

ORDINANCE NO. 101, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
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
PERTAINING TO TELECOMMUNICATION FACILITIES AND SERVICES

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AS NEW SECTION 7149

WHEREAS, pursuant to Article IV, Section 8 of the Charter of the City of Fort Collins (“Charter”), the Charter may be amended as provided by the laws of the State of Colorado; and

WHEREAS, as provided in Article XX, Section 9 of the Colorado Constitution and in Section 31-2-210(1)(b) of the Colorado Revised Statutes, the City Council may initiate a proposed Charter amendment by adopting an ordinance to submit the amendment to the City’s electorate and must adopt in that ordinance a ballot title for the amendment; and

WHEREAS, Charter Article XII, titled “Municipal Public Utilities,” contains various provisions authorizing and regulating the City’s public utilities, like its water and electric utilities, including the requirement in Section 1 of Article XII that the City’s electors must give their approval before the Council can construct, condemn, purchase, acquire or lease any new public utility; and

WHEREAS, on November 3, 2015, a majority of the City’s electorate voted “yes” in answer to a ballot question submitted to them asking if the City, in the exercise of its home rule power, should have the right to provide, either directly or indirectly through private and/or public partnerships, to its residents, businesses, educational institutions and other organizations in the City, various kind of telecommunication facilities and services, including broadband Internet facilities and services; and

WHEREAS, as a result of this response from the electorate, City Council and staff have conducted significant research, public outreach and investigation to determine whether the City should provide high-speed broadband Internet service as a public utility; and

WHEREAS, after completing that research, public outreach and investigation, the Council has determined that the City’s electorate should be asked to amend the Charter to allow, but not require, the Council to authorize, by future ordinance and without a vote of the electorate, the City’s electric utility or a new telecommunications utility to acquire and provide directly or indirectly telecommunication facilities and services, including high-speed broadband Internet facilities and services; and

WHEREAS, on July 18, 2017, the Council adopted on first reading Ordinance No. 096, 2017 (“Election Ordinance”) calling a special municipal election to be held on November 7, 2017, as a coordinated election with the Larimer County Clerk and Recorder (“November Election”) and the Election Ordinance will be considered by Council on second reading at its August 15, 2017, regular meeting; and

WHEREAS, the Council's intent in adopting this Ordinance No. 101, 2017, is to present to the City's electorate at the November Election, through the ballot title set in Section 3 of this Ordinance, a proposed amendment to Charter Article XII that would add a new Section 7 to Article XII, which, if adopted, would allow the Council, by ordinance and without a vote of the electorate, to authorize the City's electric utility or a new telecommunications utility to acquire, construct, provide, fund and contract for telecommunication facilities and services within and outside the City's territorial limits, whether directly or in whole or part through one or more third-party providers; and

WHEREAS, this new Section 7 also grants to the Council certain powers relating to providing telecommunication facilities and services, and these include: (a) issuing securities and other debt; (b) setting the customer charges for these facilities and services; (c) convening in executive session to consider matters pertaining to competition in providing these facilities and services; (d) delegating to a Council-appointed board or commission some or all of the Council's governing authority and powers granted in this Charter amendment, but not the power to issue securities and other debt; and (5) delegating to the City Manager some or all of Council's authority to set customer charges for these facilities and services.

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 the following proposed new Section 7 to Charter Article XII shall be submitted to the registered electors of the City as "Proposed Charter Amendment No. 1" at the November Election, provided that the Election Ordinance is adopted on second reading on August 15, 2017, and becomes law ten (10) days thereafter as provided in the Charter:

Charter Article XII, Municipal Public Utilities

Section 7. Telecommunication facilities and services.

(a) In addition to all the powers granted by this Charter to the Council to acquire, condemn, establish, construct, own, lease, operate and maintain an electric utility to provide light, power and other electrical facilities and services, the Council may, by ordinance and without a vote of the electors, authorize the electric utility to acquire, construct, provide, fund and contract for telecommunication facilities and services within and outside the City's territorial limits, whether directly or in whole or part through one or more third-party providers. Alternatively, the Council may create by ordinance, and without a vote of the electors, a telecommunications utility to exercise these same powers to furnish telecommunication facilities and services within and outside the City's territorial limits. If the Council creates a telecommunications utility, it may also establish that utility as an enterprise of the City in the same manner, with the same powers and subject to the same requirements and limitations established under Section 19.3(b) of Article V of this Charter for the City's other enterprises. The Council may also exercise

with respect to the telecommunications utility the same general authority and powers granted to Council in this Charter with respect to the City's other utilities.

(b) The Council, acting as itself, the board of the electric utility enterprise or as the board of the telecommunications utility enterprise, shall have the power to issue revenue and refunding securities and other debt obligations as authorized in Sections 19.3 and 19.4 of Article V of this Charter to fund the provision of the telecommunication facilities and services authorized in this Section. The cumulative total principal amount of any such securities and other debt obligations issued shall not exceed one hundred and fifty million dollars (\$150,000,000), except that any refunding of such securities or other debt obligations shall not be included in that cumulative total. The City's payment of and performance of covenants under the securities and other debt obligations issued under this subsection (b) and any other contract obligations of the City relating to the provision of telecommunication facilities and services under this Section, shall not be subject to annual appropriation so long as annual appropriation is not required under Article X, Section 20 of the Colorado Constitution.

(c) The Council shall set by ordinance the rates, fees and charges for furnishing the telecommunication facilities and services authorized in this Section subject to the same limitations in Section 6 of Article XII of this Charter for setting the rates, fees and charges for other City utilities, except to the extent this authority is delegated by Council pursuant to subsection (e) below. In setting such rates, fees and charges, the Council may also include amounts payable to the City's general fund for a franchise fee, a reasonable rate of return on any contributions from the general fund to acquire or construct telecommunication facilities, and the repayment of any loans from the general fund used to support the provision of telecommunication facilities and services under this Section, to include the payment of a reasonable rate of interest on any such loans.

(d) In addition to the authority to go into executive session as provided in Section 11 of Article II of this Charter, the Council, and any board or commission established under subsection (e) below, may go into executive session to consider matters pertaining to issues of competition in providing the telecommunication facilities and services authorized in this Section, which shall include, without limitation, matters subject to negotiation, strategic planning, pricing, sales and marketing, development phasing and any other matter allowed under Colorado law.

(e) As authorized in Section 1 of Article IV of this Charter, the Council may, by ordinance, establish a Council-appointed board or commission and delegate to it, in whole or part, the Council's governing authority and powers granted under this Section concerning the furnishing of telecommunication facilities and services by the City's electric utility or telecommunications utility, but not the power to issue securities as provided in subsection (b), above which shall only be exercised by the Council acting as itself or as the board of the electric utility enterprise or as the board of the telecommunications utility enterprise. The Council may also delegate by ordinance to the City Manager, in whole or part, its authority in subsection (c) above to set the rates, fees and charges for furnishing telecommunication facilities and services. Any Council

ordinance delegating this authority shall set forth the process to be used by the delegate for the setting of these rates, fees and charges. In addition, the amount of the rates, fees and charges so set by the delegate shall be determined under the same criteria the Council is authorized and required to follow in subsection (c) above.

(f) For purposes of this Section, *telecommunication facilities and services* shall mean those facilities used and services provided for the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, to include, without limitation, any broadband Internet facilities and services using any technology having the capacity to transmit data to enable a subscriber to the service to originate and receive high-quality voice, data, graphics and video. *Telecommunication facilities and services* and "broadband Internet facilities and services" are to be interpreted under this Section in the broadest possible way to cover the widest range of technologies and technology infrastructure, regardless of how these terms may be defined by federal or state law.

Section 3. That the following ballot title, with its title and submission clause, is hereby adopted for submitting the proposed new Section 7 in Charter Article XII to the City's electorate at the November Election, provided that the Election Ordinance is adopted on second reading on August 15, 2017, and becomes law ten (10) days thereafter as provided in the Charter:

CITY-INITIATED
PROPOSED CHARTER AMENDMENT NO. 1
ADDING A NEW SECTION 7 TO CHARTER ARTICLE XII TO
AUTHORIZE, BUT NOT REQUIRE, THE CITY'S PROVISION OF
TELECOMMUNICATION FACILITIES AND SERVICES AS A
PUBLIC UTILITY, INCLUDING BROADBAND INTERNET SERVICES

Shall Article XII of the City of Fort Collins Charter be amended to allow, but not require, City Council to authorize, by ordinance and without a vote of the electors, the City's electric utility or a separate telecommunications utility to provide telecommunication facilities and services, including the transmission of voice, data, graphics and video using broadband Internet facilities, to customers within and outside Fort Collins, whether directly or in whole or part through one or more third-party providers, and in exercising this authority, to: (1) issue securities and other debt, but in a total amount not to exceed \$150,000,000; (2) set the customer charges for these facilities and services subject to the limitations in the Charter required for setting the customer charges of other City utilities; (3) go into executive session to consider matters pertaining to issues of competition in providing these facilities and services; (4) establish and delegate to a Council-appointed board or commission some or all of the Council's governing authority and powers granted in this Charter amendment, but not the power to issue securities and other debt; and (5) delegate to the City Manager some or all of Council's authority to set customer charges for telecommunication facilities and services?

_____ Yes/For
_____ No/Against

Section 4. That pursuant to Section 31-2-210(4) of the Colorado Revised Statutes, the City Clerk is directed to publish in the *Coloradoan* a notice of the City's November 7, 2017, special election coordinated with Larimer County and to include in that notice the full text of proposed Section 7 of Charter Article XII as it is stated in this Ordinance. Such notice is to be published within thirty (30) days of the adoption of this Ordinance and not less than sixty (60) days nor more than one hundred twenty (120) days before said election.

Introduced, considered favorably on first reading, and ordered published this 8th day of August, A.D. 2017, and to be presented for final passage on the 15th day of August, A.D. 2017.

ATTEST:





Mayor



Interim City Clerk

Passed and adopted on final reading on the 15th day of August, A.D. 2017.

ATTEST:





Mayor



Interim City Clerk