

October 17, 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, Duval, Coldiron

● **AGENDA REVIEW: CITY MANAGER**

City Manager Atteberry stated he has asked Interim Police Chief Jones to provide a staff report on an issue that has been in the media recently.

● **CITIZEN PARTICIPATION**

Eric Sutherland spoke regarding Item No. 4, *Second Reading of Ordinance No. 132, 2017, Amending Chapter 7.5 of the Code of the City of Fort Collins Regarding the Imposition of Capital Expansion Fees Adopted in Ordinance No. 049, 2017*. He stated the cost to citizens of this action is over \$1 million and it is a fiscally irresponsible move by the City.

Cari Brown, ARC of Larimer County, thanked the City for proclaiming October as National Disability Employment Awareness Month.

Wes Kenney, Fort Collins Symphony Music Director, announced the current season called “A Season of Diversity.” The November 4 concert is called “East Meets West.”

Ji Hye Chung, Assistant Concert Master, played a violin piece.

Forrest (no last name given) discussed an officer-involved shooting on July 1 on Prospect near Centre. He questioned why dash cam footage has not been released from that incident. He also asked why a K9 unit without mental support personnel was sent into a home with a confused, mentally unstable woman. He opposed a proposed hotel project along the Poudre River.

Marilee Boylan, ARC of Larimer County, thanked the City for proclaiming October as National Disability Employment Awareness Month. She encouraged the City to become a model employer for hiring a diverse workforce including people with intellectual and developmental disabilities.

Darlene (no last name given) expressed concern about bus service stopping too early on campus stating it is a safety issue.

Joseph Miller stated the 911 Good Samaritan law does not cover minors who overdose on alcohol. He discussed the case of a minor who overdosed and did not receive proper medical care.

Whitney Fanning suggested a CSU/City partnership for free parking near campus citing safety concerns for individuals walking alone at night.

Thomas Edwards stated the EPIC remodel has moved bicycle racks too far from the building and discussed his observations of bicyclists not obeying traffic rules. He also discussed veterans' issues.

● **CITIZEN PARTICIPATION FOLLOW-UP**

Councilmember Martinez asked about the release of the Police dash cam footage from the incident referenced by a citizen. City Manager Atteberry replied that is an ongoing investigation. Once closed, those videos will be released.

Councilmember Martinez discussed the veterans' services provided by the community.

Councilmember Stephens asked about the bicycle racks being moved at EPIC. City Manager Atteberry replied he would return to Council with information on that.

● **CONSENT CALENDAR**

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt and approve all items on the Consent Agenda.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Bob Overbeck, District 1
AYES:	Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

1. **Consideration and Approval of the Minutes of the September 19, 2017 Regular Council Meeting. (Adopted)**

The purpose of this item is to consider and approve the minutes from the September 19, 2017 Regular Council meeting.

2. **Second Reading of Ordinance No. 130, 2017, Appropriating Prior Year Reserves and Unanticipated Revenue in Various City Funds and Authorizing the Transfer of Appropriated Amounts Between Funds or Projects. (Adopted)**

This Ordinance, unanimously adopted on First Reading on October 3, 2017, combines dedicated and unanticipated revenues or reserves that need to be appropriated before the end of the year to cover the related expenses that were not anticipated and, therefore, not included in the 2017 annual budget appropriation. The unanticipated revenue is primarily from fees, charges, rents, contributions and grants that have been paid to City departments to offset specific expenses.

3. **Second Reading of Ordinance No. 131, 2017, Appropriating Prior Year Reserves in the General Fund to Reimburse Avago Wireless Technologies (USA) Manufacturing, LLC for Use Taxes and Business Property Taxes as Provided in Business Investment Agreements. (Adopted)**

This Ordinance, unanimously adopted on First Reading on October 3, 2017, appropriates \$397,716 of prior year reserves from the General Fund for a rebate to Avago Technologies Wireless (U.S.A.) Mfg., LLC. ("Avago") for use tax and business personal property tax rebates under two business investment agreements. The agreements provide business investment assistance to Avago for the expansion and retrofit of Avago's Building 4 for a wafer fabrication facility in 2012 and for a FBAR clean room facility in 2013. These two projects were required to create an additional 227 primary jobs in the City, and net 617 full time equivalents.

4. **Second Reading of Ordinance No. 132, 2017, Amending Chapter 7.5 of the Code of the City of Fort Collins Regarding the Imposition of Capital Expansion Fees Adopted in Ordinance No. 049, 2017. (Adopted)**

This Ordinance, unanimously adopted on First Reading on October 3, 2017, amends Section 7.5-19 of the City Code related to the imposition, computation and collection of fees for development projects that had an approved Project Development Plan prior to the adoption date of Ordinance No. 049, 2017.

5. **First Reading of Ordinance No. 133, 2017, Appropriating Unanticipated Grant Revenue in the General Fund for Electric Lawn and Garden Equipment Procurement. (Adopted)**

The purpose of this item is to appropriate unanticipated grant revenue in the amount of \$15,000 in the General Fund for the purchase of electric lawn and garden equipment for the Parks Department. The Regional Air Quality Council (RAQC) granted these funds to assist municipalities in purchasing new low-emission commercial lawn and garden equipment. The grant directly supports efforts to lead by example in reducing air quality impacts from municipal lawn and garden equipment fleet.

6. **First Reading of Ordinance No. 134, 2017, Amending Chapter 3, Article III, Section 3-76 of the Code of the City of Fort Collins to Set the Occupation Tax Rate for New Categories of Liquor Licenses. (Adopted)**

The purpose of this item is to add the new license types and corresponding tax to the occupation tax schedule. The Colorado General Assembly has added three new types of liquor licenses. The City has an occupation tax for the liquor license categories established by the State.

7. **First Reading of Ordinance No. 135, 2017, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands as Part of the Fossil Creek Trail System. (Adopted)**

The purpose of this item is to obtain authorization from City Council to use eminent domain to acquire a tract of land owned by the Clarendon Hills Homeowners' Association (CHHA) that is being used as part of the Fossil Creek Trail. In the 1990s, the Fossil Creek Trail (FCT) was constructed from Cathy Fromme Prairie at Taft Hill Road to the underpass at Shields Street. As the FCT comes to the east side of Shields Street, it crosses a portion of Tract D, Clarendon Hills Fourth Filing. This tract is currently owned by CHHA. CHHA supports conveyance of a portion of Tract D to the City for the FCT. Due to restrictions in the Declaration of Covenants for Clarendon Hills, CHHA asked the City to use eminent domain procedures to accomplish this acquisition.

8. **Resolution 2017-092 Finding Substantial Compliance and Initiating Annexation Proceedings for the Water Treatment Facility Annexation No. 1. (Adopted)**

The purpose of this item is to initiate annexation proceedings for the Water Treatment Facility Annexation No. 1. This is a voluntary annexation. The City of Fort Collins is the applicant and has submitted a written petition requesting four sequential annexations. Water Treatment Facility Annexation No. 1 is the first Resolution of this series of four sequential annexations, and totals 0.101 acres of Laporte Avenue which establishes 1/6 perimeter boundary contiguity with the existing municipal boundaries to the east.

The Water Treatment Facility Annexations form a flagpole-shaped annexation starting slightly east of the intersection of Sunset Street and Laporte Avenue and ending at 4316 Laporte Avenue. The requested zoning for this annexation is Urban Estate (UE) and Residential Foothills (RF), which is in compliance with the City of Fort Collins Structure Plan and the Northwest Subarea Plan.

9. **Resolution 2017-093 Finding Substantial Compliance and Initiating Annexation Proceedings for the Water Treatment Facility Annexation No. 2. (Adopted)**

The purpose of this item is to initiate annexation proceedings for the Water Treatment Facility Annexation No. 2. This is a voluntary annexation. The City of Fort Collins is the applicant and has submitted a written petition requesting four sequential annexations. Water Treatment Facility Annexation No. 2 is the second Resolution of this series of four sequential annexations, and totals 0.380 acres of Laporte Avenue which establishes 1/6 perimeter boundary contiguity with the Water Treatment Facility Annexation No. 1.

The Water Treatment Facility Annexations form a flagpole-shaped annexation starting slightly east of the intersection of Sunset Street and Laporte Avenue and ending at 4316 Laporte Avenue. The requested zoning for this annexation is Urban Estate (UE) and Residential Foothills (RF), which is in compliance with the City of Fort Collins Structure Plan and the Northwest Subarea Plan.

10. **Resolution 2017-094 Finding Substantial Compliance and Initiating Annexation Proceedings for the Water Treatment Facility Annexation No. 3. (Adopted)**

The purpose of this item is to initiate annexation proceedings for the Water Treatment Facility Annexation No. 3. This is a voluntary annexation. The City of Fort Collins is the applicant and has submitted a written petition requesting four sequential annexations. Water Treatment Facility Annexation No. 3 is the third Resolution of this series of four sequential annexations, and totals 1.182 acres of Laporte Avenue which establishes 1/6 perimeter boundary contiguity with the Water Treatment Facility Annexation No. 2.

The Water Treatment Facility Annexations forming a flagpole-shaped annexation starting slightly east of the intersection of Sunset Street and Laporte Avenue and ends at 4316 Laporte Avenue. The requested zoning for this annexation is Urban Estate (UE) and Residential Foothills (RF), which is in compliance with the City of Fort Collins Structure Plan and the Northwest Subarea Plan.

11. **Resolution 2017-095 Finding Substantial Compliance and Initiating Annexation Proceedings for the Water Treatment Facility Annexation No. 4. (Adopted)**

The purpose of this item is to initiate annexation proceedings for the Water Treatment Facility Annexation No. 4. This is a voluntary annexation. The City of Fort Collins is the applicant and has submitted a written petition requesting four sequential annexations. Water Treatment Facility Annexation No. 4 is the fourth and final Resolution of this series of sequential annexations, and totals 102.825 acres which establishes 1/6 perimeter boundary contiguity with the Water Treatment Facility Annexation No. 3. Unlike Water Treatment Facility Annexations No. 1, 2 and 3, the No.4 annexation lies in large part outside the boundary of the Growth Management Area.

The Water Treatment Facility Annexations forming a flagpole-shaped annexation starting at the intersection of Sunset Street and Laporte Avenue and ends at 4316 Laporte Avenue. The requested zoning for this annexation is Urban Estate (UE) and Residential Foothills (RF) which is in compliance with the Fort Collins City Plan Structure Plan Map and the Northwest Subarea Plan designations.

● **END CONSENT**

● **STAFF REPORTS**

Mark Sears, Natural Areas Manager, discussed the background of the partnership between Natural Areas and Housing Catalyst at Goose Hollow Natural Area. The goal for the Natural Area is to provide a bridge between the community, surrounding neighborhoods, and the two affordable housing complexes near the Natural Area.

Councilmember Stephens thanked Sears for identifying the space and being diligent on forming the partnership.

Cassie Archuleta, Environmental Program Manager, discussed the characteristics of ozone and the measuring devices used in Fort Collins. She noted Fort Collins is part of the Denver Metro non-attainment area and is in violation of the federal standards. Local transportation planning efforts can help effect local contributions to ozone-causing emissions. Small engines, such as those used in lawn and garden equipment, are large contributors to ozone-causing pollution and the City has been making efforts to change up its fleet to use more electric lawn and garden equipment. The Gardens on Spring Creek will be collaborating on an ozone garden exhibit which will feature ozone monitors.

Councilmembers Cunniff and Martinez thanked Archuleta and staff for their work.

Terry Jones, Interim Police Chief, stated the Springfield Court call referenced in Citizen Participation involved a woman with mental health issues who went into a former home insisting it was hers. Police were called and the K9 unit was used to locate the woman in the crawl space. The woman was wanted on a felony charge and was taken to the Larimer County jail.

Regarding the officer-involved shooting from the summer, the individual involved had threatened to kill his brother and sister-in-law. When Police arrived on the scene, the man came to the door with a knife. After being told no less than 30 times to drop the knife, he ultimately rushed the reporting CSU officer and both the City and CSU officers fired. The District Attorney's Office investigated the shooting and determined the use of deadly force was appropriate.

Jones discussed an issue involving an off-duty officer who observed a car driving erratically and at a high rate of speed. The officer ultimately had to physically take the woman to the ground as she would not comply with his requests for her driver's license. The officer called for uniformed officers to respond, which they did, as did a security guard at the apartment complex. The woman was issued a ticket for obstruction and careless driving.

The incident showed up on social media and an internal affairs investigation was subsequently initiated.

Mayor Pro Tem Horak requested input regarding the process following the investigation. Jones replied the results of the investigation will be submitted to the officer's chain of command to determine if proper conduct was violated. The chain of command could then sustain, not sustain, find the violation unfounded, or exonerate the officer. Policies and directives relating to off-duty actions will also be evaluated.

Councilmember Stephens asked how citizens should verify whether an off-duty officer is legitimate. Police Chief Jones replied this officer did take extra steps to identify himself by use of his badge and identification card; however, individuals can always call 911 or the Fort Collins Police line, or go to a location where there are many people. Off-duty officers are taught to exercise a great deal of discretion when community members are engaged.

Councilmember Stephens asked if individuals could ask the officer to move to a more populated location. Jones replied that is a possibility, or individuals can remain in their vehicles.

Councilmember Martinez discussed the importance of officers being trained to use discretion.

Councilmember Cunniff requested a report regarding potential policy and training changes.

● **COUNCILMEMBER REPORTS**

Councilmember Cunniff reported on participating in water collaboration meetings and this week's Finance Committee meeting during which the City's credit rating related to potential loans for northeast improvements was discussed.

Councilmember Summers reported on the Colorado Municipal League legislative groups meeting in Denver.

Councilmember Overbeck reported on the Museo de las Tres Colonias grand re-opening and the Manufacturing Day tour of Woodward.

Councilmember Martinez reported on the grand opening of the Campus West Police substation, Campus Connections, and the CSU Distinguished Alumni Award event.

Councilmember Stephens reported on the October Election Code Committee meeting during which citizen participation and a preliminary redistricting discussion occurred. She also reported on the Museo de las Tres Colonias grand re-opening.

Mayor Troxell reported on students attending the Council meeting as part of a City Works class. He also discussed his proclamation related to Dottie Metcalf-Lindenburger, a NASA astronaut.

Councilmember Cunniff reported on the PSD/City/County liaison meeting.

Councilmember Stephens recognized the speakers who addressed National Disability Employment Awareness Month.

● **DISCUSSION ITEMS**

12. **Consideration of the Long Pond Wireless Telecommunications Facility Addition of Permitted Use Request. (Postponed to November 21, 2017)**

A. *Public Hearing and First Reading of Ordinance No. 136, 2017, Approving the Addition of Permitted Use Associated with the Long Pond Wireless Telecommunications Facility Project Development Plan #160018.*

OR

B. *Public Hearing and First Reading of Ordinance No. 137, 2017, Denying the Addition of Permitted Use Associated with the Long Pond Wireless Telecommunications Facility Project Development Plan #160018.*

The purpose of this item is to decide whether to approve, approve with conditions, or deny the Long Pond Wireless Telecommunications Addition of Permitted Use request (the "APU") being made in conjunction with PDP160018. The APU requests the addition of wireless telecommunication facilities as a permitted use on a parcel of land located in the Low Density Mixed-Use Neighborhood ("LMN") zone district. Wireless telecommunication facilities are not a permitted use in the LMN. PDP160018

proposes a 60-foot tall wireless telecommunications facility disguised as a silo at 2008 Turnberry Road.

Mayor Troxell stated this is an addition of permitted use (APU) item and involves a hearing before Council. This process allows an applicant to request that a land use be added to the zoning map for a specific parcel located in the zone district that does not otherwise allow for the requested use. Council is to decide, based on the evidence at this hearing, whether the requested APU meets the Land Use Code criteria and whether it should be approved, approved with conditions, or denied.

Deputy City Attorney John Duvall stated this hearing places Council as the decision maker in the first instance of this matter; therefore, any evidence can be considered. Council received a letter this morning from the attorney for Verizon Wireless. That letter indicated Verizon is partnering with Atlas Tower, the applicant, and makes several arguments that Council must approve this APU under the Federal Telecommunications Act which contains provisions that evidence concerning radio frequency emissions cannot be used by local governments to deny a wireless communications site and prohibit wireless services. City Attorney staff has not had time to fully research the issue to provide advice to Council.

Mayor Pro Tem Horak asked where the process is in terms of timing to meet federal requirements. Duvall replied the City has 150 days from the date of receipt of the completed application. Clay Frickey, City Planner, replied the complete application was received August 24, 2017; therefore, the 150 days is roughly the end of January.

Mayor Pro Tem Horak asked if the applicant has provided any information related to a supposed gap in cell service. Duvall replied any materials could be presented at this hearing. Frickey replied the applicant has provided coverage maps indicating gaps and the fix various cell tower heights will provide.

Mayor Pro Tem Horak expressed concern staff has not had enough time to evaluate the information.

Councilmember Cunniff agreed with Mayor Pro Tem Horak and stated he would like to receive additional information regarding other potential sites and other potential technologies, including small cell.

Councilmember Overbeck supported continuing the item.

Councilmember Martinez made a motion to postpone this hearing to November 21, 2017 with Second Reading in December.

City Manager Atteberry requested a 5-minute break to examine schedules.

Councilmember Martinez withdrew his motion.

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

City Manager Atteberry recommended moving First Reading of this item to November 21, with Second Reading on December 19.

Councilmember Martinez made a motion, seconded by Councilmember Overbeck, to postpone

this item to November 21 for hearing and First Reading and December 19 for Second Reading.

Mayor Pro Tem Horak noted the December 19 date could be changed.

Councilmember Cunniff clarified Council is directing legal staff to investigate the legal arguments raised by the applicant and is directing management staff to work with the applicant and the City's own resources to develop answers to the technical questions related to alternative siting and alternative technology.

Mayor Troxell noted citizens cannot have individual conversations with Councilmembers on this topic given the quasi-judicial nature of the item; however, all public emails have and will be captured, and testimony will be taken on November 21.

RESULT:	POSTPONED TO NOVEMBER 21, 2017 [UNANIMOUS]
MOVER:	Ray Martinez, District 2
SECONDER:	Bob Overbeck, District 1
AYES:	Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

● **OTHER BUSINESS**

Councilmember Overbeck stated a councilmember from Broomfield has asked Fort Collins to sign a letter to the Colorado Oil and Gas Commission. He asked that staff review the letter and return with recommendations on its alignment with the City's policies.

Mayor Troxell suggested the Legislative Review Committee review the proposed letter.

Mayor Pro Tem Horak asked if telecommunication processes and procedures are being reviewed for issues such as the previous item.

Councilmember Cunniff stated the Fort Collins Sustainability Group requested the Finance Committee add a clause to its finance policies dealing with socially-responsible investments. The Committee was not inclined to make a recommendation to Council; however, there was some sentiment to consider a corporate investment policy.

● **ADJOURNMENT**

The meeting adjourned at 7:49 PM.


Mayor

ATTEST:


City Clerk

