

AGENDA ITEM SUMMARY

May 21, 2019

City Council

STAFF

Tyler Marr, Senior Project Manager
Chris Van Hall, Legal

SUBJECT

First Reading of Ordinance No. 066, 2019, Making Appropriations for a Federal Lobbying Contract Related to Regulation of Train Horn Noise.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate \$49,000 in order to enter into a lobbying contract with Squire Patton Boggs to achieve legislative or regulatory progress on reducing train horn noise in downtown Fort Collins. The City will enter into the lobbying contract without competition as permitted by Section 8-161(d)(1) of the City Code.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The City has been pursuing a reduction in train horn noise through the downtown core for many years, most notably in the form of a quiet zone, which would allow train operators to refrain from blasting horns at every crossing. These efforts have been met with resistance, challenges, and roadblocks from the Federal Railroad Administration (FRA), who has to date proven unwilling to work collaboratively, or evaluate federal law beyond a very strict and narrow interpretation. The City has been denied a waiver to the requirement for gates along the Mason corridor despite evidence of meeting safety criteria and has been unable to get firm next steps from FRA on what might be alternative solutions that they would consider.

City Council and staff have worked with the federal government through multiple angles, including seeking support of appointed officials from both the Obama and Trump administrations. These efforts have resulted in additional conversations with the FRA but have not produced meaningful results. Recent visits to Washington, D.C. included conversations with our Congressional delegation and members of the Trump administration indicating that a legislative approach could be the most expedient way to see relief.

With multiple opportunities to include language in upcoming federal legislation, such as the reauthorization of the surface transportation act (FAST), the Fiscal Year 2020 federal budget process, or a potential infrastructure deal, staff believes it is an appropriate time to engage outside help to achieve legislative results. A federal lobbyist could assist in trying to make progress on multiple fronts, including:

- An appropriations provision prohibiting federal funds to enforce FRA requirements related to our efforts;
- An exemption from the regulations for receiving a Quiet Zone from FRA; and
- A permanent exemption via legislation that effectively establishes a Quiet Zone via Congress.

Staff has identified Squire Patton Boggs (SPB) as a preferred provider for lobbying services to address these opportunities. The City will enter into the lobbying contract pursuant to Section 8-161(d)(1) of the City Code,

because there exists more than one responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the City, will otherwise injure the City's financial interests or will substantially impede the City's administrative functions or the delivery of services to the public. The City works with the firm on other projects - currently and most notably Halligan Reservoir efforts - and SPB has a national team (including expertise in railroad issues) that we believe can help secure necessary sponsors and supporters for relevant legislation. SPB has proposed a one-year retainer with the City at the cost of \$7,000 monthly, or \$84,000 for a twelve-month engagement, however, the City will only be entering into the contract for seven months at a cost of \$49,000, with an option to extend the contract if Council subsequently approves an additional \$35,000 for another five months of engagement. Staff will bring this proposed additional funding in the 2020 budget revision process. SPB and staff believe this is enough time to make substantial progress on the legislative and regulatory fronts.

Staff plans to begin work with SPB immediately upon securing an appropriation, so as to not miss timely opportunities in the Congressional calendar.

CITY FINANCIAL IMPACTS

Staff has identified the General Fund reserves as a source for the needed \$49,000 because the debt service payments related to the financing of the I-25/Project and Regional Police Training Facility projects was \$350,000 less than originally budgeted for. The \$49,000 to cover costs under this contract for 2019 will be deducted from this \$350,000 savings and the remainder of the contract costs will be captured in the 2020 budget revision process.

ORDINANCE NO. 066, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING APPROPRIATIONS FOR A FEDERAL LOBBYING
CONTRACT RELATED TO REGULATION OF TRAIN HORN NOISE

WHEREAS, the City has been trying to achieve a reduction in train horn noise through the downtown core for many years, most notably in the form of attempting to establish a quiet zone along the Mason corridor, which would prohibit train operators traveling along the Mason corridor from using train horns within the established quiet zone, except in rare circumstances; and

WHEREAS, despite various attempts, the City has not been successful in establishing a quiet zone along the Mason corridor due to the way the Federal Railroad Administration (the “FRA”) interprets relevant regulations; and

WHEREAS, the City has not been able to obtain further direction from the FRA on what might be a workable solution to establish a quiet zone along the Mason corridor; and

WHEREAS, after further discussion with representatives of Congress and members of the Trump administration, it appears the best solution to establish a quiet zone along the Mason corridor would be to pursue various legislative solutions through Congress that may allow the City to establish a quiet zone or to otherwise reduce train horn noise through the downtown core; and

WHEREAS, staff has evaluated prospective providers of lobbying services and has identified Squire Patton Boggs (SPB) as the preferred provider to help secure necessary sponsors and support for a legislative solution to the train horn noise issue; and

WHEREAS, this Ordinance appropriates \$49,000 for 2019 lobbying services from SPB for seven months, with an option to extend the contract for an additional five months if Council subsequently appropriates an additional \$35,000 in the 2020 budget revision process, or otherwise; and

WHEREAS, staff plans to begin work with SPB immediately upon securing an appropriation, so as to not miss timely opportunities in the Congressional calendar; and

WHEREAS, this appropriation serves the public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of reducing noise pollution within the City’s downtown core; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council to appropriate by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the General Fund and will not cause the total amount appropriated in the General Fund to exceed the current estimate of actual and anticipated revenues to be received in that fund during any fiscal year.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from prior year reserves in the General Fund the sum of FORTY NINE THOUSAND DOLLARS (\$49,000) for expenditure in the General Fund for a Federal Lobbying Contract with Squire Patton Boggs related to Train Horn Noise.

Introduced, considered favorably on first reading, and ordered published this 21st day of May, A.D. 2019, and to be presented for final passage on the 4th day of June, A.D. 2019.

Mayor

ATTEST:

Chief Deputy City Clerk

Passed and adopted on final reading on the 4th day of June, A.D. 2019.

Mayor Pro Tem

ATTEST:

City Clerk