

January 13, 2015

RE:

SUPPLEMENTAL APPROPRIATION FOR EVERGREEN INCENTIVE AGREEMENT
A Motion to Approve and Order Published on Second Reading an Ordinance
Enacting a Supplemental Budget and Appropriation to the 2015 City of Loveland
Budget for an Incentive Agreement with Evergreen Development Company

Mayor Cecil Gutierrez and City Council:

The purpose of this letter is to file a protest against the supplemental appropriation Ordinance and Resolution for Thornton Longterm Investments LLC to redevelop the north east corner of 34 and 287 for a Sprouts Grocery Store, which is null and void as it was not lawfully presented nor a public hearing allowed prior to the final adoption.

According to Loveland's City Charter Section 4-9

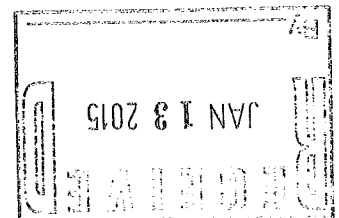
"(3) After the first reading, the Council shall vote to amend, adopt, or reject the ordinance, or take such other action as it deems appropriate."

Contrary to the city's own charter, city staff substantially changed the purpose of an appropriation approved on first reading November 4, 2014 titled "Evergreen Incentive" agreement.

As originally introduced, the resolution motion read *"A Resolution Authorizing the City Manager to sign an Economic Incentive Agreement with Evergreen Development based on the Attached Term Sheet."* The associated and attached Ordinance also referred to the "Evergreen Incentive" but when presented for the "second reading" the agreement was with Thornton Longterm Investments LLC, not Evergreen. The agreement presented to Loveland's City Council on January 6, 2015 is titled, *"Agreement for City Incentive, Fee Waiver, And Construction Materials Use Tax Waiver, With Thornton Longterm Investments LLC,.."*

Despite changing the party in the transaction, the city ordinance supporting the appropriation of funds was not properly amended to reflect the actual recipient of the incentive yet the associated resolution and second party agreements were changed reflecting the new purpose of the appropriation.

On January 6, 2015 the Loveland City Council voted on the substantially changed appropriation of the same dollar value of \$2.2 million but for the purpose of providing a company not previously mentioned, Thornton Longterm Investments LLC, the funds as part of a 1031 exchange instead of Evergreen-Eisenhower, LLC as referenced by the contract bearing the latter company's name and not that referenced in the first reading or any attached documents.



Another substantial change not debated or approved by the Loveland City Council during the first reading is a new clause in an attached agreement nullifying all the guarantees the money must be repaid to the city in the event there is a change to the city's sales tax code.

This is significant for two reasons,

1. In an apparent attempt to conceal the substantial change in the appropriation of funds, staff has indicated the "guarantee" for the repayment of those funds still resides with the original incentive benefactor, Evergreen Devco. In fact, new language which was not present in the prior term-sheet approved on the first reading on November 4, 2014 absolves Evergreen of this obligation thus substantially changing the obligation by negating Evergreen's obligation in the event the City of Loveland amends its code regarding the collection of food sales taxes.
2. As most members of the Loveland City Council have already expressed an interest in effecting a change in the city's code for collection of food sales taxes, the likelihood the \$2.2 million appropriation will be recovered is dramatically changed by the new "guarantee" with Evergreen Invesco which is arguably no longer a guarantee at all.

Loveland's City Charter Section 4-9 states,

(5) The ordinance shall be introduced by motion at a second regular or special meeting of the Council held not earlier than four (4) days after the first publication.

(6) Prior to taking final action on the ordinance, the Council shall permit public comments on the ordinance, then shall vote to amend, finally adopt, or reject the ordinance, or take such other action as it deems appropriate

As noted above, the Loveland City Council never amended the original ordinance as presented by staff on November 4, 2014. Following staff changes sometime prior to the January 6, 2015 council meeting or alleged second reading, Loveland's City Council failed to conduct the required public hearing before deliberating on the staff's substantial changes to the incentive package thus changing the recipient of the incentive.

Mayor Cecil Gutierrez announced shortly after the new ordinance was moved for approval, "This is a second reading and normally we do not do any public comments on or..ah.. it is not a public hearing on second reading." This prevented public comment on the staff's recommended changes.

Following the Mayor's comment, Loveland City Manager Bill Cahill introduced yet another version of the ordinance never presented previously to the public stating,

“You have on the dais a new version of the ordinance....” He noted changes to the fleet replacement funds and other amounts and so-called typos in the published version but assured the council his latest changes were not substantial.

Curiously, Councilwoman Joan Shaffer did not amend her original motion to adopt the ordinance as published. Nonetheless, the City Clerk has published a changed version that one must assume was the “dais version” referred to by the city manager yet never introduced or adopted by the City Council.

As a resident of Loveland who will be adversely impacted by the Sprouts Farmers Market and substantial subsidy being provided to its construction by the City of Loveland, I was not allowed to address my concerns to the City Council once the substantially changed appropriation was introduced nor address even the third and “new” version referred to by the city manager during the January 6, meeting. Both versions #2 and #3 necessitated a public hearing per the city’s charter yet both times the public was denied an opportunity to speak.

The purpose of this letter is to request you, Mayor Gutierrez, conduct a valid public hearing before voting on the proposed appropriation as required in our city charter so myself and any other members of the public may participate in a public hearing on the actual ordinance and supporting agreements proposed for adoption. Staff may also need to amend the ordinance supporting the resolution to reflect the incentive agreement now between the City of Loveland and Thornton Investments LLC instead of Evergreen as the current ordinance erroneously states.

Failure to comply with the city charter or state law in the appropriation of funds for the newly proposed Thornton Longterm Investments LLC incentive may lead myself and other citizens of Loveland to seek relief from a court to confirm the ordinance was not adopted according to the procedures required under the city’s charter and state law.

Sincerely,

Brian Wood

Brian Wood 667 6105