

June 7, 2011

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting - 6:00 p.m.

A regular meeting of the Council of the City of Fort Collins was held on Tuesday, June 7, 2011, at 6:00 p.m. in the Council Chambers of the City of Fort Collins City Hall. Roll call was answered by the following Councilmembers: Horak, Kottwitz, Manvel, Ohlson, Poppaw, Troxell and Weikunat.

Staff Members Present: Atteberry, Krajicek, Roy.

Agenda Review

City Manager Atteberry withdrew Item Nos. 19 and 21, *Items Relating to the Greeley Bellvue Pipeline on City Property* and *Items Relating to the Fort Collins Museum/Discovery Science Center Project*, to a later date, and moved Item No. 10, *Second Reading of Ordinance No. 064, 201, Appropriating Unanticipated Grant Revenue and Prior Year Reserves In the Capital Projects Fund for the North College Avenue Improvements - Vine Drive to Conifer Project*, to the Discussion Agenda.

Citizen Participation

Eric Sutherland, 3520 Golden Currant, opposed the City's investment in the Smart Grid Program.

Virginia Farver, 1214 Bellvue Drive, questioned the City's investment in the Smart Grid Program.

Terri Williams, 2018 Niagra Court, expressed concern regarding the City's investment in Smart Grid technology.

Michelle Martens, Fort Collins resident, expressed concern regarding Smart Grid Program privacy issues and monitoring.

Thomas Edwards, Fort Collins Bicycle Coalition, discussed bicycle trip numbers in the Fort Collins community and violations of traffic laws.

Mel Hilgenburg, 172 North College, supported the Veterans Plaza Project and suggested possible licensing for e-bike users.

Stacy Lynne, 216 Park Street, discussed the difference between fact and opinion and the idea of a magistrate versus a judge.

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Citizen Participation Follow-up

City Manager Atteberry noted the Smart Meter Program will be discussed at the July 5th work session.

CONSENT CALENDAR

6. Consideration and Approval of the Minutes of the May 3 and May 17, 2011, Regular Meetings.
7. Second Reading of Ordinance No. 061, 2011, Appropriating Funds from the City's Storm Drainage Fund Reserves for Transfer to the Fort Collins Urban Renewal Authority for the Purpose of Providing a Loan for the Northeast College Corridor Outfall Project.

This Ordinance, unanimously adopted on First Reading on May 17, 2011, appropriates funds from the City's Storm Drainage Fund Reserves for the purpose of providing a loan to the Fort Collins Urban Renewal Authority (URA). The proposed loan provides the URA with the necessary funds to contribute \$326,472 to the purchase of the Northeast College Corridor Outfall detention pond (purchase completed in July, 2010). This contribution will cover the shortfall in the land purchase transaction and repay the City's Stormwater Fund capital projects budget. The loan from the Storm Drainage Fund Reserves will be interest only for a term of 10 years. As stated in the Agenda Item Summary on First Reading, the interest rate associated with the NECCO loan was to be set at the 10-year treasury bill rate on the day after URA Board authorization or May 18, 2011. The corresponding treasury bill rate was 3.181 percent on that day and will be the effective rate of this loan.

8. Second Reading of Ordinance No. 062, 2011, Appropriating Prior Year Reserves in the Capital Projects Fund for the Building on Basics Lincoln Center Renovation Project.

During the Lincoln Center Addition and Renovation project, an unanticipated structural issue with the 32 year old Performance Hall walls was discovered. The structural problem is significant and the Performance Hall walls will require additional structural support. This work must be completed before the facility can be reopened. Previously, \$460,000 was appropriated for these repairs. This Ordinance, unanimously adopted on First Reading on May 17, 2011, appropriates an additional \$135,000 from prior year reserves in the Capital Project Fund Building Community Choices program to complete the structural work.

9. Second Reading of Ordinance No. 063, 2011, Making Certain Amendments to Chapter 7, Article III, Division 3 of the City Code Governing Council Election Districts.

At the April 5, 2011 City election, voters approved a Charter amendment which changed the method for adjusting City Council district boundaries so that the size and configuration of Council districts is based on the number of people residing in each district (population),

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rather than the number of registered electors. The Charter, as amended, calls for the Council to establish by ordinance the process for adjusting district boundaries and giving notice of any proposed boundary changes and the manner of protesting such proposed changes. This Ordinance, unanimously adopted on First Reading on May 17, 2011, amends existing provisions in the City Code to establish the process of adjusting district boundaries based on population.

10. Second Reading of Ordinance No. 064, 201, Appropriating Unanticipated Grant Revenue and Prior Year Reserves In the Capital Projects Fund for the North College Avenue Improvements - Vine Drive to Conifer Project.

The limits of this phase of the North College Improvement Project are from Vine Drive to the Hickory/Conifer intersection. Improvements will include a two inch asphalt overlay, the construction of various urban design elements, an eight foot on-street bike lane, a landscaped parkway, shared use paths, the definition and consolidation of accesses throughout the corridor, an updated storm system including water quality treatment ponds, and safety improvements at the Conifer/Hickory Intersection. The total project budget of \$11.19 million includes \$2.7 million from residual funds available from the Building on Community Choices (BCC) Tax Initiative of 1997. This Ordinance, unanimously adopted on First Reading on May 17, 2011, appropriates \$1,001,000 in additional grant funds received from the Colorado Department of Transportation and \$2.7 million from prior year reserves in the Capital Projects Fund, Building Community Choices reserves for expenditure on this Project. The residual BCC funds appropriated are to be repaid to the City of Fort Collins by the Urban Renewal Authority (URA) when the URA has the funds to repay the BCC funds. Due to the timing of the improvements, the URA contributions will not be available at the start of construction. The total appropriation of \$11,186,000 will allow the project to be constructed to the full project limits from Vine Drive to Conifer as outlined in the Building on Basics (BOB) 2005 Tax Initiative.

11. First Reading of Ordinance No. 065, 2011, Appropriating Prior Year Reserves and Unanticipated Revenue in the General Fund for Cultural Development and Programming Activities and the Fort Collins Convention and Visitors Bureau.

This Ordinance appropriates unanticipated Cultural Development and Programming (CDP) revenue and prior year reserves for the CDP accounts and prior year reserves for the Convention and Visitors Bureau. Lodging tax revenues in 2010 were \$22,252 short of revenue projections; however, there are Lodging tax reserves from unspent appropriations in the amount of \$113,066 available to be appropriated in the General Fund. In addition, \$2,800 of unanticipated CDP revenue was received in 2011 which will be appropriated into the Cultural Development and Programming accounts.

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12. First Reading of Ordinance No. 067, 2011, Authorizing the Conveyance to Larimer County of a Permanent Non-Exclusive Storm Drainage Easement on City Wastewater Utility Property Including a Portion of Prospect Ponds Natural Area.

Larimer County has a current construction project at the Larimer County Detention Center Campus (LCDC) located on Midpoint Drive. This project includes an Alternative Sentencing Division building, an addition to the existing Sheriff's Administration building, and an addition to the existing Community Corrections Facility. In addition, there will be parking lot modifications and site improvements. With these changes, the project will include an on-site detention pond. To handle the drainage from the site, Larimer County is requesting that the City grant a permanent utility easement for a 30-inch underground stormwater pipe to convey the detained runoff to Skunk Pond, which is part of Prospect Ponds Natural Area.

13. Items Relating to Approval and Appropriation of Two Real Property Land Donations to the Natural Areas Program.

A. First Reading of Ordinance No. 068, 2011, Authorizing the Acceptance of a Donation of 1.75 Acres From Larimer County and Appropriating Unanticipated Revenue in the Natural Areas Fund.

B. First Reading of Ordinance No. 069, 2011, Authorizing the Acceptance of a Donation of Three Acres from Mike Sollenberger and Appropriating Unanticipated Revenue in the Natural Areas Fund.

Larimer County would like to transfer the ownership and management of a 1.75 acre parcel along the Poudre River and located adjacent to the north end of Arapaho Bend Natural Area to the City Natural Areas Program ("NAP").

Mike Sollenberger has agreed to donate the three acre parcel located adjacent to Running Deer Natural Area, south of East Prospect Road to the NAP.

14. Resolution 2011-050 Authorizing the Execution of an Updated Intergovernmental Agreement Between the City of Fort Collins, the City of Longmont and Platte River Power Authority.

In January 1998, the City of Fort Collins, the City of Longmont and Platte River Power Authority (Platte River) entered into a 10-year intergovernmental agreement (the Agreement) for Platte River to purchase and operate a joint customer information system (CIS) for customer account management and billing on behalf of the two cities. On August 26, 2008, the term of the Agreement was extended for two years.

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On August 17, 2010, City Council adopted Resolution 2010-049 extending the term of the Agreement to August 26, 2011, to allow additional time for staff discussion. The staffs of the two cities and Platte River have discussed and agreed on the terms of a draft updated CIS Agreement (Updated CIS IGA) and are bringing forward the draft Updated CIS IGA for Council approval.

15. Resolution 2011-051 Reappointing Gordon F. Esplin as Temporary Judge and Authorizing the Execution of an Employment Agreement.

Council originally appointed Gordon F. Esplin as Temporary Judge (Assistant Municipal Judge) in 1989, and has reappointed him every two years thereafter. His current appointment terminates on June 30, 2011. Municipal Judge Kathleen M. Lane recommends that Mr. Esplin be reappointed for another two-year term.

Mr. Esplin has been paid \$85 per hour for his services for several years now. While that rate is well below the going rate for legal fees in Fort Collins, it is an appropriate rate for this occasional hourly service when compared with what other municipalities pay their Assistant Municipal Judges. Mr. Esplin has agreed to continue in this position at the current pay rate.

*****END CONSENT*****

Ordinances on Second Reading were read by title by City Clerk Krajicek.

7. Second Reading of Ordinance No. 061, 2011, Appropriating Funds from the City's Storm Drainage Fund Reserves for Transfer to the Fort Collins Urban Renewal Authority for the Purpose of Providing a Loan for the Northeast College Corridor Outfall Project.
8. Second Reading of Ordinance No. 062, 2011, Appropriating Prior Year Reserves in the Capital Projects Fund for the Building on Basics Lincoln Center Renovation Project.
9. Second Reading of Ordinance No. 063, 2011, Making Certain Amendments to Chapter 7, Article III, Division 3 of the City Code Governing Council Election Districts.
10. Second Reading of Ordinance No. 064, 201, Appropriating Unanticipated Grant Revenue and Prior Year Reserves In the Capital Projects Fund for the North College Avenue Improvements - Vine Drive to Conifer Project.

Ordinances on First Reading were read by title by City Clerk Krajicek.

11. First Reading of Ordinance No. 065, 2011, Appropriating Prior Year Reserves and Unanticipated Revenue in the General Fund for Cultural Development and Programming Activities and the Fort Collins Convention and Visitors Bureau.

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12. First Reading of Ordinance No. 067, 2011, Authorizing the Conveyance to Larimer County of a Permanent Non-Exclusive Storm Drainage Easement on City Wastewater Utility Property Including a Portion of Prospect Ponds Natural Area.
13. Items Relating to Approval and Appropriation of Two Real Property Land Donations to the Natural Areas Program.
 - A. First Reading of Ordinance No. 068, 2011, Authorizing the Acceptance of a Donation of 1.75 Acres From Larimer County and Appropriating Unanticipated Revenue in the Natural Areas Fund.
 - B. First Reading of Ordinance No. 069, 2011, Authorizing the Acceptance of a Donation of Three Acres from Mike Sollenberger and Appropriating Unanticipated Revenue in the Natural Areas Fund.
19. First Reading of Ordinance No. 070, 2011, Authorizing the Conveyance of a Waterline Easement, Access Easement, and Temporary Construction Easement on City property to the City of Greeley.
20. First Reading of Ordinance No. 071, 2011, Approving the Waiver of City Fees for the Care Housing Affordable Housing Project in the Provincetowne Subdivision.
22. First Reading of Ordinance No. 074, 2011, Appropriating Funds From the City's General Fund Reserves for Transfer to the Fort Collins Urban Renewal Authority for the Purpose of Providing a Loan for the Kaufman and Robinson, Inc. Project at 1330 Blue Spruce.
23. First Reading of Ordinance No. 075, 2011, Appropriating Funds from the City's General Fund Reserves for Transfer to the Fort Collins Urban Renewal Authority for the Purpose of Providing a Second Loan for the North College Marketplace Project.

Councilmember Manvel made a motion, seconded by Councilmember Troxell, to adopt the Consent Calendar as modified. Yeas: Weitkunat, Kottwitz, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

Staff Reports

Larimer County Sheriff Justin Smith discussed the expiring County Jail sales tax and stated an initiative may be placed before voters to maintain the current sales tax level to support basic County services, including Jail operations. A partial river restriction is being considered to keep tubers and other recreational users off the Poudre River due to high water concerns.

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Sergeant Jeremy Yonce gave a presentation regarding "Downtown After Dark," noting the high number of liquor-licensed establishments in the Downtown area. He discussed fine increases and community service options for individuals receiving violations for disturbances. Councilmember Manvel commended Sergeant Yonce and Police Services for work on Downtown issues.

Councilmember Horak asked about the rationale for the amount of fine reduction for performing community service clean-up efforts. Yonce replied fine reduction has always been part of the system; however, the City is now getting service in return.

Councilmember Horak asked about cameras in the Downtown area. Yonce replied cameras are present in many businesses and the cameras in Downtown are planned to be used for marketing purposes as well as to provide evidence for any type of crime.

Councilmember Horak asked if the decision to place cameras was made by Council. City Manager Atteberry replied he would return with more information.

Councilmember Horak suggested a derivation of this presentation should be placed on Channel 14.

City Manager Atteberry stated Plan Fort Collins has been selected as the 2011 American Planning Association Colorado Excellence Award recipient in the category of Outstanding Planning Project.

Mark Jackson, Planning, Development, and Transportation Budget, Policy and Communication Manager, reported the Downtown paving project was completed within budget two weeks early.

Councilmember Horak asked why the project was completed two weeks early. Larry Schneider, Street Superintendent, replied the schedule allowed for weather delays and appropriate nighttime temperatures.

Councilmember Reports

Councilmember Poppaw discussed her tour of the Adoption Dreams Come True facility. She announced Mayor Pro Tem Ohlson received a lifetime achievement award from the Colorado Association for Recycling for his work to promote recycling in Northern Colorado.

Councilmember Troxell announced the Veterans Plaza dedication at Spring Canyon Park and the Big Splash event at the Water Works.

Councilmember Horak stated the Poudre Fire Authority Board met and formed a sub-committee regarding the Fire Chief selection process.

Mayor Weitkunat discussed the Finance Committee meeting topics which included the Discovery Science Museum and refinancing storm drainage. The Greeley Stampede has proclaimed June 30, 2011, as the City of Fort Collins day at the Stampede. Group Lima Grain held its North American office grand opening at its Fort Collins location.

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**Ordinance No. 071, 2011,
Approving the Waiver of City Fees for the Care Housing
Affordable Housing Project in the Provincetowne Subdivision, Adopted on First Reading**

The following is staff's memorandum for this item.

“EXECUTIVE SUMMARY

Under Colorado statute and City of Fort Collins ordinance, the projects of housing authorities are exempt from taxes and fees. For many years, the City has waived fees for projects of the Fort Collins Housing Authority (FCHA), as required by the ordinance. For the most part, these have been relatively small projects. FCHA is currently partnering with the non-profit CARE Housing in a large, multi-family affordable housing project in the Provincetowne subdivision, which is under construction. Fee waivers for this project total \$557,378.

While the City has long been committed to affordable housing, and the need for financial support is clearly demonstrated in the increase in the number of applications for local and federal funds, the fiscal impact of this and future fee waivers for projects in which the FCHA is a partner rather than sole owner may warrant some thoughtful evaluation of the waiver situation, and possibly some changes to the City's Code. In addition to considering the current and projected fiscal impact on the City for fee waivers for large projects, clarification is also being sought from City Council on the definition of “ownership” as it pertains to the Housing Authority and its development partners. This issue will be addressed at a future work session. Pending that policy discussion, the City Manager is recommending that Council consider waiving the fees due for the CARE Housing project.

BACKGROUND / DISCUSSION

CARE Housing (a non-profit) bought a portion of the Provincetowne project site, located at Autumn Ridge Road and Trilby, from KB Homes to fulfill the affordable housing requirement for the entire residential project. The financing of affordable housing is rather complex, especially in today's economic climate. A fifteen year federal tax credit for private investors is a critical component of the financial package, and the private investor (J.P. Morgan Chase, in this case) must be a 99% owner. The Housing Authority is technically only a .001% participant in this project, but is further involved because it guarantees up to \$1.4 million of unanticipated costs. The affordability period for the Project is 40 years. Under certain circumstances, the Housing Authority could take over the project.

State law contemplates the type of tax credit financing structure that is being used to finance this Project (where the Housing Authority has only a partial ownership interest), by stating that a project is exempt from taxation if it is owned by “an entity in which an entity wholly owned by an authority has an ownership interest.” It is not clear, however, whether the statutory intent is to also exempt such a project from fees. That is because, as to the exemption from both taxes and fees, the statute states that just “the authority” is exempt.

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Another component of the financing picture for this project is the expectation by FCHA partners and its lenders that the fee exemption for which the Fort Collins Housing Authority is eligible under state law and the City Code passes to the other funding partners. This includes a waiver of taxes and development review and capital expansion fees as provided in Sec. 7.5-17(1) of the Fort Collins City Code. The degree of the FCHA's ownership of the project has been the subject of considerable discussion. Does (or should) the waiver of fees for the Housing Authority properly extend to majority partners, or should it be limited to projects wholly owned, developed and operated by the Fort Collins Housing Authority, or projects with some specified ownership interest?

A related concern in the extension of the fee waivers to FCHA partners is the criteria for approving projects and partners. Several local projects, either partially or wholly composed of affordable units, have sought support from the FCHA, and not all such requests have been approved by the FCHA board. The FCHA considers financial feasibility, benefit to low-income households, access to support services and other criteria, before agreeing to participate.

Affordable Housing Projects and Fees

Development and building permit fees for affordable housing projects are currently handled in two ways:

- 1. If the Housing Authority is involved, all fees and taxes, except for utility fees, are waived as described above, pursuant to both State law and City Code.*
- 2. For affordable housing projects that do not involve the Housing Authority, the following occurs:*
 - a. By City Code, development review fees are waived according to the percentage of the project that meets the criteria for and has been designated as affordable. If a project receives a 100% affordable housing designation, 100% of the development review fees are waived; if 10% of the housing units are designated affordable, 10% of the fees are waived.*
 - b. Sales taxes are waived for any tax-exempt entities.*
 - c. By City Code, plan check, building permit and certain utility fees are collected at the time of building permit issuance.*
 - d. By City Code, all other fees are delayed until Certificate of Occupancy issuance, or December 1st of the year the building permit was issued, whichever first occurs.*

Development review fees cover services rendered; if the fees are waived, and the services are still provided, then the General Fund presumably backfills the gap of expenses incurred. Likewise, impact fees (parkland, fire, street oversizing, police, etc.) cover capital costs associated with new development. If the fees are waived and the capital improvements still provided, then City, Poudre

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Fire Authority (PFA) and School District funds presumably backfill the gap. Utility connection fees are not waived.

The City has routinely waived fees for FCHA projects in the past. Most of those waivers dealt with relatively small projects. The last significant new FCHA construction project was the Via Lopez project in 1998 and 1999. The FCHA was 100% owner of the development, which included 22 single family detached homes; fee waivers totaled approximately \$107,476.

Over \$1.5 million of City administered competitive funds, including CDBG and HOME, have already been expended on the Provincetowne project, including payment of water tap fees, electric capacity fees, PFA fees, and building permit fees. Building permits have been issued for all eleven buildings and construction is underway, with the first units expected to be ready for occupancy by June 11.

Because of concerns about significant financial and policy impacts on the City, management staff and the City Attorney's Office have explored several facets of this issue. Staff also worked with the FCHA and CARE Housing on some proposed alternatives to a full waiver of fees for projects involving FCHA partnerships, including deferring those fees rather than waiving them or limiting the waiver to situations where the FCHA is the majority owner of the project. However, each of the alternatives examined was problematic in this situation, primarily because the projections for the Project were developed, and financing structured, based on the assumption that the fees would be waived as they have been for previous FCHA projects. The City Manager is recommending that the Council waive the fees for the CARE Housing project and then deal with the policy question of continuing to waive fees for these kinds of projects at a later time. That question will be presented to Council at a work session on July 5.

Attached is a memo from Julie Brewen, FCHA Director (Attachment 3), that gives FCHA's perspective on the proposed fee waiver, as well as an explanation of how the FCHA determines, on a case-by-case basis, whether to enter into these kinds of partnerships.

FINANCIAL / ECONOMIC IMPACTS

For the Provincetowne project (eleven multifamily buildings; a total of 85 low income rental units), the potential financial impact of a fee waiver on City funds is \$557,378.

Approximately \$4,762 of the fee revenue lost is Utility development review fees. Building permit and plan check fees lost total \$42,720. The remaining \$509,896 is comprised of Capital Expansion fees (Fire, Police, General Government, Parkland, Street Oversizing, and School fees). These figures reflect recent changes in the capital expansion and utility development review fees. Some fees were collected at the inception of this project because of the unresolved issues, and approximately \$17,177 will need to be refunded if the fees are waived."

Karen Cumbo, Director of Planning, Development, and Transportation Services, discussed the proposed affordable housing project and its history as a Fort Collins Housing Authority project. The potential financial impact of a fee waiver on City funds is \$557,378. Staff has explored various

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ways of mitigating this impact, including deferral for varying periods; however, staff is recommending approval of the fee waiver.

Matt Robenault, Fort Collins Housing Authority Board Chairperson, supported the fee waiver noting the project will aid in filling the need for affordable housing units.

Councilmember Horak asked if this item had come before Council previously. Cumbo replied in the negative.

Councilmember Horak asked for staff's opinion regarding the source for the funds. Cumbo replied staff explored various options for covering the \$500,000 in fees, such as deferring the fees for 15 years but staff never assumed Council would authorize \$500,000 to backfill the fees.

Councilmember Poppaw noted the Housing Authority and CARE Housing moved forward with the project in good faith based on state statute and City precedent and asked how this issue was overlooked. Cumbo replied the law and past practice indicated fee waivers should be expected and the fees are not discussed until the building permit application is submitted.

Mayor Weitkumat asked if the capital expansion fees become due at the time the building permit is pulled. Cumbo replied in the affirmative.

Councilmember Horak asked about the impact of Council not adopting the Ordinance. Julie Brewen, Fort Collins Housing Authority Executive Director, replied the fees not being waived would create a \$500,000 funding deficit for the Housing Authority, and the project would not be able to support the debt with the restricted rents and would be in default. A deferral of fees would work strictly from a Housing Authority risk standpoint; however, that would leave CARE Housing with some potential problems with refinancing at year 15 and beyond.

Councilmember Horak asked about the impact of postponing the item for a month. Cumbo replied staff could issue temporary certificates of occupancy. Brewen replied the investor, JP Morgan Chase, would likely oppose that option.

Councilmember Horak asked why Council was not previously made aware of this situation. City Attorney Roy replied this began as an administrative item and remained in that category because the existing City Ordinance and state law gave the City Manager the right to waive the fees without Council action. This item will not require Council to locate an extra \$500,000. Whether or not backfill is needed will come up one piece at a time depending on when a particular improvement is ready to be constructed and the timeframe within which it needs to be constructed. At that point, the monies in the fund must be adequate to fund the project or be backfilled.

Councilmember Manvel asked if the Housing Authority has the \$1.4 million guarantee amount. Brewen replied the Housing Authority and CARE Housing have the amount in equity at other properties but utilizing that would put other properties at risk. The money that has already been expended has come from construction loans. JP Morgan Chase is the investor as well as the lender.

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Mayor Weitkunat noted Fort Collins has established an affordable housing policy based on the need in the community; part of which includes fee waivers for the Fort Collins Housing Authority.

Councilmember Troxell asked for information about the project itself. Cumbo replied there are 85 units in eleven buildings.

Councilmember Troxell asked how much of the project is being financed. Jeff Johnson, attorney for CARE Housing, replied JP Morgan Chase is involved as a tax credit investor and is bringing about \$5.2 million in equity to the \$14 million project.

Councilmember Troxell asked when the project is set to be completed. Brewen replied it will be completed by October. Cumbo replied all of the building permits have been issued.

Mayor Pro Tem Ohlson stated he would not support the Ordinance based on the process and encouraged fellow Councilmembers to vote against items that seem to force Council to vote for them at the last minute. He asked if it is a requirement to waive the fees, given the fact that the Housing Authority is a very minimal partner.

Councilmember Poppaw noted staff's presumption was that state statute and City policy were to be followed. These types of projects will not occur without fee waivers.

City Attorney Roy stated Council is not absolutely bound to waive the fees. The state statute relating to impact fees states "the City may waive fees for affordable housing." Another statute states that housing authorities are exempt from both fees and taxes and projects in which a housing authority has an interest are also exempt from taxes. Therefore, it is unclear whether projects not entirely owned by the Housing Authority are exempt from fees. The City Code speaks to fee waivers for Housing Authority projects, leaving this to Council interpretation.

Councilmember Poppaw asked if the attorney for the Housing Authority could respond. Brewen stated that last two large Housing Authority projects were tax credit acquisition rehab deals and both had fee waivers. In both instances, the Housing Authority was 0.01% owner, as is the case in this project. Mr. James Martell, attorney for the Housing Authority, replied CARE Housing will receive \$5.2 million in equity at the end of 15 years; therefore the benefit of the small ownership percentage is large. This ownership configuration minimizes the liability to the Housing Authority, still achieves the tax credits, and gains the benefit of the equity at the end of 15 years.

Councilmember Manvel asked how the ownership would be divided at the end of 15 years in terms of equity interest. Martell replied that is unclear as the rents cannot increase; however, expenses can increase. At the end of 15 years, the equity would likely go back to CARE Housing. Affordability of the units is guaranteed for 40 years.

Councilmember Troxell asked about the ability to backfill funds. City Manager Atteberry noted this item was not required to come before Council; however, staff opted to place it on Council's agenda because of the large dollar amount and would not consider waiving fees to such an extent without

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Council approval. Cumbo replied staff has explored some options for backfill. There are options, from a procedural standpoint, which will keep the City out of this situation in the future.

Councilmember Manvel made a motion, seconded by Councilmember Poppaw, to adopt Ordinance No. 071, 2011, on First Reading.

Councilmember Manvel stated there are two possible consequences of not adopting this Ordinance: a negative \$500,000 appropriation to the Housing Authority and the possible end to this project. He stated process changes are necessary.

Councilmember Poppaw agreed with Councilmember Manvel in terms of the process; however, this project was started with good intentions.

Councilmember Horak supported affordable housing but expressed disappointment with the process.

Mayor Pro Tem Ohlson stated he would not support the Ordinance given the process in which it came before Council.

Councilmember Troxell stated he would like to explore how these projects can be funded through rational and deliberate means.

City Manager Atteberry stated this item could be discussed at a work session on June 14 or June 28, both prior to Second Reading.

Mayor Pro Tem Ohlson noted policy changes would not be made prior to Second Reading and asked what information could come of a work session that would aid in Second Reading votes. Councilmember Horak replied outreach should occur and Council should be able to give some direction as to fee waivers in the future.

Councilmember Poppaw asked if staff would be prepared to do a work session on this item in a week and whether or not there is a need to rush the work session prior to Second Reading.

Councilmember Poppaw asked if another similar issue would be coming before Council prior to the work session on the topic. Cumbo replied there is a senior housing project which just received its low-income tax credit approval; however, building permits have not been issued.

Councilmember Kottwitz expressed support for the project and encouraged public transportation connectivity to the area.

Mayor Pro Tem Ohlson reiterated his opposition to items coming before Council in a hurried manner.

The vote on the motion was as follows: Yeas: Weitkunat, Kottwitz, Manvel, Poppaw, Horak and Troxell. Nays: Ohlson.

THE MOTION CARRIED.

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

(**Secretary's note: Councilmember Kottwitz left at this point in the meeting.)

**Ordinance No. 074, 2011,
Appropriating Funds From the City's General Fund Reserves for Transfer
to the Fort Collins Urban Renewal Authority for the Purpose of Providing a
Loan for the Kaufman and Robinson, Inc. Project at
1330 Blue Spruce, Adopted on First Reading**

The following is staff's memorandum for this item.

“EXECUTIVE SUMMARY

The Fort Collins Urban Renewal Authority (URA) is seeking a loan from the City to reimburse Kaufman and Robinson, Inc (KRI) for the public improvements associated with building a new location at 1330 Blue Spruce Drive. Offsetting these costs allowed the retention and expansion of a locally owned business to be economically feasible. The total cost of this Project was \$192,891. The requested loan amount from the City of Fort Collins General Fund Reserves to the URA will be \$192,891. The URA will utilize the City's Interfund Borrowing program that was formally added to the City's investment policies in 2008. This program enables the City to use a portion of its investment portfolio to assist City Departments and related entities (e.g., the URA) to access funds at a competitive interest rate while still providing a market based yield to the City investment portfolio.

BACKGROUND / DISCUSSION

The City and the URA entered into an intergovernmental agreement on August 15, 2006 allowing the City to advance fund to the URA in support of its activities. Any such advance of funds shall be evidenced in writing in the form of a loan memorialized by a promissory note or a grant, which transaction shall not be valid until first having been approved by both the City Council and the URA Commission.”

On June 2 2009, the URA Board approved a Redevelopment Agreement between the URA and KRI to provide financial assistance through reimbursement for a new building project at 1330 Blue Spruce Drive. The obligation was to reimburse up to \$215,000 upon issuance of a Certificate of Occupancy for the public improvements as stated in the Redevelopment Agreement.

On December 1, 2009, the URA Board approved a revised Redevelopment Agreement between the URA and KRI to provide additional financial assistance through reimbursement for green building components added to the new building project at 1330 Blue Spruce Drive. The original obligation was to reimburse up to \$215,000 and was increased by \$54,000 for green building features, bringing the maximum amount to \$269,000 upon issuance of a Certificate of Occupancy for the public improvements as stated in the Redevelopment Agreement.

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Exhibit C from the Redevelopment Agreement lists the public improvements included as total eligible costs (Attachment 1).

FINANCIAL / ECONOMIC IMPACTS

The Project was determined by the URA Board to be a qualified project for tax increment financing and consistent with the North College URA Plan, as well as the North College Corridor Plan. Over the remaining life of the plan area, the project will generate an estimated \$600,000. This action approves the loan agreement between the City and URA to finance the commitment made by the URA Board to Kaufman and Robinson.

URA funding for the Project totals \$192,891. This loan is a five year term loan, with the first four years interest only payments and the remaining balance paid in year five."

Christina Vincent, Urban Renewal Authority Redevelopment Program Administrator, discussed the Kaufman and Robinson project, which did include some features from the LEED Certification rating system and a great deal of waste diversion. This is a business retention and expansion effort on the part of the Urban Renewal Authority.

Mayor Pro Tem Ohlson asked about the reduction in loan amount request relating to the chilled water system. Vincent replied Kaufman and Robinson opted not to do the chilled water system, thus lowering the project cost.

Mayor Pro Tem Ohlson asked how 2.4 tons of drywall was reused. Vincent replied a contract vendor was hired to remove the drywall from the site. Mayor Pro Tem Ohlson asked for information regarding the end use of the drywall. Vincent replied she would return with that information. Councilmember Horak made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 074, 2011, on First Reading.

Councilmember Manvel supported the project and the Urban Renewal Authority's role.

Councilmember Troxell supported the project and its efforts incorporating LEED certification items.

Mayor Pro Tem Ohlson supported the project but encouraged changing environmental aspects of future projects to be more heavily monitored.

The vote on the motion was as follows: Yeas: Weitkunat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

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**Ordinance No. 075, 2011,
Appropriating Funds from the City's General Fund Reserves for Transfer
to the Fort Collins Urban Renewal Authority for the Purpose of Providing a
Second Loan for the North College Marketplace Project, Adopted on First Reading**

The following is staff's memorandum on this item.

“EXECUTIVE SUMMARY

The Urban Renewal Authority (URA) is seeking a loan in the amount of \$3 million from the City to fulfill the remaining reimbursement obligation for the North College Marketplace granted by the URA Board in September 2008. The first appropriation for \$5 million was received in April 2009 for Off Site Street Infrastructure, Wetlands Mitigation, and Demolition/Site Preparation. The requested loan amount from the City of Fort Collins' General reserves to the URA will be \$3 million and reimbursed to the project for the On-Site public improvements. The URA will utilize the City's Interfund Borrowing program that was formally added to the City's investment policies in 2008. This program enables the City to use a portion of its investment portfolio to assist City Departments and related entities (e.g., the URA) to access funds at a competitive interest rate while still providing a market based yield to the City investment portfolio.

BACKGROUND / DISCUSSION

The City and the URA entered into an intergovernmental agreement on August 15, 2006 allowing the City to advance fund to the URA in support of its activities. Any such advance of funds shall be evidenced in writing in the form of a loan memorialized by a promissory note or a grant, which transaction shall not be valid until first having been approved by both the City Council and the URA Commission.”

On September 16, 2008 the URA Board approved Resolution No. 011, authorizing a Redevelopment Agreement between the URA and the developer to provide financial assistance for the North College Marketplace. It was determined at that time that the URA would need to borrow the funds to pay for the public improvements and then bond against that amount in the future. The City loaned the URA funds in the amount of \$5 million on April 21, 2009 for those public improvements associated with the first three line items of Exhibit C of the Redevelopment Agreement (Attachment 1).

Below are the line items listed in Exhibit C for the initial appropriation of \$5 million:

<i>Off Site Street Infrastructure</i>	<i>\$ 2,812,620</i>
<i>Demolition, Property Clean up and Site Preparation Cost</i>	<i>\$ 66,650</i>
<i>Wetlands Mitigation, Landscaping, Unsuitable Materials and Payment to the Wetlands' Reserve Fund</i>	<i>\$ 1,763,20</i>
<i>Contingency (initial amount)</i>	<i>\$ 57,524</i>
	<i>\$5,000,000</i>

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he remaining line items listed in Exhibit C are requested for this appropriation of \$3 million:

On Site Utilities (Sanitary, Storm, Water, Dry)	\$1,022,861
Gateway/Landscaping/Pedestrian Connection/Grading/ North South Circulation and College Avenue Public Access Easement/Paving of Grape Street	\$1,702,128
Relocation Assistance (Up to 1,000 per residence)	\$ 10,000
Contingency (remaining)	<u>\$ 265,011</u>
	\$3,000,000

Exhibit C from the Redevelopment Agreement lists the public improvements included as potential eligible costs (Attachment 1).

FINANCIAL / ECONOMIC IMPACTS

The Project was determined by the URA Board to be a qualified project for tax increment financing and consistent with the North College URA Plan as well as the North College Corridor Plan. Over the remaining life of the plan area, the project will generate an estimated \$15.5 million in property tax increment. This action approves the loan agreement between the City and URA to finance the commitment made by the URA Board for the North College Marketplace.

URA funding for the Project's second appropriation amount totals \$3,000,000. This loan is a 20-year term loan."

Christina Vincent, Urban Renewal Authority Redevelopment Program Administrator, stated this Ordinance would appropriate the final \$3 million of the original \$8 million and will pay for the eligible public improvements that were not associated with the first \$5 million. This loan will have an 18-year term with no pre-payment penalty and a total interest payment to the City of \$1.3 million.

Mayor Pro Tem Ohlson asked about discrepancies between cost estimates and actual costs. Vincent replied the first \$5 million was the appropriated amount to spend; however, the development exceeded that amount and brought in receipts proving additional expenses. The language in the redevelopment agreement allowed only the first \$5 million to be submitted prior to a Certificate of Occupancy being obtained. As that has occurred, the additional receipts may be submitted to encompass the \$3 million. Off-site street infrastructure improvements which were part of the first \$5 million were transferred to the City's Engineering Department and receipts were checked there.

Mayor Pro Tem Ohlson asked for assurance, prior to Second Reading, that the Engineering Department provides the same level of scrutiny to receipts as does the URA.

Councilmember Manvel asked about the possibility of \$900,000 coming back from future developers. Vincent replied that estimate was made in 2008 and was based on the possibility of additional redevelopment paying back the local street portion that was funded for properties adjacent to the project.

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Councilmember Horak made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 075, 2011, on First Reading.

Councilmember Manvel encouraged a discussion regarding the effect of these types of large loans on the General Fund and City reserves. Mike Freeman, Chief Financial Officer, replied the Finance Committee is scheduled to do a complete cash flow analysis through the end of the Urban Renewal Authority term based on existing projects. John Voss, Interim Finance Director, replied the minimum reserve fund balance, established by policy, is 60 days of annual expenditures, which is approximately \$17 million. These two actions will take \$3.2 million out of the existing \$19.3 million resulting in a balance \$900,000 below the \$17 million threshold. Sales tax is anticipated to come in over budget in 2011 which will offset that amount.

Mayor Pro Tem Ohlson expressed concern General Fund reserves will be too depleted given this project and the Discovery Science Center project, coming before Council shortly. He asked why the Utility reserves are not being used to fund this project. Freeman replied there are legal concerns as to whether or not the Utility reserves can loan dollars for interfund loans. City Attorney Roy replied he would return to Council with a legal perspective.

Mayor Pro Tem Ohlson asked if the possibility of getting the money from a different reserve fund could be explored prior to Second Reading. City Manager Atteberry replied in the affirmative.

City Manager Atteberry asked staff to respond to Mayor Pro Tem Ohlson's concerns regarding borrowing from the General Fund reserves. Freeman replied staff would not make a recommendation to borrow from the General Fund reserves should there be a concern it would put the reserves in peril. The URA area is just now getting substantial projects that create tax increment; therefore, repayment is a timing issue rather than an ability to repay issue. The repayment of these loans with interest is substantially higher than interest would be on the free market.

Mayor Pro Tem Ohlson expressed concern there are zero General Fund dollars available to provide positive services for the community and opposed the piecemeal approach to borrowing from the reserves.

The vote on the motion was as follows: Yeas: Weitkumat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 064, 201,
Appropriating Unanticipated Grant Revenue and Prior Year Reserves In the Capital
Projects Fund for the North College Avenue Improvements - Vine Drive to
Conifer Project and Approving a Related Reimbursement Agreement
and Promissory Note, Adopted on Second Reading**

The following is staff's memorandum for this item.

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“EXECUTIVE SUMMARY

The limits of this phase of the North College Improvement Project are from Vine Drive to the Hickory/Conifer intersection. Improvements will include a two inch asphalt overlay, the construction of various urban design elements, an eight foot on-street bike lane, a landscaped parkway, shared use paths, the definition and consolidation of accesses throughout the corridor, an updated storm system including water quality treatment ponds, and safety improvements at the Conifer/Hickory Intersection. The total project budget of \$11.19 million includes \$2.7 million from residual funds available from the Building on Community Choices (BCC) Tax Initiative of 1997. This Ordinance, unanimously adopted on First Reading on May 17, 2011, appropriates \$1,001,000 in additional grant funds received from the Colorado Department of Transportation and \$2.7 million from prior year reserves in the Capital Projects Fund, Building Community Choices reserves for expenditure on this Project. The residual BCC funds appropriated are to be repaid to the City of Fort Collins by the Urban Renewal Authority (URA). Due to the timing of the improvements, the URA contributions will not be available at the start of construction. The total appropriation of \$11,186,000 will allow the project to be constructed to the full project limits from Vine Drive to Conifer as outlined in the Building on Basics (BOB) 2005 Tax Initiative.

On second reading, at request of Councilmember Horak and with the approval of the Leadership Planning Team, staff has prepared an optional version of the ordinance for Council’s consideration. The revised ordinance would formalize the Urban Renewal Authority’s obligation to repay the City for the \$2.7 million contribution from the Building Community Choices reserve fund by authorizing the execution of a Reimbursement Agreement with the URA and a corresponding promissory note. If this version of the ordinance is approved by the City, the URA Board would approve the same agreement and note.”

Rick Richter, Engineering and Capital Projects Manager, discussed the proposed roadway improvements.

City Attorney Roy stated the revised Ordinance better ensures the repayment of the \$2.7 million through the execution of a reimbursement agreement and a promissory note. He read the revised portions of the Ordinance into the record.

Councilmember Troxell made a motion, seconded by Councilmember Poppaw, to adopt Ordinance No. 064, 2011 as amended, on Second Reading.

Councilmember Manvel asked how the interest rate for the promissory note will be determined. Mike Freeman, Chief Financial Officer, replied the estimate for the interest rate is 3.92% based on the Treasury Bill.

Councilmember Horak supported the placement of a loan agreement.

The vote on the motion was as follows: Yeas: Weitkunat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARREID.

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Other Business

Councilmember Troxell asked about the impact of pine beetles on urban forests and how the City's Forestry Department is handling the issue. City Manager Atteberry stated a response may have been provided by the City Forester a few months ago; if not, a service area request will be submitted.

Mayor Pro Tem Ohlson asked about the possibility of getting a policy change to stop the City from using corn-based ethanol. City Manager Atteberry replied an immediate change would be difficult given agreements with other entities and investments in facilities. An extensive white paper was distributed months ago and will be resurfaced to include the impacts of immediately ceasing use and phasing out use. The issue can be brought before Council for a decision.

Councilmember Troxell asked if this also includes E85,.

Adjournment

Mayor Weitkunat adjourned the meeting until the conclusion of the Urban Renewal Authority meeting.


(Council adjourned to the conclusion of the Urban Renewal Authority Meeting and reconvened at 10:00 p.m.) .

Executive Session Authorized

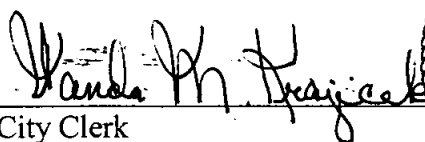
Mayor Pro Tem Ohlson made a motion, seconded by Councilmember Manvel, to go into Executive Session as authorized by Section 2-31(a)(2) and Section 2-31(a)(3) of the City Code, for the purpose of discussing the possible disposition of interests in real property and related legal issues. Yeas: Weitkunat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

The meeting adjourned at 10:45 p.m.


Mayor

ATTEST:


City Clerk

