per facility	\$
Amount Due/Paid	\$

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

Retail Liquor or Fermented Malt Beverage License Renewal Application

Please verify & update all information below

Return to city or county licensing authority by due date

Licensee Name EL MEZCAL, INC			Doing Business As Name (DBA) SOL DE JALISCO MEXICAN RESTAURANT	
Liquor License # 03-06783	License Type Hotel & Restaurant	Sales Tax License # 3005-1601-0000	Expiration Date 08/07/2020	Due Date 06/23/2020
Business Address 3748 - 3750 CLEVELAND AVENUE Wellington CO 80549				Phone Number 970-412-7104
Mailing Address PO BOX 38 Wellington CO 80549			Email mcontreras2074@yahoo.com	
Operating Manager Jesus Rodriguez	Date of Birth 9/6/72	Home Address 831 Columbia Rd. Ft Collins, CO 80525	Phone Number 970-412-7104	
1. Do you have legal possession of the premises at the street address above? ☒ Yes ☐ No Are the premises owned or rented? ☐ Owned ☒ Rented* If rented, expiration date of lease May 1, 2030				
2. Are you renewing a storage permit, additional optional premises, sidewalk service area, or related facility? If yes, please see the table in upper right hand corner and include all fees due. ☐ Yes ☒ No				
3a. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? ☐ Yes ☒ No				
3b. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.? ☐ Yes ☒ No				
4. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. ☐ Yes ☒ No				
5. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. ☐ Yes ☒ No				
6. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. ☐ Yes ☒ No				
7. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. ☐ Yes ☒ No				

Tax Check Authorization, Waiver, and Request to Release Information

I, Jesus E. Rodriguez am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of El Mezcal, Inc (the "Applicant/Licensee") to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.

The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101, et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.

The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.

By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and is duly authorized employees, to act as the Applicant's/Licensee's duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.

Name (Individual/Business) <u>El Mezcal, Inc.</u>		Social Security Number/Tax Identification Number <u>81-1207259</u>	
Address <u>3750 Cleveland Ave, P.O. Box 38</u>			
City <u>Wellington</u>		State <u>CO</u>	Zip <u>80549</u>
Home Phone Number <u>970-412-7104</u>		Business/Work Phone Number <u>970-568-3082</u>	
Printed name of person signing on behalf of the Applicant/Licensee <u>Jesus E. Rodriguez</u>			
Applicant/Licensee's Signature (Signature authorizing the disclosure of confidential tax information) <u>Jesus E. Rodriguez</u>			Date signed <u>8-19-20</u>

Privacy Act Statement

Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 U.S.C. § 552a (note).

May 1, 2020

As the landlords of 3748 – 3750 Cleveland Ave, Wellington, CO 80549, Jesus E. and Myrna Rodriguez, will extend the lease to El Mezcal, Inc. from May 1, 2020 to May 1, 2030.

Jesus E. Rodriguez

Jesus E. Rodriguez 5-1-20

Myrna Rodriguez

Myrna Rodriguez 5/1/20

El Mezcal, Inc.

Jesus E. Rodriguez

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

El Mezcal, Inc.

is a

Corporation

formed or registered on 01/25/2016 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20161060519 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 09/02/2020 that have been posted, and by documents delivered to this office electronically through 09/03/2020 @ 15:27:29 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 09/03/2020 @ 15:27:29 in accordance with applicable law. This certificate is assigned Confirmation Number 12576250 .



Jena Griswold

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



LARIMER COUNTY SHERIFF'S OFFICE

Justin E. Smith, Sheriff

One Agency

One Mission

Public Safety

August 28, 2020

Town of Wellington

Attn: Kelly Houghteling, Interim Town Administrator

PO Box 127

Wellington, Colorado 80549

Dear Ms. Houghteling:

Monthly from January through December 2020, the Larimer County Sheriff's Office will provide 342 hours of supervisor time, 1,026 hours of general patrol service, 85 hours of investigating services, 171 hours of desk deputy time, and 171 hours of school resource services per month within the corporate limits of the Town. The supervisor time and general patrol service hours are provided by deputies assigned to the Town.

During the month of **July 2020**, non-assigned deputies spent a total of **164.05** hours in Wellington responding to calls, patrolling, and making contacts in the town.

During the month of **July 2020** there were **32.67** hours worked by Investigations.

During the month of **July 2020** there were **25.0** hours worked by Northern Colorado Drug Task Force.

Of Note: In anticipation of extra people attending the fireworks this year we staffed 10 deputies (5 patrol and 5 reserves) for the evening. The crowds remained dispersed throughout the evening. Near the end of the fireworks show most of the deputies ended up being involved with the investigation of a local resident, Brandon Chismar, who got into a disturbance with several others. He threw a firework into a group of people and physically assaulted at least 2 people, causing serious injury to one of them. When deputies were preparing to go to his residence, the suspect left his residence in a vehicle and nearly ran over 2 of the deputies. He was arrested without incident and has been charged with 8 crimes (4 felonies, 4 misdemeanors). The extra staffing allowed deputies to work multiple scenes and interview several people at a time, bringing this investigation to a quick, safe and successful conclusion.

Pursuant to the Law Enforcement Agreement between the Town of Wellington and Larimer County, applicable documenting monthly forms are attached.

Thank you,

A handwritten signature in black ink that reads "Joe Shellhammer".

Captain Joe Shellhammer

(970) 498-5103

Attachments

Administration
2501 Midpoint Dr.
Fort Collins, CO 80525
970 498-5100

County Jail
2405 Midpoint Dr.
Fort Collins, CO 80525
970 498-5200

Emergency Services
1303 N. Shields
Fort Collins, CO 80524
970 498-5300



LARIMER COUNTY SHERIFF'S OFFICE

Wellington Calls for Service and Patrol Time Report

(For Non-Wellington Officers)

7/1/2020 to 7/31/2020

****This report will not calculate time prior to April 1, 2014****

***Officers excluded from the report data: 9S8, 9Z89, 9E87, 9E5, 9E27, 9E3, 9E2, 9E50, 9E31, 9E7, 9X106

Wellington Time:

Time on Calls and Patrolling (minutes/Hours) - Non-Wellington Units - 7/1/2020 to 7/31/2020

		Total Minutes Hours	Call/Contact Time	Patrol Time
Total	Minutes	9,843.00	7,327.00	2,516.00
	Hours	164.05	122.12	41.93
July	Minutes	9,843.00	7,327.00	2,516.00
2020	Hours	164.05	122.12	41.93

Call/Contact Time: Time spent on dispatched or self initiated calls and person or vehicle contacts.

Patrol Time: Time spent patrolling in the Town when not on a specific call or contact.



Larimer County Sheriff's Office

Investigator Hours by Town\Squad\Officer

Date Range: 7/1/2020 to 7/31/2020

	Total
Total	32.67
Wellington	32.67
LIPE	7.25
L02008	0.00
L08002	0.00
L14035	7.25
L15055	0.00
L91009	0.00
LIPR	25.42
L07016	3.00
L13019	16.75
L17029	5.67
L86003	0.00

Wellington Monthly Report

July 2020

Larimer County Sheriff's Office

Christine Harpel
Senior Administrative Assistant

8/12/2020

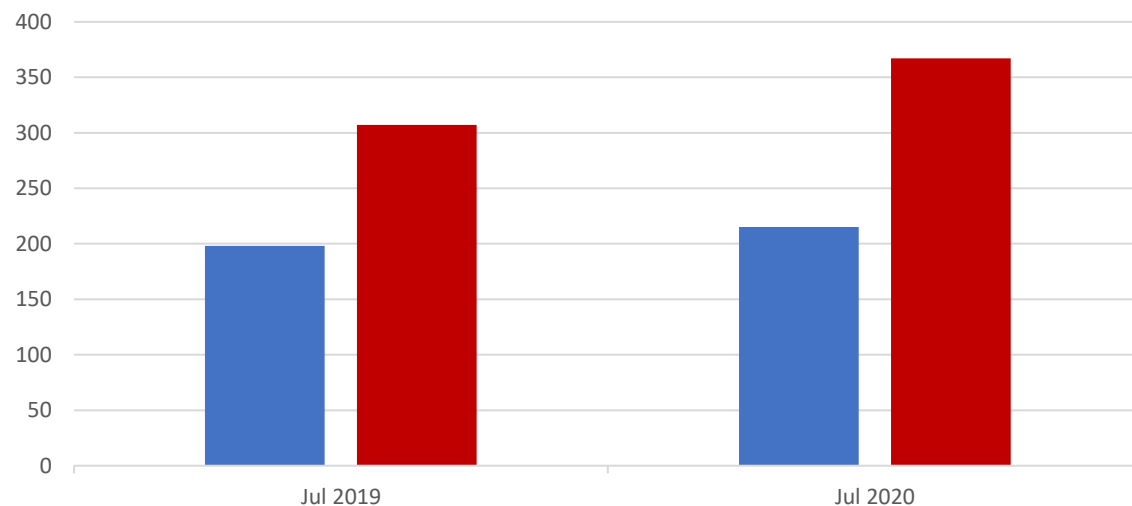
Page 145 of 152

July 2020 Totals

Dispatched / Officer-Initiated Activity

Dispatched Calls	215
Officer Initiated	367
Jul 2020 Total	582

Dispatched vs Officer-Initiated Activity



➤ Dispatched calls were Up 17 or 9% from July 2019

➤ Officer-Initiated Activity was Up 60 or 20% from July 2019

■ Dispatched ■ Officer-Initiated

	Jul 2019	Jul 2020
Dispatched Calls	198	215
	39%	37%
Officer Initiated	307	367
	61%	63%
Total	505	582

➤ 37% were Dispatched Calls

➤ 63% was Officer-Initiated Activity

July 2020 Calls for Service

Calls for Service Comparison

Call Types A-M

Call Type	2017	2018	2019	Avg 17-19	2020	% Change 3-Yr Avg to 2020
Alarm Calls	10	6	4	6.67	3	-55%
Alcohol Calls	1	1	1	1.00	0	-100%
Animal Calls	8	10	16	11.33	22	94%
Assault	2	0	2	1.33	1	-25%
Assist Other Agency (Fire/Med)	14	6	17	12.33	12	-3%
Bar Checks	0	4	0	1.33	0	-100%
Burglary	2	1	0	1.00	1	0%
Child abuse	0	0	1	0.33	0	-100%
Citizen Assist	47	22	18	29.00	19	-34%
Civil	9	14	16	13.00	11	-15%
Criminal Mischief	4	0	3	2.33	4	71%
Disturbance	11	4	4	6.33	4	-37%
Drug case	2	1	3	2.00	1	-50%
DUI Arrest	0	1	3	1.33	1	-25%
Extra Checks & Business Check	208	84	114	135.33	209	54%
Family Problems	10	10	11	10.33	7	-32%
Fire Ban	1	0	0	0.33	0	-100%
Fireworks	24	24	13	20.33	32	57%
Follow up	40	40	32	37.33	35	-6%
Found property	4	1	3	2.67	4	50%
Fraud	5	1	6	4.00	5	25%
Harassment	8	7	5	6.67	5	-25%
Information Report	0	0	0	0.00	1	N/C
Juvenile Problem	5	3	7	5.00	5	0%
Littering	1	1	0	0.67	1	50%
Lost Property	0	4	4	2.67	1	-63%
Missing Person (Child/Adult)	4	2	1	2.33	2	-14%
Motor Vehicle Accident	3	8	12	7.67	6	-22%
Municipal Code Violation	2	1	2	1.67	18	980%

Call Types N-Z

Call Type	2017	2018	2019	Avg 17-19	2020	% Change 3-Yr Avg to 2020
Neighbor Problems	5	4	3	4.00	2	-50%
Noise\Party Complaint	8	6	3	5.67	6	6%
Pedestrian Contact/Subject St	10	6	12	9.33	7	-25%
Private Tow	4	3	2	3.00	1	-67%
REDDI Report	2	2	1	1.67	1	-40%
Robbery	0	1	0	0.33	0	-100%
School Check	3	1	0	1.33	1	-25%
Sex assault	1	1	1	1.00	5	400%
Sex Offender Check	1	14	11	8.67	3	-65%
Suicide	1	1	0	0.67	0	-100%
Suicide Att/Threat	4	1	1	2.00	4	100%
Suspicious Circumstances	34	22	29	28.33	33	16%
Theft	4	10	6	6.67	5	-25%
Traffic Problem	19	17	13	16.33	11	-33%
Traffic Stop	29	119	81	76.33	42	-45%
Trespass	4	2	1	2.33	2	-14%
Vehicle Theft	2	0	0	0.67	1	50%
Vehicle Trespass	22	0	1	7.67	0	-100%
VIN Check	8	0	24	10.67	9	-16%
Warrant Attempt/Arrest	1	10	9	6.67	4	-40%
Weapon Related	0	1	0	0.33	1	200%
Welfare Check	10	11	5	8.67	19	119%
Unspecified	1	3	4	2.67	15	463%
TOTALS	598	491	505	531.33	582	10%

% Change 3-Yr Avg to 2020 = N/C because value cannot divide by 0

Calls for Service UP 77 or 15% from July 2019

July 2020 calls UP 10% from July 2017-2019 Average

July 2020 Call Categories

Crime Type Averages / Trends

Property Crimes					
Call Type	2017	2018	2019	Avg 17-19	2020
Burglary	2	1	0	1.67	1
Theft	4	10	6	4.67	5
Vehicle Theft	2	0	0	0.67	1
Vehicle Trespass	22	0	1	3.33	0
Property Crimes Totals	30	11	7	10.33	7

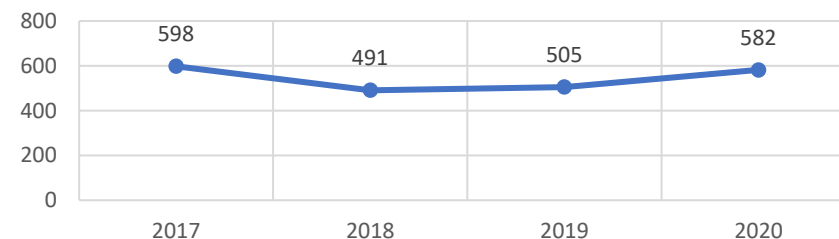
Persons Crimes					
Call Type	2017	2018	2019	Avg 17-19	2020
Assault	2	0	2	0.67	1
Missing Person (Child/Adult)	4	2	1	1.33	2
Robbery	0	1	0	0	0
Sex assault	1	1	1	1.00	5
Weapon Related (menacing,	0	1	0	0.67	1
Persons Crimes Totals	7	5	4	3.67	9

Disorder/Other Crimes					
Call Type	2017	2018	2019	Avg 17-19	2020
Alcohol Calls	1	1	1	1.00	0
Animal Calls	8	10	16	10.33	22
Criminal Mischief	4	0	3	3.67	4
Disturbance	11	4	4	5.33	4
Drug case	2	1	3	1.67	1
Family Problems	10	10	11	7.67	7
Harassment	8	7	5	5.67	5
Juvenile Problem	5	3	7	5.33	5
Noise\Party Complaint	8	6	3	5.00	6
Suspicious Circumstances	34	22	29	32.33	33
Trespass	4	2	1	2.67	2
Disorder Crimes Totals	95	66	83	80.67	89

Red numbers indicate a DECREASE in crime from July 2017-2019 Average

Yellow backgrounds indicate an INCREASE in crime from July 2017-2019 Average

July 2017-2020 Totals



July 2020 Traffic

Traffic Citations	7/19	7/20
Traffic Citations Issued	5	3
Traffic Verbal Warnings	62	33
Traffic Written Warnings	7	10

- Citations Issued Down 2
- Verbal Warnings Down 29
- Written Warnings Up 3

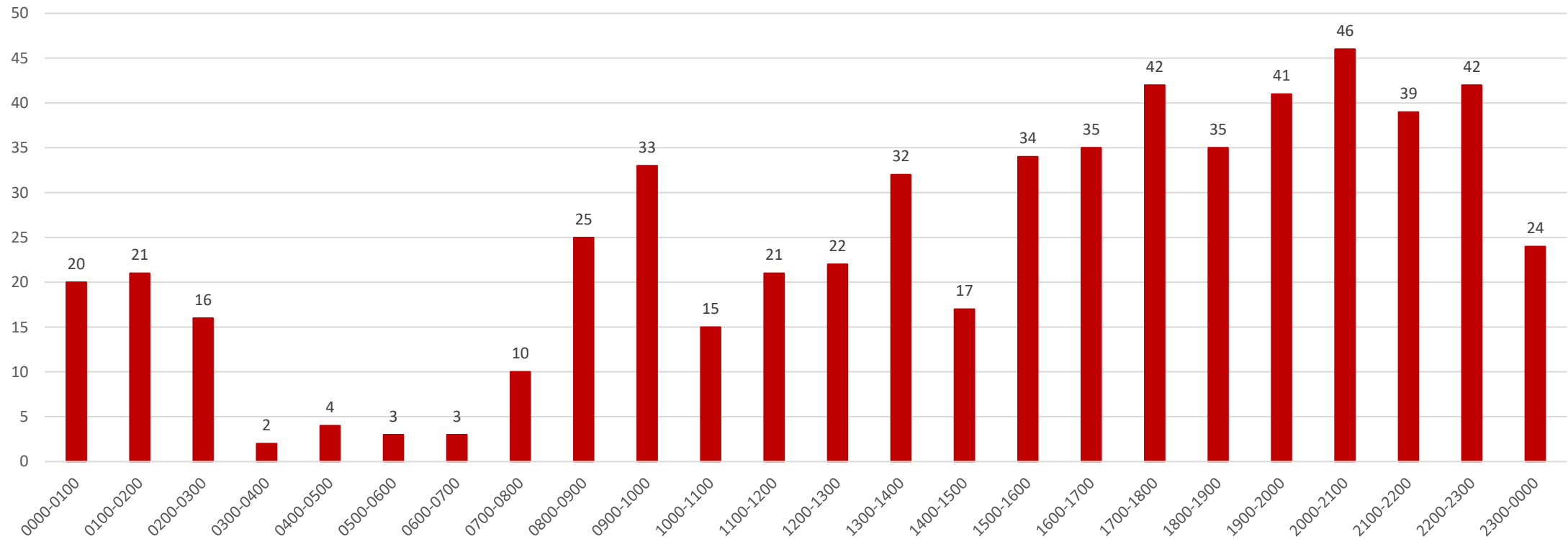
Call Type	7/19	7/20
Traffic Stop	81	42
Motor Vehicle Accident	12	6
DUI Arrest	3	1
Traffic Problem	13	11
REDDI Report	1	1

- Traffic Stops Down 39 or 48%
- MV Accidents Down 6
- DUI Arrests Down 2
- Traffic Problems Down 2 or 15%
- REDDI Reports Equal

July 2020

Call Totals by Hour

Busiest Hours
2000-2100 (46)
1700-1800 & 2200-2300 (42)

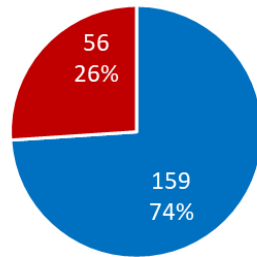


←→ 28 Calls between 0200-0700

July 2020

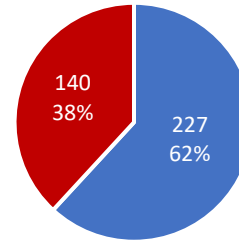
Wellington/Non-Wellington Units

Dispatched



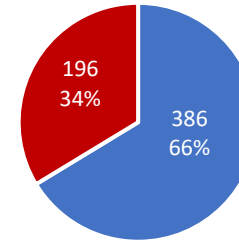
Wellington Non-Wellington

Officer-Initiated



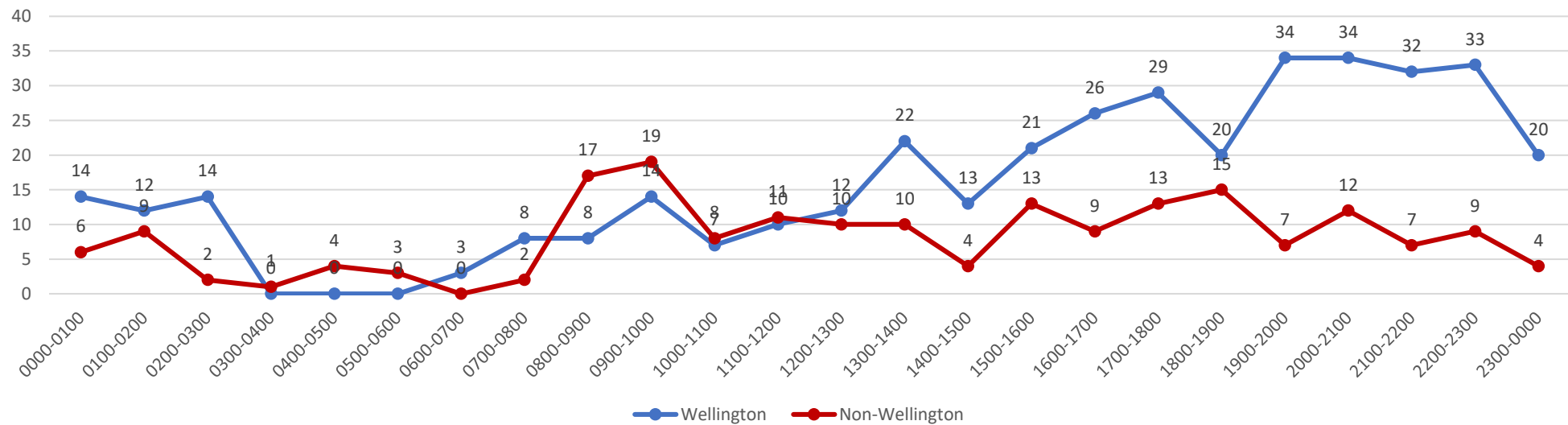
Wellington Non-Wellington

Total Calls



Wellington Non-Wellington

Wellington/Non-Wellington Calls by Hour



Wellington Non-Wellington

July 2020

Response Times / Time on Calls Dispatched Calls Only All Times in Minutes

Average Response Time (All Units)		
High		4.32
Medium		8.31
Low		15.15
Avg. Response Time		14.07

Average Time on Calls (All Wellington Calls)			
High			5.97
Medium			11.93
Low			39.96
Avg. Time			35.64