

City of
Fort Collins

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January 12, 2016

Ms. Virginia Farver
1214 Belleview Drive
Fort Collins, CO 80526

Re: Notice of Claim

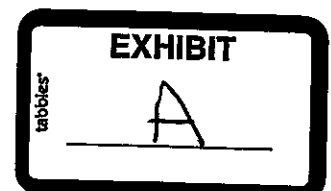
Dear Ms. Farver:

This letter is in response to your September 23, 2015 notice of claim ("Notice") that the City of Fort Collins ("City") received on September 29, 2015. Your Notice is nineteen pages long and numerous documents are attached to it. You state in the Notice that you are presenting it to the City in accordance with the Colorado Governmental Immunity Act.

You claim in the Notice that you and other customers of the City's Electric Utility ("Electric Utility") have suffered monetary damages you allege were caused by the City's implementation of its "Advance Metering Fort Collins" project ("AMFC Project"). More specifically, you claim that these damages have occurred because you believe that the AMFC Project was implemented without the City Council approval required by "Colorado law and the City Charter." You ask for approximately \$800 in monetary damages for yourself and an unstated amount for other Electric Utility customers.

As you know, under the AMFC Project the Electric Utility has replaced most of its electromechanical electric meters with a communicating digital electric meter (often referred to as a "smart meter") that can be read remotely rather than requiring that it be read at its location by a meter reader, as was the case for electromechanical meters. However, for those customers who have objected to the smart meter, as you have, the Electric Utility has instead installed a type of non-communicating digital meter that must still be read by a meter reader.

As you state in your Notice, the City Council has imposed an \$11 per month charge on those customers whose meters must still be read by a meter reader. The monetary damages you claim include reimbursement for what you have personally paid for this charge and, it appears, reimbursement for the Electric Utility's other customers who have paid this charge. You argue this reimbursement is required because the AMFC Project was not properly approved by City Council and, therefore, Council's imposition of this charge was not legal.



To support your claims you cite in the Notice certain Colorado statutes and City Charter provisions. You argue that these laws show that the City Council has failed to properly approve the AMFC Project. Your argument, however, overlooks how all of the Electric Utility's operations, including the AMFC Project, are authorized in the City's Charter and Code.

In Section 5(b)(4) of Charter Article II, the City Council is authorized to establish a City administrative office to provide "electric utility services." The Council did this by the adoption of Code Section 2-504 through which it created the City's "Utility Services" and authorized the appointment of a "Director . . . directly responsible to the City Manager . . . for the functions and duties of Utility Services . . . to provide for the design, construction, reconstruction, addition, repair, replacement, operation and maintenance of the City's electric . . . services"

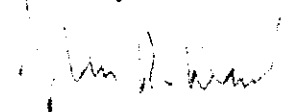
The Council has also adopted a comprehensive set of Code provisions in Article VI of Code Chapter 26 to further define, regulate and to set the fees, rates and charges for the City's provision of electric services through Utility Services. Included in Article VI is Section 26-396 which reads, in part: "No person shall take electrical energy from the distributing system except through a meter or other measuring device owned and installed by the City without the consent of the electric utility to take such electrical energy."

Based on these provisions in the City Charter and Code, the choice and decision of what kind of electric meter is to be used by the Electric Utility has clearly been delegated to the City Manager and the Director of Utility Services subject, of course, to any needed appropriation of funds by the City Council. As you concede in your Notice, the Council adopted ordinances to appropriate the funds needed to implement and complete the AMFC Project.

Section 2 of Charter Article III further provides that the City Manager is responsible for administering Council's adopted budget, which necessarily includes the City Manager seeing that the budgeted funds are spent in the manner authorized by Council in its budget. This is exactly what was done in the City's implementation of the AMFC Project.

The City therefore denies the claims you have asserted in your Notice.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Duval".

John R. Duval
Deputy City Attorney

Cc: Risk Management