

December 5, 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, Cunniff, Horak  
ABSENT: Troxell  
Staff Present: Atteberry, Daggett, Coldiron

● **AGENDA REVIEW: CITY MANAGER**

City Manager Atteberry stated there were no changes to the published agenda.

● **CITIZEN PARTICIPATION**

Myles Crane, Steering Committee of Partnership for Age Friendly Communities, congratulated the City on receiving the Baldrige Award. He discussed the organization and two recently completed projects, Senior Access Points and Homeshare.

Eric Sutherland opposed the electric utility time of use rate ordinance adopted at the last Council meeting. He opposed the formation of a broadband utility.

Diane Smith, Senior Advisory Board, discussed housing needs of seniors and a recently created info-graphic illustrating those needs.

Gregg Leverett discussed being threatened with arrest by the Sherriff's Office and Fort Collins Police Department and the Dyer case.

George Grossman, Happy Lucky's Tea House, suggested the City provide free parking validations for customers to aid in the loss of parking spaces during water line replacement construction.

Colin Garfield, Fort Collins Citizens' Broadband Committee, discussed the national spotlight on Fort Collins given election results supporting broadband efforts and net neutrality.

Sean McGill, Rigden Farm Residential Homeowners Association and Rigden Farm Master Homeowners Association, discussed excess water fees paid, and expected to be paid, by the Associations. He requested Council consider extending the deadline for purchasing water rights.

Brad Bishop, Fort Collins Running Club, thanked Council and the City for its support of races and public trails. He stated Fort Collins is one of two communities in Colorado to be named as a runner-friendly city by the Road Runners Club of America and discussed the Club's efforts to collect trash in October.

David Ayraud, Rigden Farm Homeowners Association, discussed water rates and requested Council consider extending the deadline for purchasing water rights.

Anthony Shibata, Rigden Farm Residential Homeowners Association, discussed water rates and requested Council consider extending the deadline for purchasing water rights.

● **CITIZEN PARTICIPATION FOLLOW-UP**

Mayor Pro Tem Horak summarized the citizen comments and requested staff input.

Kevin Gertig, Utilities Director, stated Utilities staff will meet with the Rigden Farm HOA to address potential impacts and will follow-up with Council.

Councilmember Martinez asked if this pertains only to new development in the HOA or existing homes. Lance Smith, Utilities Strategic Finance Director, replied staff had several discussions with Council about adjusting the cost of water rights. Once the new cash-in-lieu rate was approved, staff looked at all existing water accounts that have exceeded the amount of water they have been provided through water rights. Those accounts have been paying an excess water use surcharge for several years. Staff has informed those customers that surcharge is going to more than double next year and they have an opportunity to bring forth additional water rights to mitigate the anticipated increase in the surcharge. Rigden Farm HOA was made aware of this about two months ago.

Councilmember Martinez expressed concern the HOA has not had enough time to organize its members.

Mayor Pro Tem Horak requested additional information from staff with recommendations as to how to deal with this issue. City Manager Atteberry replied staff would return with that as soon as possible.

Councilmember Cunniff discussed the excess water use surcharge and requested information about its doubling.

Regarding the Walnut Street parking issue, Matt Fater, Interim Water Engineering Field Services Manager, stated staff has been working with Walnut Street business owners and is evaluating a request from them to provide parking vouchers to help offset some of the loss of parking during construction.

City Manager Atteberry stated staff is looking at the City's construction process in general and the various types of inconveniences and challenges created for businesses. An enterprise-wide approach to treat all businesses equally is being examined.

● **CONSENT CALENDAR**

Councilmember Overbeck pulled Item No. 2, *Items Relating to Code Amendments to Manage Small Cell and Other Communication Facility Installations in City Rights-of-Way and on City Infrastructure*, from the Consent Agenda.

Councilmember Cunniff pulled Item No. 5, *Second Reading of Ordinance No. 163, 2017, Repealing and Reenacting Article V of Chapter 24 of the Code of the City of Fort Collins and Amending the Fort Collins Traffic Code Regarding the Residential Parking Permit Program*, from the Consent Agenda.

Eric Sutherland pulled Item No. 7, *First Reading of Ordinance No. 166, 2017, Appropriating Prior Year Reserves in the General Fund to Reimburse Woodward, Inc. for Development Fees and Use Tax*, from the Consent Agenda.

Councilmember Cunniff 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>	Ross Cunniff, District 5
<b>SECONDER:</b>	Bob Overbeck, District 1
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Cunniff, Horak
<b>ABSENT:</b>	Troxell

1. **Consideration and Approval of the Minutes of the November 7, 2017 Regular Council Meeting and the November 13, 2017 Adjourned Council Meeting. (Adopted)**

The purpose of this item is to consider and approve the minutes from the November 7, 2017 Regular Council meeting and the November 13, 2017 Adjourned Council meeting.

2. **Items Relating to the Community Services 2018 Mid-Year Budget Cycle Appropriation Requests. (Adopted)**

A. Second Reading of Ordinance No.158, 2017, Appropriating Prior Year Reserves in the Natural Areas Fund and Authorizing the Transfer of Appropriations from the Natural Areas Fund into the Capital Project Fund for the Natural Areas Maintenance Facility Expansion Project and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program.

B. Second Reading of Ordinance No. 159, 2017, Appropriating Prior Year Reserves in the Capital Expansion Fund and Authorizing the Transfer of Appropriations from the Capital Expansion Fund into the Capital Project Fund for Community Park Development and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program.

C. Second Reading of Ordinance No. 160, 2017, Appropriating Prior Year Reserves in the Capital Expansion Fund and Authorizing the Transfer of Appropriations from the Capital Expansion Fund into the Capital Project Fund for the East District Maintenance Facility and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program.

These Ordinances, unanimously adopted on First Reading on November 21, 2017, appropriate the additional funding for Natural Areas and Parks and Park Planning & Development projects. These projects, which were reviewed by City Council at the October 24, 2017 Council Work Session, include a Natural Areas Maintenance Facility Expansion, Community Park Development and an East District Park Maintenance Facility.

3. **Items Relating to the Horsetooth Road and College Avenue Intersection Improvement Project. (Adopted)**

A. Second Reading of Ordinance No. 161, 2017, Appropriating Prior Year Reserves in the Transportation Capital Expansion Fee Fund and Authorizing the Transfer of Appropriations from the Transportation Capital Expansion Fee Fund into the Capital Project Fund for the "Horsetooth and College Intersection Project", and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program.

- B. **Second Reading of Ordinance No. 162, 2017, Authorizing the Acquisition by Eminent Domain of Certain Lands Necessary to Construct Public Improvements in Connection with the Horsetooth Road and College Avenue Intersection Improvements Project.**

These Ordinances, unanimously adopted on First Reading on November 21, 2017, appropriate \$1,100,000 of prior year reserves in the Transportation Capital Expansion Fee Fund and obtain authorization from City Council to use eminent domain, if deemed necessary, to acquire property interests needed to construct improvements to the intersection of Horsetooth Road and College Avenue. Council previously appropriated the majority of the project funding through previous Council actions, including the 2017-2018 budget process, which identified additional funding was going to be needed with a future appropriation in 2019. The project was previously scheduled to be completed in 2019, but the project schedule has been accelerated to be complete in 2018.

4. **Second Reading of Ordinance No. 165, 2017 Creating and Establishing the Midtown Business Improvement District. (Adopted)**

This Ordinance, unanimously adopted on First Reading on November 21, 2017, creates and establishes the Midtown Business Improvement District, appoints the initial members of the Board of Directors of the District, approves the District's Initial Operating Plan and Budget; and designates the area as a location for new business or commercial development.

The Initial Operating Plan has been revised between First and Second Reading of the Ordinance to address issues that were raised by Council at First Reading. The revised Initial Operating Plan is attached as Exhibit "E" to the Ordinance and the revisions are on page 6 of the Plan. The issues addressed in these revisions are to clarify that: (1) the District will be operated in compliance with all applicable Colorado laws, including the Fair Campaign Practices Act; (2) authorized District improvements will be available and open to the public in a non-discriminatory manner; and (3) the District cannot provide security services now or in the future unless authorized to so by the City Council.

5. **First Reading of Ordinance No. 167, 2017, Amending Section 2-568(c)(2) of the Code of the City of Fort Collins Pertaining to Rules of Conduct Applicable to Councilmember Conduct. (Adopted)**

The purpose of this item is to amend Section 2-568(c)(2) of the City Code to add clarifying language that limits Councilmember interaction with City officers and employees regarding matters for which a conflict of interest has been declared.

6. **First Reading of Ordinance No. 168, 2017, Amending Chapter 26, Articles VI and VII of the Code of the City of Fort Collins to Correct Errors in How Certain Utility Fees Formulae are Expressed Related to Electric Utility Development Fees and Single-Family Residential Stormwater Utility Fees. (Adopted)**

The purpose of this item is to correct two formulas relating to development charges and monthly fees for the Light and Power and Stormwater utilities. The first correction fixes an omission in the calculation of kilo-watt demand for electric capacity charges. The second correction fixes a typo in a formula used to calculate single family residential monthly stormwater fees. Both of these changes make City Code consistent with the original intent of the formulas and reflect how the fees have been calculated and billed since their adoption.

7. **First Reading of Ordinance No. 171, 2017, Amending Chapter 1 of the Code of the City of Fort Collins to Create a Petty Offense Classification and Penalties for Petty Offense Violations. (Adopted)**

The purpose of this item is to create a petty offense category within the City Code and to classify a violation of the City's smoking ordinance as a petty offense.

8. **First Reading of Ordinance No. 169, 2017, Authorizing the Use of the Non-Development Lease with the Colorado State Board of Land Commissioners as Match for a Neotropical Migratory Bird Conservation Act Grant Administered by the U.S. Fish and Wildlife Service. (Adopted)**

The purpose of this item is to place a Notice of Grant Agreement on the 3,873 acres of land within Soapstone Prairie Natural Area subject to a Non-Development Lease with the Colorado State Board of Land Commissioners. The grant will expand upon Bird Conservancy of the Rocky's (BCR) research and monitoring work on Soapstone Prairie and Meadow Springs Ranch to implement conservation strategies and management for 19 high priority grassland birds that breed within the Laramie Foothills Mountains to Plains Project and 28 high priority species at wintering sites in the Chihuahuah Desert of Mexico.

9. **First Reading of Ordinance No. 170, 2017, Authorizing the Use of the Evans Tract as Match for a Neotropical Migratory Bird Conservation Act Grant Administered by the U.S. Fish and Wildlife Service. (Adopted)**

The purpose of this item is to place a Notice of Grant Agreement on the 240-acre Evans Tract purchased in 2015 as part of Soapstone Prairie Natural Area. The grant will expand upon Bird Conservancy of the Rocky's (BCR) research and monitoring work on Soapstone Prairie and Meadow Springs Ranch to implement conservation strategies and management for 19 high priority grassland birds that breed within the Laramie Foothills Mountains to Plains Project and 28 high priority species at wintering sites in the Chihuahuah Desert of Mexico.

● **END CONSENT**

● **CONSENT CALENDAR FOLLOW-UP**

Councilmember Martinez highlighted Item No. 4, *Items Relating to the Horsetooth Road and College Avenue Intersection Improvement Project*, as a good news item.

● **COUNCILMEMBER REPORTS**

Councilmember Overbeck reported on attending a staff training focusing on equity and inclusion.

Councilmember Summers reported on attending an employee recognition event for long-term employees. He expressed his thanks to employees.

Councilmember Martinez reported on the employee recognition event and commended employees and leadership. He also reported on the Human Relations Commission awards and suggested the Mayor should be involved in handing out awards in the future.

Councilmember Overbeck reported on the Human Relations Commission awards and recognition of Child Safe.

Mayor Pro Tem Horak reported on the Boxelder Basin Regional Stormwater Authority meeting and stated the outline of who will be funding improvements once the Authority has paid off its bonds is moving forward. He also reported on a Water Now workshop regarding water rates and on attending the North Fort Collins Business Association holiday party during which the Coats and Boots event was highlighted.

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

10. **Items Relating to Code Amendments to Manage Small Cell and Other Communication Facility Installations in City Rights-of-Way and on City Infrastructure. (Adopted as Amended on Second Reading)**

- A. *Second Reading of Ordinance No. 143, 2017, Amending Chapter 23 of the Code of the City of Fort Collins to Establish Communication Facility Encroachment Permits.*
- B. *Second Reading of Ordinance No. 144, 2017, Amending Articles 3 and 5 of the Land Use Code Regarding Small Cell Facilities.*

*These Ordinances, unanimously adopted on First Reading on November 21, 2017, regulate the installation of small cellular and other communication equipment in the City's rights-of-way, establish a permit to allow such installations and to consider less extensive changes to the Land Use Code to clarify that the review of such applications for use of the City's right-of-way is addressed under the City Code regulations. The City Code language has been recommended for approval by the Energy Board and the Land Use Code language has been recommended for approval by the Planning and Zoning Board.*

*Between First and Second Reading, staff has modified the requirements involving signal interference compliance, as defined in the proposed regulations at City Code Sec. 26-172 and further described at Secs. 26-175(c) and 26-177(d)(1). Carriers expressed concerns with conditioning City permit approval on demonstrating compliance with federal radio frequency and signal interference standards. After review, staff has updated the related proposed City Code sections to align with regulations adopted by other Colorado municipalities requiring a statement under penalty of perjury that a carrier's emissions and equipment meet federal standards.*

Councilmember Overbeck stated Council has received feedback from citizens since First Reading and is hoping to make improvements to what is proposed.

Tyler Marr, City Manager's Office, discussed state regulation which greatly expanded the rights of telecom companies to install stand-alone poles and attached small cellular facilities to city-owned infrastructure. Council instituted a moratorium in September to allow time for staff to develop appropriate regulations. Staff's goals in developing the regulations were to achieve an integrated design for new facilities, have a strong preference for attaching to existing poles first, and understand the public safety need to expand coverage. The proposed code applies only to installations within the City's right-of-way, tries to limit the installation of new equipment within the right-of-way through the preference for attachment to City-owned infrastructure, addresses height and bulk through camouflage and design standards, and establishes the process through which permits would be granted.

Marr reviewed the concerns heard by citizens. In terms of these facilities being allowed in residential areas, state law indicates the small cell facilities are a use-by-right in all zone districts and federal law states local governments cannot prohibit the deployment of personal wireless service. State and federal law also do not allow public opinion to be considered for use-by-right items. Regarding concerns about setbacks from residential properties, staff has determined a setback requirement would restrict the presence of these facilities in residential areas. Monitoring of radio frequency emissions is heavily dictated by federal law; the City cannot require carriers to monitor emissions and the City is limited on what it can do with its own monitoring data. The City is also not able to include health concerns as part of the Ordinance as the FCC sets occupational standards for groups of individuals working close to these facilities.

Marr discussed the public outreach process and stated staff will continue to review carrier and citizen concerns and address those as they are able. A separate master lease agreement will be created for each carrier interested in installing small cellular facilities.

Nancy Eason thanked Council and Marr for their responses to her concerns. She acknowledged these facilities cannot be restricted; however, she requested a requirement to notify residents stating this is an entirely new use.

Nick Limberopoulos, Busch Law Firm, representing AT&T, applauded the City and staff for taking proactive steps to provide a regulatory roadmap for the rapid and responsible deployment of small cells in the right-of-way. He discussed concerns his firm has with the Ordinance conflicting with federal and state law relating to the definition of an eligible facilities request which omits bay stations, which would include all utility poles in the city's right-of-way. It would be in the best interest of all stakeholders to clarify the 600-foot separation requirement would not apply to replacement poles. In terms of vault design standards, the City's definition is more restrictive and requires that meter boxes are included in the 17-cubic foot dimensional standard which conflicts with currently controlling state law.

Councilmember Cunniff asked if notice of these installations could be provided in utility bills. Marr replied staff is exploring notification options and the current thought is to maintain a webpage with current applications; utility bill inserts could be examined.

Councilmember Cunniff stated he would like citizens to be notified as these installations are somewhat different than an underground utility.

Councilmember Overbeck suggested notification through mailers, social media, and the website. He asked if the City can spot-check the devices for emissions. Marr replied that is an approach the City could take; however, San Francisco takes that approach and has had limited efficacy in terms of identifying violations. To date, staff has not received direction from Council to conduct independent monitoring; however, the City does take direction from FCC regulations and carriers are required to certify through them that standards are met.

Councilmember Overbeck asked what process would occur should a City employee find excess emissions from a device. Marr replied the FCC is the only entity that can enforce a violation; therefore, the City would likely notify the FCC to follow-up and take a measurement. There may be an opportunity in the master lease agreements to demonstrate compliance in a higher manner; however, that has not been fully explored.

Councilmember Cunniff made a motion, seconded by Councilmember Summers, to adopt Ordinance No. 143, 2017, on Second Reading, as amended to replace subsection C(1)(a) with new language related to vault standards.

Councilmember Cunniff acknowledged frustration with the limited purview of the City on this matter, but commended staff work and the proposed aesthetic standards. He requested and received Council support to direct staff to return with notification options.

Mayor Pro Tem Horak supported notification suggestions and encouraged the City to develop an informational program on FCTV.

Councilmember Overbeck encouraged the use of NextDoor as a means of communication.

<b>RESULT:</b>	<b>ORDINANCE NO. 143, 2017, ADOPTED AS AMENDED ON SECOND READING [UNANIMOUS]</b>
<b>MOVER:</b>	Ross Cunniff, District 5
<b>SECONDER:</b>	Ken Summers, District 3
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Cunniff, Horak
<b>ABSENT:</b>	Troxell

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 144, 2017, on Second Reading.

<b>RESULT:</b>	<b>ORDINANCE NO. 144, 2017 ADOPTED ON SECOND READING [UNANIMOUS]</b>
<b>MOVER:</b>	Ross Cunniff, District 5
<b>SECONDER:</b>	Bob Overbeck, District 1
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Cunniff, Horak
<b>ABSENT:</b>	Troxell

**11. Second Reading of Ordinance No. 163, 2017, Repealing and Reenacting Article V of Chapter 24 of the Code of the City of Fort Collins and Amending the Fort Collins Traffic Code Regarding the Residential Parking Permit Program. (Adopted on Second Reading)**

*This Ordinance, unanimously adopted on First Reading on November 21, 2017, updates the City Code and Traffic Code to include elements of the Residential Parking Permit Program (RP3) as discussed at the August 22, 2017 Work Session, and changes some existing provisions that are no longer being used. Amendments to the Code will provide the City Manager to create regulations regarding the process for fast tracking areas affected by spillover parking (parking in neighborhoods adjacent to newly-adopted RP3 zones). Some additional revisions are proposed to ensure consistency between the current administrative procedures and the Code.*

Councilmember Cunniff expressed concern regarding the quorum requirement for engaging 50% of residents to vote in the formation of a residential parking zone. He stated public elections do not normally have such a requirement and suggested the elimination of Section 3.

Laurie Kadrich, Planning, Development, and Transportation Director, replied that requirement was not initially part of the program; however, very low resident participation was an issue. Outreach to neighborhoods was improved and this threshold was established. This is the same threshold used for neighborhoods to vote on traffic mitigation.

Councilmember Cunniff asked how the process has been improved to ensure identification of property owners. Seth Lorson, Transit Planner, replied addresses are determined through the Larimer County Assessor's information, duplicate addresses are removed, ballot language clearly states only one ballot can be cast per resident in the district, and signature certification is required on ballots.

Councilmember Stephens asked how many votes have not passed as a result of not having a quorum. Lorson replied there were no failed votes regarding regular RP3 zones; however, it did happen in the stadium event additions. Subsequent complaints have not been heard from neighborhoods that did not adopt the zones as a result of not having a quorum.



Councilmember Stephens asked if residents can bring the issue up for a vote again if it fails initially. Lorson replied in the affirmative.

Councilmember Summers asked about the ballot process. Lorson replied it is the final step in the outreach for the creation of an RP3 zone. Prior to that, residents must submit a petition for zone creation and a neighborhood meeting including both renting residents and owners as well as surrounding area residents occurs.

Councilmember Summers asked about petition requirements. Lorson replied it requires 10 resident signatures.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 163, 2017, on Second Reading.

Councilmember Cunniff commended the Residential Parking Permit Program as a good option for neighborhoods but stated there has been at least one situation in which the quorum requirement caused an issue.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to strike (c)(3) on page 4 of the Ordinance. He stated the requirement does not exist for most other voting processes.

Councilmember Stephens expressed concern with removing the quorum altogether as this is a large change for neighborhoods.

Councilmember Summers supported keeping some type of quorum requirement and noted only 10 resident signatures are required for a reconsideration. He asked about the timeline requirement from a failed initiative to a reconsideration. Kadrich replied there is no limitation on that, however neighborhoods with low participation have been encouraged to wait a year or so and staff has offered to do additional outreach during that time.

Councilmember Overbeck stated staff has developed some expertise on dealing with neighborhoods and citizens are pleased with the results of RP3 zone establishment. Lorson discussed the block-by-block manner in which zones are being adopted near CSU.

Councilmember Cunniff suggested a 10% quorum number.

Councilmember Stephens asked about the development of the 50% quorum number. Kadrich replied that was developed when Kurt Ravenschlag first started working with RP3 zones, he identified there had not been a consistent number of people petitioning and identifying the zones. He researched these zones in other communities and created recommendations for his staff team.

Councilmember Summers stated he is most comfortable with the Ordinance as written and discussed the importance of neighborhood action in encouraging residents to vote.

Councilmember Cunniff discussed his concern that property owners, not renting neighbors, are voting.

Councilmember Stephens suggested a 1/3 quorum number.

Councilmember Martinez stated he is not opposed to the staff recommendation and noted this is a significant change for neighborhoods.

Councilmember Overbeck asked if staff is anticipating the end of RP3 zones in the near future. Lorson replied there are likely two more zones and others may be subject to additions.

Councilmember Overbeck stated he is in support of the staff recommendation given the success of the program thus far.

Councilmembers Cunniff and Overbeck accepted a 1/3 quorum number as a friendly amendment in the interest of discussion.

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

**THE MOTION FAILED.**

Councilmember Cunniff requested staff do some analysis of recent votes, particularly around the stadium, and find ways to correct some of the issues. He requested staff notify Council when a vote is pending and the results of the vote.

City Manager Atteberry stated staff will address process improvements to address the concerns brought to Councilmember Cunniff's attention.

Councilmember Stephens suggested petitioners could be empowered with ways to help notify and engage neighbors.

Councilmember Overbeck suggested staff return in a year with an update and commended the RP3 program overall.

Councilmember Summers questioned whether property owners should be the appropriate party to vote in the case of income properties given tenants would be the main parties affected.

Councilmember Overbeck agreed with Councilmember Summers' suggestion.

Mayor Pro Tem Horak supported the staff recommendation.

Councilmember Cunniff agreed with Mayor Pro Tem Horak that property owners are the correct metric.

<b>RESULT:</b>	<b>ORDINANCE NO. 163, 2017 ADOPTED ON SECOND READING [UNANIMOUS]</b>
<b>MOVER:</b>	Ross Cunniff, District 5
<b>SECONDER:</b>	Bob Overbeck, District 1
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Cunniff, Horak
<b>ABSENT:</b>	Troxell

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

● DISCUSSION ITEMS

12. **First Reading of Ordinance No. 172, 2017, Amending Article III of Chapter 12 of the Code of the City of Fort Collins Regarding Smoking in Public Areas. (Adopted as Amended on First Re)**

*The purpose of this item is to consider changes to the downtown smoking ordinance as consistent with the direction given by Council at the August 22 Work Session. The changes include placing a 10 p.m. to 5a.m. window in which the ordinance would not be in effect, and two options related to having designated smoking areas within the downtown zone, one of which creates up to eight areas and one which would allow smoking in all alleys within the zone.*

Tyler Marr, Policy and Project Manager, stated the current smoking Ordinance, which went into effect in 2016, prohibits smoking in the downtown area, on City-owned property, and at City-sponsored special events. At an August work session, Council requested the exploration of a non-criminal offense, a lifting of the restriction between 10 p.m. and 5a.m., and potential designated areas. Concerns with the existing Ordinance include the large size of the downtown no smoking area which leads to employee smoke breaks taking much longer, difficulty in notifying visitors, competitive disadvantage for businesses, and the criminal offense aspect and enforcement damaging relationships with police and other City staff. Alternatively, there are comments that these restrictions are necessary and advance important health and livability goals within the city.

Marr discussed the three proposed changes to the Ordinance. The first, which was approved on the Consent Agenda, created a new petty offense category within the Municipal Code. This carries a maximum fine of \$500 and no jail time. The second modification would lift the downtown smoking restrictions between 10 p.m. and 5 a.m. The third change is related to designated smoking areas. One option creates several small designated smoking zones within the downtown area. The second option would allow smoking in all alleys, which makes education and signage easier. However, it would be more difficult for non-smokers to avoid and would conflict with the 20-foot rule. The third option would leave the ordinance as is.

Alan Braslau supported the smoke-free environment and encouraged Council to make no changes to the current Ordinance.

Katherine (no last name given), Larimer County Department of Health and Environment, discussed a community collaboration addressing the health concerns affecting youth. She stated communities that enact laws that limit substance use have lower rates of youth substance use and encouraged Council to make no changes to the current Ordinance.

Kevin Taylor encouraged Council to make no changes to the current Ordinance and suggested even strengthening it.

Ryan Houdek, owner of several downtown restaurants, stated he has never had an issue avoiding smoke when navigating the downtown area. He opposed the current Ordinance and stated compliance will only come with easier, enforceable solutions. He supported reducing the offense, lifting the restriction between 10 p.m. and 5 a.m., and allowing smoking in alleys and 20 feet away from doors and windows.

Christa Timmerman, Larimer County Department of Health and Environment, discussed the County's efforts at reducing youth tobacco use and encouraged Council to consider public health best practices and youth tobacco prevention when making its decision.

Jennifer Seiwald, downtown business owner, opposed allowing smoking in alleys. She opposed changes to the existing Ordinance, but stated she would rather have designated smoking areas if a change is to be made.

Councilmember Cunniff asked how staff determined the locations of the designated smoking zones. Marr replied staff attempted to find zones in every block face within alleys that did not violate the 20-foot rule.

Councilmember Cunniff asked how the 10 p.m. time was determined. Marr replied there is generally a large increase in smoking after 10 p.m.

Councilmember Cunniff asked about the petty offense category and needed language changes. City Attorney Daggett replied the category of petty offense was created on the Consent Agenda and Section 4 of this Ordinance makes that apply to the smoking Ordinance.

Councilmember Overbeck asked why the neighborhood meeting occurred so closely to this Council meeting. Marr replied it took until last Thursday to ensure the proposed zones could be operationalized and enforced.

Councilmember Overbeck asked if individuals can smoke in their cars if windows are rolled up. Marr replied in the affirmative.

Councilmember Martínez stated allowing smoking in alleys is counter to the City's efforts at improving alleys. He supported helping employers encourage employees to quit smoking versus enabling them to have a space to smoke.

Councilmember Overbeck asked why the library area was not included. Marr replied Council gave clear direction to not modify the ordinance related to City parks, natural areas, and other property.

Councilmember Overbeck asked how staff is addressing the issue of smokers leaving the library to smoke in front of residences. Marr replied those concerns have been heard not only at the library, but in other areas around town and that is a challenge with this Ordinance.

Councilmember Overbeck asked if the no smoking area could be expanded from Olive to Peterson up to Mountain. Marr replied that is an option for Council to consider. City Attorney Daggett recommended a new Ordinance be brought forth if Council wanted to make such a change.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 172, 2017, on First Reading, as amended to maintain the petty offense change but strike all other changes.

Councilmember Cunniff supported the petty offense aspect as it makes it more likely the Ordinance will be enforced. He stated there are often families out past 10 p.m. and most of the proposed designated smoking areas are close to the smoke-free boundaries. He suggested directing staff to designate smoking areas outside the boundaries.

City Attorney Daggett outlined the necessary language changes to the Ordinance and recommended striking the section dealing with delayed implementation. Councilmembers Cunniff and Overbeck agreed to the changes.

Councilmember Stephens stated she toured the designated smoking areas and there is a case to be made for having an area to which smokers can be directed out of the throughways. She stated this may also make enforcement easier as officers can direct people to proper areas.

Councilmember Overbeck stated he was sympathetic to the employee issue; however, he has since had many citizens comment they are concerned about the downtown ban being lifted. He noted nicotine gum can be chewed as well.

Councilmember Martinez stated it may create more of a challenge for police officers to direct smokers to a different area. It is not a right for individuals to impose their second-hand smoke on others and suggested the creation of employee smoking cessation programs.

Councilmember Stephens stated she is not trying to promote smoking but is attempting to be a realist and having the zones would help keep smokers off College Avenue. There is an enforcement issue and smoking is still occurring despite the ban.

Councilmember Summers stated he understands Councilmember Stephens' concerns. He asked if consideration has been given to shrinking the no smoking area. Marr replied Council directed staff to leave the boundaries of the zone as is at its August work session; however, public outreach efforts found some people feel it is too large.

Councilmember Summers asked if the smoking prohibition includes e-cigarettes. Marr replied in the affirmative.

Councilmember Martinez stated second-hand smoke trespasses on others' freedom to stay healthy. He admitted people will still smoke in the downtown area, but stated citizens will generally respect the ban.

Mayor Pro Tem Horak stated he would support the motion and stated it would be very difficult to shrink the smoke-free area.

Councilmember Overbeck requested future public outreach be done earlier in the process.

Councilmember Stephens stated she would support the motion and encouraged County health employees to reach out to restaurant workers.

<b>RESULT:</b>	<b>ORDINANCE NO. 172, 2017 ADOPTED AS AMENDED ON FIRST READING [UNANIMOUS]</b>
<b>MOVER:</b>	Ross Cunniff, District 5
<b>SECONDER:</b>	Bob Overbeck, District 1
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Cunniff, Horak
<b>ABSENT:</b>	Troxell

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

13. **First Reading of Ordinance No. 166, 2017, Appropriating Prior Year Reserves in the General Fund to Reimburse Woodward, Inc. for Development Fees and Use Tax. (Adopted as Amended on First Reading)**

*The purpose of this item is to appropriate \$42,614 of prior year reserves for a rebate to Woodward, Inc. for use tax under an agreement that City Council approved on April 2, 2013 (Ordinance No. 055, 2013). The agreement provides business investment assistance for the relocation of Woodward's headquarters, as well as an expansion of its manufacturing and office facilities to a new location at the corner of Lincoln Avenue and Lemay Avenue. The project will retain or create between 1,400 and 1,700 primary jobs in the City.*

Eric Sutherland stated this appropriation is in violation of the City Charter.

Mayor Pro Tem Horak requested City Attorney Daggett respond to Mr. Sutherland's comments. City Attorney Daggett replied Mr. Sutherland has articulated a long-standing disagreement in interpretation between himself and the City Attorney's Office. Council clearly identified public purposes to be accomplished by these expenditures.

Councilmember Cunniff asked why there is not a whereas clause detailing the public purpose. City Attorney Daggett replied one could be included.

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

City Attorney Daggett read a new final whereas clause that discusses public purpose and ties into the Ordinance by which Council adopted the agreement originally.

Councilmember Cunniff made a motion, seconded by Councilmember Martinez, to adopt Ordinance No. 166, 2017, on First Reading, as amended to include the new whereas clause.

Mayor Pro Tem Horak asked if the clause should include mention of public infrastructure.

City Attorney Daggett stated the language could be updated for Second Reading.

<b>RESULT:</b>	<b>ORDINANCE NO. 166, 2017, ADOPTED AS AMENDED ON FIRST READING [UNANIMOUS]</b>
<b>MOVER:</b>	Ross Cunniff, District 5
<b>SECONDER:</b>	Ray Martinez, District 2
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Cunniff, Horak
<b>ABSENT:</b>	Troxell

● **OTHER BUSINESS**

Councilmember Overbeck requested and received Council support to direct staff to examine a potential no smoking zone around the library.

Councilmember Overbeck asked about the scope of the target area for an occupancy study and suggested it encompass a wider area in order to be inclusive and thorough.

Mayor Pro Tem Horak stated the study should include representatives from different neighborhoods who have been actively involved in the subject. He stated there are different ways to be involved and suggested HOAs be contacted.

City Manager Atteberry requested Councilmember Overbeck provide specific names and neighborhoods for inclusion in the study.

● **CALL OF SPECIAL MEETING**

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, pursuant to Section 2-29(a) of the City Code, that the City Council call a special meeting of the Council to take place on Wednesday, December 13, 2017, at 6:00 p.m. for the purpose of conducting a pre-application hearing under Section 2.1.2(h) of the Land Use Code regarding the Montava project.

Mayor Pro Tem Horak stated this meeting will not be presented on live FCTV as there is an agreement with Larimer County to use the channel on specific dates; however, it will be recorded and available on the City's website.

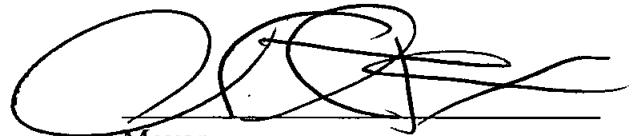
<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Ross Cunniff, District 5
<b>SECONDER:</b>	Bob Overbeck, District 1
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Cunniff, Horak
<b>ABSENT:</b>	Troxell

● **ADJOURNMENT**

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to adjourn to 6:00 p.m. on Tuesday, December 12, 2017, for the purpose of holding a possible executive session to discuss personnel matters and for consideration of such other matters that may come before the Council.

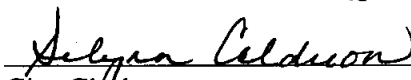
<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Ross Cunniff, District 5
<b>SECONDER:</b>	Bob Overbeck, District 1
<b>AYES:</b>	Martinez, Stephens, Summers, Overbeck, Cunniff, Horak
<b>ABSENT:</b>	Troxell

The meeting adjourned at 9:14 PM.



Mayor

ATTEST:

  
 City Clerk

