

AGENDA

CITY COUNCIL WORK SESSION

January 27, 2020

**4:00 PM, City Council Chambers
130 S Galena Street, Aspen**



I. WORK SESSION

- I.A. Wheeler Board Joint Meeting
- I.B. Engineering Project Updates - Hallam Street Ped/Bikeway, Critical Pedestrian Connections, Spring Street Improvements, CDOT
- I.C. Smoking Ordinance Revisions



MEMORANDUM

TO: Mayor and City Council

FROM: Gena Buhler, Wheeler Opera House Executive Director

THROUGH: Scott Miller, Interim Assistant City Manager

CC: Wheeler Opera House Board of Directors

MEMO DATE: January 16, 2020

MEETING DATE: January 27, 2020

RE: City Council and Wheeler Board of Directors Work Session

REQUEST OF COUNCIL: The Wheeler Board of Directors (“Board”) requests discussion of its 2020 work plan and priorities. The discussion includes request of a timely addition to the Wheeler Opera House goals, discussion of future planning priorities, and overview of current Wheeler and Board projects; all in support of the successful future of the Wheeler Opera House.

Specific discussion topics include:

- Support of Wheeler growth model and upcoming needs
- Addition of environmental goal to Wheeler Goals
- Addition of “Mission Statement and Goals” as a clarification to the Board’s roles and duties
- Council direction of expectations and assumptions of Board members

BACKGROUND OF WHEELER BOARD OF DIRECTORS: City of Aspen Ordinance 63, Series of 1992 clarified that the Board is to function as an advisory board and not a managing board. Ordinance 5, Series of 2004 established the following powers and duties of the Wheeler Board of Directors:

Generally, the Board of Directors is empowered to advise the City of Aspen with the planning and policy related to the daily and long-term operations of the Wheeler Opera House. These management duties shall include the following:

- 1. Recommend scheduling policy, priority and rates for the theatre operations; and*
- 2. Recommend operating policy and rental rates for the commercial space in the Opera House building*

As stated in the current legislation, the current composition, term, and qualifications of the Board is as follows:

(a) The Board of Directors of the Wheeler Opera House shall consist of seven (7) regular members and one (1) alternate member, all of whom shall serve overlapping three (3)-year terms. The Board shall be appointed by the City Council with all appointees designated as at-large appointees who shall be selected primarily for their knowledge of and experience in the performing arts and/or financial, management or marketing capabilities.

(b) Except for the filling of vacancies, all terms of appointments shall be for three (3)-year periods, commencing at the time of appointment.

(c) The Aspen Music Festival and School (AMFS) or its successor organization that may have the right to exclusive use of the Wheeler Opera House during the summer season, as per contracting through August 2034, shall appoint a representative to fill a permanent, non-voting, ex-officio seat on the Board of Directors. By virtue of AMFS's Wheeler Opera House management responsibilities for a significant portion of the year, the AMFS representative shall be entitled to participate in any of the activities and deliberations of the Board, but shall not vote.

(d) All members of the Board of Directors shall serve at the pleasure of the City Council and may be removed by majority vote thereof.

(e) The Board of Directors is declared not to be a permanent board within the meaning of Section 8.2 of the Charter of the City of Aspen and, therefore, there shall be imposed no age or residency requirement for membership on the Board of Directors nor shall candidates for appointment be required to be qualified electors.

The current members of the Board are as follows:

Chip Fuller, Chairperson	Justin Brown (AMFS)
Christine Benedetti, Vice Chairperson	Ziska Childs
Nina Gabianelli, Secretary	Peter Grenney (alternate)
	Dr. Tom Kurt
	Amy Mountjoy
	Richard Stettner

Since the arrival of Wheeler Executive Director Gena Buhler in May 2015, the Board has advised on the growth and upward trajectory of the Wheeler Opera House, including:

- Programming & Venue Usage Growth
- WRETT Tax 20 Year Renewal
- Review and Research in support of JAS Aspen Funding & Partnership proposal
- RFP selection committee participation including restaurant space, marketing firm, booking broker, and ticketing system selections

- Wheeler Feasibility of Growth Study (Summer/Fall 2019)
- Wheeler Organizational Sustainability Study (Spring 2020)

The Board most recently met with City Council in March 2018.

BACKGROUND OF WHEELER MISSION & GOALS: The following mission and goals statement for the Wheeler Opera House was established in November 2009 by the Board.

Mission Statement

“The mission of the Wheeler Opera House is to monitor and ensure the preservation and viability of the historic venue and its property through exceptional performance experiences for residents, guests and performers, and to support the cultural assets of the Roaring Fork Valley.”

Goals Statement

The goals of the Wheeler Opera House are to provide appropriate facilities and resources in order to:

- *Assist user groups in the successful presentation of rental and community events, series, and festivals;*
- *Foster and advocate artistic expression within the Roaring Fork Valley community;*
- *Present world-class arts experiences to Aspen, through the production, co-production, or creation of individual events, series, and festivals;*
- *Provide opportunities for educational experiences for students of all ages throughout the Roaring Fork Valley;*
- *Provide a public gathering place for the use of area groups, residents, governments, and guests;*
- *Preserve and enhance Aspen’s reputation as a premiere resort destination with a dedication to arts and humanities; and*
- *Ensure the long-term viability of the facility through responsible fiscal management.*

DISCUSSION: The Wheeler Opera House Board requests a discussion with City Council on the following areas:

- Support of Wheeler growth model and upcoming needs
 - The Board believes that things are going very well at the Wheeler with the facility and programming thriving. The facility is busier than it has ever been in history, with over 300 events and a flow of 100,000 people project through the facility in 2020. The success can be attributed to the successful growth model led by Wheeler Executive Director.

- The Board supports continued momentum, which serves the community by having Aspen's historic venue operating at a high-level year-round. The Wheeler brings diverse year-round programming including national comedy and music acts, world and Colorado premiere films, speakers and family entertainment, reaching a much broader section of the community than in past years.
- Looking forward to the Organizational & Sustainability Study (Phase II Theatre Projects consultants) scheduled for Spring 2020, the Board supports evaluation of the operational staffing model and anticipates the need to add resources to the base operational model in order to make this level of operations sustainable for Wheeler staff versus reducing operations, programming and community access in order to maintain current staffing levels. The Board looks forward to participation in this project.
- Addition of environmental goal to Wheeler Goals
 - Reflecting on current City Council goals, the Board would like to request the approval of an eighth Wheeler goal which represents environmental and sustainability program priorities.
 - Recommended goal: *Operate an environmentally responsible and sustainable venue; advocating and educating visiting artists, guests and community partners on programs and initiatives.*
- Addition of "Mission Statement and Goals" to the Board's Roles and Duties
 - The Board uses the Wheeler Mission Statement and Goals to guide discussions and recommendations. While it has been assumed that the Mission Statement and Goals are a part of the established Board Roles and Duties, the Board would like to adopt "Wheeler Mission Statement and Goals" into the formal language through a 2020 Ordinance.
 - Proposed language: "Generally, the Board of Directors is empowered to advise the City of Aspen with the planning and policy related to the daily and long-term operations of the Wheeler Opera House, *guided by the adopted Wheeler Mission & Goals Statements.*"
- Council direction of expectations and assumptions of Board members
 - What is the Council's vision of the Wheeler over the next 10 to 20 years?
 - What does Council expect (or want) from the Board in its defined role?
 - What should the Board be doing that they might not already be doing?

FINANCIAL IMPACTS:

There are no financial impacts as a part of the discussion currently.

CITY MANAGER COMMENTS:



MEMORANDUM

TO: Mayor and Council

FROM : Pete Rice, PE, Senior Project Manager
Raquel Flinker, Project Engineer II

THRU: Tricia Aragon, PE, City Engineer

DATE OF MEMO: January 20, 2020

MEETING DATE: January 27, 2020

RE: Street Smart Updates

REQUEST OF COUNCIL: City staff would like to update Council on Street Smart programs and receive Council's direction on future programs involving the safety of bicycle, pedestrian and vehicle users.

SUMMARY: The City has planned projects and programs for 2020 to be discussed during this Work Session which have been determined through past Council direction, community input and City safety priorities. The following Street Smart topics include:

1. Hallam Street Ped Bikeway
2. Traffic Signal Maintenance
3. Critical Pedestrian Connections Update
4. Intersection Safety Update
 - Spring/Main St.
 - Spring/Cooper St.
5. Pedestrian and Bicycle Safety Team (PABST)

Staff is requesting Council to review and provide direction on the Street Smart programs described above.

HALLAM STREET PED BIKEWAY

BACKGROUND:

The number of bike riders in the City of Aspen has significantly increased throughout the years and we expect this will continue to expand into the future. Parks and Engineering teamed to create the City of Aspen Bicycle & Pedestrian Masterplan that was updated in 2016. During the Bicycle & Pedestrian Master Plan effort, a Ped Bikeway along Hallam Street was identified as



critical. Main Street acts as a barrier for bicyclists. Creating a bikeway on Hallam Street achieves a connection through the north side of the City including the Post Office Trail, the Red Brick Building, Yellow Brick Building and Clarks Cutoff Trail.

The first piece of this critical connection was implemented on the Castle Creek Bridge project which placed a trail on the bridge and connected the trail to the edge of Hallam Street at the S Curve on 7th Street. Once this phase was completed, Council directed staff to implement a living lab for the remaining section on Hallam Street in a similar nature to the Hopkins Ped Bikeway. Staff was directed to study the impact of limiting vehicles to drive one block only in order to allow a safe corridor for pedestrians and bicyclists.

The Living Lab for Hallam Street Ped Bikeway was activated in July of 2019.

DISCUSSION:

In the summer of 2019, a Hallam Ped Bikeway living lab was implemented with the following objectives:

- Observe bike and pedestrian mobility.
- Receive feedback from the community.
- Determine the impact the lab would have on traffic movements on Bleeker, Hallam, Francis and Smuggler Streets.
- Review route modifications and interactions between users.

The Living Lab has been very successful. The bicyclists more than doubled in numbers compared to the counts prior to implementation in 2017. Staff will discuss the objectives studied during the Living Lab in detail during the Work Session.

FINANCIALS:

Additional financial resources are not required at this time.

RECOMMENDATION:

Staff recommends that Council implements the permanent placement of the Hallam Ped Bikeway.

TRAFFIC SIGNAL MAINTENANCE

BACKGROUND:

Over the years, the citizens and Council have indicated that the traffic signals within the City should have increased pedestrian focus and favor Aspen ideals. CDOT focuses on general vehicular movement and meeting requirements for standard intersections. In the past this difference has impacted the pedestrian friendliness of our downtown core.



DISCUSSION:

To better meet community needs, the City is pursuing an IGA with CDOT for:

1. Traffic signal timing
2. Traffic signal maintenance (preventative & emergency)
3. Crosswalk Maintenance

The IGA would encompass the four traffic signals along Main St. (Figure 1). The Cemetery lane signal is not included. The IGA would allow the City to control and optimize traffic signal timing and maintenance. As part of this effort, the City put out an RFP in 2019 and TS&L was the sole bidder.



Figure 1 – Traffic signals along Main St. that would be incorporated in the IGA with CDOT



FINANCIALS:

Currently, only one of these intersections has a battery backup. As part of the IGA, CDOT will fund the installation of battery backups at the other three intersections and an initial signal retiming study. CDOT would contribute approximately \$74,000 of the total costs of approximately \$114,000 to upgrade the traffic signals. Please refer to Table 1 for information on maintenance costs compared to CDOT's contribution.

Table 1 – Maintenance Costs Vs. CDOT's Contribution

Item	CDOT's contribution/ year	Contract costs/ year
Traffic Signal Preventative Maintenance	~\$20,000	~\$17,500
Traffic Signal Emergency Maintenance	-	~\$1,200*
Crosswalk Maintenance	~\$5/ sq.ft.	\$4.50/ sq.ft. (Streets Dept.)

*Estimated from CDOT's current maintenance hours

RECOMMENDATION:

During this work session, Council is asked to provide direction regarding the IGA with CDOT and the maintenance contract with TS&L. Staff recommends passage, at a future regular Council meeting, of a resolution stating Council's intent to pursue IGA with CDOT and the approval of the maintenance contract with TS&L.

CRITICAL PEDESTRIAN CONNECTIONS UPDATE

BACKGROUND:

The City of Aspen has a long history of working on pedestrian plans, some dating back to the 1970's. These plans have defined the aesthetic of our sidewalks and trail system that exists throughout the community.

In 2014 and 2015, staff worked to create an updated Bicycle & Pedestrian Master Plan. Staff assembled an existing conditions map and undertook a comprehensive public survey process that resulted in over 100 potential improvement projects within the community. This information was distilled down to a final map and a set of proposed improvements to the bicycle and pedestrian infrastructure. During this master planning, staff reviewed documents such as the Aspen Area Community Plan, Aging Well in Pitkin County, and City of Aspen Civic



Master Plan to help ensure these proposed improvements were in-line with the community vision.

PABST (Pedestrian and Bicycle Safety Team) has reviewed this infrastructure and received feedback from citizens throughout the years. A formalized critical pedestrian connection map has been prioritized through Council input, PABST input along with utilizing the Pedestrian and Bicycle Masterplan. Other factors that determine this list include pedestrian safety, the type of user including children, the amount of use and community input. During the winter months, pedestrians are typically pushed into the roadway creating additional safety concerns.

Staff reviewed several locations on site with Council last year to create the top ten pedestrian connections. The list includes the following locations:

1. Paepcke Park (Main to Hopkins, west side)
2. S Garmisch St (Half block between Hopkins and Hyman, east side)
3. Koch Park (Durant to S 1st Street, east and north sides)
4. Wagner Park (Hyman to Durant, east side)
5. Wagner Park (South side replacement)
6. Francis Whittaker Park
7. East Hopkins St (Half block between Original and Hyman, east and north sides)
8. Original St/ Ute Ave (South of Durant)

Two connections were successfully completed in 2019:

1. Bleeker St. (Garmish to Monarch St.)
2. King St. (Neale to Gibson Ave.)

DISCUSSION:

Staff has scheduled and estimated the top ten pedestrian connections within the 10-year budget. Staff will continue to assess all pedestrian connections within the City, but would like Council's feedback on addressing other needs within the City and would like to understand Council's priorities proceeding forward into the top ten pedestrian connections.

FINANCIALS:

Below is staff's best estimate for what the above proposed projects will cost. Please note that construction costs will vary depending on time frame of completion.

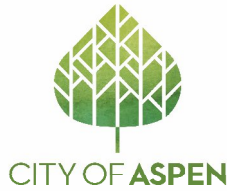


Table 2 – Critical Connections Cost Estimates

Critical Connection	Cost Estimate
1. Paepcke Park (On-going)	\$97,000 (included in Paepcke transit hub)
2. S Garmisch Street (2022)	\$95,000
3. Koch Park (2024)	\$65,000
4. Wagner Park (2027)	\$80,000
5. Wagner Sidewalk Replacement (2027)	\$140,000
6. Hopkins Street/ Park Avenue (TBD)	TBD
7. Original Street/ Ute Avenue (On-going)	\$175,000
8. Francis Whittaker Park (2025)	\$240,000

At this time, financial decisions are not required from Council. Upon Council's approval, staff will prioritize each individual project and come back to Council with more detailed design options, implementation and construction costs for each individual project.

Paepcke park has been approved for conceptual design. Funds for the Original St./Ute Ave. have been allocated on the 2020 approved budget.

RECOMMENDATION:

Staff recommends that Council completes all of the recommended projects above to achieve improved pedestrian safety and experience within the City of Aspen.

If there are any projects that Council feels should not be on this list or should be added, staff is requesting these recommendations at this time.

INTERSECTION SAFETY UPDATE - SPRING/MAIN ST.

BACKGROUND:

The intersection at Spring Street and Main Street was historically difficult for pedestrians due to limited visual identification and minimal lighting. Staff analyzed the intersection to discover that over fifty five percent of the vehicles did not stop for pedestrians when they were present. In 2017, staff approached Council to improve this intersection to increase the safety for pedestrians. Council approved the contract for construction in the winter of 2019 and the project was completed the following spring. Improvements included utilizing curb extensions to increase



pedestrian visibility, installation of rapid flash beacons, installation of a rain garden for water quality improvement and restriping for the intersection.

DISCUSSION:

Staff is following up with the results after the improvements were implemented.



Figure 2 – Spring/Main St. Intersection

At the East side of the intersection, a vehicle would stop for a pedestrian only 36% of the time prior to placement of the rapid flash beacon, crosswalk and curb extensions for improved visibility. This interaction improved significantly once the project was completed and vehicles stopped 70% of the time.

At the West side of the intersection, a vehicle would stop for a pedestrian 45% of the time prior to placement of the rapid flash beacon. This interaction improved significantly once the project was completed and vehicles stopped 76% of the time. Please refer to Figure 3.

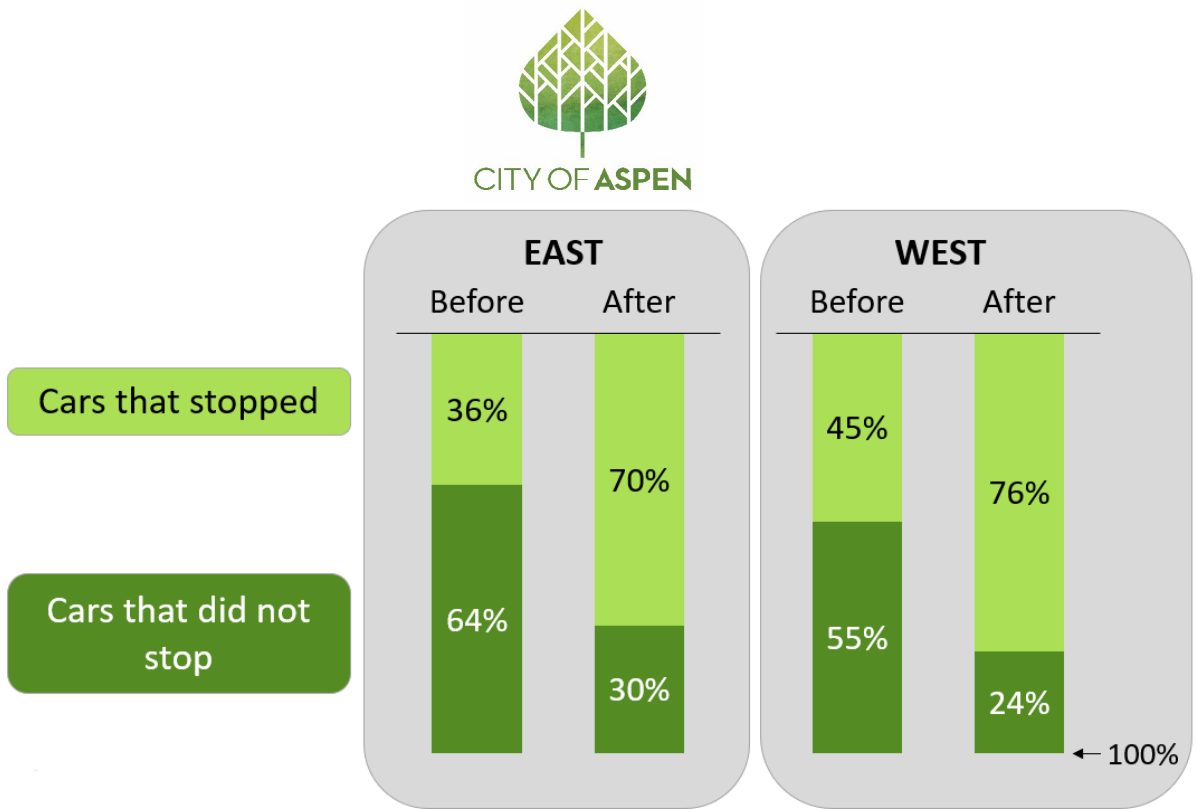


Figure 3 – Pedestrian-Vehicle Interaction

The improvements done on the intersection have dramatically increased the safety at the intersection. In the short period of time the project has been completed, accidents with vehicles have minimized and the interactions with pedestrians has improved.

INTERSECTION SAFETY UPDATE - SPRING/COOPER ST. (CITY MARKET INTERSECTION)

BACKGROUND:

During the winter of 2019, staff visited this intersection with Council. Council directed staff to obtain data at this intersection and return to council for discussion. During the spring and summer of 2019, staff reviewed the interaction between users and summarized the findings.

This intersection has a 2-way stop sign (West and East sides) and has high pedestrian traffic (Figure 4).



Figure 4 – Pedestrian Safety Changes

DISCUSSION:

A little over 30% of vehicles stop at the stop bar (Figure 5). Approximately one third stop in the intersection and one third does not stop at all. This is an indication that vehicles have a poor visibility of the intersection from the stop bar. Additionally, there is a significant number of near misses during a four-hour interval which means that the interactions between vehicles and pedestrian has a high potential of collision.

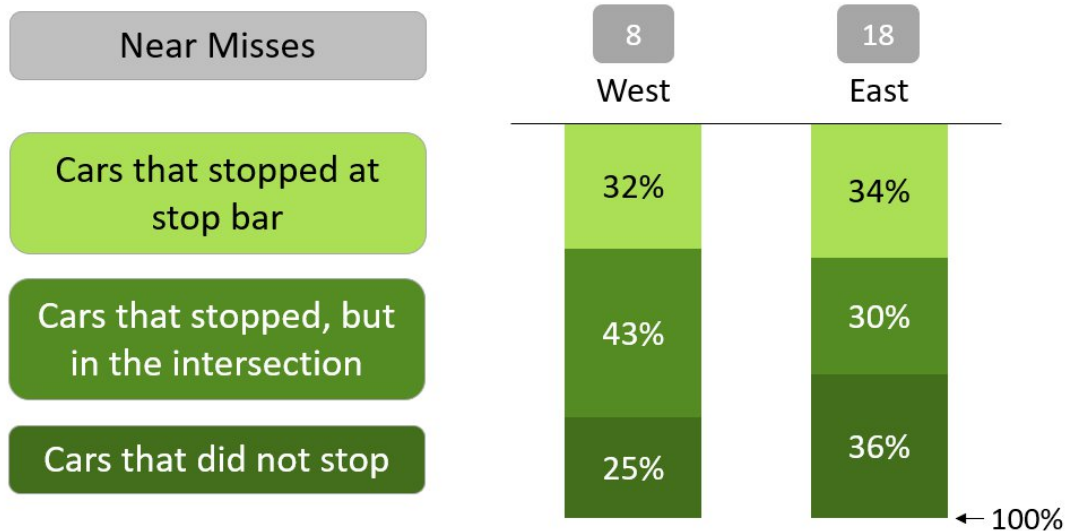
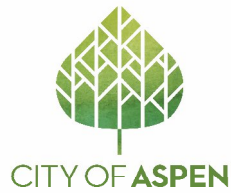


Figure 5 – Vehicle Stop Sign Interaction

The pedestrian vehicle interaction on the South and North sides is not great (Figure 6). Additionally, there was a significant number of near misses during a four-hour interval.

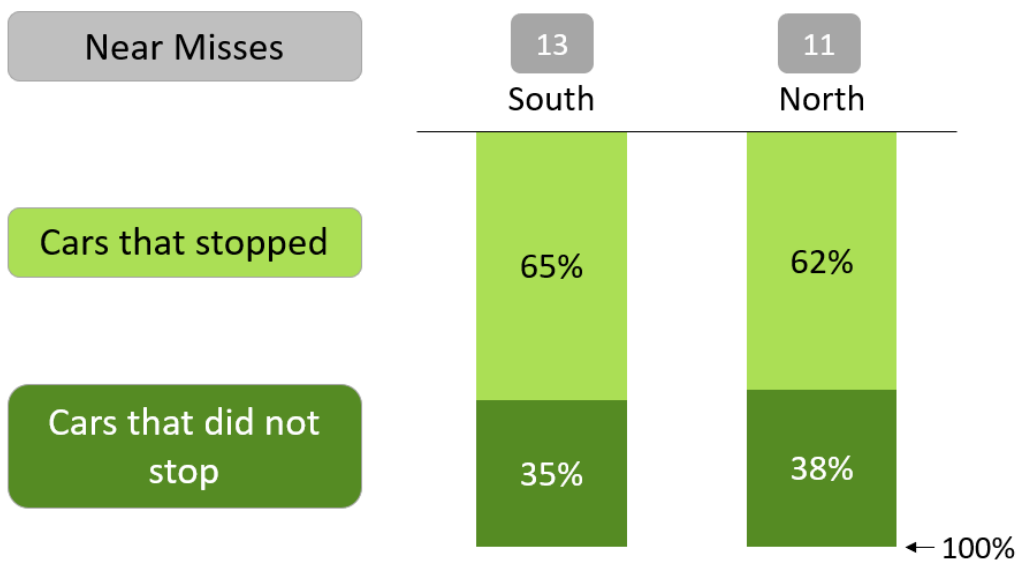


Figure 6 – Pedestrian-Vehicle Interaction

FINANCIALS:

Staff has allocated a sum of \$230,000 in 2021 for construction. This amount is estimated to accommodate full infrastructure modifications and can be reduced based on Council's input.



RECOMMENDATION:

Staff recommends proceeding with design alternatives that will improve the interactions within the intersection. Staff would present alternatives and their associated cost impacts at a later work session.

UPCOMING PROJECT UPDATES

BACKGROUND:

Below is a list of current projects:

- Park Circle Pedestrian Improvements (Construction to commence in 2020)
- Park and Midland Avenue (Currently in Community Engagement)
- CDOT ADA Improvements (Design to commence in 2020, construction expected 2020/2021)

RECOMMENDATION:

Staff will be returning to Council on consent agenda for Park Circle and will be returning to Council with updates on the progress of Park and Midland Avenue and CDOT ADA improvements.

PABST

BACKGROUND:

Pedestrian and Bicycle Safety Team, also known as PABST, is an interdepartmental group that promotes and protects safety, ease of access, and quality of life in the City. PABST was created to address citizen concerns within the right-of-way that involves several departments in a collaborative effort.

DISCUSSION:

PABST acts as a funnel between multiple departments for citizens to raise issues involving the right-of-way. The group effectively addresses concerns by incorporating viewpoints and experience from multiple departments. Departments represented are: Engineering, Police, Transportation, Parks, Environmental Health, Streets, and Parking.

CITY MANAGER COMMENTS: _____



CITY OF ASPEN

STREETSMART 

Street Smart

Vehicle, Pedestrian and Bike Safety Updates

Pete Rice, P.E.
Raquel Flinker, E.I.T.

January 27, 2020

Street Smart Safety Updates

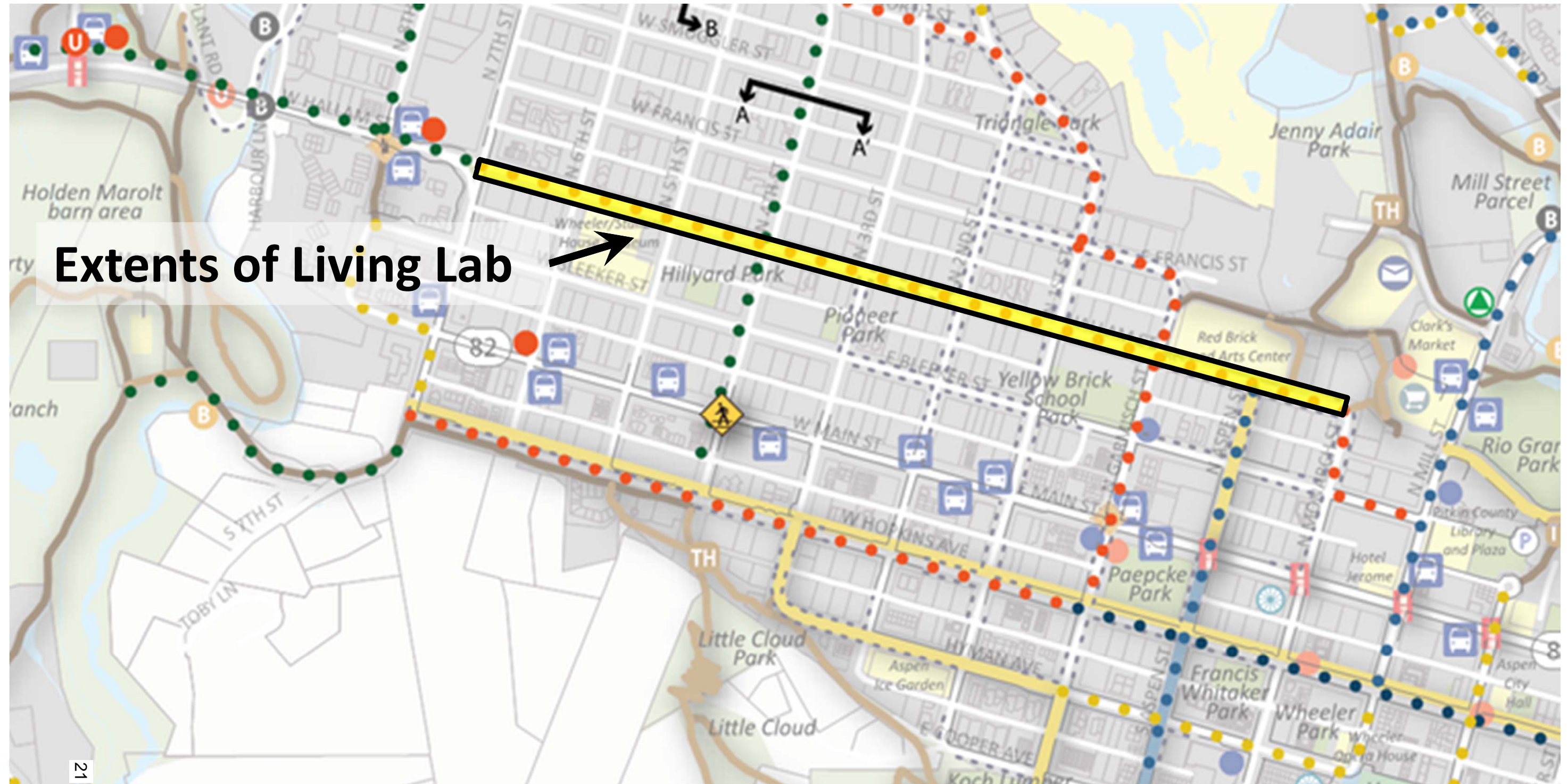
1. Hallam Street Ped Bikeway
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5. Pedestrian and Bicycle Safety Team (PABST)



CITY OF **ASPEN**

Hallam Street Ped Bikeway Summer Living Lab

Hallam Street Ped Bikeway



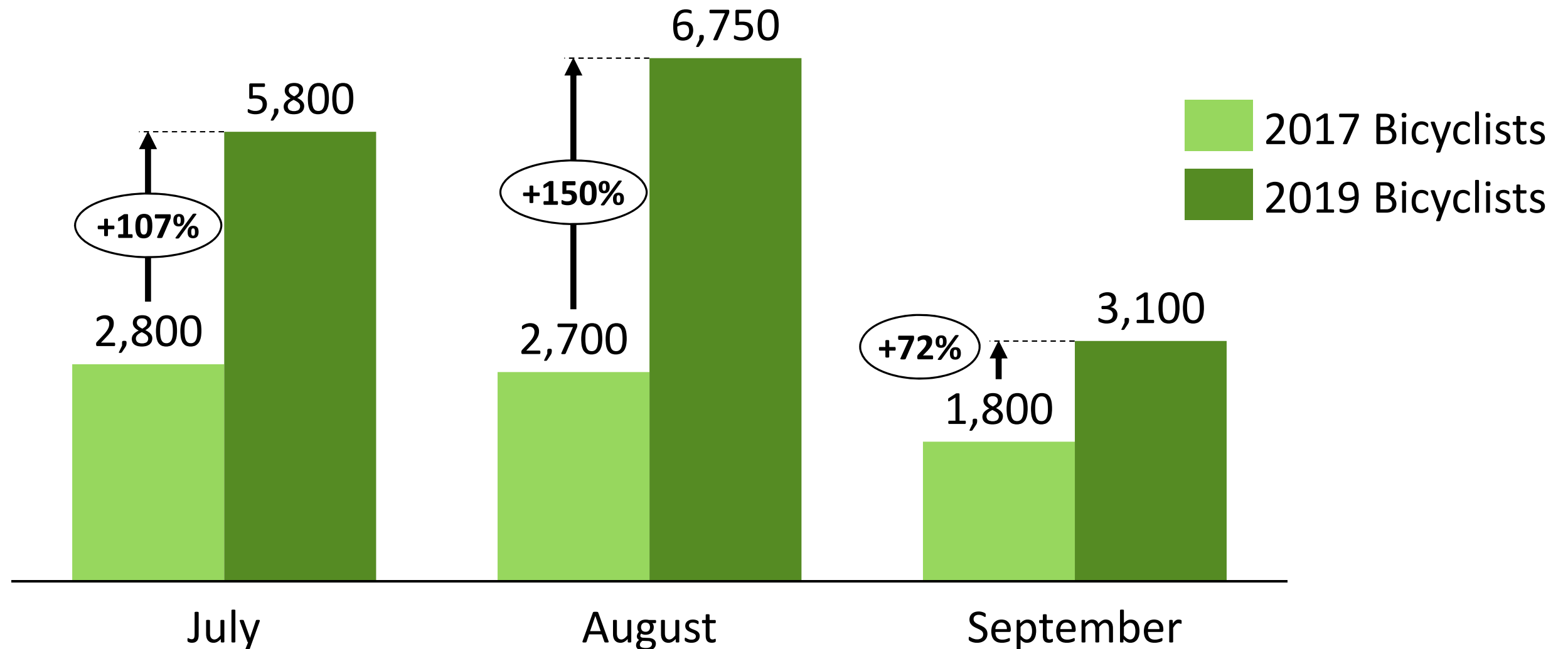
Living Lab Objectives - Summer 2019

- Observe bike and pedestrian mobility.
- Receive feedback from the community.
- Acquire vehicle data in the west end to determine traffic impact.
- Review route modifications and interactions between users.



Hallam Street Ped Bikeway

Bicycles are increasing substantially!
No complaints on vehicle and bike interactions during lab!

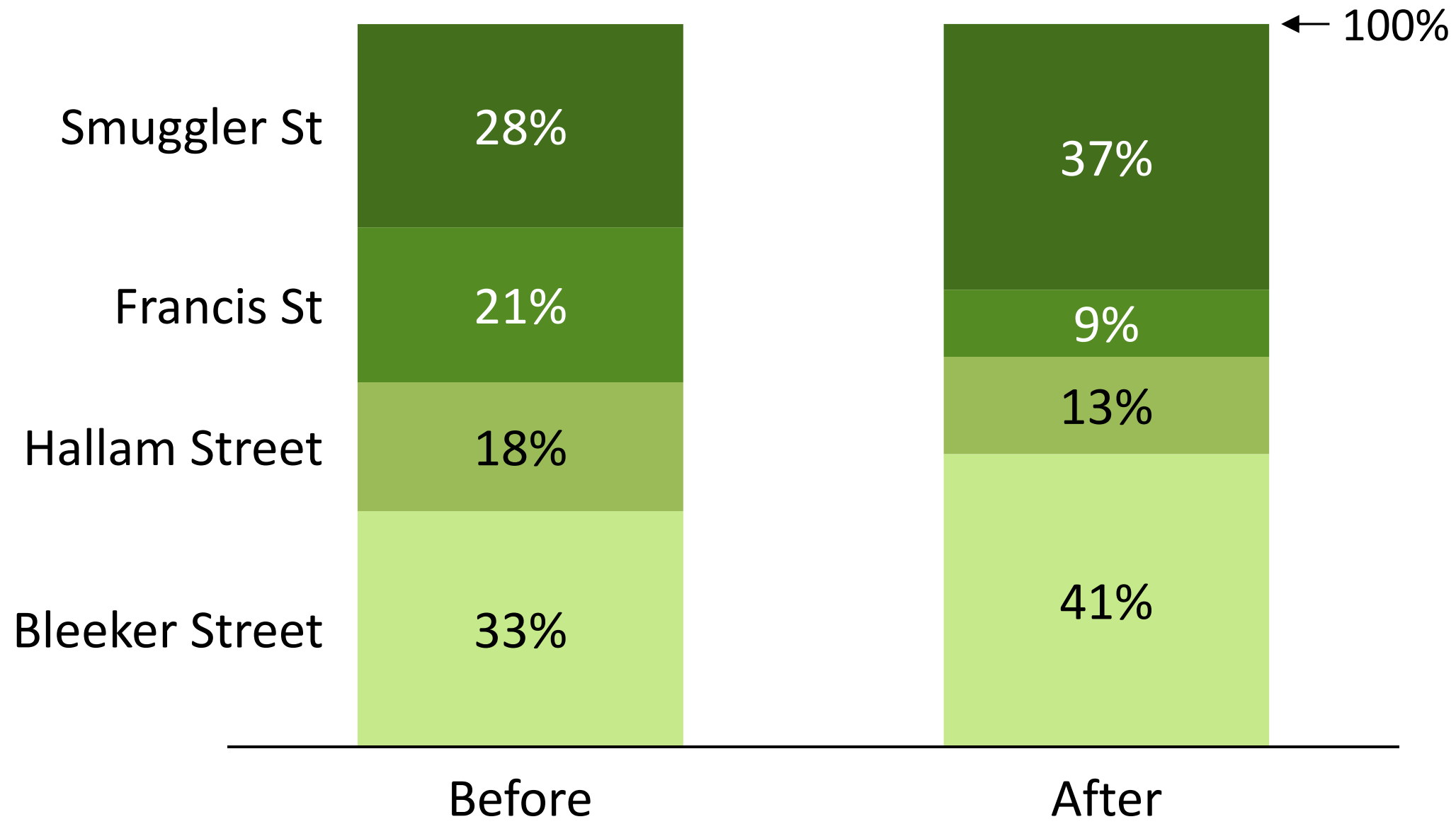


Public Feedback Topics

1. Reverse stop signs on 2nd Street to allow bicycles better movement.
2. Modify 4-way stops at 1st & Garmisch Streets.
3. Vehicle impact in surrounding neighborhoods.
4. Everyone wants the ped bikeway on the street they live on.



Outbound Vehicle Traffic



Why Hallam Street?

- Studied throughout the Bike and Ped Master Plan Phase II project
- Direct connection with the ABC/CCB Trail
- Hallam Street used as a bike corridor prior to implementation
- Direct connection to the Yellow Brick, Red Brick, Post Office Trail and Clarks Cutoff Trail
- Stop signs are more favorable to bikers
- Only two blocks of separation from Main Street – this is more favorable for bikers and pedestrians

Hallam Street Ped Bikeway

Staff Recommendation:

Adoption of Hallam St. as a Ped Bikeway





CITY OF **ASPEN**

Traffic Signal Maintenance

Traffic Signal Maintenance



Traffic Signal Maintenance

To better meet community needs, the City is pursuing an IGA with CDOT for:

1. Traffic signal timing
2. Traffic signal maintenance (preventative & emergency)
3. Crosswalk Maintenance

As part of this effort, the City put an RFP out in 2019.



Traffic Signal Maintenance

Item	CDOT's contribution/ year	Contract costs/ year
Traffic Signal Preventative Maintenance	~\$20,000	~\$17,500
Traffic Signal Emergency Maintenance	-	~\$1,200
Crosswalk Maintenance	~\$5/ sq.ft.	\$4.50/ sq.ft. (Streets Dept.)

*Estimated from CDOT current maintenance hours

CDOT would contribute ~\$74,000 of the total costs of ~\$114,000 to upgrade the traffic signals.

Traffic Signal Maintenance

Staff is seeking direction from Council and recommends:

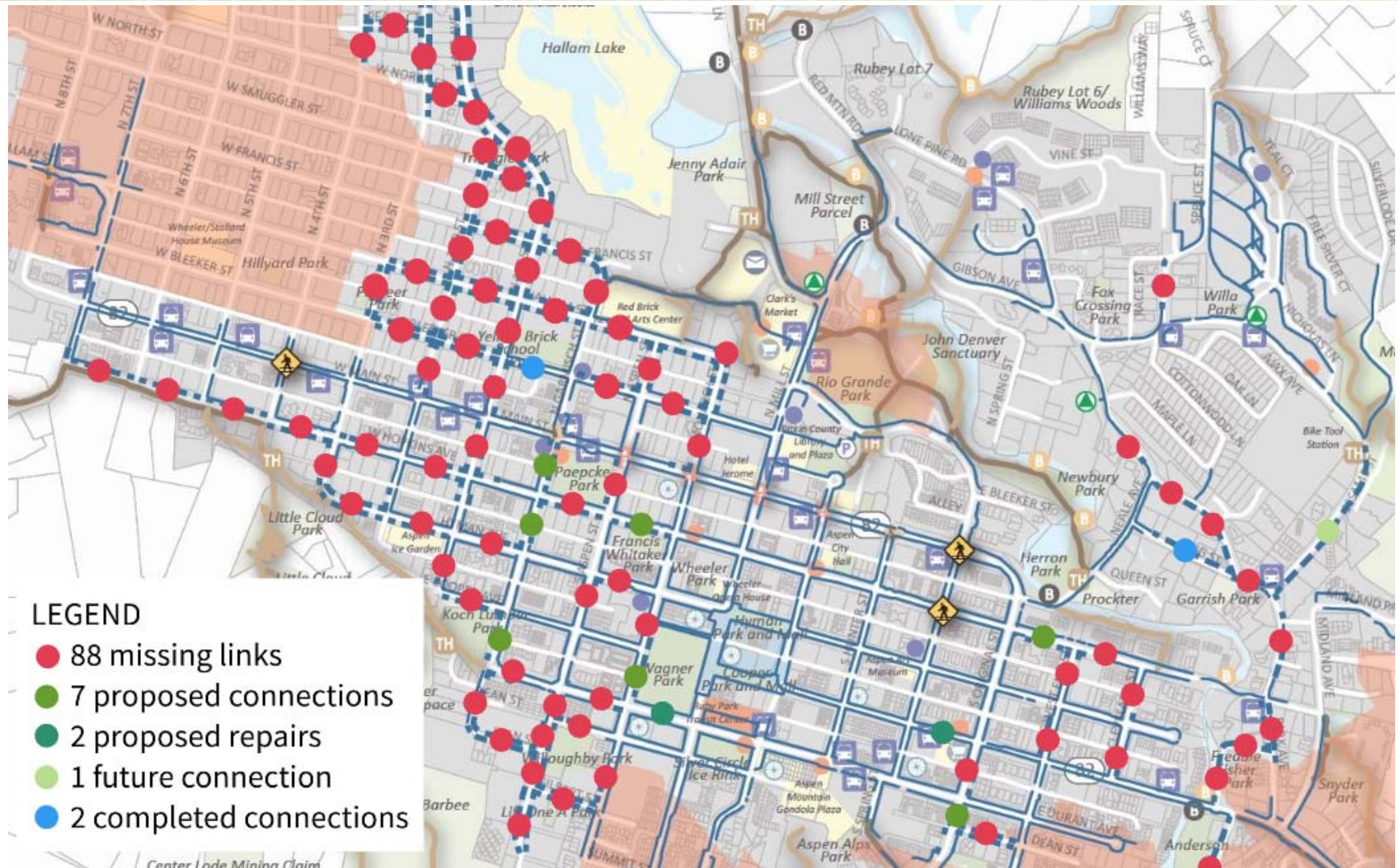
- Pursue of IGA with CDOT
- Approval of maintenance contract with TS&L



CITY OF **ASPEN**

Critical Pedestrian Connections

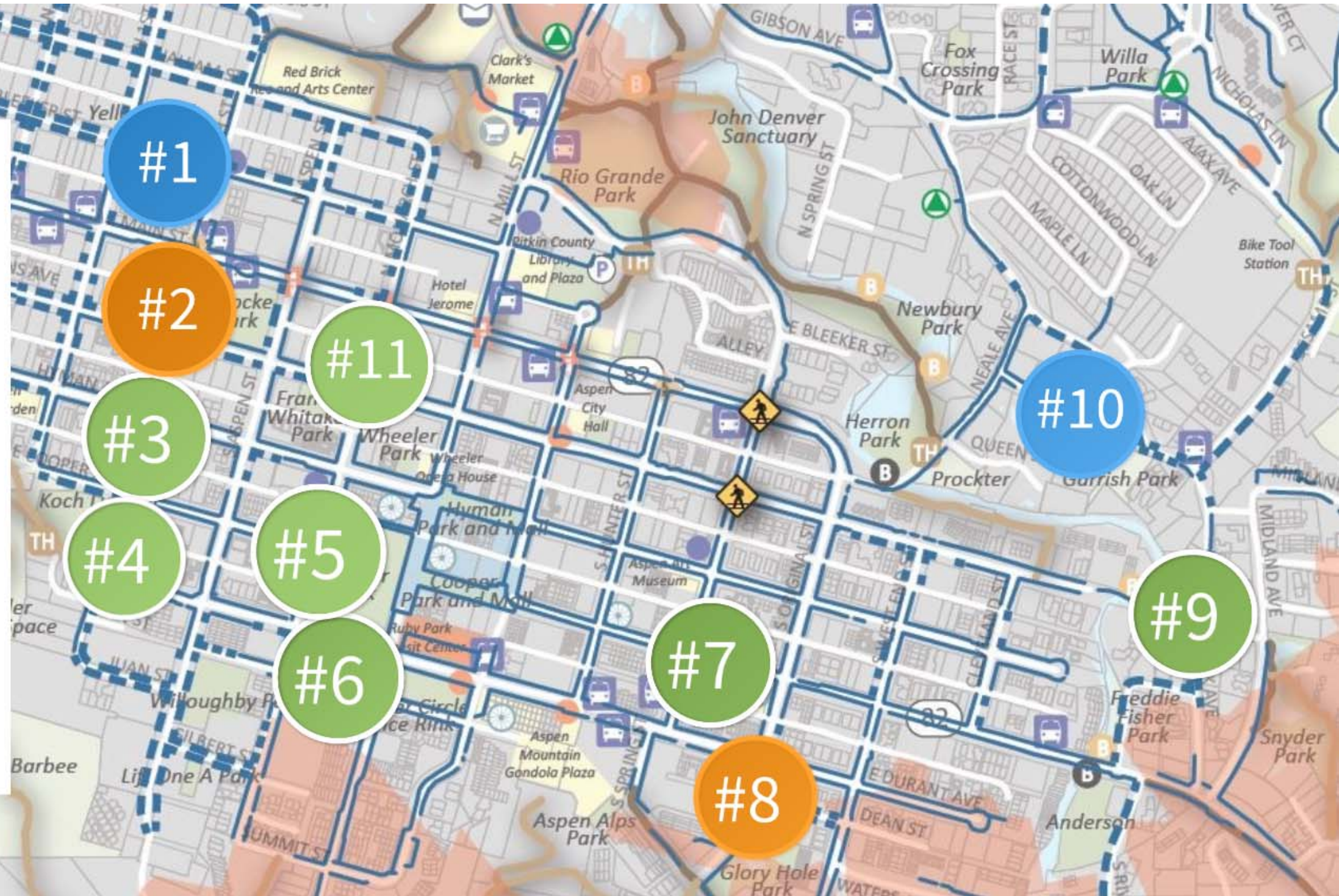
Proposed Sidewalk Connections



Critical Pedestrian Connections

LEGEND

1. Bleeker St (Completed)
2. Paepcke Park (On-going)
3. S Garmisch St (2022)
4. Koch Park (2024)
5. Wagner Park (2027)
6. Wagner Park Sidewalk Repair (2027)
7. Spring and Cooper St (2021)
8. Original St/ Ute Av (On-going)
9. Hopkins St/ Park (TBD)
10. King St (Completed)
11. Francis Whittaker Park (2025)



Completed Pedestrian Connections

Before:

After:

Bleeker St.



King St.



Critical Pedestrian Connections

- Staff recommends that the Council completes all of the recommended projects.
- Does Council have any projects that should be added or removed from this list?



CITY OF **ASPEN**

Intersection Safety Update – Spring/Main Street

Spring and Main St. Intersection

Before:

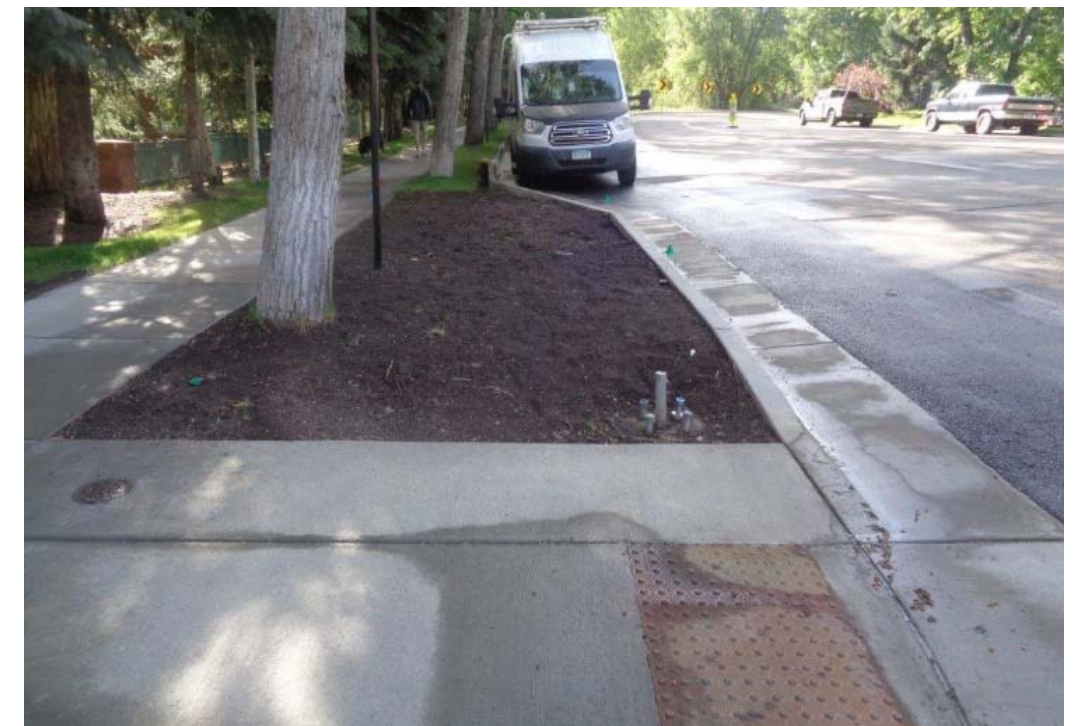


After:



Intersection Improvements

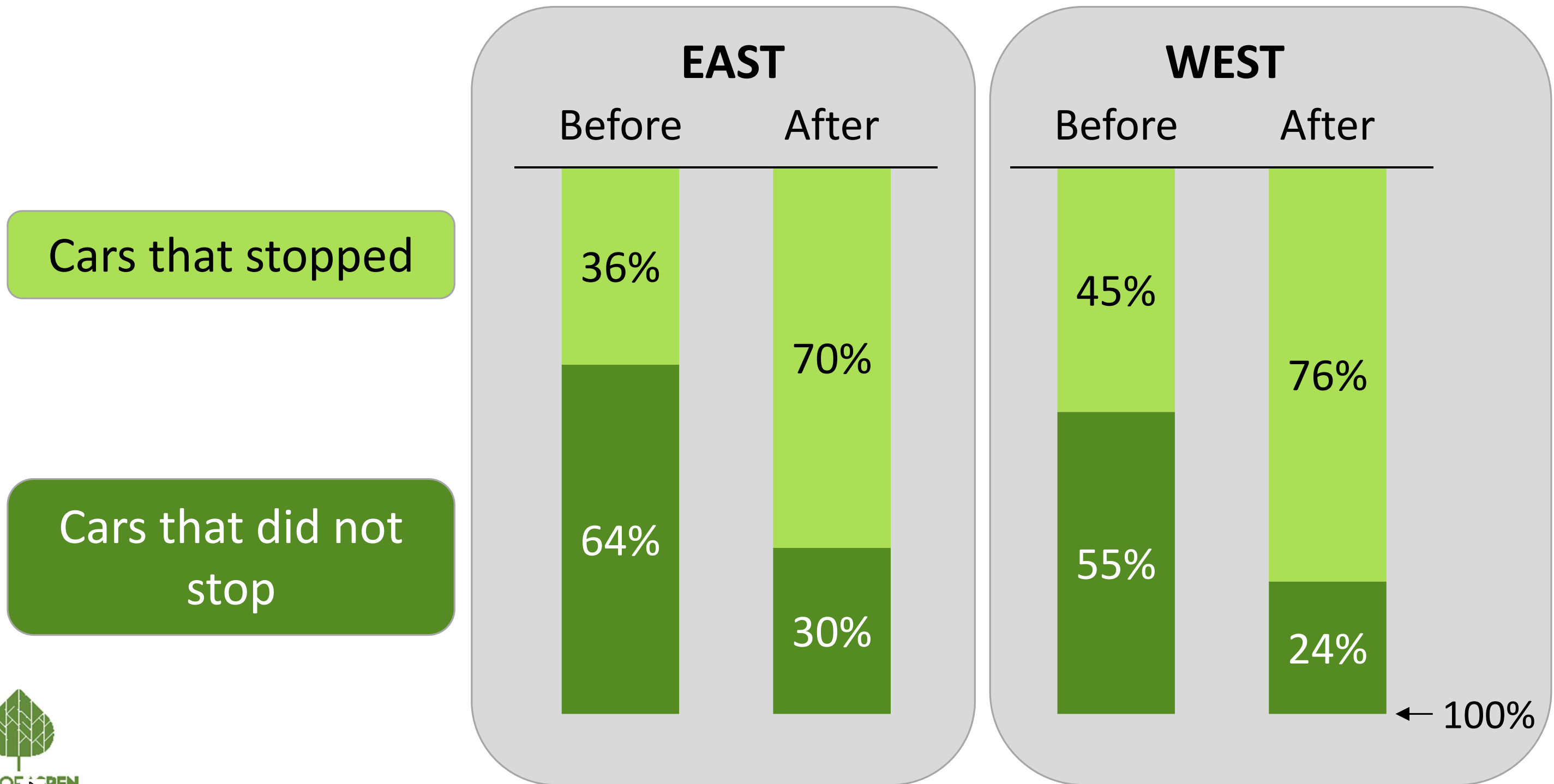
- Curb side extension on the East side
- Crosswalk addition on East side
- Rapid Flashing Beacons on both the West and East sides
- Lanes re-striping



Spring and Main St. Intersection



Pedestrian – Vehicle Interaction





Intersection Safety Update – Spring/Cooper Street

Spring and Cooper Intersection



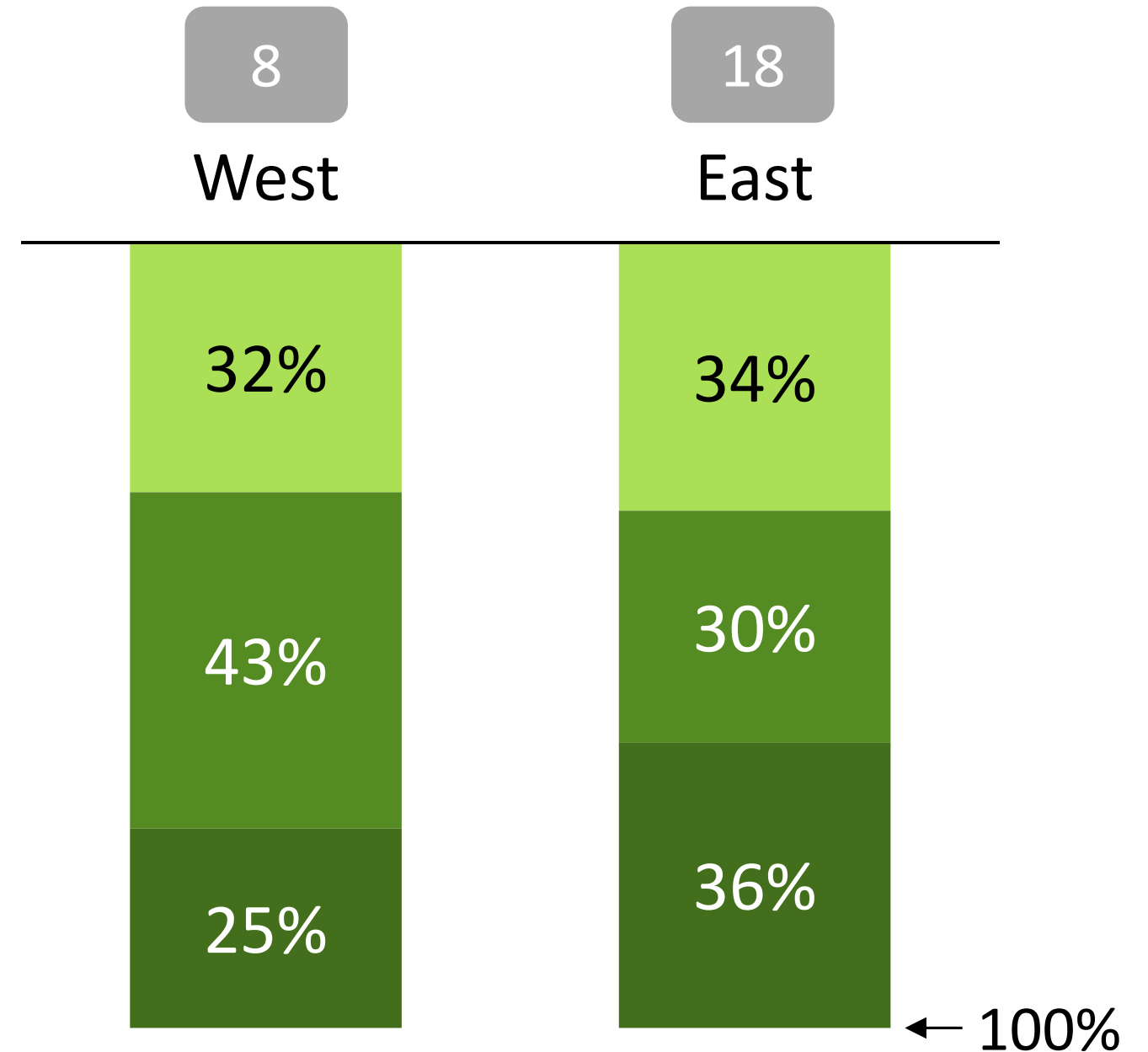
Vehicle Stop Sign Interaction

Near Misses

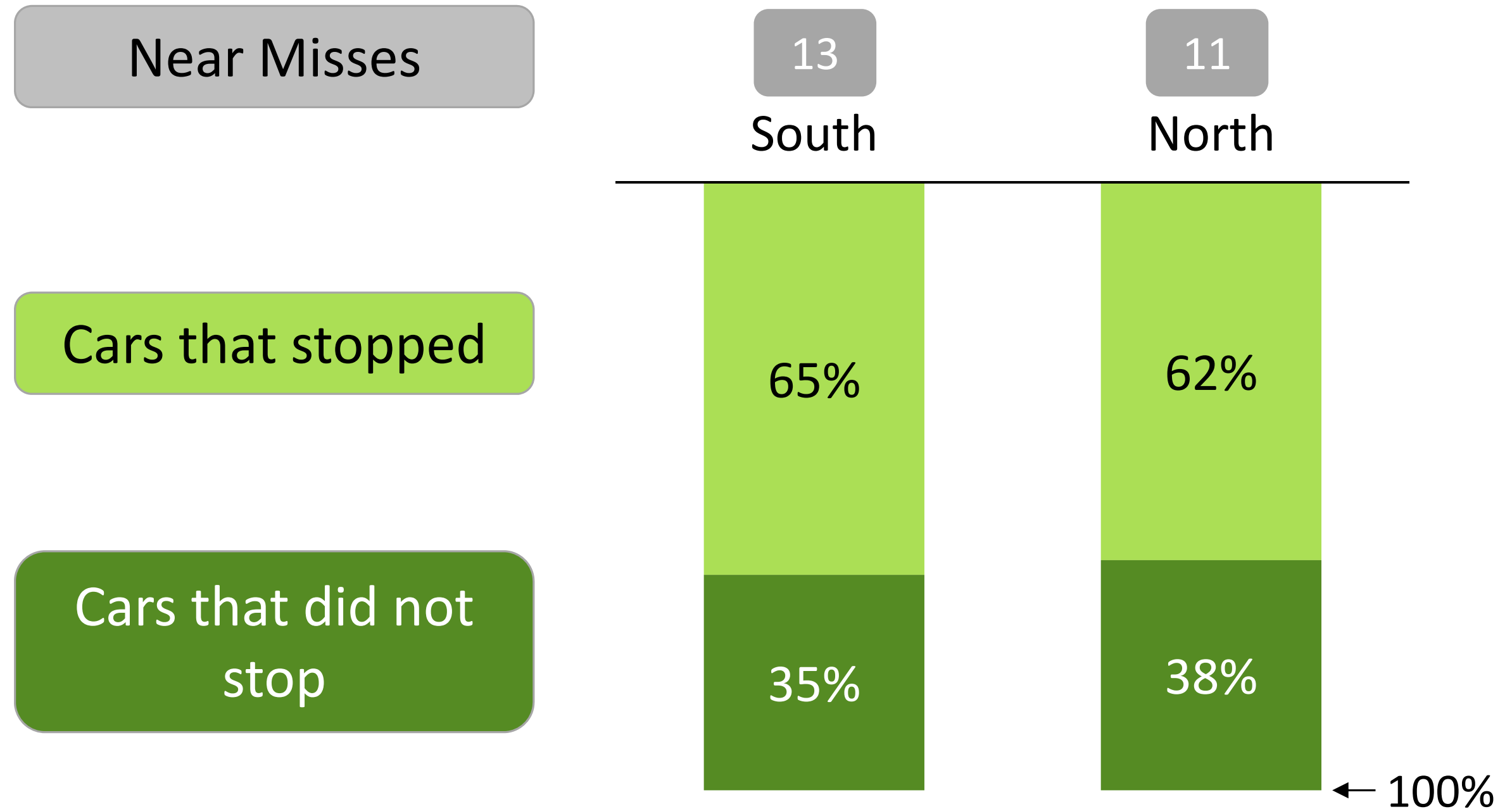
Cars that stopped at stop bar

Cars that stopped, but in the intersection

Cars that did not stop



Pedestrian – Vehicle Interaction



Spring and Cooper Intersection

Staff is seeking direction from Council and recommends:

- Proceeding with design alternatives that would improve the interactions within the intersection



CITY OF **ASPEN**

Upcoming Project Updates

Upcoming Project Updates

- Park Circle
- Park and Midland Avenue
- CDOT ADA Improvements



Pedestrian and Bicycle Safety Team (PABST)

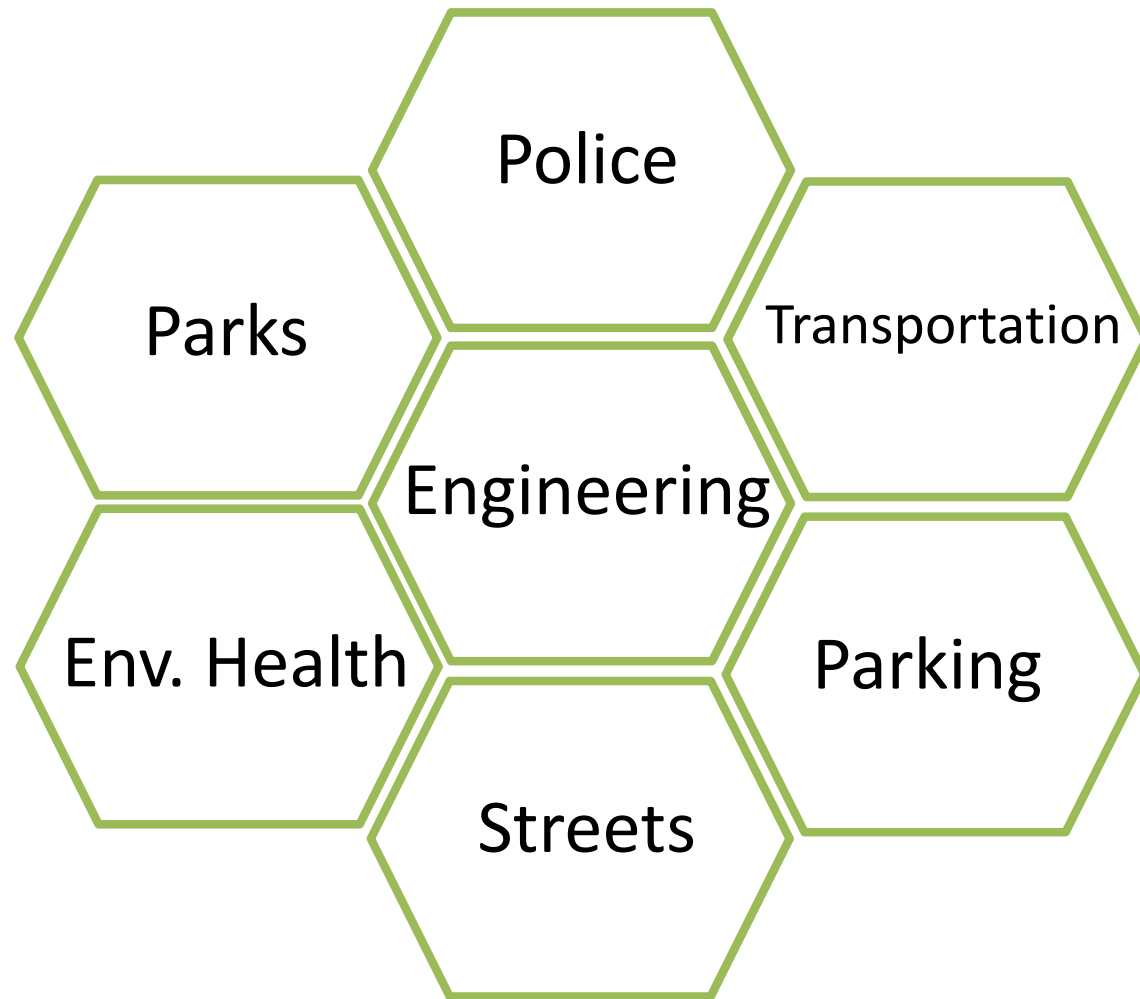
What is PABST?

Interdepartmental group that:

- Acts as a funnel between multiple departments for citizens to raise issues involving the right-of-way
- Promotes and protects safety, ease of access, and quality of life in the City
- Effectively addresses safety concerns throughout the right-of-way by incorporating multiple departments in one setting



What is PABST?



Project Highlights

- Sight lines at intersections
- Traffic calming
- Pedestrian crossings
- Snow melted bus stops
- Sidewalk installation
- Roadway slopes



MEMORANDUM

TO: Mayor and City Council

FROM: Jannette Whitcomb, Environmental Health and Sustainability

THROUGH: CJ Oliver, Environmental Health and Sustainability Director
Phillip Supino, Community Development Director

MEETING DATE: January 27, 2020

RE: Smoking Ordinance Update

REQUEST OF COUNCIL: Staff is seeking Council direction on suggested improvements to the City's Smoking Ordinance, Municipal Code Section 13.16.010, in response to 2019 Colorado legislative changes to the Colorado Clean Indoor Air Act.

SUMMARY AND BACKGROUND:

In 1985, Aspen became one of Colorado's first municipalities to prohibit smoking in public places with the passage of a smoking ordinance. The Aspen ordinance banned smoking in places such as restaurants, bars, retail shops and offices. Aspen's smoking ordinance outlined where smoking was allowed and where it wasn't. It set forth detailed ventilation requirements for establishments which could continue to allow smoking including a completely separated smoking area for cigars. Aspen only has one existing smoking establishment. In 2010, Council updated the existing smoking ordinance to include a section prohibiting smoking outside on designated city owned properties.

In 2006, Colorado passed a statewide Clean Indoor Air Act banning any smoking in restaurants and bars. Aspen's section allowing smoking in bar areas became obsolete. Staff began using both the state's and city's smoking ordinances for the protection against secondhand smoke. In 2019, the state legislature updated the Colorado Indoor Air Act to include a ban on all nicotine products such as e-cigarettes and vaping. It also eliminated most exemptions for smoking indoors, except for preexisting establishments where primary sales were from tobacco products, such as Aspen's Cigar Bar.

Since the update to the Colorado Clean Indoor Air Act, the section in Aspen's code that remains relevant is section 13.16.040(h), prohibiting smoking outside on designated city owned property. However, the City's ordinance currently does not include e-cigarettes and vaping under its definition of tobacco products. Thus, this section is limited to only the protection against secondhand smoke from cigarette and cigar smoke and not vapors from e-cigarettes and vaping.

DISCUSSION:

Many sections of Aspen's current smoking ordinance are superseded by the Colorado Clean Indoor Air Act. This causes confusion for staff and the public in the administration of the ordinance and the protection of the public from secondhand smoke and vapor.

Staff propose replacing Aspen's existing smoking ordinance with a new ordinance that includes the State's Colorado Clean Indoor Act by reference, and section 13.16.040(h), prohibiting smoking outside on designated city owned property. This update will also cover the prohibition of vaping and e-cigarette use in all designated non-smoking areas.

An updated smoking ordinance would provide staff and the public a clear understanding of the rules on smoking in and around all public buildings (the statewide Clean Indoor Act) and outside (designated non-smoking areas on city owned property). The updates will make Aspen's smoking regulations easier for the public to understand and simpler for staff to administer.

The smoking ordinance represents one piece of a complex air quality program for the City. Aspen has a long history of improving the air our community breaths through voluntary and regulatory programs. Aspen's outdoor air quality program will be under review in the coming years with opportunities for updates and revisions. This review is triggered by the completion of our "maintenance" status with the Environmental Protection Agency (EPA) for violating National Ambient Air Quality Standard for particulate matter in the early 1980's. After November 18, 2023, Aspen will be out of the EPA Maintenance State Implementation Plan program. At that time, Aspen will lose access to Congestion Mitigation and Air Quality funding for programs like Car To Go and WE-cycle.

Additionally, climate change will exacerbate Aspen's air quality vulnerabilities. After the EPA regulations subside, the City of Aspen will need support for current and future air quality programs from the community which may not know our air pollution history nor understand the protection measures implemented to keep Aspen's air clean.

Now is the time to both celebrate our air quality accomplishments and plan for our air quality future. As we transition from supervisory status by the State and EPA, it is imperative to develop plans and regulations to protect and further improve air quality throughout the City. In 2020, staff will start the planning process with City Council, staff, community stakeholders and the public to plan for the future of air quality management and programming in Aspen.

FINANCIAL IMPACTS:

The repeal and adoption of a new smoking ordinance or revision to the existing ordinance will not require any additional funding. There will not be a financial impact to businesses from these changes as the regulations are already in effect for the community.

ENVIRONMENTAL IMPACTS:

In 1964, the first Surgeon General's report on smoking recognized the proven link between smoking and lung cancer. In 1986, the 19th Surgeon General's report on "The Health Consequences of Involuntary Smoking" officially acknowledged and emphasized the harmful effects of secondhand smoke. And in 1993, the U.S. Environmental Protection Agency published a report concluding that secondhand smoke was responsible for approximately 3,000 lung cancer deaths each year in nonsmoking adults and impairs the respiratory health of hundreds of thousands of children.

In recent years, nicotine vapor products (e-cigarettes and vaping) have become popular, especially among young adults and children. Per the Center for Disease Control (CDC), the use of e-cigarettes is unsafe for kids, teens, and young adults. Most e-cigarettes contain nicotine, which is highly addictive and can harm adolescent brain development, which continues into the early to mid-20s.

E-cigarettes can contain other harmful substances besides nicotine. These products are dangerous for the user and they expose bystanders to secondhand vapor that is not safe to breathe, including cancer-causing chemicals, heavy metals and nicotine.

In conjunction with the Colorado Clean Indoor Air Act, an updated City of Aspen indoor air quality regulation and smoking ban will help to provide significant protection from exposure to secondhand smoke and vapors.

ALTERNATIVES:

Council could amend the existing ordinance definitions to include e-cigarettes and secondhand vapor. This would strengthen the section regulating outside smoking as it would include all forms of nicotine use. However, it would not change the fact that our local ordinance is more lenient than the Colorado Clean Indoor Act in the protection against secondhand smoke and vapor inside buildings. Confusion would remain about which regulation applies to a situation for both the public and staff.

This alternative would not lessen the public's protections against secondhand smoke and vapor as the Colorado Clean Indoor Act would be enforceable where Aspen's codes are more lenient.

RECOMMENDATIONS: Staff recommend Council direct staff to write a new smoking ordinance that repeals the existing ordinance and replaces it with a reference to the Colorado Clean Indoor Act with a section which allows for the regulation of tobacco product use outside on designated city owned property that includes vaping and e-cigarettes.

CITY MANAGER COMMENTS: