IN THE SUPREME COURT

OF THE

STATE OF COLORADO

No. 80SA110

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| LARRY MARGOLIS, WAYNE H. ROTH and ROBERT WIEGAND, II,<br><br>Petitioners,<br><br>vs.<br><br>DISTRICT COURT IN AND FOR THE COUNTY OF ARAPAHOE AND STATE OF COLORADO and the HONORABLE GEORGE B. LEE, JR., one of the Judges thereof,<br><br>Respondents. | ORIGINAL PROCEEDING PURSUANT TO RULE 21 C.A.R. IN THE NATURE OF PROHIBITION |

# BRIEF OF AMICUS CURIAE COLORADO MUNICIPAL LEAGUE

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## INTEREST OF THE COLORADO MUNICIPAL LEAGUE AS AMICUS CURIAE

The Colorado Municipal League (League) is a non-profit association of two hundred twenty-nine Colorado municipalities.

The power to protect the health, safety and welfare of the general public through the exercise of the zoning power is a matter of great concern to Colorado municipalities. Regulating the use of land in a municipality is essential to providing a well-planned community, responsive to the needs of all citizens.

Municipalities throughout Colorado are vitally interested in and concerned with any action or decision which could adversely affect their ability to zone property in accordance with statutory or home rule charter procedures. The issues presented by the above-entitled case fall within that area of concern. Insofar as the petitioners argue that the powers of referendum and initiative apply to quasi-judicial zoning decisions, comprehensive land use planning based upon procedures designed to protect individual landowners and benefit the general public could be destroyed.

Because of these interests, the League appears as Amicus Curiae in this case on behalf of the City of Greenwood Village and all other Colorado municipalities.

## STATEMENT OF THE ISSUES PRESENTED

I. Is this case a proper one for the granting of relief in the nature of prohibition under C.A.R. 21 and Art. VI, Sec. 3, Colo. Const.?

II. Was the trial court correct in ruling that the powers of initiative and referendum do not apply to quasi-judicial zoning decisions?

## STATEMENT OF THE CASE

The Colorado Municipal League adopts the statement of the case as set forth in the brief of the City of Greenwood Village.

I. THIS IS NOT A PROPER CASE FOR THE GRANTING OF RELIEF IN THE NATURE OF PROHIBITION UNDER C.A.R. 21 AND ARTICLE VI, SECTION 3 OF THE COLORADO CONSTITUTION, BECAUSE THERE IS NO ALLEGATION THAT THE DISTRICT COURT ACTED IN EXCESS OF ITS JURISDICTION.

This action was brought pursuant to C.A.R. 21, which provides in relevant part:

> Relief in the nature of prohibition may be sought in the Supreme Court where the district court is proceeding without or in excess of its jurisdiction....

This rule was promulgated pursuant to Art. VI, Sec. 3 Colo. Const., which grants the Court original jurisdiction over writs "as may be provided by rule of court...."

A common theme running through the many cases defining the Court's role in prohibition proceedings is that:

> When a writ of prohibition is presented to the court its only inquiry is "whether the inferior judicial tribunal is exercising a jurisdiction it does not possess, or, having jurisdiction over the subject-matter and the parties, has exceeded its legitmate powers." City of Aurora v. Congregation Beth Medrosh Hagodol, 140 Colo. 462, 467, 345 P.2d 385, 387 (1959).

See also, Vaughn v. District Ct., 192 Colo. 348, 559 P.2d 222 (1977); Alspaugh v. District Ct., 190 Colo. 282, 545 P.2d 1362 (1976); City of Colorado Springs v. District Ct., 184 Colo. 177, 519 P.2d 325 (1974).

Not only must there be a jurisdictional defect, but the attention of the trial court must have been drawn to the question of jurisdiction. Town of Vail v. Dist. Ct., 163 Colo. 305, 430 P.2d 477 (1967); City of Thornton v. Public Utilities Commission, 154 Colo. 431, 391 P.2d 374 (1964). The reason for these rules is that prohibition is not to be used in lieu of the normal appeal process, nor is it intended to restrain a trial court from committing error in deciding a question properly before it. Prinster v. District Ct., 137 Colo. 393, 325 P.2d 938 (1958); Leonhart v. District Ct., 183 Colo. 1, 329 P.2d 781 (1958).

In the case at bar, however, neither the petition nor the brief in support of the petition make any allegations that the trial court exceeded its jurisdiction or its legitimate powers. Nor is there any indication that Petitioners

called the attention of the trial court to any lack of jurisdiction.

Indeed, it is obvious that the District Court had jurisdiction in this case. Under Art. VI, Sec. 9, Colo. Const., district courts are tribunals of general jurisdiction. This grant of jurisdiction unquestionably entitles a district court to interpret the Constitution and statutes of the state, as well as municipal charters and ordinances. This is precisely what Petitioners asked the District Court to do when they brought suit. Consequently, the District Court had subject-matter jurisdiction over the action, a conclusion that Petitioners do not deny.

With respect to personal jurisdiction, it need only be noted that Petitioners originally brought the action in the District Court, thus submitting to its jurisdiction. As with subject-matter jurisdiction, Petitioners make no allegation that the District Court was proceeding without personal jurisdiction.

There is also no indication that Petitioners objected to the District Court's jurisdiction at trial or any other time. Considering the fact that Petitioners originally invoked the District Court's jurisdiction, this is hardly surprising.

Even the most searching examination of the petition and brief in support fails to reveal anything other than the Petitioner's objection to the District Court's interpretation of the law. Assuming, arguendo, that the District Court was wrong in granting the City's motion to dismiss, that still would not justify relief by writ of prohibition. It is axiomatic that "[p]rohibition may not be used to restrain a trial court from committing error in deciding a question properly before it...." Alspaugh v. District Ct., 190 Colo. 282, 285-6, 545 P.2d 1362, 1364 (1976); Prinster v. District Ct., 137 Colo. 393, 325 P.2d 938 (1958).

In summation, it is clear that the District Court had jurisdiction to do what it did in this case, and that Petitioners are merely trying to circumvent the normal appeal procedures by bringing this action. Consequently, relief in the nature of prohibition should be denied, and the rule to show cause should be discharged.

II. THE INITIATIVE AND REFERENDUM POWERS DO NOT APPLY TO QUASI-JUDICIAL ZONING DECISIONS.

A. Under The Colorado Constitution And The City Charter, The Initiative And Referendum Powers Apply Only To Legislative Matters.

Art. V, Sec. 1, Colo. Const. reserves the right of initiative and referendum with respect to state legislation. The last part of this Section states:

> The initiative and referendum powers reserved to the people by this section are hereby further reserved to the legal voters of every city, town and municipality as to all local, special and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws, except that cities, towns and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. (emphasis added)

Thus, with respect to "municipal legislation," the initiative and referendum powers are reserved to the legal voters, and the municipality is empowered to provide for the manner in which the right is exercised. See, Francis v. Rogers, 182 Colo. 430, 514 P.2d 311 (1973).

In City of Aurora v. Zwerdlinger, 194 Colo. 192, 571 P.2d 1074 (1977), this Court held that the provisions of Art. V, Sec. 1, Colo. Const. "apply only to acts which are legislative in character...." Id. at 195, 571 P.2d at 1076. That decision, which was based on the language of the Article, adopted the majority view. See, Carson v. Oxenhandler, 534 S.W.2d 394 (Mo.App. 1960); Keigley v. Bench, 97 Utah 69, 89 P.2d 480 (1939). Consequently, since the Zwerdlinger decision, the constitutional powers of initiative and referendum apply only to the legislative acts of a City Council.

Art. XX, Sec. 5, Colo. Const.[1] requires all home rule charters to provide for initiative and referendum procedures. With respect to initiative,

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[1]While this Section literally deals only with Denver, it is made applicable to all home rule municipalities by Art. XX, Sec. 6, Colo. Const.

Section 5.1 of the Greenwood Village Charter provides that "[a]ny proposed ordinance may be submitted...." Section 5.2 of the charter provides that "[t]he referendum shall apply to all ordinances passed by the Council...." Relevant charter provisions are reprinted in Appendix A.

Under the Court's decision in City of Aurora, v. Zwerdlinger, supra, this language must be interpreted as meaning only ordinances which are legislative in character.

The charter provision at issue in Zwerdlinger stated "[t]he referendum shall apply to all ordinances passed by council...." The question was whether this provision should be literally applied to allow referendum as to a non-legislative ordinance fixing utility rates. It was stated that:

> [R]eferences in municipal charters to "all ordinances" have generally been interpreted as meaning only ordinances which are legislative in character.
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> * * * *
>
> From an early date in the history of the right of referendum it has been recognized that to subject to referendum any ordinance adopted by a city council, whether administrative or legislative, could result in chaos and the bringing of the machinery of government to a halt.
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> * * * *
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> Although initiative and referendum provisions widely differ in their terminology, it is the general rule that they are applicable only to acts which are legislative in character, and not to those dealing with administrative or executive matters....
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> In accordance with this rule the words "any ordinance" in a provision for referendum have frequently, and almost universally, been construed to mean ordinances which are legislative in character. Id. at 196, 571 P.2d at 1076-7.

The Court concluded that, in spite of the charter provision's literal language, "the Aurora Charter reserved the referendum power only as to all legislative ordinances...." Id. at 196, 571 P.2d at 1077. Consequently, it was held that the referendum power had no application to a non-legislative ordinance fixing utility rates.

It can be seen that the language of the Greenwood Village Charter is the same language dealt with in the Zwerdlinger case, i.e., "all ordinances" and

"any...ordinance."

It necessarily follows that Zwerdlinger's limitation of this language to legislative actions is applicable to the Greenwood Village Charter. Consequently, the charter provisions limit the application of initiative and referendum to actions which are legislative in character.

B. The Quasi-Judicial Process Of Zoning Particular Tracts Of Land Is Not A Legislative Matter And Thus Not Subject To The Initiative And Referendum Powers.

Since this Court's decision in Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975), it has been definitively established that the process of rezoning specific pieces of property is not legislative, but quasi-judicial. The opinion in Snyder specifically draws a distinction between "the adjudicative process involved in enacting a *rezoning* ordinance and the legislative process involved in passing the general zoning ordinance." Id. at 425, 542 P.2d at 373-4 (emphasis by the Court).

This distinction is explained as follows:

> Generally, when a municipal legislative body enacts a comprehensive plan and zoning code, it acts in a policy making capacity. But in amending a zoning code, or reclassifying land thereunder, the same body, in effect, makes an adjudication between the rights sought by the proponents and those claimed by the opponents of the zoning change. The parties whose interests are affected are readily identifiable. Although important questions of public policy may permeate a zoning amendment, the decision has a far greater impact on one group of citizens than on the public generally.
>
> Another feature of zoning amendment decisions, which distinguishes them from other types of legislative action, is their localized applicability. Other municipal ordinances which affect particular groups or individuals more than the public at large apply throughout an entire geographic area within the municipal jurisdiction, whereas ordinances that amend zoning codes or reclassify land thereunder apply only to the immediate area being rezoned.

> Finally, legislative hearings are generally discretionary with the body conducting them, whereas zoning hearings are required by statute, charter or ordinance. The fact that these hearings are required is itself recognition of the fact that the decision making process must be more sensitive to the rights of the individual citizen involved. Id. at 425, 542 P.2d at 374.

Thus, the Court held that while the passage of the general zoning ordinance is legislative, "the enactment of a rezoning ordinance pursuant to the statutory criteria, after notice and a public hearing, consititue[s] a quasi-judicial function...." Id. at 426, 542 P.2d at 375.

The Snyder decision was followed in the subsequent case of Corper v. City & County of Denver, 191 Colo. 252, 552 P.2d 13 (1976), wherein the Court held that the zoning amendment procedure utilized by Denver was quasi-judicial in nature, even though the City's ordinances referred to rezoning actions as "legislative."

Three factors the Court in Snyder thought essential to a finding that the action of a municipal legislative body is quasi-judicial are:

> (1) a state or local law requiring that the body give adequate notice to the community before acting; (2) a state or local law requiring that the body conduct a public hearing, pursuant to notice, at which time concerned citizens must be given an opportunity to be heard and present evidence; (3) a state or local law requiring the body to make a determination by applying the facts of a specific case to certain criteria established by law. Id. at 425, 542 P.2d at 374.

An examination of the procedures for zoning individual pieces of property which are mandated by Greenwood Village's charter and ordinances indicate that the process is clearly quasi-judicial. The City is required to conduct public hearings prior to zoning decisions, and must give advance notice of that hearing to the applicant and the general public. Specific rules concerning the procedure applicable to such hearings are set out, and the City is required to reach a decision by applying relevant facts to criteria prescribed by law. Applicable ordinance, charter and statutory provisions are set out in Appendix A. All criteria required to make an action of the city council quasi-judicial under Snyder are present in the Greenwood Village zoning procedures.

Since the zoning process is quasi-judicial rather than legislative, and since the initiative and referendum powers apply only to legislative matters, it is clear that initiative and referendum do not apply to ordinances zoning particular pieces of property.

Other jurisdictions have come to the same conclusion. See, e.g., Leonard v. City of Bothell, 87 Wash.2d 847, 557 P.2d 1306 (1976) (rezoning not a legislative decision and thus not subject to referendum); West v. City of Portage, 392 Mich. 458, 221 N.W.2d 303 (1974) (general zoning ordinance is legislative act and subject to referendum; rezoning is administrative and not subject to referendum); Foreman v. Eagle Thrifty Drugs and Markets, Inc., 89 Nev. 533, 516 P.2d 1234 (1973) (rezoning merely effectuates previously declared policy of general zoning ordinance, is administrative, and not subject to initiative or referendum); Bird v. Sorenson, 16 Utah 2d 1, 394 P.2d 808 (1964) (enactment of rezoning ordinance administrative, not subject to referendum).

Some courts have reached the same conclusion based primarily upon policy considerations. Thus, in Elkind v. New Rochelle, 5 N.Y.2d 836, 181 N.Y.S. 2d 509, 155 N.E.2d 404 (1957), the court affirmed a decision at 163 N.Y.S. 2d 870 which held that inasmuch as the zoning enabling act not only provided that the city council would amend the zoning regulations, but also set out a detailed procedure for doing so, referendum should not apply to a zoning amendment. Otherwise, explained the court, the safeguards and procedures established by the legislature would be completely nullified. And, in Township of Sparta v. Spillane, 125 N.J. Sup. 519, 312 A.2d 154 (1973) the court held that since zoning was intended to be accomplished in accordance with a comprehensive plan, and that achievement of such goals might be jeopardized by piecemeal attacks upon zoning ordinances by referenda, the power of referendum did not apply to an amendment to the zoning ordinance. Finally, in O'Meara v. City of Norwich, 167 Conn. 579, 356 A.2d 906 (1975), the court held that statutory zoning requirements incorporate safeguards assuring a full and fair consideration of the matter, thus protecting the rights of individual property owners. Consequently, the act of zoning was not a legislative function and not subject to referendum.

The policy reasons for not applying initiative and referendum to quasi-judicial zoning matters are indeed persuasive. Perhaps the most compelling

arguments concern the rights of individual property owners.

The procedures controlling individual zoning decisions in Greenwood Village are designed to protect the rights of property owners by giving them prior notice and an opportunity to present their side of the issue. The hearing will be held in a forum which is bound by written procedures and standards, and which produces a written record and decision. Property owners can determine, prior to the hearing, what factors will be relevant to the decision, and can prepare accordingly. If the decision-making body fails to follow required procedures, abuses its discretion or exceeds its jurisdiction, the decision can be set aside via judicial review under C.R.C.P. 106(a)(4).

These safeguards will be largely destroyed if quasi-judicial zoning decisions can be made by initiative and referendum. An initiated ordinance under Article V., Greenwood Village Charter, need not be subjected to a hearing. A hearing would be of little avail in any case, since the decision would be made, not in a quasi-judicial atmosphere, but in the political arena. Comprehensive planning and zoning procedures designed to safeguard individual interests and provide a well-reasoned decision will no longer be relevant. considerations. Instead, a property owner will be forced to mount an expensive election campaign aimed at each registered voter in the City, in an attempt to persuade them to zone or not zone his property in a particular manner. This burden will fall not only upon an applicant for rezoning, but also upon the individual who is satisfied with his present zoning and is protesting an initiated rezoning of his property.

Neighboring property owners affected by a particular rezoning will also be unable to present their views in the context of a controlled public hearing. If they want their side of the issue heard, these individuals will be forced to finance an election campaign. If they lack the money or the public relations expertise essential to city-wide election campaigns, they will be effectively precluded from being heard.

Finally, the concept of certiorari review via C.R.C.P. 106(a)(4) will be inapplicable to a zoning decision made by initiative or referendum. The factors upon which the decision-making body (i.e., the electorate) bases its determination will be impossible to ascertain and, in any case, irrelevant. Presumably, the "arbitrary and capricious" standard would not apply to a

legislative decision made by the electorate. Consequently, the only situation in which such a decision could be set aside would be where the zoning deprived the owner of substantially all reasonable uses of his property.

Other compelling policy reasons exist for not allowing quasi-judicial zoning decisions to be decided by initiative and referendum. Greenwood Village, like many other Colorado municipalities, has enacted a master plan which serves as a guide for the future development of the community. The adoption of such plans has long been encouraged by the General Assembly in order to provide for "a coordinated, adjusted, and harmonious development of the municipality...." §31-23-207, C.R.S. 1973 (1977 Repl. Vol.). See also, §31-23-303, C.R.S. 1973 (1977 Repl. Vol.), which requires zoning regulations to be made "in accordance with a comprehensive plan."

In all probability, zoning decisions made by popular vote will have little, if any, relationship to a comprehensive plan. Instead, the operative factor will be the size of election campaign the applicant (or opponents) can afford. Without adherence to a comprehensive plan, zoning can degenerate into fragmented, disconnected decisions devoid of any discernible continuity. Such a result thwarts the goal of zoning in the first place, creates public cynicism for the zoning process, and contravenes the legislative intent evidenced by the above statutes.

Another important policy consideration concerns municipal liability under 42 U.S.C. §1983 for zoning decisions which violate the Fifth Amendment.[2] This federal statute (the full text of which is reprinted in Appendix A) provides that every person who, under color of law, violates another person's constitutional rights, shall be liable to that person in damages. It has been held that a municipal action which violates the Fifth Amendment takings clause is redressable under §1983. Lake Country Estates, Inc. v. Tahoe Regional Planning Agcy., 99 S.Ct. 1171 (1979). Further, there is the possibility of an inverse condemnation action under the Fifth Amendment alone.[3] Consequently, if zoning can be accomplished by initiative, the public has the ability to *unknowingly* create massive damages claims against the municipality.

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[2]In Monell v. N.Y.C. Dept. Social Services, 436 U.S. 658 (1978), the Court held that municipalities are "persons" for purposes of liability under §1983, and in Owen v. City of Independence, 48 L.W. 4389 (1980), the Court held that municipalities have no "good faith" immunity for their acts.

[3]See, Agins v. City of Tiburon, 157 Col. Rptr. 372, 588 P.2d 25 (1979, wherein it was held that an inverse condemnation action for compensation was not an available remedy for a confiscatory zoning ordinance. The U.S. Supreme Court has granted certiorari in this case.

Petitioners rest their case primarily upon the decision in City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972). It is the League's contention that Snyder v. City of Lakewood, supra, and City of Aurora v. Zwerdlinger, supra, have changed the state of the law so that the Dooney decision is no longer applicable.

Dooney is inapplicable to the present situation because, at the time it was decided, zoning was not quasi-judicial, but legislative. Neither had referendum under home-rule charters been limited to legislative ordinances. Snyder declared zoning to be quasi-judicial in 1975, and Zwerdlinger limited referendum to legislative ordinances in 1977. Consequently, the issues which are most basic to this case were not even addressed in Dooney. Insofar as Dooney would allow a quasi-judicial zoning decision to be made by initiative or referendum, it has been overruled by Snyder and Zwerdlinger.

Zoning directly affects the most valuable asset in the community, real estate. However, it must be remembered that property is owned by individual citizens, not the community. While the public has the right to regulate the use of this property pursuant to the zoning power, the property owner also has rights and interests which must be protected if land use planning is to continue as a rational, politically feasible process. The detailed, quasi-judicial procedure by which zoning decisions are made in Greenwood Village is designed to protect those rights and interests. It should not be transformed into a legislative process which would be largely unresponsive to individual property owners' interests.

## CONCLUSION

1. This is not a proper case for the granting of relief in the nature of prohibition. Prohibition is only to be used to restrain a trial court from exceeding its powers or exercising a jurisdiction it does not possess. Petitioners make no allegation that the District Court was exceeding its powers or jurisdiction, but contend only that the court misinterpreted the law. Consequently, relief in the nature of prohibition should be denied, and the rule to show cause should be discharged.

2. The initiative and referendum powers do not apply to quasi-judicial zoning decisions. Under City of Aurora v. Zwerdlinger, supra, these powers are limited to matters legislative in nature. Under Snyder v. City of Lakewood, supra, zoning is not legislative, but quasi-judicial. Consequently, the decision of the District Court should be affirmed, and the rule to show cause should be discharged.

Respectfully submitted,

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## 1. Planning and Zoning Statutes

### PART 2
### PLANNING COMMISSION

**31-23-201. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) "Mayor" means the chief executive of the municipality, whether the official designation of his office is mayor, city manager, or otherwise; except that with respect to municipalities operating under the statutory city manager form of government, the term means the city manager.

(2) "Subdivision" means the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

**31-23-202. Grant of power to municipality.** Any municipality is authorized to make, adopt, amend, extend, add to, or carry out a plan as provided in this part 2 and to create by ordinance or resolution a planning commission with the powers and duties set forth in this part 2.

**31-23-203. Personnel of the commission.** (1) The municipal planning commission, referred to in this part 2 as the "commission", shall consist of not less than five nor more than seven members; except that a home rule city or town shall not be limited in the size of its commission. Unless otherwise provided by ordinance, the membership and terms of members shall be as follows:

(a) When the commission is limited to five members, the membership shall consist of the mayor and a member of the governing body as ex officio members and three persons appointed by the mayor, if the mayor is an elective officer; otherwise by such office as the governing body may designate as the appointing power in the ordinance creating the commission.

(b) When the commission consists of seven or more members, there shall be four ex officio members consisting of the mayor, one of the administrative officials selected by the mayor, a member of the governing body selected by the mayor, and a member of the governing body selected by the governing body; the balance of the membership shall be appointed as provided in paragraph (a) of this subsection (1).

(2) All members of such commission shall be bona fide residents of the municipality and, if any member ceases to reside in such municipality, his membership on the commission shall automatically terminate.

(3) All members of the commission shall serve without compensation and the appointed members shall hold no other municipal office; except that one such appointed member may be a member of the zoning board of adjustment or appeals. The terms of ex officio members shall correspond to their respective official tenures; except that the term of the administrative official selected by the mayor shall terminate with the expiration of the term of the mayor who selected him. The term of each appointed member shall be six years or until his successor takes office; except that the respective terms of one-third of the members first appointed shall be two years, one-third shall be four years, and one-third shall be six years. Members other than the member representing the governing body may be removed, after public hear-

ings, by the mayor for inefficiency, neglect of duty, or malfeasance in office, and the governing body may remove the member representing it for the same reasons. The mayor or the governing body, as the case may be, shall file a written statement of reasons for such removal. Vacancies occurring otherwise than through the expiration of term shall be filled for the remainder of the unexpired term by the mayor in the case of members selected or appointed by him, by the governing body in the case of the member appointed by it, and by the appointing power designated by the governing body in municipalities in which the mayor is not an elective officer.

(4) Notwithstanding any provisions of subsections (1) and (3) of this section to the contrary, the governing body of each municipality may provide by ordinance for the size, membership, designation of alternate membership, terms of members, removal of members pursuant to subsection (3) of this section, and filling of vacancies of the commission.

**31-23-204. Organization and rules.** The commission shall elect its chairman from among the non ex officio members and shall create and fill such other of its offices as it may determine. The term of the chairman shall be one year, with eligibility for reelection. The commission shall hold at least one regular meeting in each month. It shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record.

**31-23-205. Staff and finances.** The commission may appoint such employees as it deems necessary for its work; except that the appointment, promotion, demotion, and removal of such employees shall be subject to the same provisions of law as govern other corresponding civil employees of the municipality. The commission may also contract, with the approval of the governing body, with municipal planners, engineers, and architects and other consultants for such services as it requires. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the governing body, which shall provide the funds, equipment, and accommodations necessary for the commission's work.

**31-23-206. Master plan.** (1) It is the duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside its boundaries, subject to the approval of the governmental body having jurisdiction thereof, which in the commission's judgment bear relation to the planning of such municipality. Such plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the commission's recommendations for the development of said territory including, but not limited to:

(a) The general location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds, and open spaces;

(b) The general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes;

(c) The removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the ways, grounds, open spaces, buildings, property, utility, or terminals referred to in paragraphs (a) and (b) of this subsection (1); and

(d) A zoning plan for the control of the height, area, bulk, location, and use of buildings and premises. Such a zoning plan may protect and assure access to sunlight for solar energy devices; however, regulations and restrictions of the height, number of stories, size of buildings and other structures, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation.

(2) As the work of making the whole master plan progresses, the commission may from time to time adopt and publish a part thereof. Any such part shall cover one or more major sections or divisions of the municipality or one or more of the foregoing or other functional matters to be included in the plan. The commission may amend, extend, or add to the plan from time to time.

**31-23-207. Purposes in view.** In the preparation of such plan, the commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality, with due regard to its relation to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire, flood waters, and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, the promotion of energy conservation, and the adequate provision of public utilities and other public requirements.

**31-23-208. Procedure of commission.** The commission may adopt the plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan (said parts corresponding with major geographical sections or divisions of the municipality or with functional subdivisions of the subject matter of the plan) and may adopt any amendment or extension thereof or addition thereto. Before the adoption of the plan or any such part, amendment, extension, or addition, the commission shall hold at least one public hearing thereon, notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the municipality and in the official newspaper of the county affected. The adoption of the plan, any part, amendment, extension, or addition shall be by resolution of the commission carried by the affirmative votes of not less than two-thirds of the entire membership of the commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the commission to form the whole or part of the plan, and the action taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the chairman or secretary of the commission. An attested copy of the plan or part thereof shall be certified to each governmental body of the territory affected and, after the approval by each body, shall be filed with the county clerk and recorder of each county wherein the territory is located.

**31-23-209. Legal status of official plan.** When the commission has adopted the master plan of the municipality or of one or more major sections or districts thereof, no street, square, park or other public way, ground or open space, public building or structure, or publicly or privately owned public utility shall be constructed or authorized in the municipality or in such planned section and district until the location, character, and extent thereof has been submitted for approval by the commission. In case of disapproval, the commission shall communicate its reasons to the municipality's governing body, which has the power to overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership. If the public way, ground space, building, structure, or utility is one the authorization or financing of which does not, under the law or charter provisions governing the same, fall within the province of the municipal governing body, the submission to the commission shall be by the governmental body having jurisdiction, and the planning commission's disapproval may be overruled by said governmental body by a vote of not less than two thirds of its membership. The failure of the commission to act within sixty days from and after the date of official submission to it shall be deemed approval.

**31-23-210. Publicity - travel - information - entry.** The commission has power to promote public interest in and understanding of the plan and to that end may publish and distribute copies of the plan or any report and may employ such other means of publicity and education as it may determine. Members of the commission may attend city planning conferences, meetings of city planning institutes, or hearings upon pending municipal planning legislation, and the commission may pay, by resolution, the reasonable traveling expenses incident to such attendance. The commission shall recommend, from time to time, to the appropriate public officials programs for public structures and improvements and for the financing thereof. It shall be part of its duties to consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens in relation to protecting and carrying out the plan. The commission has the right to accept and use gifts for the exercise of its functions. All public officials shall furnish to the commission, upon request, within a reasonable length of time, such available information as the commission may require for its work. The commission and its members, officers, and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary marks and monuments thereon. In general, the commission has such powers as are necessary to enable it to fulfill its functions, to promote municipal planning, or to carry out the purposes of this part 2.

**31-23-211. Zoning.** Where a commission is established in accordance with the provisions of this part 2, it has and shall exercise all of the powers and rights granted to the zoning commission by part 3 of this article. When there is a zoning commission in existence at the time that a commission is created, the zoning commission shall deliver to the commission all of its records and shall thereafter cease to exercise the powers and prerogatives previously exercised by it; except that if the existing zoning commission is nearing completion of a zoning plan, the governing body of the municipality may postpone, by resolution, the transfer of the zoning commission's powers until completion of the zoning plan; but in no event shall the period of such postponement exceed six months from the date of the creation of the commission. Nothing in this section shall invalidate or otherwise affect any zoning law or regulation or any action of the zoning commission adopted or taken prior to the creation of a commission.

**31-23-212. Jurisdiction.** The territorial jurisdiction of any commission over the subdivision of land includes all land located within the legal boundaries of the municipality and, limited only to control with reference to a major street plan and not otherwise, also includes all land lying within three miles of the boundaries of the municipality not located in any other municipality; except that in the case of any such land lying within five miles of more than one municipality, the jurisdiction of each commission shall terminate at a boundary line equidistant from the respective municipal limits of such municipalities. The jurisdiction over the subdivision of lands outside the boundary of a municipality shall apply equally to any municipality.

**31-23-213. Scope of control.** When a commission has adopted a major street plan for the territory within its subdivision control, or any part thereof, as provided in section 31-23-208, and has filed a certified copy of such plan in the office of the county clerk and recorder of the county in which such territory or such part is located, no plat of a subdivision of land within such territory or such part shall be filed or recorded until it has been approved by such commission and such approval entered in writing on the plat by the chairman or secretary of the commission.

**31-23-214. Subdivision regulations.** (1) Before any commission exercises the powers set forth in section 31-23-213, it shall adopt regulations governing the subdivision of land within its jurisdiction and shall publish the same in pamphlet form, which shall be available for public distribution, or, at the election of the commission, the regulations may be published once each week for three consecutive weeks in the official paper of the municipality or county in which such subdivisions, or any part thereof, are located. Such regulations may provide for the proper arrangement of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, and air, and for the avoidance of congestion of population, including minimum area and width of lots. In the territory subject to subdivision jurisdiction beyond the municipal limits, the regulations shall provide only for conformance with the major street plan.

(1.5) Subdivision regulations adopted under provisions of this section may protect and assure access to sunlight for solar energy devices by considering in subdivision development plans the use of restrictive covenants or solar easements, height restrictions, side yard and setback requirements, street orientation and width requirements, or other permissible forms of land use controls.

(2) Before the adoption of the regulations referred to in this section, a public hearing shall be held thereon in the county in which said territory, or any part thereof, is situated. A copy of such regulations shall be certified by the commission to the county clerk and recorders of the counties in which the municipality and territory are located.

**31-23-215. Procedure - legal effect.** (1) The commission shall approve or disapprove a plat within thirty days after said plat has been submitted to it; otherwise such plat shall be deemed approved and a certificate to that effect shall be issued by the commission on demand unless the applicant for the commission's approval waives this requirement and consents to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. Any plat submitted to the commission shall have submitted with it the names and addresses of all surface owners, mineral owners, and lessees of mineral owners to whom notices of a hearing shall be sent as their names may appear upon the plats or records in the county clerk and recorder's office and as their most recent addresses may appear in a telephone or other directory of general use in the area of the property or on the tax records of the municipality or county. No plat shall be acted on by the commission without affording a hearing thereon. Notice of the time and place of such hearing shall be sent to said persons by registered mail not less than five days before the date fixed therefor.

(2) Every plat approved by the commission, by virtue of such approval, shall be deemed to be an amendment or an addition to or a detail of the municipal plan and a part thereof. Approval of a plat shall not constitute or effect an acceptance by the public of any street or other open space shown upon the plat. From time to time, the commission may recommend to the governing body amendments of the zoning ordinance or map or additions thereto to conform to the commission's recommendations for the zoning regulations of the territory comprised within approved subdivisions. The commission has the power to impose use, height, area, or bulk requirements or restrictions governing buildings and premises within the subdivision if such requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the municipality. Such requirements or restrictions shall be stated upon the plat prior to the approval and recording thereof, shall have the force of law, and shall be enforceable in the same manner and with the same sanctions and penalties and subject to the same powers of amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality. No action taken under this section shall be binding for any purpose until such action has been approved by the governmental body of the territory affected or any part thereof.

**31-23-216. Penalties for sales in unapproved subdivisions.** Whoever, being the owner or agent of the owner of any land located within a subdivision, transfers or sells, agrees to sell, or negotiates to sell any land by reference to or exhibition of or by use of a plat of a subdivision before such plat has been approved by the commission and recorded or filed in the office of the appropriate county clerk and recorder shall pay a penalty of one hundred dollars to the municipality for each lot or parcel so transferred, or sold, or agreed or negotiated to be sold. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section. The municipality may enjoin such transfer or sale or agreement by action for injunction brought in any court of competent jurisdiction and may recover the penalty by civil action in any court of competent jurisdiction.

**31-23-217. Acceptance and improvement of streets.** (1) The municipality shall not accept, lay out, open, improve, grade, pave, curb, or light any street or lay or authorize water mains or sewers or connections to be laid in any street within any portion of a territory for which the commission has adopted a major street plan unless such street:

(a) Has been accepted or opened as or otherwise has received the legal status of a public street prior to the adoption of such plan; or

(b) Corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street plat made by and adopted by the commission. However, the governing body may accept any street not shown on or not corresponding with a street on the official master plan or on any approved subdivision plat or an approved street plat if the ordinance or other measure accepting such street is first submitted to the commission for its approval and, if approved by the commission, is enacted or passed by not less than a majority of the entire membership of the governing body or, if disapproved by the commission, is enacted or passed by not less than two-thirds of the entire membership of the governing body.

(2) A street approved by the commission upon submission by the governing body or a street accepted by a two-thirds vote after disapproval by the commission shall have the status of an approved street as though it had been originally shown on the official master plan or on a subdivision plat approved by the commission or had been originally platted by the commission.

**31-23-218. Erection of buildings.** (1) After the time when a commission has adopted a major street plan of the territory within the municipal limits of said municipality, no building shall be erected on any lot within such territory or part nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed:

(a) Has been accepted or opened as or otherwise has received the legal status of a public street prior to that time; or

(b) Corresponds with a street shown on the official master plan, with a street or subdivision plat approved by the planning commission, with a street on a street plat made by and adopted by the commission, or with a street accepted by the governing body in accordance with the provisions of section 31-23-217. Any building erected in violation of this section is an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated or have it removed.

**31-23-219. Status of existing statutes.** After the time when a municipal planning commission has control over subdivisions as provided in section 31-23-213, the jurisdiction of the planning commission over plats shall be exclusive within the territory under its jurisdiction, and all statutory control over plats or subdivisions of land granted by other statutes, insofar as in harmony with the provisions of this part 2, shall be deemed transferred to the planning commission of such municipality.

**31-23-226. Applicability.** This part 2 applies to municipalities, including home rule cities and towns, insofar as constitutionally permissible and except as limits are placed upon its application within the boundaries of home rule cities and towns by the charter or ordinance adopted pursuant thereto of said cities or towns.

## PART 3

## ZONING

**31-23-301. Grant of power.** (1) Except as otherwise provided in section 34-1-305, C.R.S. 1973, for the purpose of promoting health, safety, morals, or the general welfare of the community, including energy conservation and the promotion of solar energy utilization, the governing body of each municipality is empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the height and location of trees and other vegetation, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Regulations and restrictions of the height, number of stories, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation. Such regulations shall provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules contained in such regulations. Subject to the provisions of subsection (2) of this section and to the end that adequate safety may be secured, said governing body also has power to establish, regulate, restrict, and limit such uses on or along any storm or floodwater runoff channel or basin, as such storm or floodwater runoff channel or basin has been designated and approved by the Colorado water conservation board, in order to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or floodwaters. Any ordinance enacted under authority of this part 3 shall exempt from the operation thereof any building or structure as to which satisfactory proof is presented to the board of adjustment that the present or proposed situation of such building or structure is reasonably necessary for the convenience or welfare of the public.

(2) The power conferred by subsection (1) of this section for flood prevention and control shall not be exercised to deprive the owner of any existing property of its future use or maintenance for the purpose to which it was lawfully devoted on February 25, 1966, but provisions may be made for the gradual elimination of uses, buildings, and structures, including provisions for the elimination of such uses when the existing uses to which they are devoted are discontinued, and for the elimination of such buildings and structures when they are destroyed or damaged in major part.

(3) The governing body of any municipality or the board of adjustment thereof, in the exercise of powers pursuant to this section, may condition any zoning regulation, any amendment to such regulation, or any variance of the application thereof or the exemption of any building or structure therefrom upon the preservation, improvement, or construction of any storm or

floodwater runoff channel designated and approved by the Colorado water conservation board.

(4) No statutory or home rule city or town or city and county shall enact an ordinance prohibiting the use of a state-licensed group home for the developmentally disabled which serves not more than eight developmentally disabled persons and appropriate staff, as a residential use of property for zoning purposes. As used in this subsection (4), the phrase "residential use of property for zoning purposes" includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning.

**31-23-302. Districts.** For any of the purposes enumerated in section 31-23-301, the governing body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this part 3, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

**31-23-303. Legislative declaration.** (1) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, floodwaters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote energy conservation; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipal-

(2) (a) The general assembly declares that the establishment of state-licensed group homes for the exclusive use of developmentally disabled persons is a matter of statewide concern and that a state-licensed group home for eight developmentally disabled persons is a residential use of prope , for zoning purposes. As ed in this subsection (2), the phrase "resident al use of property for zoning purposes" includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning. "Developmentally disabled" in this section means those persons having cerebral palsy, multiple sclerosis, mental retardation, autism, and epilepsy.

(b) The general assembly declares that the establishment of owner-occupied or nonprofit group homes for the exclusive use of not more than eight persons sixty years of age or older per home is a matter of statewide concern. The general assembly further finds and declares that it is the policy of this state to enable and assist persons sixty years of age or older who do not need skilled and intermediate care facilities, and who so elect, to live in normal residential surroundings, including single-family residential units. Every municipality having adopted or which shall adopt a zoning ordinance shall provide for the location of group homes for the aged. A group home for the aged established under this paragraph (b) shall not be located within seven hundred fifty feet of another such group home, unless otherwise provided for by the municipality. Nothing in this paragraph (b) shall be construed to exempt such group homes from compliance with any state, county, or municipal health, safety, and fire codes. Upon the effective date of this paragraph (b), every person sixty years of age or older who resides in a skilled or intermediate health care facility and who may be transferred or discharged therefrom to a group home for the aged shall not be so discharged or transferred unless he has received ninety days' advance written notice thereof or has agreed in writing to the proposed transfer or discharge.

(c) Nothing in this subsection (2) shall be construed to supersede the authority of municipalities and counties to regulate such homes appropriately through local zoning ordinances or resolutions, except insofar as such regulation would be tantamount to prohibition of such homes from any residential

district. This section is specifically not to be construed to permit violation of the provisions of any zoning ordinance or resolution with respect to height, setbacks, area, lot coverage or external signage or to permit architectural designs substantially inconsistent with the character of the surrounding neighborhood. This section is also not to be construed to permit conducting of the ministerial activities of any private or public organization or agency or to permit types of treatment activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. If reasonably related to the requirements of a particular home, a local zoning or other development regulations may, without violating the provisions of this section, also attach specific location requirements to the approval of the group home, including the availability of such services and facilities as convenience stores, commercial services, transportation, and public recreation facilities.

**31-23-304. Method of procedure.** The governing body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts are determined, established, enforced, and, from time to time, amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing thereon at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

**31-23-305. Changes.** Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such changes signed by the owners of twenty percent or more of the area of the lots included in such proposed change, of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the governing body of such municipality. The provisions of section 31-23-304 relative to public hearings and official notice shall apply equally to all changes or amendments.

**31-23-306. Zoning commission.** In order to avail itself of the powers conferred by this part 3, the governing body shall appoint a commission, known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body shall not hold its public hearings or take action until it has received the final report of such commission. Where a municipal planning commission already exists, it shall be appointed as the zoning commission.

CERTIFICATE OF MAILING

I certify that copies of the foregoing Brief have been mailed to the following listed parties of record by first class mail, postage prepaid, this 28th day of April, 1980.

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Honorable George B. Lee, Jr.
District Court Judge
15400 East 14th Place
Aurora, Colorado 80011

Sandra M. Marr

5. Federal Statutes

42 U.S.C. 1983 (1970)
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

**Section 5. New charters, amendments or measures.** The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided:

It shall be competent for qualified electors in number not less than five percent of the next preceding gubernatorial vote in said city and county to petition the council for any measure, or charter amendment, or for a charter convention. The council shall submit the same to a vote of the qualified electors at the next general election not held within thirty days after such petition is filed; whenever such petition is signed by qualified electors in number not less than ten percent of the next preceding gubernatorial vote in said city and county, with a request for a special election, the council shall submit it at a special election to be held not less than thirty nor more than sixty days from the date of filing the petition; provided, that any question so submitted at a special election shall not again be submitted at a special election within two years thereafter. In submitting any such charter, charter amendment or measure, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. Whenever the question of a charter convention is carried by a majority of those voting thereon, a charter convention shall be called through a special election ordinance as provided in section four (4) hereof, and the same shall be constituted and held and the proposed charter submitted to a vote of the qualified electors, approved or rejected, and all expenses paid, as in said section provided.

The clerk of the city and county shall publish, with his official certification, for three times, a week apart, in the official newspapers, the first publication to be with his call for the election, general or special, the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which is to be submitted to the voters. Within ten days following the vote the said clerk shall publish once in said newspaper the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which shall have been approved by majority of those voting thereon, and he shall file with the secretary of state two copies thereof (with the vote for and against) officially certified by him, and the same shall go into effect from the date of such filing. He shall also certify to the secretary of state, with the vote for and against, two copies of every defeated alternative article or proposition, charter, charter amendment, measure or proposal for a charter convention. Each charter shall also provide for a reference upon proper petition therefor, of measures passed by the council to a vote of the qualified electors, and for the initiative by the qualified electors of such ordinances as they may by petition request.

The signatures to petitions in this amendment mentioned need not all be on one paper. Nothing herein or elsewhere shall prevent the council, if it sees fit, from adopting automatic vote registers for use at elections and references.

No charter, charter amendment or measure adopted or defeated under the provisions of this amendment shall be amended, repealed or revived, except by petition and electoral vote. And no such charter, charter amendment or measure shall diminish the tax rate for state purposes fixed by act of the general assembly, or interfere in any wise with the collection of state taxes.

The city council, or board of trustees, or other body in which the legislative powers of any home rule city or town may then be vested, on its own initiative, may submit any measure, charter amendment, or the question whether or not a charter convention shall be called, at any general or special state or municipal election held not less than 30 days after the effective date of the ordinance or resolution submitting such question to the voters.

4. Relevant Provisions of Colorado Constitution

## ARTICLE V

### Legislative Department

**Section 1. General assembly - initiative and referendum.** The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly, and also reserve power at their own option to approve or reject at the polls any act, item, section or part of any act of the general assembly.

The first power hereby reserved by the people is the initiative, and at least eight percent of the legal voters shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, shall be addressed to and filed with the secretary of state at least four months before the election at which they are to be voted upon.

The second power hereby reserved is the referendum, and it may be ordered, except as to laws necessary for the immediate preservation of the public peace, health or safety, and appropriations for the support and maintenance of the department of state and state institutions, against any act, section or part of any act of the general assembly, either by a petition signed by five percent of the legal voters or by the general assembly. Referendum petitions shall be addressed to and filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly, that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section or part of any act, shall not delay the remainder of the act from becoming operative. The veto power of the governor shall not extend to measures initiated by, or referred to the people. All elections on measures referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the right to enact any measure. The whole number of votes cast for secretary of state at the regular general election last preceding the filing of any petition for the initiative or referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted.

The secretary of state shall submit all measures initiated by or referred to the people for adoption or rejection at the polls, in compliance herewith. The petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state; such petition shall be signed by qualified electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some qualified elector, that each signature thereon is the signature of the person whose name it purports to be, and that to the best of the knowledge and belief of the affiant, each of the persons signing said petition was at the time of signing, a qualified elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are qualified electors. The text of all measures to be submitted shall be published as constitutional amendments are published, and in submitting the same and in all matters pertaining to the form of all petitions the secretary of state and all other officers shall be guided by the general laws, and the act submitting this amendment, until legislation shall be especially provided therefor.

The style of all laws adopted by the people through the initiative shall be, "Be it Enacted by the People of the State of Colorado".

The initiative and referendum powers reserved to the people by this section are hereby further reserved to the legal voters of every city, town and municipality as to all local, special and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws, except that cities, towns and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten percent of the legal voters may be required to order the referendum, nor more than fifteen per cent to propose any measure by the initiative in any city, town or municipality.

This section of the constitution shall be in all respects self-executing.

# 3. Relevant Greenwood Village Charter Provisions

## ARTICLE V
## INITIATIVE AND REFERENDUM

**Section 5.1 - Initiative:**

Any proposed ordinance may be submitted to the Council by a petition signed by qualified electors of the City equal in number to the percentage hereinafter required.

**Section 5.2 - Submissions:**

If the petition accompanying the proposed ordinance is signed by qualified electors equal in number to twenty (20%) per cent of the vote for Mayor in the next preceding general City election, with a request for a special election, the Council shall either pass said ordinance without alterations within thirty (30) days after the petition is filed, subject to the referendum, or call a special municipal election within ninety (90) days after the petition is filed unless a general election or special municipal election is to occur within ninety (90) days thereafter. At such special or general municipal election Council shall submit said ordinance to a vote of the electors of the City.

An initiated ordinance shall be published in the same manner as other ordinances. The ballot upon which such proposed ordinance is submitted shall comply with the requirements set forth in Section 2.4 of this Charter. If a majority of the electors voting thereon shall vote in favor thereof, the same shall thereupon, without further publication, become an ordinance of the City immediately. Any number of proposed ordinances may be submitted at the same election. The number of special elections shall be limited as provided in Section 2.4 of this ordinance.

**Section 5.3 - Referendum:**

The referendum shall apply to all ordinances passed by Council except ordinances making the tax levy, the annual appropriation ordinance, or ordering of improvements initiated by petition and to be paid for in whole or in part by special assessments. If at any time within thirty (30) days after the final passage of an ordinance to which the referendum is applicable a petition signed by qualified electors equal in number to at least twenty (20%) per cent of the votes for Mayor at the next preceding general City election, is presented to the Council protesting any ordinance going into effect, it shall reconsider such ordinance. If the ordinance is not entirely repealed, Council shall submit it to a vote of the electors of the City within ninety (90) days after filing of the petition as provided in the Initiative and Section 2.4 of this Charter. Such ordinance shall then go into effect without further publication if a majority of the electors voting thereon vote in favor of it. The Council, on its own motion, shall have the power to submit any proposed ordinance to a vote of the electors at a general or special election as provided and limited in this Charter. No provision of this Charter shall be construed as limiting the right of Council to refer any ordinance subject to referendum. If provisions of two or more proposed ordinances adopted or approved at the same election conflict, the ordinance receiving the highest affirmative vote shall become effective.

**Section 5.4 - Amendments:**

An ordinance adopted or rejected by the electors under either the Initiative or Referendum, cannot be revised, repealed or amended except by the electors; but the Council shall have the power to submit a proposition without a petition therefor; subject to the limitations set forth in Section 2.4 of this Charter.

**Section 10.2 - Board of Adjustment and Appeals:**

There is hereby created and established a Board of Adjustment and Appeals consisting of the number of members from time to time specified by the Council by ordinance. Such members shall be appointed by the Council for overlapping terms of three years. Each member shall be a taxpaying elector and in addition shall have resided in the area comprising the city at the time of his appointment for at least three (3) years immediately preceding the date of his appointment.

The Board shall have power to hear and determine appeals from refusals of building permits in violation of the zoning ordinance, to make exceptions to the terms of the zoning regulations in harmony with their general purpose and intent and to authorize variances from the strict application of the zoning regulations in such situations, subject to such limitations as may be set by ordinance. The findings and decisions of the Board shall be final, subject only to judicial review.

The Board shall keep minutes of its proceedings, show the vote taken, keep records of its examinations and other official actions. Every order, requirement, decision or determination of the Board shall be filed in the office of the Clerk.

The Board shall exercise the functions and powers and perform the duties assigned to it by this Charter and the ordinances of the City and where not otherwise provided by ordinance or Charter, the Board shall have the powers, perform the functions and follow the procedures set forth in the Statutes of the State of Colorado.

**Section 10.3 - Planning and Zoning Commission:**

There is hereby created and established a Planning and Zoning Commission consisting of the number of members from time to time specified by the Council by ordinance. Such members shall be appointed by the Council for overlapping terms of three (3) years. Each member shall be a taxpaying elector and in addition shall have resided in the area comprising the city at the time of his appointment for at least three (3) years immediately preceding the date of his appointment.

The Planning and Zoning Commission shall exercise the functions and powers and perform the duties assigned to it by this Charter and the ordinances of the City. It may prepare and submit to the Council for its approval a master plan for the physical development of the City and areas adjacent thereto. All plats of proposed subdivisions shall be submitted to it for its recommendations and approval before being presented to the Council for its approval. It shall hold hearings relative to zoning and changes in the zoning ordinance, and shall make recommendations thereon to the Council. Where not otherwise provided by Charter or ordinance, the Planning and Zoning Commission shall have the powers, perform the functions and follow the procedures set forth in the Statutes of the State of Colorado.

9.08 Judicial Enforcement and Review.

A) Any party aggrieved by any decision rendered by the hearing body in any quasi-judicial hearing, as well as department heads or authorized officials of the City, or the City itself, may proceed to have the same reviewed by the District Court in and for the Eighteenth Judicial District of the State of Colorado in the manner provided by law.

B) Before making application to the District Court, the party making such application, except in the case of the City or a department head or authorized official, shall pay to the City the expenses of any transcription of the record of proceedings, and other expenses; provided, however, that such fee may be waived by the City in whole or in part in instances of proven indigency.

9.09 Filing of Final Report. Upon the conclusion of the hearing and subsequent decision thereof the Commission or Board shall prepare a final report in writing regarding its findings of fact and recommendations with respect to the subject matter of the hearing. This report shall be filed with the City Clerk of the municipality on or before fifteen (15) days from the conclusion of said hearing.

9.10 Records of Meeting. Except as otherwise required hearings before said boards or Commissions need not have verbatim transcripts: however, in such cases, a full written report shall be made in the matters of such Boards or Commissions.

9.11 Order of Procedures of Judicial or Quasi-Judicial Hearings Before City Council. After the final report of any Board or Commission has been received, the City Clerk shall place the same before the City Council at the next regular meeting at which time the Council shall set a time and date certain for the public hearing.

A) Notification procedures and publication requirements shall be the same as those set forth in 9.04 above..

B) When required, the applicant shall post the premises for at least ten (10) continuous days with the first day of posting not later than twenty (20) days preceeding the date of the hearing by placing a sign in a conspicuous place on the subject premises which sign shall be made of suitable material not less than 22 inches wide and 26 inches high and not less than four feet from ground level, composed of letters not less than one inch in height stating the type of application, the date, time and place of the hearing, the name and address of applicant, and that petitions or remonstrances may be filed with the City Clerk, City of Greenwood Village, Colorado. The applicant shall file with the City Clerk prior to the public hearing an affidavit attesting to the date of the posting of said sign and attached to such affidavit shall be a photograph taken of the sign as it appears after its original posting on the subject premises. This affidavit, together with the photograph of the sign so posted, shall constitute prima facie evidence of the fact that the sign was prepared and posted as required herein.

C) The hearing shall be conducted in accordance with the provisions set forth in 9.05 above; except that a verbatim transcript by qualified shorthand reporter shall be taken of such proceedings.

C) The City Clerk shall cause to be published in the legal newspaper of the City a notice of said hearing giving therein all material facts, together with the time, date and place at which the hearing will be held. Such notice shall be published two times in the legal newspaper; the first time shall be at least fifteen (15) days prior to the date of the public hearing and the second time being at least seven (7) days from the first publication.

9.05 Order of Procedure for Hearings. In all quasi-judicial hearings the following order of procedure may be followed:

A) At all such hearings sign-in sheets shall be available to those in the audience who would care to speak for or against the matter to be heard.
B) Procedural instructions by presiding officer.
C) Presentation of those documents showing the regularity of the commencement of the proceedings and the form of the public notice given.
D) Presentation of evidence by the applicant, petitioner, appealing party or complainant.
E) Presentation of evidence in support of the applicant, petitioner, appealing party or complainant by any other person.
F) Presentation of evidence from any person opposing the application, petition, appeal or complaint.
G) Presentation of evidence in opposition or rebuttal to the matters presented by the opposition.
H) All documents or other items of physical evidence, shall be marked as exhibits with such identifying symbols as may be necessary to determine the exhibit referred to by any witness or other person.

9.06 Rules of Evidence. The chairman shall rule on the question of admissibility of all exhibits and testimony and his ruling will stand unless objected to by a member of the hearing body after said ruling, in which event the question of admissibility will be decided by the majority of the members of the hearing body present at the meeting. A record will be kept of evidence refused or testimony rejected.

9.07 Deliberation and Notice of Decision. Each hearing body is hereby authorized to deliberate upon the issues presented at the hearing in private, nonpublic sessions; provided that no decision shall be effective, except upon a vote of the members of the hearing body, conducted in an open session thereof, which shall be duly recorded in the minutes of the public body. Written copies of all decisions shall, upon request, be delivered to the applicant, petitioner, appellant, complainant and other interested party.

## SECTION 9 - RULES OF PROCEDURE.

9.01 Purpose and Applicability. The purpose of the rules of procedure contained herein is to provide a uniform, consistent and expeditious method of procedure for the conduct of all hearings held before the City Council, or any Board, commission or official of the City. The provisions herein shall be applied uniformly in all such hearings; provided, however, that any board, commission or official may supplement the provisions of this section by the adoption of further rules of procedure not inconsistent herewith. All rules adopted to supplement the provision of this section by any board, commission or official shall be reduced to writing and copies thereof shall be filed in the office of the City Clerk and made available to the public.

9.02 Quasi-Judicial Hearings. The provisions of sub-sections 2 through 13 shall be applicable only to those hearings where the City Council, any board, commission or official is called upon to exercise a power of a judicial or quasi-judicial nature, which hearings, for purposes of this section shall be deemed to consist of, but not necessarily limited to the following:

A) Hearings before the City Council upon application for the issuance or hearings for the suspension or revocation of liquor or fermented malt beverage licenses, upon ordinances which zone or rezone realty; and upon all appeals from the decisions of any city official, board or commission, where such an appeal is otherwise authorized, and which requires an evidentiary hearing to determine such appeal.

B) Hearing before the Board of Adjustment and Appeals upon appeals from any decision of the Building Inspector or upon request for a variance or exception from the terms of any ordinance.

C) Hearing before any board, commission or official respecting the issuance, suspension or revocation of any license issued by the City.

9.03 Rights of Participants. All quasi-judicial hearings shall be conducted under procedures designed to insure all interested parties due process of law and shall, in all cases, provide for the following:

A) The administration of oaths to all parties or witnesses who appear for the purpose of testifying upon factual matters, where such procedure is requested.

B) The cross-examination of all witnesses upon the written request by interested parties or their attorneys who, prior to the commencement of said hearing filed said request with the City Clerk or secretary of the hearing body. The Chairman may limit cross-examination which adduces cumulative evidence or repetitive examination or in order to protect witnesses against harrassment or embarrassment.

C) The stenographic, or other verbatim, record of all testimony presented in the hearing, or an adequate summary of such testimony.

D) A clear decision by the hearing body which shall set forth the factual bases and reasons for the decision rendered.

9.04 Order of Procedure Prior to Hearing. For those hearings conducted before any Board or commission and where subsequent referral to the City Council is necessary or advisable the following procedures may be used:

A) Upon receipt of any matter of business as stated in Section 9.02, the chairman, at the next regular meeting, shall set a date certain for the hearing before the Board or Commission, such hearing to be open to the public, at which any person interested in the subject matter of the hearing may be present and offer information relevant to the subject matter of the hearing.

B) The date, time and place of said hearing shall be transmitted in letter form, certified mail with return receipt requested, to the applicant and/or his attorney.

hearing in the official newspaper of the City.

(5) The posting shall be complete at least fifteen (15) days prior to the meeting and the applicant shall file an affidavit of posting attached to a photograph of the sign as posted on the real property with the Planning Office. This affidavit and photograph shall constitute prime facie evidence of the fact that the sign was prepared and posted. The expense of such posting and affidavit shall be paid by the applicant. The applicant shall notify by certified mail the landowner, and adjacent landowners of the date, time and place of the meeting, which notice shall be postmarked at least five (5) days prior to the meeting. Such notice shall include a correct and completed copy of the application. The applicant shall file an affidavit of mailing attached to a copy of the letter sent, the addresses to which the letters were sent, and the certified and return receipts. This affidavit and attachments shall constitute prima facie evidence of the fact that the certified mailing was done. The expense of such mailing and affidavit shall be paid by the applicant.

(6) After such public hearing, the Planning and Zoning Commission shall within fifteen (15) days transmit an advisory report to the City Council.

(7) The Council shall direct that an ordinance be drafted by the City Attorney embodying the petitioned amendment.

(8) The Council shall schedule such proposed ordinance for consideration and shall proceed as for the consideration of any other ordinance.

5) PLANNED UNIT DEVELOPMENT PROCEDURE:

The following procedure shall be available in all existing zones of the City on an optional basis. Unless ~~were~~ required by zone district, the Planned Unit Development Procedure shall be mandatory for any request for change in zoning for business or industrial use or for any residential use in excess of one dwelling unit per acre density.

A Planned Unit Development may incorporate a subdivision, a rezoning, a street vacation and a preliminary and final plat or plan.

The application procedure for a Planned Unit Development generally has two steps. The first step is a preliminary submission and response; the second step is a final submission and formal action only by the Planning and Zoning Commission for approval by City Council. Any revisions to an existing P.U.D. must go through the same two bodies by the same procedure

2. Relevant Greenwood Village Ordinances

2.02 ADMINISTRATION OF ORDINANCE

A) ENFORCEMENT

1) METHODS OF ENFORCEMENT. The provisions of this Code shall be enforced by the City Council, the City Attorney, and the Zoning Administrator by use of the following methods:
   a) requirement of a building permit;
   b) inspection and ordering removal of violations;
   c) proceedings in municipal court;
   d) injunction;
   e) requirement of a certificate of occupancy, and;
   f) any other remedy available.

2) CHIEF ENFORCEMENT OFFICIAL. The chief enforcement official who shall be responsible for the enforcement of this Chapter shall be the Zoning Administrator. The Zoning Administrator shall be appointed by the City Council ~~and directed through the Planning Department~~.

ZONING OF ANNEXED AREAS.

Within ninety (90) days after the effective date of the ordinance of annexation, the Planning and Zoning Commission shall hold a public meeting on the zoning of the annexed area and transmit a recommendation in written form to the City Council. The City Council shall act upon the matter in compliance with the State Statute.

RE-ZONING APPLICATION: PROCEDURE AND FEES.

a) APPLICATION. An amendment to the text of this chapter shall be initiated by formal written petition to City Council stating the exact language and section of the proposed amendment. Such petition may be made by any City Councilman, the Planning and Zoning Commission, the Planning Office or any person having a property interest in the land to be affected by such amendment.

b) FEE: For individual petitioners, a fee of one-hundred fifty ($150) dollars shall be charged for processing. No charge shall be made for a petition initiated by any City Councilman, the Planning Commission, or the Planning Office.

c) PROCEDURE.
   (1) The City Council shall refer the petition to the Planning and Zoning Commission and the Planning Office.
   (2) The Planning Office shall analyze the impact of the proposed change on the effectiveness of this chapter and on the development of land within the City and report such findings to the City Council and the Planning and Zoning Commission.
   (3) The Planning and Zoning Commission shall schedule a public hearing at any regular or special meeting.
   (4) Notice of the time and date of such hearing and a brief explanation of the subject matter shall be published at least fifteen (15) days prior to the

**31-23-309. Conflict with other laws.** When the regulations made under authority of this part 3 require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part 3 shall govern. Wherever the provisions of any other statute, local ordinance, or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose higher standards than are required by the regulations made under authority of this part 3, the provisions of such statute or local ordinance or regulation shall govern.

**31-23-310. Racial restrictions.** This part 3 shall not be construed, in the case of any municipality, to confer or enlarge any authority or power to establish any restriction based upon race or color.

**31-23-311. Telecommunications research facilities of the United States - inclusions in planning and zoning.** Any zoning plan, modification thereof, or variance therefrom adopted or granted under this part 3 or part 2 of this article on or after April 23, 1969, shall comply with the requirements of part 6 of article 11 of title 30, C.R.S. 1973.

**31-23-312. Safety glazing materials.** The governing body of each municipality in this state shall adopt standards governing the use of safety glazing materials for hazardous locations within its jurisdiction, which standards shall be no less stringent than the provisions of article 2 of title 9, C.R.S. 1973. No building permit shall be issued for the construction, reconstruction, or alteration of any structure in such municipality unless such construction, reconstruction, or alteration conforms to the standards adopted pursuant to this section. The building inspection authority in such municipality shall inspect all places not inspected by the division of labor under the provisions of article 2 of title 9, C.R.S. 1973, to determine whether such places are in compliance with the standards for the use of safety glazing materials.

**31-23-313. Planned unit developments - ordinances.** Any municipality may authorize planned unit developments, as defined in section 24-67-103, C.R.S. 1973, by enacting an ordinance in accordance with the provisions of article 67 of title 24, C.R.S. 1973.

**31-23-307. Board of adjustment.** (1) The governing body shall provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years. The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with the enforcement of any ordinance adopted pursuant to this part 3. It shall also hear and decide all matters referred to it or upon which it is required to pass under such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. Every decision of such board shall be subject, however, to review by certiorari by the district court of the county within which the municipality or any part thereof is located. Such appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the municipality.

(2) Such appeal shall be taken within such time as prescribed by the board of adjustment by general rule by filing with the officer from whom the appeal is taken with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall at once transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by the district court on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide the same within a reasonable time. Upon hearing, any party may appear in person or by agent or attorney. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises and to that end has all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment has the power, in passing upon appeals, to vary or modify the application of the regulations or provisions of such ordinance relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. Where feasible, the board of adjustment may vary or modify the application of the regulations for the purpose of considering access to sunlight for solar energy devices.

**31-23-308. Remedies.** In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part 3 or of any ordinance or other regulation made under authority conferred by this part 3, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.