

August 15, 2017

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

● ROLL CALL

PRESENT: Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak  
Staff Present: Atteberry, Daggett, Coldiron, Knoll

● AGENDA REVIEW: CITY MANAGER

City Manager Atteberry stated the agenda has been amended to reflect the withdrawal of Item 16, *First Reading of Ordinance No. 113, 2017, Amending Section 2-203 of the Code of the City of Fort Collins Relating to the Functions of the Cultural Resources Board*, and Item 25, *First Reading of Ordinance No. 020, 2017, Authorizing the Conveyance of a Portion of City-Owned Property at Running Deer Natural Area to Big Foot Properties, LLC*.

● CITIZEN PARTICIPATION

Eric Sutherland requested clarification regarding the Senior Center lease and discussed the poor performance of the Vine and Lemay intersection, stating the City's financial priorities are skewed.

Kathryn Dubiel discussed Item No. 19, *Resolution 2017-077 Approving Revised Costs and Fees for Fort Collins Municipal Court*. She stated the Municipal Court filing fee is egregious and should be consistent with other municipalities.

● CITIZEN PARTICIPATION FOLLOW-UP

City Manager Atteberry stated the financial transaction for the parking structure and the public/private partnership with the Elizabeth Hotel closed Tuesday, August 7, and related documents are public.

Mayor Troxell requested input regarding the Municipal Court filing fee. City Attorney Daggett replied the costs that are the basis for the fee relate to administrative costs and were not intended to cover Court operations or the Judge's time.

Mayor Troxell stated the Vine and Lemay intersection is a priority for the community.

● CONSENT CALENDAR

Mayor Pro Tem Horak withdrew Item No. 9, *Second Reading of Ordinance No. 099, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Blehm-Homestead Annexation to the City of Fort Collins, Colorado and Approving Corresponding Changes to the Sign District Map*, from the Consent Agenda.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt and approve all items not withdrawn from the Consent Agenda.

<b>RESULT:</b>	<b>CONSENT AGENDA ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Bob Overbeck, District 1
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

1. **Consideration and Approval of the Minutes of the July 5 and July 18, 2017 Regular Council Meetings, the June 27, 2017 Special Council Meeting and the July 25, 2017 Adjourned Council Meeting. (Adopted)**

The purpose of this item is to approve the minutes from the July 5 and July 18 Regular Council meetings, the June 27, 2017 Special Council meeting and the July 25, 2017 Adjourned Council meeting.

2. **Second Reading of Ordinance No. 088, 2017, Amending the Land Use Code Sign Regulations. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 5, 2017, updates the Land Use Code (LUC) sign regulations with content neutral standards. The Ordinance has two changes from First Reading to correct an omission in a table and the definition of feather flag. In Section 3.8.7.2 Table G2 (page 29 of the Ordinance) did not include the duration of time a feather flag could be displayed. The table was corrected and now includes the display time. The definition of feather flag included an extra word that has been deleted (page 34 of the Ordinance).

3. **Second Reading of Ordinance No. 091, 2017, Appropriating Unanticipated Revenue Relating to a Federal Emergency Management Agency Grant for Acquisition and Remediation of Property Adjoining the Downtown Whitewater Park Area. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 18, 2017, appropriates a \$232,509 Federal Emergency Management Agency (FEMA) grant. The total budget approved by FEMA is \$265,725 which includes \$33,216 that has been previously appropriated by the City. The funds will pay for the acquisition and remediation of a property adjoining the downtown whitewater park area.

4. **Second Reading of Ordinance No. 094, 2017, Amending Part 18 of the Fort Collins Traffic Code Regarding the Towing and Impounding of Vehicles on Public Rights-of-Way. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 18, 2017, amends the Traffic Code to allow for the immediate removal and impoundment of vehicles on public streets and alleys as a means of enforcing violations to the Residential Parking Permit Program (RP3) for Colorado State University (CSU) major stadium events. The Code change would also allow the City to create new tow-away zones, if needed in the future.

5. **Second Reading of Ordinance No. 095, 2017 Amending Section 19-65 of the Code of the City of Fort Collins Regarding the Citation Procedure for Civil Infractions to Include an Exception for Parking on Yards. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 18, 2017, amends City Code to allow for immediate ticketing for parking on yards during Colorado State University (CSU) game days and major stadium events.

6. **Second Reading of Ordinance No. 096, 2017, Calling a Special Municipal Election To Be Held In Conjunction With the November 7, 2017 Larimer County Coordinated Election. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 18, 2017, calls a Special Municipal Election to be held in conjunction with the November 7, 2017 Larimer County Coordinated Election, and to preserve the opportunity for Council to place initiated or referred issues on the November ballot. If Council decides to place any measures on the ballot relating to Charter amendments, it would need to do so no later than August 29 in order to meet statutory requirements for publication. If Council does not take action by ordinance or resolution before the statutory deadline (September 8) to certify ballot language to Larimer County, the election will be cancelled and the provisions of this Ordinance will be of no further force and effect.

This Ordinance does not submit a specific measure to the November 7, 2017 ballot. Adoption of this Ordinance is a required step in preserving the option for City Council to submit any ballot measures that Council may desire, at the November 7, 2017 Coordinated Election.

7. **Second Reading of Ordinance No. 097, 2017, Vacating a Portion of Lincoln Avenue Right-of-Way Dedicated on the Fort Collins Original Town Plat Dated January 17, 1873, with the Reservation of a Drainage and Utility Easement. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 18, 2017, vacates a portion of Lincoln Avenue that is no longer necessary or desirable to retain for street purposes. During the design process for the Lincoln Corridor Improvements Project - Phase I, it was determined that there was a portion of right-of-way that was no longer necessary to retain. The request to vacate was made by the City of Fort Collins Engineering Department.

8. **Second Reading of Ordinance No. 103, 2017, Appropriating Prior Year Reserves in the General Fund for the Conduct of a Special Election on November 7, 2017, that was not included in the 2017 Adopted City Budget. (Adopted)**

This Ordinance, unanimously adopted on First Reading on August 8, 2017, appropriates \$150,000 from prior year reserves for the conduct of the November 7, 2017, Special Election. This is an estimated amount based on prior participation in coordinated elections. Final costs will be determined by the number of eligible Fort Collins voters, and the number of entities participating/sharing in the cost of the election.

9. **Items Relating to the Vida Sana Program. (Adopted)**

- A. Resolution 2017-047 Authorizing the City Manager to Execute a Grant Agreement with the Poudre Valley Health Systems Foundation for Delivery of Vida Sana Project Programming.
- B. First Reading of Ordinance No. 106, 2017, Appropriating Unanticipated Grant Revenue in the Recreation Fund for the Vida Sana Program.

The purpose of this item is to approve the Vida Sana subgrant agreement and appropriate subgrant funds in the amount of \$18,451 from the Colorado Department of Public Health and Environment, through the Poudre Valley Health Systems' (PVHS) Community Health Improvement Department. The Vida Sana Grant will address the needs of targeted health disparate populations in Fort Collins by allowing specific discounted programming cost for Northside Aztlan Community Center (NACC) exercise programs.

10. **First Reading of Ordinance No. 107, 2017, Appropriating Unanticipated Grant Revenue in the General Fund and Transferring Funds from the Community Development and Neighborhood Services Operating Budget to the Grant Budget for the Restorative Justice Program.**  
(Adopted)

The purpose of this item is to appropriate grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services (CDNS). A grant in the amount of \$67,612 has been received from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) for all other offenses. The grant period for is July 1, 2017, to June 30, 2018. This is the first year in a 3-year cycle for the Juvenile Diversion grant.

11. **Items Relating to Additional Allocations of Funding to Projects Funded in 2017 Spring Cycle of the Competitive Process for Allocating City Financial Resources to Affordable Housing and Community Development Activities Utilizing Funds from the Federal Community Development Block Grant Program, Federal HOME Investment Partnerships Program, the City's Affordable Housing Fund Program and the City's Human Services Program (HSP).**  
(Adopted)

- A. Resolution 2017-075 Rescinding Resolution 2017-042 and Approving Revised Allocations to the Programs and Projects that Will Receive Funds from the Federal Community Development Block Grant Program, HOME Investment Partnerships Program, the City's Affordable Housing Fund, and the City's Human Services Program.
- B. First Reading of Ordinance No. 109, 2017, Appropriating Unanticipated Revenue in the Community Development Block Grant Fund.
- C. First Reading of Ordinance No. 110, 2017, Appropriating Unanticipated Revenue in the HOME Investment Partnerships Fund.

The purpose of this item is to appropriate the additional funding received from the Department of Housing and Urban Development (HUD) for 2017 and distribute the final funding allocations proportionately in accordance with the Community Development Block Grant Commission's (CDBG) recommendations. This will complete all funding allocations related to the 2017 Spring Cycle of the Competitive Process. Resolution 2017-075 rescinds the resolution passed by the City Council in May 2017 to allocate funding and completes the final distribution of funding to the 2017 Spring Cycle of the Competitive Process for allocating \$1,174,289 in City financial resources to human service programs, affordable housing projects and the administration of the CDBG and HOME programs for the fiscal year that begins October 1, 2017. Ordinance No. 109, 2017, appropriates the increase in allocations to the FY2017 CDBG from HUD and Ordinance No. 110, 2017 appropriates the increase in allocations to the FY2017 HOME Participating Jurisdiction (PJ) Grant from HUD.

12. **Items Relating to the Interstate Land Holdings Annexation to the City of Fort Collins.**  
(Adopted)

- A. Resolution 2017-076 Setting Forth Findings of Fact and Determinations Regarding the Interstate Land Holdings Annexation.
- B. First Reading of Ordinance No. 111, 2017, Annexing the Property Known as the Interstate Land Holdings Annexation to the City of Fort Collins, Colorado.

The purpose of this item is to annex an area of approximately 12.139 acres in southeast Fort Collins. The property is situated on the northwest corner of the I-25 and Carpenter Road intersection. The Initiating Resolution was adopted on consent, July 5, 2017.

13. **First Reading of Ordinance No. 112, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in Interstate Land Holdings Annexation to the City of Fort Collins, Colorado and Approving Corresponding Changes to the Sign District Map. (Adopted)**

*This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2017-017.*

The purpose of this item is to zone the properties included in the Interstate Land Holdings annexation into the General Commercial (CG) and Public Open Lands (POL) zone districts.

14. **First Reading of Ordinance No. 113, 2017, Amending Section 2-203 of the Code of the City of Fort Collins Relating to the Functions of the Cultural Resources Board. (Adopted)**

The purpose of this item is to update how the functions of the Cultural Resources Board (CuRB) are described to better reflect the actual scale and responsibilities of the Cultural Services Department. The current City Code language is outdated. It references advising the Museum director, and matters pertaining to the operations of the Lincoln Center. The Cultural Services Director, staff liaison to the CuRB, is responsible for directing the Lincoln Center, Museum of Discovery, Gardens on Spring Creek, Carnegie Creative Center, and Art in Public Places program. The proposed new language more accurately reflects the entire scope of functions currently performed by the Cultural Services Department.

15. **First Reading of Ordinance No. 114, 2017, Repealing Article III of Chapter 15 of the Code of the City of Fort Collins Relating to Amusement Devices and Places. (Adopted)**

The purpose of this item is to repeal Article III of Chapter 15 of City Code to remove a license requirement on amusement devices and places, including but not limited to, pool tables, roller skating rinks, shooting galleries and electronic game devices.

16. **First Reading of Ordinance No. 115, 2017, Amending Section 2-493 of the Code of the City of Fort Collins Regarding Duties of Municipal Judges. (Adopted)**

The purpose of this item is to set out the duties of the Municipal Judges as referenced in Article VII, Section 1, of the City Charter.

17. **Resolution 2017-077 Approving Revised Costs and Fees for Fort Collins Municipal Court. (Adopted)**

The purpose of this item is to add two new fees to the approved costs and fees for cases in Fort Collins Municipal Court: a \$65 Sealed Records Fee and a \$300 Civil Case Filing Fee.

The Sealed Records Fee is mentioned in the state legislature's House Bill 17-1208, which takes effect on September 1, 2017. That law makes clarifications to the criminal justice records sealing process including allowing Municipal Court defendants whose non-traffic misdemeanor case is completely dismissed or of which they are fully acquitted to request that their records be sealed. The change allows sealing to be ordered directly by the Municipal Court in those cases without requiring such defendants to file a separate action in District Court as was required in the past. As for state court defendants, the law provides that Municipal Court defendants must pay a \$65 fee "to cover the actual costs related to the sealing of the criminal justice records, which may be waived by the Court upon a determination of indigency." See C.R.S. Section 24-72-702.5(2). *Note: This change does not impact the current process authorized by City Code in which underage possession cases are sealed automatically after dismissal without a request from the defendant or payment of a fee.*

The Civil Case Filing Fee is needed to offset at least a portion of the administrative expense to the Court of civil cases being filed by members of the public. The amount of the proposed fee, \$300, is based on the cost of approximately 10 hours of Court Administrator time. This is a very conservative estimate of the time needed to administer such a case and does not include the judicial expense involved. For comparison, the Colorado state District Courts currently charge a \$224 filing fee to Plaintiffs in civil actions, including Rule 106 (Colorado Rules of Civil Procedure) actions.

A final minor change proposed to the list of costs and fees is to revise the description of the Active Condition Fee to clarify that it does not apply to restitution payment conditions.

The background information included in this Agenda Item Summary has also been updated to indicate that Petitions for Indigence requesting waiver of costs are now accepted by the Court on all cases, not just misdemeanor cases. This change has already been implemented.

18. **Resolution 2017-078 Authorizing the Mayor to Execute an Intergovernmental Agreement Between the City of Fort Collins and Larimer County for the Construction of the Long View Trail Between Fort Collins and Loveland. (Adopted)**

The purpose of this item is to request Council approval for an intergovernmental agreement (IGA) between Fort Collins and Larimer County for the construction of the Long View Trail between Fort Collins and Loveland.

19. **Resolution 2017-080 Approving the Appointment of Delynn Coldiron as Interim City Clerk Effective as of the Date and Time of City Clerk Wanda Winkelmann's Resignation. (Adopted)**

The purpose of this item is to appoint Delynn Coldiron as Interim City Clerk, following the resignation of City Clerk Wanda Winkelmann.

- **END CONSENT**
  
- **CONSENT CALENDAR FOLLOW-UP**

Councilmember Overbeck congratulated Delynn Coldiron on her appointment as the Interim City Clerk.

● **COUNCILMEMBER REPORTS**

Councilmember Cunniff reported on the Capital Improvement Expansion Fee working group's inaugural meeting.

Councilmember Overbeck reported on his periodic review meeting with the Parking Advisory Board and stated the Board is seeking a more diverse membership. He congratulated the Downtown Business Association for a successful New West Fest. He reported on a CSU stadium and campus tour, Neighborhood Night Out, the Innovate Fort Collins event, and District 1 parks as well as provided an update on the Poudre Heritage Alliance.

Councilmember Stephens thanked the Mayor, League of Women Voters, and Women's Commission members for the Women's Equality Day proclamation. She commended Neighborhood Night Out participants.

Mayor Pro Tem Horak reported that he and Jennifer Shanahan, Natural Areas, testified before the Colorado Parks and Wildlife Commission regarding the NISP mitigation plan and the City's related comments. He reported on the Avery Park grand re-opening.

Councilmember Martinez reported on the Avery Park re-opening, the CSU stadium community open house, the volunteer appreciation event, Project Smile event, and the Spring Creek flood memorial event. He received one call regarding handicap parking spaces being taken away at New West Fest but noted the problem was quickly resolved by staff.

Mayor Troxell discussed the Spring Creek flood memorial event.

● **CONSIDERATION OF COUNCIL-PULLED CONSENT ITEMS**

20. **Second Reading of Ordinance No. 099, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Blehm-Homestead Annexation to the City of Fort Collins, Colorado and Approving Corresponding Changes to the Sign District Map. (Adopted on Second Reading)**

*This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2017-017.*

*This Ordinance, unanimously adopted on First Reading on July 18, 2017, zones the property included in the Blehm-Homestead enclave annexation into the Urban Estate (UE), zone district and Residential Neighborhood Sign District.*

City Attorney Daggett outlined the procedure for the hearing of this item.

Ted Shepard, Chief Planner, stated these parcels are recommended for Urban Estate zoning which complies with the Structure Plan map.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 099, 2017, on Second Reading.

<b>RESULT:</b>	<b>ORDINANCE NO. 099, 2017, ADOPTED ON SECOND READING [UNANIMOUS]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Bob Overbeck, District 1
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

21. **Second Reading of Ordinance No. 098, 2017, Annexing the Property Known as the Blehm-Homestead Annexation to the City of Fort Collins, Colorado. (Adopted on Second Reading)**

*This Ordinance, unanimously adopted on First Reading on July 18, 2017, annexes an enclave area of approximately 109 acres in southeast Fort Collins. The property is situated between South Timberline and Ziegler Roads, and bisected by Kechter Road. The 28-parcel enclave consists of the Blehm Subdivision, two abutting properties to the east of the Blehm Subdivision, Homestead PUD, and one abutting property to the west of the Homestead PUD.*

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to reconsider Item No. 8, Second Reading of Ordinance No. 098, 2017. Yeas: Troxell, Summers, Overbeck, Stephens, Cunniff, Martinez and Horak. Nays: none.

**THE MOTION CARRIED.**

John Baum opposed the proposed stormwater fees for the Blehm Annexation area. He questioned what benefit he will receive from paying such fees.

Brad Arzt opposed the proposed stormwater fees for the Blehm Annexation area.

Chris Hagerty stated he was told the stormwater fee could be waived and opposed the proposed fees given the low amount of impervious area on the lots.

James Ott opposed the proposed stormwater fees for the Blehm Annexation area.

Mayor Troxell requested input regarding stormwater fee calculation. Kevin Gertig, Utilities Director, replied many of the lots in the annexation area are 300,000 square feet and larger with little impervious area; therefore, per the City Code, there is a 72% discount on the stormwater fees.

Councilmember Cunniff asked about the minimum lot size for Urban Estate. Ted Shepard, Chief City Planner, replied the minimum lot size is 1/2 acre, or a cluster development plan not exceeding an overall gross of two units per acre is also allowed.

Councilmember Cunniff asked if there is the potential for a ten-acre lot to eventually be developed into 20 single-family homes. Shepard replied in the affirmative and stated each new individual smaller lot would be subject to the full range of City utility fees.

Councilmember Cunniff noted the fees not only address the kind of events a pervious surface can mitigate; they exist in part to reduce the damage caused by significantly larger events.

Councilmember Summers asked about the stormwater fees these properties have paid to the County. Shepard replied he is unsure if the County charges a stormwater fee and stated nothing occurs in terms of improvements through the City until a redevelopment transpires.

Councilmember Martinez stated the property owners have indicated they do not pay a stormwater fee to the County and asked if that is true countywide. Shepard replied stormwater fees may be paid for large capital projects in certain basins.

Councilmember Martinez asked what the properties will gain by paying the City stormwater fees. Gertig replied the same stormwater design and methods for the entire city will be incorporated into the annexed area as it is redeveloped. He discussed systemwide improvements that benefit the city and county.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 098, 2017, on Second Reading.

Councilmember Summers suggested adjusting the stormwater discount for the affected properties to 90%.

City Attorney Daggett made a suggestion related to phasing the stormwater fees if that is Council's desire.

Mayor Pro Tem Horak suggested addressing the Ordinance as is without changing the policy and fee on-the-fly.

Councilmember Summers stated the property owners should not have to pay a fee higher than that of a single-family house, particularly given the large portion of pervious land.



Mayor Troxell supported a deliberate examination of fees and annexation policies.

<b>RESULT:</b>	<b>ORDINANCE NO. 098, 2017, ADOPTED ON SECOND READING [UNANIMOUS]</b>
<b>MOVER:</b>	Gerry Horak
<b>SECONDER:</b>	Ross Cunniff, District 5
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

● **DISCUSSION ITEMS**

22. **Items Relating to the Gardens on Spring Creek. (Adopted on First Reading)**

- A. *First Reading of the Ordinance No. 118, 2017, Modifying Ordinance No. 074, 2016, Which Modified the April 7, 2016, Planning and Zoning Board Decision Approving the Major Amendment to the Centre for Advanced Technology 22nd Filing, Community Horticulture Center, #MJA 150006 Pertaining to the Gardens on Spring Creek to Remove Two Conditions, Specifically the West Sound Wall and Central Override Component of the Sound System.*
- B. *First Reading of Ordinance No. 104, 2017, Appropriating Unanticipated Revenue in the Capital Projects Fund and Appropriating Prior Year Reserves in the General Fund for Transfer to the Capital Projects Fund for Construction of the Final Five Acres of the Gardens on Spring Creek and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program.*

*The purpose of this item is modify the approved plan for the expansion of the Gardens on Spring Creek by removing the western sound wall and central override sound system; and to appropriate \$2,431,000 for construction of the Gardens on Spring Creek facility including the Great Lawn, Undaunted Garden, Foothills and Prairie Gardens. This item also appropriates the funds needed for the Arts in Public Places artwork that is part of the capital project.*

Michelle Provaznik, Gardens on Spring Creek Manager, discussed the history of and funding sources for the Gardens, which opened in 2004. The actual gardens on the property have been funded through fundraising efforts since that time. This item is part of the Cultivating Community Capital campaign to build five acres of new gardens, which will complete the master plan and build the great lawn and stage and other garden spaces. Provaznik discussed the proposed removal of the west sound wall and permanent sound monitoring system and stated the Gardens are seeking \$400,000 from the City to complete the necessary funding.

Barbara Albert expressed concerns related to noise and stated neighbors are not opposed to the sound wall.

Korey Albert objected to the Ordinance language and stated the noise levels will be out of compliance with the sound code. He suggested escrowing funds for the wall and sound mitigation system now.

Dick Thomas expressed concern related to noise.

Kevin Barrier stated the central override system and west sound wall were key components of the Planning and Zoning Board's approval of the project and stated the project must go back before the Board if those key components are removed.

Randy Morgan supported the project and stated donations for the project are hinging on this approval by Council.

Dulcie Willis, Friends of the Gardens on Spring Creek, supported the project and stated it will be a cultural gathering place.

Jesse Eastman, Friends of the Gardens on Spring Creek, supported the project.

Councilmember Cunniff asked if a private developer who had changed their project would need to go back through the process or be able appeal to Council. City Attorney Daggett replied a private developer would go back through the process, though it may be a slightly different process. She stated this item is before Council as a proposed modification of the Ordinance Council adopted in 2016 under its legislative authority.

Councilmember Cunniff requested a more detailed explanation of the proposed operational changes that render the sound wall unnecessary. Provaznik replied the decibels coming off the stage will be decreased and sound engineers will be required to keep the decibels at certain levels which will keep it within the sound ordinance at the receiving lines of the property.

Councilmember Cunniff asked how much money the removal of the active monitoring system will save. Provaznik replied it is a \$50,000-\$60,000 savings.

Councilmember Cunniff asked how this expenditure would affect reserve balances. Mike Beckstead, Chief Financial Officer, replied there were \$4 million in unassigned, available General Fund reserves at the end of 2016, which would be the source of this funding.

City Manager Atteberry stated the only way he was comfortable recommending approval of this item was for the operations to be within the limits of the sound code; should that prove to be an issue during the first year of operation, additional sound mitigation will be discussed.

Councilmember Overbeck asked if any emails or other correspondence was received. Provaznik replied one email has been received.

Councilmember Overbeck asked how sound monitoring will occur. City Manager Atteberry assured Council limits will be met and code enforcement will not be necessary.

Mayor Pro Tem Horak suggested making a sound monitoring app available for neighbors and stated additional information regarding the plan for potential consequences of sound code violations be outlined prior to Second Reading.

Councilmember Stephens asked how the Denver Botanic Gardens and others conduct sound control. Provaznik replied sound at the Botanic Gardens is tracked with hand-held monitors and the sound engineer's board also indicates decibel levels. She stated annual neighborhood meetings are planned.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Martinez, to adopt Ordinance No. 118, 2017, on First Reading.

Mayor Pro Tem Horak expressed concern the Agenda Item Summary provided an inaccurate portrayal of the funding issues.

Councilmember Cunniff stated the impression of the City having a privileged development role exists and he expressed concern related to the process. He stated he will not support the motion

on First Reading but would reconsider if there is a guarantee that the sound code will be met without neighbors having to police the sounds.

Councilmember Stephens thanked the neighbors and stated lowering the volume may be a better solution than the wall.

Councilmember Martinez stated he would support the motion and supported citizens being able to see decibel levels in real time.

Councilmember Overbeck expressed concern about the notification process.

Mayor Troxell stated he would support the motion.

Mayor Pro Tem Horak suggested an amendment to move Second Reading to September 19. Councilmember Martinez accepted the amendment as friendly.

Councilmember Overbeck asked how the neighborhood will be engaged prior to Second Reading. City Manager Atteberry replied he will develop a strategy for that engagement and return to Council with a plan.

<b>RESULT:</b>	<b>ORDINANCE NO. 118, 2017, ADOPTED ON FIRST READING [6 TO 1]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Kristin Stephens, District 4
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Troxell, Horak
<b>NAYS:</b>	Cunniff

Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to adopt Ordinance No. 104, 2017, on First Reading, with Second Reading on September 19.

Councilmember Stephens thanked those involved with the Gardens and stated it will be a great project for the community.

Councilmember Cunniff expressed concern related to the public process.

Councilmember Martinez commended the project and thanked the donors.

Mayor Troxell stated this is a great project for the community and thanked those who have been involved in the process and project.

<b>RESULT:</b>	<b>ORDINANCE NO. 104, 2017, ADOPTED ON FIRST READING [6 TO 1]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Kristin Stephens, District 4
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Troxell, Horak
<b>NAYS:</b>	Cunniff

(Secretary's Note: The Council took a brief recess at this point in the meeting.)

23. **Second Reading of Ordinance No. 101, 2017, Submitting to a Vote of the Registered Electors of the City of Fort Collins a Proposed Amendment to Article XII of the City Charter to Add a New Section 7 Pertaining to Telecommunication Facilities and Services. (Adopted as Amended on Second Reading)**

*This Ordinance, adopted on First Reading on August 8, 2017 by a vote of 5-2 (Nays: Martinez, Summers), submits to Fort Collins electors a proposed amendment to Charter Article XII, Municipal Public Utilities. The amendment would authorize the City Council to provide, by future ordinance, telecommunications/broadband facilities and services as a public utility, to issue of up to \$150 million in bonds, the ability to go into executive session to discuss matters related to competition in the telecommunications industry, and the option to establish governance of this public utility through a board and/or to delegate rate-making authority to the City Manager. This measure does not mandate that the City provide municipal retail broadband services, or that a third-party be the provider.*

Eric Sutherland questioned voters' expectations regarding the repayment of debt incurred to fund the broadband project. He stated the City is not being transparent or sincere in this process.

Rich Stave questioned several aspects of the calculations and funding and opposed an Executive Session on the topic.

Sidna Rachid thanked the City and Council for this proposal.

Ann Hutchison, Fort Collins Chamber of Commerce, stated the City does not fully understand the opportunities and challenges it is giving up by dedicating this much of the Utility bonding capacity to a single project. She suggested Council take more time and hold a special election in April rather than placing this on the November ballot.

Councilmember Martinez asked about fee escalation. Mike Beckstead, Chief Financial Officer, replied there is an escalation factor and a built-in revenue increase of about 3% per year to cover the cost of inflation.

Councilmember Martinez asked about an affordable tier rate. Beckstead replied that rate has yet to be calculated; however, the business plan makes a commitment to create such a rate.

Councilmember Martinez asked if broadband will be a joint enterprise or its own utility. Beckstead replied the ballot language modifies the current light and power enterprise structure to allow the City to do telecommunications inside of one of the existing light and power enterprises. It also gives Council the option to create a fifth utility either now or in the future.

Councilmember Martinez asked if weekend service will fit into the current budget. Beckstead replied in the affirmative.

Councilmember Martinez asked how many individuals responded to the online survey. Ginny Sawyer, Policy and Project Manager, replied the online survey attempted to duplicate the statistically valid survey of approximately 400 individuals. The online version garnered between 700 and 800 responses.

Councilmember Martinez asked why fiber is less expensive to maintain than copper. Beckstead replied fiber requires less energy to push the information between equipment ports; therefore, there is a lower energy cost to run the system.

Councilmember Martinez asked if the proposed broadband service will be shared or dedicated to each residence. Brad Ward, consultant, replied it is a combination of the two; in general, it is

private, dedicated service with some shared aspects of the overall technology in the network. Beckstead replied each premise will have a fiber connection from a node to that residence.

Councilmember Martinez asked if the City would be liable for any type of cyberattack. City Attorney Daggett replied that would need to be examined in terms of how the utility is operated and in reference to the governmental immunity act as it applies to this type of operation. Beckstead noted no personal information is being stored in this system.

Councilmember Martinez questioned risks and stated threats seem to outweigh opportunities.

Councilmember Summers asked how many other companies provide broadband service. Ward replied Century Link and Comcast control a large share of the residential market.

Councilmember Summers asked about the feasibility of the wholesale model. Beckstead replied there are communities who have built the fiber network and then have not been able to secure a service provider to use the network effectively. Wholesale is less attractive from a business risk standpoint and success would be dependent on the third-party service provider.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 101, 2017, on Second Reading, as amended.

Councilmember Martinez expressed concern that citizens will not be thoroughly informed in due time to vote in November.

Councilmembers requested the creation of a summary document for citizens.

Councilmember Summers made a motion, seconded by Councilmember Cunniff, to amend Ordinance No. 101, 2017 to focus specifically on a retail model proposal.

City Attorney Daggett read the necessary language changes for the amendment.

Councilmember Summers stated his goal for the amendment is to make the ballot language as clear as possible. He noted it is very unlikely a successful third-party service provider will be found; however, should one be found, a change can be made in the future.

Councilmember Cunniff stated he would provisionally support the amendment given the cleaner language.

Councilmember Overbeck stated he is not necessarily comfortable voting for the amendment given the late timing.

Mayor Troxell requested staff input regarding mitigation for identified risks and challenges. Beckstead replied part of the mitigation was to try to attract a third-party which has not yet occurred. A utility fee was also not utilized. At this point, hiring the correct consultants, adjusting the governance model, and providing exceptional customer service are the risk mitigation strategies.

Mayor Pro Tem Horak stated he would not support the amendment.

Councilmember Summers stated the business plan has been established around the retail model.

Councilmember Stephens agreed with Mayor Pro Tem Horak and stated the flexibility is important and is what was adopted on First Reading.

Mayor Troxell stated he would oppose the amendment in order to allow more flexibility.

The vote on the motion to amend was as follows: Yeas: Summers. Nays: Cunniff, Martinez, Horak, Troxell, Overbeck and Stephens.

THE MOTION FAILED.

Councilmembers Overbeck and Cunniff expressed support for the main motion.

Councilmember Martinez stated he is leery about the success of this proposal and expressed concern the technology will shift dramatically prior to the debt being paid off. However, he stated he will support placing the item on the ballot in order to give citizens proper input.

Councilmember Stephens stated she would support the motion as voters overwhelmingly supported exploring the option and her constituents have requested high-speed broadband service.

Councilmember Summers supported citizens making the decision; however, he expressed concern they haven't been given enough facts and clarity to make a decision.

Councilmember Martinez stated voters must be aware they are supporting the City's expenditure of \$150 million.

Mayor Troxell discussed technological and digital advances over the past decades and stated connectivity is essential for the community. He estimates the take rate will be much higher than the 28%.

<b>RESULT:</b>	<b>ORDINANCE NO. 102, 2017 ADOPTED AS AMENDED ON SECOND READING [6 TO 1]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Ross Cunniff, District 5
<b>AYES:</b>	Martinez, Stephens, Overbeck, Troxell, Cunniff, Horak
<b>NAYS:</b>	Summers

24. **Second Reading of Ordinance No. 100, 2017, Amending Portions of Chapter 17 of the Code of the City of Fort Collins Regulating Trespass and the Obstruction of a Highway or Passageway. (Adopted on Second Reading)**

*This Ordinance, adopted on First Reading on July 18, 2017, by a vote of 3-2 (Nays: Overbeck, Stephens, Absent: Summers, Troxell) amends Section 17-128 of the City Code regarding obstructing a highway or passageway, including adding restrictions around obstructing public fixtures. A minor change to Section 17-40(b) of the City Code (Trespass) is also included, which adds lying or "otherwise occupying" to the already prohibited list of climbing, sitting or standing on or in objects on public or private property not designed for such use, and adds planters to the list of examples of such objects.*

*In response to a citizen inquiry and comments received by citizens during the First Reading of the Ordinance, a Whereas clause has been added clarifying that it is the intent of this Council to ensure this Ordinance continues to apply to all people, and not just certain segments of the population. In*

*response to questions regarding sitting on objects, particularly planters, language has been added to Section 17-40(b) to clarify the extent of the prohibition.*

Jeff Mihelich, Deputy City Manager, showed a map of business entrances and 20-foot arcs around each in the Old Town area. He stated there are ample areas for individuals to rest and relax outside the 20-foot arcs. He noted the 20-foot distance from business entrances has been on the books for a number of years and is not recommended for change.

Lynn Thompson, Fort Collins Homeless Coalition, opposed the Ordinance as written and requested a change to the definition relating to resting in public.

Deborah James stated there are many sidewalk obstructions other than homeless individuals.

Sidna Rachid opposed the proposed Ordinance and cited statistics relating to jailing homeless individuals.

Shane Sheridan discussed potential unintentional violations of this Ordinance and stated it works to dehumanize part of the population.

Fran Levine opposed the Ordinance as written stating it would discriminate against homeless citizens.

Garrett Mumma opposed the Ordinance as written and discussed the definition of obstruction.

Andrew Bondi expressed concern regarding the seeming arbitrary nature of the 20-foot distance and stated this Ordinance will magnify the issue of homeless citizens in Old Town neighborhoods.

Holly Sample suggested the 20-foot distance be reduced to 6 feet.

Christianne Guerra opposed the Ordinance as written and stated homeless citizens need access to downtown amenities.

Adam Lovell opposed the proposed Ordinance and recommended the 20-foot distance be reduced to 6 feet.

Doug Henderson opposed the proposed Ordinance and recommended the 20-foot distance be reduced.

Nicholas Mouton opposed the proposed Ordinance and the 20-foot distance.

Dan (no last name given) stated he is a business owner and supported this as a common sense Ordinance.

Andy Auer opposed the proposed Ordinance.

Chi Chi Dougherty opposed the proposed Ordinance.

Mary Elyse Delphs opposed the proposed Ordinance.

Brian Munsky opposed the proposed Ordinance.

Barb Wilkins supported assistance for disabled individuals.

Steve Raimer supported reasonable access to businesses but opposed the proposed Ordinance. He suggested working on strategies to reduce homelessness.

Karen Miller opposed the proposed Ordinance

Nevin Mandel opposed the proposed Ordinance.

Shane Miller opposed the proposed Ordinance and stated its intent seems to be to reduce the number of homeless individuals in the Old Town area.

Cheryl Distaso, Fort Collins Homeless Coalition, opposed the proposed Ordinance as being too similar to the sit/lie ban. She stated the 20-foot distance is too great.

Councilmember Overbeck questioned why blocking accessible ramps is not already a City regulation. Mihelich replied that is considered obstruction and is already illegal.

Councilmember Overbeck questioned the definition of entrance. Mihelich replied entrance references the frame of any door used by the public or employees to access the building.

Councilmember Overbeck asked if blind spot obstructions are referenced in the proposed language. Mihelich replied in the negative.

Councilmember Overbeck asked about stakeholders identified in the Police Services memo. Kevin Cronin, Assistant Chief of Police, replied stakeholders were citizens, downtown businesses, various associations, and downtown police officers.

Councilmember Stephens asked who ensures the Ordinance does not discriminate. Cronin replied calls for service are answered by Police and officers observing a violation will also intervene in those situations. He noted officers are trained to avoid enforcement action and immediate arrests are reserved for violent situations.

Councilmember Martinez questioned the definition of "ordinary person." City Attorney Daggett replied that term is usual for legal writing and is meant to reference a standard applicable to regular, common members of the public.

Councilmember Overbeck suggested a radius of somewhere between 6 and 20 feet.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 100, 2017, on Second Reading.

Councilmember Overbeck made a motion, seconded by Councilmember Stephens, to amend the motion to change the distance to 12 feet.

Councilmember Stephens expressed concern regarding the way in which the 20-foot distance could be enforced.

Councilmembers Martinez and Cunniff stated they will not support the amendment.



Mayor Troxell supported the main motion and stated passageways are addressed due to safety of all citizens.

Councilmember Stephens requested periodic updates and expressed concern this is not the perfect Ordinance.

The vote on the motion to amend was as follows: Yeas: Overbeck and Stephens. Nays: Horak, Troxell, Summers, Cunniff and Martinez.

THE MOTION FAILED.

Councilmember Martinez stated this Ordinance, with the 20-foot distance, has been around for many years and addresses the entire population.

Councilmember Overbeck opposed the motion and stated involving other aspects of town could have been a better process.

<b>RESULT:</b>	<b>ORDINANCE NO. 100, 2017, ADOPTED ON SECOND READING [5 TO 2]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Ross Cunniff, District 5
<b>AYES:</b>	Martinez, Summers, Troxell, Cunniff, Horak
<b>NAYS:</b>	Stephens, Overbeck

**25. First Reading of Ordinance No. 020, 2017, Authorizing the Conveyance of a Portion of City-Owned Property at Running Deer Natural Area to Big Foot Properties, LLC. (Withdrawn)**

*The purpose of this item is for City Council to consider the proposed sale of approximately 11.85 acres of land to Big Foot Properties, LLC, (Roger Hageman, Hageman Earth Cycle (HEC)). About eight months ago, the City Manager's Office inquired about the possibility of selling approximately 15 acres of land to HEC. The land was purchased by the City's Natural Areas Department eighteen years ago, along with additional land for Running Deer Natural Area. Prior to the City's purchase, the 15 acres was leased by HEC for the operation of a yard waste/organic material recycling business. The land has continued to be leased to HEC and the current lease will expire in 2018. The proposed sale area has been reduced to 11.85 acres after exclusion of a wetland and boundary adjustments.*

<b>RESULT:</b>	<b>WITHDRAWN</b>
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**26. Items Relating to the Submission of a City-Initiated Ordinance Relating to Medical Marijuana Businesses to a Vote of the Registered Electors of the City at the November 7, 2017, Special Municipal Election. (Postponed to Date Certain)**

- A. *Possible Public Hearing and Motions Regarding Protest(s) of Ballot Language.*
- B. *Resolution 2017-079 Submitting a City-Initiated Ordinance Dealing with Medical Marijuana Businesses to a Vote of the Registered Electors of the City at the Special Municipal Election to be Held on November 7, 2017, in Conjunction with the Larimer County Coordinated Election.*

*The purpose of this item is to submit a City-Initiated Ordinance to the registered electors of the City at the November 7, 2017 special election. The proposed Ordinance amends Section 15-491 (a) and (b) of Article XVI of the City Code to allow Council to change or add any provisions in Chapter 15, Article XVI in order to stay current with state laws, rules and regulations relating to medical marijuana.*

Any protest of the proposed ballot language must be received no later than Monday, August 14, 2017, at noon. The protest(s) shall be heard, considered, and resolved by Council prior to adoption of Resolution 2017-079. If protest(s) are received, copies will be included in Council's "Read-before" packet.

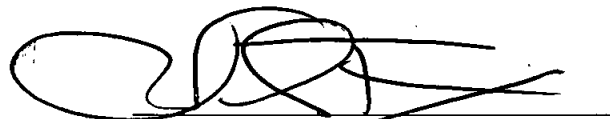
(Due to the lateness of the hour, this item was postponed to August 22, 2017)

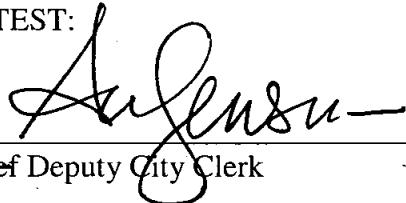
● **ADJOURNMENT**

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adjourn to 6:00 PM, Tuesday, August 22, 2017, for the purpose of considering agenda items prepared and posted in advance of that meeting, any unfinished matters from this meeting, and such other matters that may come before Council.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Ross Cunniff, District 5
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

The meeting adjourned at 11:13 PM.

  
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Mayor

ATTEST:  
  
\_\_\_\_\_  
Chief Deputy City Clerk

