

## Houde, Lisa

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**From:** emsorders55@earthlink.net  
**Sent:** Thursday, December 15, 2022 1:55 PM  
**To:** Houde, Lisa  
**Subject:** Ordinance 8556

### External Sender

Lisa Houde,

This letter is regarding the agenda item titled: "Second reading and consideration of a motion to adopt Ordinance 8556, amending Title 9, "Land Use Code," B.R.C. 1981, to update the use table and use standards related to industrial uses and districts and setting forth related details". First thank you for taking the time to review the land use codes and update the use table. Secondly, my concern is with schools. Schools are important to our communities and are often an important criterion in choosing where to live. I do not understand why you would treat private schools differently than public schools. It is my understanding that public schools are controlled by state and federal regulations. That is no reason to make it harder for private schools to locate in any given area. Why would you treat public schools and private schools differently? Please consider correcting this deficiency in the use tables by treating all schools the same. That is to say, the criteria for allowing a school in any particular zone should not be based on whether it is a public or private school. Thank you.

Respectfully,

Eaton Scripps  
Emsorders55@earthlink.net

## Houde, Lisa

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**From:** Jerry Moore <jerry@jm-assoc.com>  
**Sent:** Thursday, December 15, 2022 1:17 PM  
**To:** Houde, Lisa  
**Subject:** Changes to City of Boulder industrial zone districts

### External Sender

Ms. Houdel-

I'm an architect and former Planning Board member. During the last 40 years I've worked with many clients in the course of developing both commercial and industrial zoned properties in Boulder. I have the following concerns about the current revisions that have been proposed for the industrial zone districts in the City of Boulder. Here's a few of them for consideration:

1. There's a dearth of undeveloped land in the existing industrial zone districts on which to cleanly institute the City's newly proposed rules. Everything else already in existence is going to require a compromised and complicated solution for both the City, property owners and tenants.
2. There are instances where existing site constraints in the IG and IM districts may limit or hamper the development of full blown heavy industrial use on the first floor because of soils or other site related conditions where slab on grade construction is not feasible. Other site constraints may also limit strictly industrial use on particular sites (e.g. limited street frontage, adequate access for OTR trucks and loading docks or negative impacts on adjacent non-industrial uses).
3. Conversion of non-industrial infrastructure to industrial on the first floor of existing buildings will be time consuming, costly, and environmentally wasteful.
4. It's highly unlikely that the floor plans of new or existing buildings will cleanly match a 1 to 1 ratio of industrial to office use.
5. On existing one-story industrial buildings, where will the supporting office space reside?
6. Most startup businesses grow incrementally with eventual "industrial" use trailing research, development, proof of concept, feasibility and small scale production. The City's proposed remodel or "simplification" of industrial zone districts precludes this growth process from occurring incrementally and predictably on a single property.
7. Leasing is a complicated, organic and unpredictable process as well. This has not been adequately considered in the City's strategy.

Thanks for your consideration.

Jerry Moore, *Principal*

### **JM ASSOCIATES INC**

PO Box 18390  
Boulder, CO 80308  
303-489-1883

## Houde, Lisa

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**From:** Chris Hansen <chansen@coloradogroup.com>  
**Sent:** Thursday, December 15, 2022 12:40 PM  
**To:** Houde, Lisa  
**Subject:** Final? input on IG office use revisions

Lisa – in addition to what I sent yesterday afternoon, here is a more thoughtful solution. In short, don't take away current rightful users from 1<sup>st</sup> floor/ single story buildings. We don't have a problem now. It is being created by an ill-proposed redefinition of "office" in the code.

Abandon the entire 1<sup>st</sup> floor idea. Utterly unenforceable, makes the code **more** complicated not less, and rewards multi story IG buildings at the expense of single story.

In its stead, create a more general definition of Office as you plan, **AND** an IS/IG/IM definition of Office that **specifically excludes the uses** the Planning Commission and Council feel will be the "mass exodus". **If they fear it, they must name it.** Not a vague "oh, I feel this will happen". If that is the case, then tell the **USERS** not to go. Don't lay it on the buildings. Doctors? Dentists? Who? Make those uses prohibited. Easy to show in the code. Simple, and no "taking" of rights that have been clearly just fine in the Is/Ig/IM zoning.

That way they can show the Allowed Use Definition in the Use Table (simple) versus some insane ordinance, buried in foot notes, about 1<sup>st</sup> floor uses and grandfathering.. gads...

As an owner of a single story IG building (since 1997), I've had uses come and go, walls changed, and changed back, etc... If I have a conforming IG office use now, and then the next tenant is not an office user, do I get to put an office user back down the road? There is no way an ordinance can address all these conforming uses if they place any restriction on the 1<sup>st</sup> floor in IG.

I find it hard to believe the Planning Department got any input from the brokerage or landlord communities. We eat and breathe this issue every day, all day. No one in Planning, Planning Commission, or Council has more insight than we do. I say that because it caught 30+ brokers (many, like me, that are owners) at The Colorado Group off guard. Yesterday. That is not effective outreach to those who know the most about a subject.

Thanks you for sharing this will Council. Hopefully they will see the folly of the current proposal and redirect.



**Chris Hansen**  
Principal/ Broker Associate, The Colorado Group, Inc

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## Houde, Lisa

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**From:** Susan Chrisman <susan@elevatedboulder.com>  
**Sent:** Thursday, December 15, 2022 12:01 PM  
**To:** Houde, Lisa; William Scott Reichenberg; Steve Chrisman  
**Subject:** City of Boulder proposes changes to industrial zone districts

### External Sender

Hi Lisa,

I've been copied on some other email communication around this issue and would like to add these bullet points for consideration as well.

1. There's a dearth of undeveloped land in the existing industrial zone districts on which to cleanly institute the City's newly proposed rules. Everything else already in existence is going to require a compromised and complicated solution for both the City, property owners and tenants.
2. There are instances where existing site constraints in the IG and IM districts may limit or hamper the development of full blown heavy industrial use on the first floor because of soils or other site related conditions where slab on grade construction is not feasible (e.g. 7007 Winchester Circle). Other site constraints may also limit strictly industrial use on particular sites (e.g. limited street frontage, adequate access for OTR trucks and loading docks or negative impacts on adjacent non-industrial uses).
3. Conversion of non-industrial infrastructure to industrial on the first floor of existing buildings will be time consuming, costly, and environmentally wasteful.
4. It's highly unlikely that the floor plans of new or existing buildings will cleanly match a 1 to 1 ratio of industrial to office use.
5. What about existing one-story buildings? Where will the supporting office space reside?
6. Most startup businesses grow incrementally with eventual "industrial" use trailing research, development, proof of concept, feasibility and small-scale production. The City's proposed remodel or "simplification" of industrial zone districts precludes this development process from occurring incrementally on a single property.
7. Leasing is a complicated, organic and unpredictable process as well. This has not been adequately considered in the City's strategy.

Thanks for your assistance!

Susan



### Susan Chrisman

Property Manager & Managing Broker

**Phone** 303-449-7475 **Mobile** 303-877-5799

**Web** [www.elevatedboulder.com](http://www.elevatedboulder.com) **Email** [susan@elevatedboulder.com](mailto:susan@elevatedboulder.com)

PO Box 510, Niwot, CO 80544



## Houde, Lisa

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**From:** Steven Chrisman <steve@chrismanc.com>  
**Sent:** Thursday, December 15, 2022 11:52 AM  
**To:** Houde, Lisa  
**Cc:** Susan Chrisman  
**Subject:** IG & IM Zoning Changes

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

### External Sender

Dear Boulder City Council,

I'm writing on behalf of the following entities which own buildings located in IG and IM zoning in the City of Boulder:

CKZ, LLC	6350 Nautilus Drive, Boulder, CO 80301
Corporate Place, LLC	6135 Gunbarrel Avenue, Boulder, CO 80301
Corporate Place, LLC	6165 Gunbarrel Avenue, Boulder, CO 80301
Corporate Place, LLC	6120 Longbow Drive, Boulder, CO 80301
Corporate Place, LLC	6170 Longbow Drive, Boulder, CO 80301
Crestview, LLC	6200 Lookout Road, Boulder, CO 80301
Gunbarrel Properties, LLC	4600 Nautilus Court South, Boulder, CO 80301
Gunbarrel Properties, LLC	4635 Nautilus Court South, Boulder, CO 80301
Northrim Properties, LLC	6880 Winchester Circle, Boulder, CO 80301
Pawnee Properties, LLC	6075 Longbow Drive, Boulder, CO 80301
Valtec Associates, LLC	4601 Nautilus Court South, Boulder, CO 80301
Westview Properties, LLC	4909 Nautilus Court North, Boulder, CO 80301

I was shocked to learn this morning that you are planning to make changes to the allowed uses for buildings located in both IG and IM zoning. I'm not sure how something that would have such a significant impact on both building owners and tenants was not made more public so we would have had the opportunity to explain why this is a horrible idea.

Limiting office uses to the second floor and above will significantly limit the tenants allowed on the first floor of these buildings. This will make a significant number of our buildings and other owners' buildings non-compliant and will force good tenants out of our buildings and most likely out of the City of Boulder.

In our Corporate Place four-building campus in Gunbarrel we have Medtronic and Northrop Grumman as tenants in all four of the buildings. They are good tenants that provide good high paying jobs that will most likely need to move elsewhere if the proposed changes go in effect. Since the majority of the space is used as office spaces, all four of these buildings would be non-compliant.

Please understand that we have spent millions building the Corporate Place buildings plus millions more on tenant improvements to accommodate the tenants. We built these buildings for the allowed uses at the time they were built. If we had known at the time the buildings were built that the first floor would be only allowed for industrial uses, that would have had a significant impact on how we designed the buildings in the first place. At this point we can't go back in time and change the buildings so they can better accommodate industrial uses on the first floors. This is just four of our buildings that would be non-compliant and several of our other buildings listed above would be non-compliant as well.

If you are that concerned about office use overwhelming industrial zoned buildings please keep professional offices out of IG and IM zoned buildings. It might be easier for the building department to group professional office and technical office under one office use type but you will make everything more difficult by controlling what can go where in the building.

I would have written more but after learning about this only this morning and needing to send something before noon I didn't have time.

Thanks,

Steven Chrisman  
Managing Broker & Property Manager  
CHRISMAN COMMERCIAL  
864 W. South Boulder Road, Suite 200  
Louisville, Colorado 80027  
303-938-8200; 303-938-8201 (facsimile)  
[steve@chrismanc.com](mailto:steve@chrismanc.com)

## Houde, Lisa

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**From:** Scott Reichenberg <scott@coloradogroup.com>  
**Sent:** Thursday, December 15, 2022 11:45 AM  
**To:** Houde, Lisa  
**Cc:** Susan Chrisman (Susan@elevatedboulder.com)  
**Subject:** Property Owner Comments Related to Proposed Use Table Definition Update

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

### External Sender

Lisa:

Again, we appreciate you assisting us in making our comments part of the conversation (since this policy change just became aware to us yesterday). Without an ability to sign up to speak at tonight's meeting, we will use this method to convey some of our thinking.

Based on the limited time to fully digest the impacts of this proposed policy change, my comments are not fully matured as it relates to identifying all the unintended consequences (and/or any possible solutions). To that end, there are a few things that should be considered to avoid taking property rights away from owners that exist today. By example, we own a building at 7007 Winchester (IM-D zoned), which was built in 1999 under the design criteria that technical office would be allowed on all floors (which was and still is a needed and necessary product type in the market). The building is a 36,000 sf with 18,000 on the 1<sup>st</sup> and 2<sup>nd</sup> floors (2 story in total). Under this new definition of office, we'd be precluded from using 13,000 sf of the building, which would render that part of the building untenable. Even if there was some form of grandfathering clause, it would still be noted as a nonconforming use, which would put our loan in technical default and could lead to a very undesirable outcome. Furthermore, a new loan could not be secured. The idea of forcing a conversion of the space to another use (pure industrial) would be financially unfeasible, ESPECIALLY since the first-floor industrial product type would not be market accepted based on functional obsolescence (ceiling height being low, no direct dock access, etc. etc.). This would be unfairly narrowing the use of the property when this was not the stated goal of the policy change.

I would strongly request that Council reconsider how this is being designed as it has far reaching consequences that I don't believe are in the best interest of the community, City and property owners. At a minimum, more time is needed to address all of these concerns correctly in a fair and balanced manner.

Thank you for your assistance.

Sincerely,  
Scott



**W. Scott Reichenberg, CCIM**  
President | Principal | Broker Associate  
The Colorado Group, Inc

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## Houde, Lisa

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**From:** Chris Hansen <chansen@coloradogroup.com>  
**Sent:** Wednesday, December 14, 2022 4:57 PM  
**To:** Houde, Lisa  
**Subject:** RE: Use table update question

Thanks for a quick reply. Seems like one change is making more work for everyone, and making the code less clear.

Thoughts right now, and I'll try and share more tomorrow after it sinks in a bit. And I shared your email with my 31+/- Associates at TCG, so they may chime in as well.

1. Your stated goal is to simplify the code by aggregating the definition of office, but then you add more, lower level/ exception, to the code. More complex, not less. And certainly harder for the citizenry to find/ follow.
2. The flexibility in the ordinance you mention may be problematic. How will you show that in the Use Table?
3. And if an IG building owner, currently leasing to conforming "technical" office uses changes floor plans, merges suites, etc... how will that not trigger the exception?
4. How on earth would the City "police" the flexibility/ exemptions?
5. I do not believe there would be a "proliferation" of "professional" office users rushing to IG. Some?... well absolutely. As an IG building owner and broker in Boulder for 25+ years, I've turned away a few. But professional users want to/ need to be in the areas of town where they are now. A few will chase (slightly) cheaper rent, but most will stay because of the other amenities. I say this with confidence because I represent these folks. Not mere speculation.
6. And that said, if they are office users, you will be only rewarding those who own multiple story buildings.
7. Another thought – if there was a mass exodus of Professional office users to IG, well that would make downtown and other parts of the city more affordable. Hmmm.

OK, enough for now, it's late. I'm inclined to say don't make the change (not making the code simpler) or make the change without the "flexibility" clause. We can never possibly anticipate the nuances of each building, and the unfairness of OK'ing all office uses for multi-story IG buildings but not single story is... extremely problematic. I ask myself the "why"...

Good evening. I'll check in Thursday.



**Chris Hansen**  
Principal/ Broker Associate, The Colorado Group, Inc

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## Houde, Lisa

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**From:** Peter Aweida <peter@westland-development.com>  
**Sent:** Monday, December 12, 2022 5:42 PM  
**To:** Houde, Lisa  
**Subject:** Feedback on revised ordinance

### External Sender

Lisa, thanks for sending this. A couple comments:

- On office uses in IG, most of the buildings currently are only 1 or 2 stories. Limiting office use to second story and above really takes most IG square footage away from office use. Please consider allowing office use on the ground floor.
- I don't see any changes to industrial zones for medical use. Maybe a clinic would be considered an office use? With such close proximity to the hospital, it would serve the East Boulder community well to allow medical clinic use in IG zones.

The rest of the suggestions looks good.

Best,  
Peter Aweida  
President, Westland Development Services, Inc.  
1644 Conestoga Street, Suite 7  
Boulder, CO 80301  
303.449.9950 - Office  
303.449.9952 - Fax  
303.257.2357 - Mobile



**Houde, Lisa**

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**Subject:** FW: Feedback on revised ordinance

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**From:** Peter Aweida <peter@westland-development.com>

**Sent:** Tuesday, December 13, 2022 10:09 AM

**To:** Houde, Lisa <HoudeL@bouldercolorado.gov>

**Subject:** RE: Feedback on revised ordinance

Thanks Lisa. About 5 or 6 years ago when Planning Board and City Council were considering allowing medical uses in industrial zones, the neighborhood outlined in gray was allowed a variance and the other East Boulder neighborhoods were not, even though staff recommended that East Boulder be included in this variance. In addition to wellness centers, medical clinics, doctors' offices, surgery centers or even a life-science-type use in industrial zones makes sense, especially given the proximity to the hospital. Future needs for this type of space are hard to predict, but the lines between current medical practices and life-science R&D are getting blurred. Industrial buildings generally have the infrastructure to accommodate these uses. Many wellness and other uses may need more than 2,000 square feet and would be better-suited for a first-floor space rather than patients navigating elevators and stairs (if they're considered an office use). I think keeping these types of uses and businesses in Boulder is important and allowing more medical options in IG areas in East Boulder would help toward that end.

Best,  
Peter Aweida  
President, Westland Development Services, Inc.  
1644 Conestoga Street, Suite 7  
Boulder, CO 80301  
303.449.9950 - Office  
303.449.9952 - Fax  
303.257.2357 - Mobile



## Houde, Lisa

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**From:** Hosea Rosenberg <hosea22@gmail.com>  
**Sent:** Monday, December 12, 2022 7:05 PM  
**To:** Houde, Lisa  
**Cc:** Guiler, Karl  
**Subject:** Re: Reminder: 12/15 City Council public hearing - Industrial area changes

### External Sender

Hi Lisa,

Forgive me for being succinct, and if some of this is off topic or not relevant, but I did want to mention a few topics on my mind as a business owner in an industrial area of Boulder.

- We continually face difficulty finding applicants for restaurant work who can afford to live and work in Boulder. Adding more employee housing / affordable housing in the East Arapahoe area would be a godsend for us. Boulder is just too expensive for most low income people. This fact remains despite our efforts to greatly increase pay by adding on a Fair Wage Fee to our guest checks.
- Crime at my businesses is at an all-time high. I have spent tens of thousands of dollars this year repairing equipment and doors due to break-ins, and even more replacing stolen property. I wish more could be done to protect businesses and personal property. Something has to change.
- More (and later) bus routes in the 55th & Arapahoe corridor would also be great for our employees. Many who work in restaurants cannot get bus rides home as they finish work after the routes end.
- The permit process for building/remodeling is extremely lengthy - not to mention expensive - and slows our progress.

Thank you for your time.

Sincerely,  
Hosea Rosenberg



Hosea Rosenberg

Chef / Owner  
Blackbelly  
Santo

720-427-8386  
[blackbelly.com](http://blackbelly.com)  
[santoboulder.com](http://santoboulder.com)

Help us find a cure for our daughter at [Sophie's Neighborhood](#)

## Houde, Lisa

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**From:** Macon Cowles <macon.cowles@gmail.com>  
**Sent:** Tuesday, December 13, 2022 7:56 AM  
**To:** Houde, Lisa; Guiler, Karl  
**Subject:** Proposed Industrial area changes

### External Sender

Dear Lisa and Karl:

I don't know that I will be able to testify to Council about the Use Table change on Thursday. I want to make three points to Council and to staff.

1)

**It is a mistake to strip housing from an allowed use in IS and IM, and to allow housing in IG only where there is an adopted plan like the E. Bldr. Subcommunity Plan.** There have only been two housing projects since 2004 approved in industrial zones—two of them, Waterview and Celestial Seasonings, will add 547 units of housing yet both would have been prohibited under the proposed Use Table changes. See <https://boulderhousing.net/important-recent-housing-projects-would-be-prohibited-under-use-table-changes-to-be-considered-by-council-thursday-dec-15-2022/>

I realize that the impetus for this is specific language in §2.21 of the BVCP that calls for housing “within areas zoned Industrial General (IG) (not those zoned for manufacturing or service uses).” But pause for a moment to consider this: it has taken 5 years (since the last update to the BVCP) to propose the Use Table change that implements the quoted language from §2.21. There are two takeaways from this: 1) Something has to be done to speed our planning processes; we have to be more nimble. 2) The two projects, Waterview and Celestial Seasonings, indicate that §2.21 may have been ill advised, so why don't we continue permitting housing in industrial Zones until the next major update.

2)

**Eliminating housing from Industrial Zones will make them even more vulnerable to massive expansion of biotech facilities.** The first harbinger of this is Blackstone's \$600 million purchase of Flatiron Properties earlier this year. See <https://seekingalpha.com/news/3820499-blackstones-biomed-buys-22-building-campus-in-boulder-colorado-for-over-600m>.

3)

**Removing the current adjacency and lot size requirements for housing in the proposed Use Tables is a good thing.** These are unduly restrictive.

I appreciate staff's work on the project. Thank you.

Macon Cowles  
1726 Mapleton Ave.  
Boulder, Colorado 80304  
[macon.cowles@gmail.com](mailto:macon.cowles@gmail.com)  
(303) 447-3062

## Houde, Lisa

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**From:** Mark Casey <Mark@tenantwisdom.com>  
**Sent:** Tuesday, December 13, 2022 10:18 AM  
**To:** Houde, Lisa; Guiler, Karl  
**Subject:** Use Table Changes

### External Sender

Hello Lisa and Karl,

As a resident of the City of Boulder, I am in favor of changing the zoning code to allow for more housing in the industrially-zoned area of Boulder.

I am a commercial real estate broker who spends a lot of time in the industrial area of Boulder, particularly East Arapahoe. It done properly, housing can work well in these areas.

Please forward my comments on to the City Council.

Thank you,  
Mark

Mark Casey  
3601 Arapahoe Avenue, Suite 303  
Boulder CO 80303  
**Tel: 303-665-6000**  
Fax: 1-866-289-5319

## Houde, Lisa

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**From:** Pannewig, Hella  
**Sent:** Wednesday, December 14, 2022 11:34 AM  
**To:** Houde, Lisa; Guiler, Karl; Browning, Elliott  
**Subject:** FW: stephen eckert :- Planning and Development Services

FYI. A comment on the use table project.

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**From:** No Reply <noreply@bouldercolorado.gov>  
**Sent:** Wednesday, December 14, 2022 10:03 AM  
**To:** Council <Council@bouldercolorado.gov>; ContactCoB <ContactCoB@bouldercolorado.gov>; Mueller, Brad <MuellerB@bouldercolorado.gov>; Pannewig, Hella <Pannewigh@bouldercolorado.gov>; Ferro, Charles <FerroC@bouldercolorado.gov>; Stafford, Edward <StaffordE@bouldercolorado.gov>; Johnson, Kristofer <JohnsonK3@bouldercolorado.gov>; Causa, Julie <CausaJ@bouldercolorado.gov>  
**Subject:** stephen eckert :- Planning and Development Services

**Preferred Form Language:** English / Inglés

**Name:** stephen eckert

**Organization (optional):** Caddis PC

**Email:** [stephen@caddispc.com](mailto:stephen@caddispc.com)

**Phone (optional):** (303) 523-1112

**My question or feedback most closely relates to the following topic (please choose one):** Planning and Development Services

**Direct my submission to:** Staff and Council

**Comment, question or feedback:** I strongly support the new uses that will be allowed in the Industrial zones. The changes reflect a modern approach to mixed uses that reflect the reality of how we live/work. They strongly support the idea of walkable communities and will provide community amenities that we all want and need. I do encourage the council to go one step further. I suggest we look at removing the barrier of the use review process on some uses. Especially restaurants, studio space, office space & independent schools. I use the word "barrier" because the use review process has become cumbersome, expensive, and much too long. If we all agree these uses are important, make the process to get them put in place less cumbersome. I ask ultimately what value is added in the review, that is not inherently incorporated in allowing the use to begin with? Unless the city is going to hire more staff, streamline the process, and encourage collaboration, the appropriate decisions on how best to move forward with the projects is best left to the Citizens who are providing them. Thanks for your consideration and these changes are a great step forward.

[[FSF080521]] Submission ID is #: 1046593890

[Compose a Response to this Email](#)

December 13, 2022

Boulder City Council Members  
City of Boulder  
1777 Broadway  
Boulder, CO 80302

**Re: Potential Scenarios and Process Questions Regarding Ordinance Amending  
Use Regulations Applicable to Industrial Zoning Districts**

Dear Mayor Brockett and Honorable Members of the City Council:

We write to follow up on our November 30 letter and subsequent conversations with City staff on behalf of our client, BioMed Realty. As requested by staff, we are providing a list of potential scenarios in which the proposed ordinance that the City Council will consider on December 15 may cause problems for stakeholders. We have also included several questions regarding process and application of the proposed ordinance. In addition, we have attached proposed modifications to the draft ordinance text that would address many of our concerns.

Technology and life science industries are evolving quickly, they no longer consist of old-fashioned labs but instead are dynamic work spaces that may defy traditional use categories. Transparency and predictability will be key to creating a thriving research and innovation ecosystem in Boulder. The following hypotheticals are not abstract, but are real situations that could occur, and are but a subset of a greater number of unintended consequences that could be identified with more time. We respectfully ask that City Council and Staff consider the following examples, and the proposed edits to the ordinance, with a view towards providing an environment of regulatory certainty. We have conviction—and trust you do as well—that such an environment would in turn attract the best companies in the world and bring cutting-edge R&D and innovation work to Boulder.

1. Hypotheticals:

- a. Tenant has 30,000 square feet of R&D space (software programming) in Building 1 on Lot A. Tenant wants to move its 20,000 square feet of corporate headquarters offices from a different state to be near its Building 1 operations:
  - i. Can the 20,000 feet of corporate office be on the first floor of Building 1, Lot A?
  - ii. What if there is another tenant with 40,000 square feet of non-R&D office in Building 1, Lot A?

- iii. Would your answer be different if the 30,000 sf R&D tenant was moving 50,000 square feet of corporate headquarters to Building 1, Lot A, and the R&D space use stayed at 30,000 square feet?
- iv. What if there is no room in Building 1 Lot A for the corporate offices and so the tenant leases space on the adjoining Lot B owned by a different owner?
  - 1. Would the 20,000 sf of corporate headquarters office still be considered “accessory”?
  - 2. Would the 20,000 sf count against Lot B’s 50,000 sf cap on office space?
  - 3. Would the answer be different if it was 50,000 sf of corporate office of the Building 1 Lot A tenant that went into Lot B’s building?
  - 4. Would it matter if Lot B’s building was only one story?
- v. What if Building 1 Lot A is full and tenant desires to move its office space onto Building 2 Lot B
  - 1. If they lease space on a nearby building on the same lot, is that still an “accessory” use<sup>1</sup> that can be greater than 50,000 square feet?
  - 2. Can the office space be located on the ground level of Building 2?
- b. Life Science Tenant has 10,000 sf of lab space and 3,000 sf of accessory office support space. Part way through the lease term, tenant outsources all lab work to a different country and uses the rest of the space as admin support for its national operations. The business is still an “R&D” business, but none of the lab operations are located in Boulder anymore.
  - i. Is the office use still “accessory”?

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<sup>1</sup> One of the biggest concerns with the *accessory use* is the language mandating the accessory use be located on the same lot. Given how tenants now operate, it would make more sense to say “within the same project or campus” because tenants tend to treat an overall business park as one “location” and try to group their operations within that location. Making a distinction between each legal lot for purposes of a tenant’s use doesn’t really work and leads to negative consequences. If an entire business park could be viewed as a location where accessory use within the same park was permissible, that would alleviate many concerns for landlords and tenants with potential limitations of the R&D accessory definition. We have suggested additional clarifying language in Exhibit A where we propose limited modifications to the Research and Development definition.



- ii. Is the space now legally non-conforming or illegally non-conforming?
- c. Existing R&D tenant has a lease of all of second floor (lab use) and all of first floor (office) in Building 1, Lot A, (both 50,000 sf floors for a total of 100,000 sf). The tenant also occupies second floor (office) of Building 2 on Lot A (another 50,000 sf), and has an option in its lease to take over the first floor five years later (another 50,000 sf), when the first floor tenant's lease expires. If it exercises the option to take the 50,000 sf of ground floor space for office in the Building 2, it will have 50,000 square feet of Lab and 150,000 square feet of office.
  - i. Would the office use still be considered accessory?
  - ii. Would the use in Building 2 be in violation then of the 50,000 sf limit on office on a single parcel?
  - iii. Would the office be permitted on the first floor of Building 2?
- d. Tenant entered into lease on November 1, 2022 to lease 50,000 square feet of R&D space on second floor for its research division and 20,000 sf on the first floor for office that supports other operations of the company. Occupancy of the space (and the commencement date of the lease) doesn't begin until June 1, 2023 when space is built out.
  - i. Does the lease constitute "legal possession" of the space even though physical occupancy doesn't occur until after the new ordinance is enacted?
  - ii. What if it is a non-binding Letter of Intent to lease the space that has been signed by landlord and tenant? Is that a different answer?
- e. Professional Office user moves into 40,000 sf of space on second floor in Building 1 after Ordinance is adopted. The lease contains an option to expand another 10,000 sf of office. Lab user occupies 15,000 square feet in same building on first floor.
  - i. Lab user sells its company and the buyer takes over space and converts it to pure office in support of operations overseas.
    - 1. Is the 50,000 sf limit of office exceeded?
    - 2. If so, which tenant is in violation?
    - 3. Is the professional office tenant barred from exercising its option to expand the additional 10,000 square feet.

4. How would the City, the landlord, or the Professional Office user know that the conversion of the lab space may have created this problem?
  5. Would the City claim that the Professional Office tenant has no ability to enforce its expansion right?
  6. What would the City's enforcement action be?
- f. Single story building designed and approved as office – i.e., no docks or garages, and set back from roadway so no curbside appeal.
- i. Tenant on other property wants to use the space for administrative office. Can the landlord lease it for that purpose?
  - ii. What if the only demand for the space is a Professional Office user – no demand for R&D, retail or manufacturing. Must the landlord keep the space vacant, or can the landlord seek an exemption?
- g. A tenant executes a lease for 50,000 sf intending to use 35,000 sf for lab and 15,000 sf for office, but then subleases the lab space to an office user, which use is considered the principal use?
- i. What if there is already a tenant leasing 50,000 sf of office as principal use on the lot?
  - ii. Is the 50,000 sf limit on office exceeded?
  - iii. If so, which tenant is in violation?
  - iv. Note that it is a common practice in leases to allow tenants to assign or sublease without landlord consent in certain situations so the landlord might not have the right to just say no. These types of subleases could result in changes without landlord control, and we will not be able to lease space to any sophisticated company without agreeing to this standard lease language which is found across the US.
- h. Architectural and engineering firm executes lease in 2020 for 15,000 square feet on second floor of 30,000 square foot building. The tenant wants to ultimately grow into the 15,000 sf first floor space, but it is occupied at time of the lease, so tenant's lease also contains an option to take the 15,000 square feet of space on the first floor when the first floor tenant's lease expires in 2025. Tenant has invested over \$1 million in finishing out its space and did so because it knew it could take over the space on the first floor for expansion.

- i. Is the tenant permitted to expand its use to the first floor per the terms of the 2020 lease? (Tenant is not an R&D user, but was a lawful Technical Office user in 2020).
- ii. As in hypothetical e, what if the Architectural tenant had just signed a lease with all the above terms and the landlord had applied for a permit to build out the space, but the tenant hadn't yet occupied?

## 2. Process:

- a. How does a landlord or a tenant determine in advance whether a use is accessory or principal?
  - i. Is it a square footage calculation?<sup>2</sup>
  - ii. Is it an income calculation?<sup>3</sup>
  - iii. Is it something else?<sup>4</sup>
  - iv. How fast can a tenant or landlord get a commitment from the City as to whether the use is principal or accessory? Ideally, the statute is written so that it is very rare that a tenant or a landlord would need to go to the City to ask if the use is permitted.
  - v. Can it morph over time and remain in compliance if the R&D use becomes more office (i.e., is that then a legal non-conforming use, or now an illegal non-conforming use?)
- b. What constitutes "legal possession"? E.g., what vests a party's rights prior to the Ordinance going into effect?
  - i. Actual occupancy?
  - ii. Building under construction(consider some properties are owner occupied)
  - iii. Application for building permit?
  - iv. Site or Use Review approval? Application?
  - v. Signed lease creating binding obligations between landlord and tenant?

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<sup>2</sup> This standard seems difficult to enforce and also impractical given that uses will almost assuredly change over time within a given location.

<sup>3</sup> This also appears difficult to determine and impractical to enforce.

<sup>4</sup> If the goal is to encourage the siting of R&D users within these zones, would it make sense that office uses are presumed to be accessory if the user's primary business fits within the R&D use category?

vi. Signed letter of intent (non-binding?)

3. Observations:

- a. Confirming in advance whether a use is R&D or “Office” will be critical, and then confirming where the line is between principal use and accessory use will also be critical. Making “accessory” applicable to the project as a whole and not each lot would help in making the changes more in keeping with actual practice and provide businesses with the level of certainty they need to locate, invest, and grow in Boulder.
- b. Without knowing in advance the City’s position on the above, it is hard to enter into binding leases and it is hard to calculate whether the 50,000 sf limit of office use, or limit on ground floor use is being violated.

Thank you for your consideration of these issues. We appreciate the opportunity to work together with you to make sure that the final draft of the proposed ordinance serves Boulder’s needs and addresses stakeholders’ concerns.

Very truly yours,



J. Marcus Painter  
Jordan J. Bunch  
of Holland & Hart LLP

cc: Brad Mueller, Planning Director

## Exhibit A

### Proposed Modifications to Draft Ordinance

The edited text below reflects our suggested changes to the draft ordinance distributed by the City of Boulder on November 25, 2022.

#### **I. Office Use Standards: Proposed Boulder Revised Code Section 9-6-5(k)(4)(A)(i)**

- a. The ~~use is not located on the ground floor, with the exception of minimum necessary ground level access, and the~~ combined floor area of offices that are a principal use on the lot or parcel does not exceed 50,000 square feet;
- b. The office meets the definition of an accessory office; or
- c. The use was legally established within the associated floor area prior to March 15, 2023. Principal uses that do not meet the requirements of Subparagraph (A)(i)a. shall be considered a nonconforming use. Changes in operations, such as changes in ownership, tenancy, management, number of employees, or hours of operation or performance of alterations or improvements within the existing floor area referenced in this subsection, shall not be considered an expansion of a nonconforming use. Such changes shall not require a request for a change of use pursuant to Section 9-10-3(c)(2), "Standards for Changes to Nonconforming Uses," B.R.C. 1981. For purposes of this Subparagraph (c), a use is deemed legally established prior to March 15, 2023 to the extent:
  - (i) a legally enforceable right to such use has been established by either:
    - (A) actual occupancy;
    - (B) application filed with the City for Site or Use Review relative to such intended use;
    - (C) application filed with the City for building permit for the space for such use; or
    - (D) a fully executed lease or letter of intent between landlord and tenant entitling a tenant to such use (including without limitation, by virtue of an existing lease, new lease or new letter of intent, a lease amendment, an option, a right of first refusal or first offer, a right of expansion, or other similar enforceable legal right between landlord and tenant, executed before March 15, 2023, whether or not such right to use exists currently or is a future right provided in the relevant legal document; and

(ii) such use was permitted by the provisions of the Code prior to March 15, 2023 and at the time of execution of the relevant legal document.

The burden of proof to establish such right shall be on the party seeking the exemption from the provisions of this Section \_\_\_\_, and shall be accompanied by a signed certificate under penalty of perjury reciting representing to the City:

(A) the date (prior to March 15, 2023) on which the document was executed; and

(B) the use ~~to~~ of the property or premises sought to be maintained or preserved.

## II. Definitions: Proposed Boulder Revised Code Section 9-16-1(c)

...

*General manufacturing*<sup>5</sup> means the processing, manufacturing, ~~or~~ compounding, fabrication, or assembly of materials ~~or~~ substances predominately from raw or primary materials, or a use, or products, provided that such use is engaged in processes that ~~have the potential to produce greater amounts of~~ noise, odor, vibration, glare, or other objectionable influences ~~than light manufacturing uses and which may have an~~ environmental contamination with a material or unreasonable adverse effect on surrounding properties. ~~General manufacturing uses typically involve primary production processes.~~

...

*Light manufacturing*<sup>6</sup> means the ~~indoor production or~~ processing, manufacturing, compounding, fabrication, or assembly of ~~finished products or parts from previously prepared materials. Light manufacturing uses generally do not include processing of raw materials or production of primary materials. Any~~ materials, substances, or products, provided that, any noise, odor, vibration, glare, or other ~~similar impacts are confined on the property~~ environmental contamination produced by the use has no material or unreasonable adverse impact on surrounding properties. This use includes commercial

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<sup>5</sup> Replaces the current “Manufacturing uses” definition: “*Manufacturing uses* means research and development facilities, testing laboratories, and facilities for the manufacturing, fabrication, processing, or assembly of products, provided that such facilities are completely enclosed and provided that any noise, smoke, vapor, dust, odor, glare, vibration, fumes, or other environmental contamination produced by such facility is confined to the lot upon which such facilities are located and is controlled in accordance with applicable city, state, or federal regulations.

<sup>6</sup> Replaces the current “Manufacturing use with potential off-site impacts” definition: “*Manufacturing use with potential off-site impacts* means all research and development facilities, testing laboratories and facilities for the manufacturing, fabrication, processing, or assembly of products which may produce effects on the environment that are measurable at or beyond the property line, provided that any noise, smoke, vapor, dust, odor, glare, vibration, fumes, or other environmental contamination is controlled in accordance with applicable city, state, or federal regulations.

printing and binding of printed media. Light manufacturing may include a showroom or ancillary sales of products related to the items manufactured on-site.

...

*Research and development*<sup>7</sup> means a facility where research and development is conducted in industries including but not limited to, industrial, biotechnology, life sciences, pharmaceuticals, medical or dental instruments or supplies, computer hardware or software, ~~or~~and electronics. ~~The facility engages in~~Activities may include product or process design, research, development, prototyping, ~~or~~testing, manufacturing, fabricating, processing, assembling, or storage of products or materials. This use may include laboratory, office, warehousing, ~~and light manufacturing functions~~, meeting rooms, management and administrative support, customer support, and employee services such as break rooms, kitchens, cafeterias, conference rooms, and fitness, recreation and wellness areas (in addition to all other accessory uses as permitted under the Code) as part of the research and development use. For the purposes of research and development use only, the definition of “accessory use” shall include uses located in the same business campus, office park, business subdivision, or original site development plan (planned unit development) as the principal use.

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<sup>7</sup> Replaces the current “Medical laboratory” definition: “Medical laboratory means a facility that provides services to the medical community such as pathological testing, dental services including the manufacturing of orthodontic appliances, crowns, and dentures, and the manufacturing of prosthetics and orthopedic appliances.”

**Exhibit B**

**Letter Dated November 30, 2022**

[See attached document]

20504843\_v2



November 30, 2022

Boulder City Council Members  
City of Boulder  
1777 Broadway  
Boulder, CO 80302

**Re: Process and Policy Concerns Regarding Ordinance Amending Use Regulations Applicable to Industrial Zoning Districts**

Dear Honorable Members of the City Council:

We write to express the concerns of a number of industrial property owners, as well as commercial tenants, affected by the proposed changes to the Boulder Revised Code (the “Code”) that the City Council will consider on first reading on December 1 (the “Proposal”). While the Proposal includes many positive elements that will promote flexibility and clarity, the Proposal also includes several provisions that will create immediate nonconforming uses, cause unnecessary disputes and litigation, and could drive long-standing local businesses and their employees out of Boulder. With a bit more time to evaluate the practical impacts, more issues may be identified and resolved, but in the minimal time given the public to review the Proposal, we have identified the following issues, discussed in more detail below:

- Lack of Stakeholder Notice and Knowledge of Impacts of Proposal
- Consequences of Office Prohibition on Ground Floors and Single-Story Buildings
- Limitation of Office Use to 50,000 Square Feet per Legal Parcel
- Major Consequences of Creation of Nonconformity on Existing Leases
- Consequences of New Manufacturing Definitions
- Narrow Definition of Research and Development Uses

We have, along with the Boulder Chamber and other owners and their representatives, reached out to the Planning Department with these concerns, and believe we have the Planning Department’s commitment to work in good faith with the stakeholders to consider and address these concerns in more detail. But that process will be difficult to complete before a December 15 second reading. We hope that the Council will allow further consideration of these issues before making a final decision on the Proposal and, optimally, will delay second reading for a reasonable period of time to allow stakeholders and Planning Department staff to address and achieve resolution of the unintended consequences and potential legal disputes.

1. **Lack of Opportunity for Stakeholder Input on Ordinance Language.**

Affected property owners (numbering in the hundreds) and tenants received no mailed notice of the proposed modifications, which practically speaking have a rezoning effect and which create new non-conformities; many owners still have no idea the modifications to definitions and limitations on uses are even happening. And while Planning Department staff engaged community groups early in the conceptual development of the Proposal, stakeholders were not involved in the drafting of the ordinance and only saw the initial language less than one week before the Planning Board's October consideration of the Proposal. *The latest draft ordinance that is now before the Council was only released on November 25 (the Friday of Thanksgiving week), and this new draft of the ordinance includes significant changes* from the draft that the Planning Board reviewed in October. Affected owners and tenants who actually do know about the Proposal are now scrambling to absorb the lengthy staff memo and evaluate all the potential impacts on their properties. Rather than adopt a major ordinance in a hurry without adequate knowledge or input from the affected citizens, we ask that a reasonable time be allowed for proper consideration of the impacts.

2. **Prohibition of Office Use on Ground Floors and Single-Story Buildings.**

The Proposal provides that new office space as a principal use may not be located on a ground floor. Many buildings in the affected zoning districts currently contain technical<sup>1</sup> office uses on the ground floor, and office is often a logical use for ground floor space. Indeed, some of the affected buildings with office occupants are only one story. The Proposal would make these current lawful uses nonconforming and would limit flexibility for property owners and tenants to modify or expand their space in the future, which in turn would decrease investment in properties and neighborhoods. Prohibiting offices on ground floors is also contrary to the general planning goal of encouraging mixed-use development in industrial zoning districts.

3. **Limitation of Office Use to 50,000 Square Feet Per Parcel.**

The Proposal provides that office space as a principal use may not occupy more than 50,000 square feet on a single legal parcel. This limitation would make a significant amount of current technical office space nonconforming and would restrict the ability of owners and tenants to adjust existing properties and invest in modernizing their facilities. The limitation also would discourage large, high-quality owners and tenants with the ability to contribute to Boulder's neighborhoods and economy from locating or staying in Boulder. The limitation also needs to be considered in light of "campus" designs or approvals of multiple buildings under a single Site Development Plan – i.e., research and development businesses with associated office campuses for operations or other business lines of the company.

4. **Lack of Grandfathering Provision for Existing Expansion Rights and In-Contract Development.** Critically, while the Proposal includes language allowing "legally established" uses to remain, as is required by the Code's legal nonconforming use provisions, the

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<sup>1</sup> Technical office uses, which are the primary lawful form of office use in the relevant zoning districts, may to an extent be included in the new "Research and Development" definition. However, not all technical office space will fall into this category.

Proposal grants no extensions or exceptions for contractual rights that have been established prior to the effective date of the Proposal. The following are examples of immediate problems created by the Proposal for affected properties:

- a. Effect on a signed Letter of Intent between a landlord and tenant for ground-floor office space in a building under construction.
- b. Effect on a signed lease for space in a building under construction or a space being vacated by an existing tenant for more than 50,000 square feet of office, or for ground-floor office space.
- c. Effect on an existing tenant which has an option to expand its technical office use when another tenant vacates, resulting in office use on the ground floor or an expansion of office use beyond 50,000 square feet.
- d. Process for the City's determination of whether space qualifies as "office" or as an accessory use for "research and development," and how that is resolved before a lease is executed.

Legal rights and reliance issues arise with all of the above scenarios, which if suddenly defeated by adoption of the Proposal and the creation of a non-conformity, will give rise to litigation and displacement of tenants. For example, a technical office tenant with a current lease including a right of first refusal to expand into space currently occupied by a non-office use would be prohibited from exercising this right if the expansion would cause the total amount of office floor area on the parcel to exceed 50,000 square feet, or if the expansion right was for first-floor space. The tenant in such a circumstance could have legal rights against the landlord for the inability to deliver the bargained-for expansion space. Similarly, a party which has signed a lease for ground floor technical office space that will not be completed until later in 2023 may be bound under the lease but precluded from lawfully using the space as intended. The resulting disputes could result in liability litigation between landlord and tenant, and, in some cases, the City of Boulder. To avoid uncertainty, interference with investment-backed expectations, and unnecessary litigation, the Proposal should be modified to allow expansion or development to proceed under the former regulations if the right to a use is established by contract before the ordinance's operative date.

5. **Revised Manufacturing Use Definitions.** The current Code distinguishes between manufacturing uses without offsite impacts, which are allowed by right, and manufacturing uses with offsite impacts, which require use review. The Proposal renames these categories "Light Manufacturing" and "General Manufacturing," respectively, and revises their definitions. In so doing, the Proposal introduces a new distinction between manufacturing involving raw materials and manufacturing involving processed materials, requiring use review for the former but not the latter. Because this distinction is irrelevant to a use's impact on the surrounding area, the new distinction should be removed. The Proposal also inserts unclear language into the definition of "General Manufacturing" that causes the definition to depend on how a use compares to uses included in "Light Manufacturing" rather than on an objective standard.

6. **Research and Development Definition.** The Proposal creates a new “Research and Development” use category to replace the much narrower “Medical Laboratory” category. This is an appropriate step to provide clarity regarding uses that are critical to modern real estate development, such as life sciences and biotechnology. However, to avoid many of the issues noted above, we believe the definition should include references to essential ancillary uses for research and development facilities, such as administrative offices, meeting rooms, break rooms, cafeterias, and fitness areas.

And all of the language of the Proposal needs to be reviewed closely for inconsistencies. As an example, the proposed text states that personal service uses are allowed in all industrial zoning districts, but the proposed use table states that they are allowed only in IG districts.

We respectfully request that the Council seriously consider the potential impacts of the provisions described above before moving forward with the Proposal. Because stakeholders have not yet had the opportunity to comment on the specific text that is under consideration, we hope that the Council will ensure that affected property owners have a reasonable opportunity to evaluate the details of the Proposal, and vet those issues with Planning Staff before the Council’s final vote. The impacts of the unintended and unconsidered consequences of the Proposal are significant to the thriving innovative ecosystems that make up much of Boulder’s industrial uses. We suggest that the Council consider delaying the scheduled second reading of the Proposal or granting a continuance to allow sufficient time to address these issues.

We should take the time to get this right for these valued members of the Boulder community and for the City generally. Thank you for your consideration.

Very truly yours,



J. Marcus Painter  
Partner  
of Holland & Hart LLP

JMP:efs  
cc: Brad Mueller, Planning Director

20421554\_v2

12/14/22

Use Table changes

Dear Council Members,

I am writing to express some concerns with the proposed Use Table Changes and the associated process.

The relevant language in Section 2.21 of the BVCP is susceptible to two interpretations: (1) residential is appropriate in all industrial zones, with additional analysis guiding the location of housing in IG in particular; or (2) the only appropriate places for housing in industrial areas is in the IG zone district. Until recently, staff had confirmed that the first interpretation properly reflected the intent behind the most recent change to Section 2.21.

In particular, in 2016, after I purchased the Bustop site in North Boulder (zoned IS), I had multiple conversations with then Long-Range Planner Leslie Ellis, who confirmed that the intent of Section 2.21 of the BVCP was to implement Code changes to incentivize residential development in the IG zone, and not to limit or eliminate residential development in the IM or IS zone. This intent was confirmed multiple times in writing by Long Range Planner Philip Kleisler, when I entitled the Residential development located at the Celestial seasoning's site (zoned IM). Phillip added and shared information that staff's intent and CC guidance was to create a work plan to incentivize residential in IG (while not eliminating residential in IM and IS).

Nonetheless, at our final Planning Board hearing for the Celestial project where the site review was approved, there was a lengthy conversation between Board members in regards to preserving industrial uses and industrial-zoned land. I believe that that conversation (which was directly at odds with the stated intent behind Section 2.21) has continued through Planning Board and staff working groups and is now incorrectly influencing Council's thinking on the subject.

The concern I have is that the current Use Table Changes are not in line with the years of community input for the comp plan update, and ideas for industrial preservation are now being input into staff's analysis of the use tables without any economic data based upon reality. Staff confirmed on numerous occasions that it was never the intent of the update to eliminate residential in the IM or IS zone. Also, although I can understand the planning benefit of limiting residential in the IG zone to parcels that are included in an area plan, that was also not the intent and does not incentivize residential in that zone.

In regards to the preservation of industrial land and uses, the Board members have continually listed the industrial uses that should be preserved (car mechanics, art space, metal fabricating, etc.). From a community standpoint I agree, but the reality is that if residential is not allowed in the IM zone and IM land with or without current industrial uses is sold, the new development will be large Life Science projects developed and financed by national REITS (this is already happening). The unfortunate truth is that the industrial uses talked about by the Board can not afford to pay even the property tax portion of the triple-net rent, let alone market rent, so thinking that eliminating residential from IM will clear the way for those sorts of industrial uses is just not reality.

In connection with its discussion, I would encourage Council to give effect to both: (1) the original intent of Section 2.21 of the BVCP (residential should be allowed in all industrial zones, and the process

regarding approving residential in IG in particular should be simplified); and (2) the underlying economic realities driving development in these areas.

Sincerely,

Andy Allison

Allison Holdings