

**February 7, 2012**

**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, February 7, 2012, 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, Manvel, Ohlson, Poppaw, Troxell and Weikunat.

Councilmembers Absent: Kottwitz

Staff Members Present: Atteberry, Krajicek, Roy.

**Agenda Review**

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

**Citizen Participation**

Michael Chalona, Parks and Recreation Board Chairperson, 408 Whedbee, discussed the disc golf course at Edora Park.

Dawn Theis, Parks and Recreation Board Secretary, 2702 Rigden Parkway, stated the Board is recommending reducing the size of the Edora disc golf course now that the Hughes Stadium disc golf course is open.

Colin Hurley, Northern Colorado Disc Golf Club Member, 1305 Cypress Drive, opposed the downsizing of the Edora disc golf course.

Evan Brummet, 4501 Boardwalk, opposed the downsizing of the Edora disc golf course.

Rachel Schrader, ASCSU Department of Community Affairs, discussed traffic safety concerns among CSU students, and requested additional lighted crosswalks and bicycle enforcement.

Lucas Hensley, Northern Colorado Disc Golf Club Vice-President, 1300 Steeple Chase Drive, opposed the downsizing of the Edora disc golf course.

Joshua Quinn, Northern Colorado Disc Golf Club, 3300 Colony Drive, opposed the downsizing of the Edora disc golf course.

John Bird, 1301 Lefthand Drive, Longmont, opposed the downsizing of the Edora disc golf course.

Amelia Caruso, Artists Assembled, supported the Arts in Public Places program in Fort Collins.

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Josh Kerson, Bicycle Advisory Committee, 2814 West Vine Drive, discussed bicycle safety concerns and requested the City hire bicycle safety officers.

Mary Harnett, 4028 Cherry Hills Drive, supported the Arts in Public Places program and its expansion.

Jeff Nichols, Loveland resident, opposed the downsizing of the Edora disc golf course.

Lance Bebont, Fort Collins resident, opposed the downsizing of the Edora disc golf course.

Eric Sutherland, 3520 Golden Currant, expressed concern regarding the RMI2 loan.

### **Citizen Participation Follow-up**

Councilmember Poppaw thanked the Arts in Public Places supporters.

Mayor Weitkunat acknowledged receipt of the emails opposing the downsizing of the Edora disc golf course.

Marty Heffernan, Director of Community Services, stated staff is recommending the downsizing of the Edora disc golf course to nine holes due to safety concerns at Edora Park.

Councilmember Horak expressed concern regarding the lack of communication with the Northern Colorado Disc Golf Club. Heffernan replied the Club had been involved in discussions and were told the completion of the Hughes course was dependent upon the downsizing of the Edora course.

Councilmember Horak asked if the Parks and Recreation Board had made a clear decision regarding the downsizing of the golf course at Edora. He expressed concern regarding how the downsizing decision was made given no public participation options.

Mayor Pro Tem Ohlson requested a timetable and cost information for an additional 18-hole disc golf course in Fort Collins. Heffernan replied challenges exist in funding but a Budgeting for Outcomes offer towards a capital project fund could occur if the land were available. The next best option may be for the slated Northeast Community Park, but that may not occur until 2020 and is dependent upon development and growth in the area.

Councilmember Troxell asked when the disc golf course was installed at Edora. Heffernan replied it was installed in 1995.

Councilmember Troxell stated any possible historical nature of the Edora course should be highlighted in the discussion.

Mayor Weitkunat stated clarity and communication regarding the upcoming process should be maintained.

Councilmember Troxell thanked the citizens who spoke regarding traffic safety.

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Mayor Weitkunat asked if bicycle safety officers would need to be submitted as part of the upcoming budget offers or if funding already exists. City Manager Atteberry replied a request could be made in the upcoming budget. Karen Cumbo, Director of Planning, Development, and Transportation Services, replied the specifics regarding bicycle safety enforcement and education efforts will be forthcoming and the issue is a high priority within the service area. Bicycle questions specifically can be addressed to the bicycle coordinator and issues regarding crosswalks can be addressed to Joe Ohlson, Traffic Engineer. City Manager Atteberry suggested the City/CSU Liaison Committee could also address the issue.

### CONSENT CALENDAR

6. Consideration and Approval of the Minutes of the January 17, 2012 Regular Meeting.
7. Second Reading of Ordinance No. 005, 2012, Amending Chapter 27 of the City Code to Modify the Requirements for Arborist Licenses, Designate Additional Violations of Chapter 27 as Civil Infractions, and Make Updates.

Section 27-34 of the City Code requires businesses that wish to apply pesticides to trees for commercial gain or profit to have a City arborist license. The Colorado Department of Agriculture has conducted a review of the City Code provisions and Forestry policies related to the regulation of pesticides and pesticide application and notified the City Forester of its conclusion that this requirement conflicts with state statutes regarding the regulation of pesticide applicators. This Ordinance, unanimously adopted on First Reading on January 17, 2012, removes this conflict.

The Ordinance also decriminalizes most violations of Chapter 27 by making every violation of Chapter 27 a civil infraction instead of a misdemeanor with the exception of those pertaining to arborist licenses; and updates a position title and cross references, and removes unnecessary detail regarding department structure.

8. First Reading of Ordinance No. 006, 2012, Appropriating Unanticipated Grant Revenue in the Transportation Services Fund for the FY 2011-12 Safe Routes to School Program.

The City of Fort Collins Transportation Planning Division has received a \$50,176 federal grant through the Colorado Department of Transportation for the FY 2011–12 Safe Routes to School (SRTS) program. This funding will allow the City of Fort Collins' Safe Routes to School Program (administered and staffed by the Transportation Planning Division) to provide new, higher quality bike racks at public schools within the City of Fort Collins and roll out a new "Bicycle Parking at Schools" educational program.

9. First Reading of Ordinance No. 007, 2012, Approving a Third Amendment to the Fort Collins-Timnath Intergovernmental Agreement Regarding Cooperation on Annexation.

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Growth Management, and Related Issues, Extending the Deadlines for the City and Town to Amend Their Growth Management Area Boundaries.

On February 17, 2009, the City of Fort Collins and the Town of Timnath entered into an intergovernmental agreement regarding annexations, growth management, and related issues. The agreement resolved certain differences that had arisen between the City and Town concerning a variety of planning and growth management issues. The agreement set one-year deadlines for the parties to amend their Growth Management Area boundaries and for Timnath to exercise an option to purchase the Vangbo property from the City. In early 2010, the parties approved an amendment to this intergovernmental agreement that extended the deadlines for approval of the Fort Collins GMA and for Timnath to decide whether to exercise its option. In early 2011, a second amendment was approved by the City and Timnath that extended the deadline for the parties to amend their Growth Management boundaries and deleted all references to Timnath's possible purchase of the Vangbo property because Timnath decided not to move forward with the purchase. Another extension is needed, and Ordinance No. 007, 2012, will extend the period of time within which the parties' Growth Management Area boundaries are to be amended for an additional year.

10. Resolution 2012-003 Amending the Human Relations Commission 2012 Work Plan.

Council liaisons have reviewed the 2012 work plans submitted by boards and commissions. On January 17, 2012, Council gave direction (under Other Business) to amend the Human Relations Commission Work Plan.

11. Resolution 2012-004 Making an Appointment to the Land Conservation and Stewardship Board.

A vacancy currently exists on the Land Conservation and Stewardship Board due to the resignation of Juli Germany. Councilmembers Wade Troxell and Aislinn Kottwitz reviewed the applications on file. The interview team is recommending Ed Reifsnnyder to fill the vacancy with a term to begin immediately and set to expire on December 31, 2012.

**\*\*\*END CONSENT\*\*\***

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

7. Second Reading of Ordinance No. 005, 2012, Amending Chapter 27 of the City Code to Modify the Requirements for Arborist Licenses, Designate Additional Violations of Chapter 27 as Civil Infractions, and Make Updates.

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

8. First Reading of Ordinance No. 006, 2012, Appropriating Unanticipated Grant Revenue in the Transportation Services Fund for the FY 2011-12 Safe Routes to School Program.

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9. First Reading of Ordinance No. 007, 2012, Approving a Third Amendment to the Fort Collins-Timnath Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management, and Related Issues, Extending the Deadlines for the City and Town to Amend Their Growth Management Area Boundaries.
16. First Reading of Ordinance No. 008, 2012, Appropriating Unanticipated Revenue in the Capital Projects Fund, Mason Corridor Project for the MAX Bus Rapid Transit Project.
17. Items Relating to Medical Marijuana.
  - A. First Reading of Ordinance No. 009, 2012, Repealing and Reenacting Chapter 15, Division 1, Article XVI of the City Code Relating to Medical Marijuana.
  - B. First Reading of Ordinance No. 010, 2012, Amending the Land Use Code to Delete All References to Medical Marijuana Businesses.
  - C. First Reading of Ordinance No. 011, 2012 Amending Chapter 15, Article XVII of the City Code to Add Additional Provisions Regarding Medical Marijuana Patients and Primary Caregivers.
18. First Reading of Ordinance No. 012, 2012, Amending Section 2-606 of the City Code and Setting the Salary of the Municipal Judge.
19. First Reading of Ordinance No. 013, 2012, Amending Section 2-581 of the City Code and Setting the Salary of the City Attorney
20. First Reading of Ordinance No. 014, 2012, Amending Section 2-596 of the City Code and Setting the Salary of the City Manager.

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

THE MOTION CARRIED.

### Staff Reports

City Manager Atteberry stated 2012 is the 25th anniversary of the Edora Pool and Ice Center and introduced Bob Adams, the City's new Recreation Director.

Adams discussed the history and funding of the EPIC facility as well as activities and participation numbers.

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### Councilmember Reports

Mayor Weitkunat discussed the Airport Steering Committee and noted the Airport is a large benefit to the community. She discussed the Colorado Municipal League lobbying activities and stated the State of the City address will be February 15th.

Councilmember Troxell requested a report on the new downtown late night Transfort service. Kurt Ravenschlag, Transfort, replied the service on the first weekend was a large success, with over 500 passengers using the service during the first two nights.

Councilmember Horak stated he met with Quail Hollow residents who are concerned about the power poles being constructed in Pineridge Open Space. He requested additional mitigation and communication efforts with neighbors and stakeholders. He stated public participation plans for ideas on projects such as this should be implemented.

### **Items Relating to the Mason Corridor Bus Rapid Transit Project, Adopted on First Reading**

The following is staff's memorandum for this item.

#### ***“EXECUTIVE SUMMARY***

- A. *Resolution 2012-005 Authorizing the Execution of a Project Construction Grant Agreement between the City and the Federal Transit Administration for the Construction of the Mason Corridor (MAX) Bus Rapid Transit Project.*
- B. *First Reading of Ordinance No. 008, 2012, Appropriating Unanticipated Revenue in the Capital Projects Fund, Mason Corridor Project for the MAX Bus Rapid Transit Project.*

*In 2009, the Federal Transit Administration (FTA) approved Small Starts funding to construct the MAX Bus Rapid Transit (BRT) Project. Previous Council actions appropriated \$54,622,000 of FTA funds, and \$17,366,772 of funding designated for local match. This Ordinance appropriates the remaining identified FTA funds of \$14,845,076, to achieve the total \$86,833,848 project cost. This Resolution authorizes the execution of the final contract for the Project Construction Grant Agreement with the FTA.*

#### ***BACKGROUND/DISCUSSION***

*The MAX Bus Rapid Transit Project is a north-south bus system located in the central area of Fort Collins. The Project extends from the Downtown Transit Center at Maple Street to approximately 1/4 mile south of Harmony Road, with a total length of approximately five miles. The BRT system is proposed within an exclusive bus-only guideway for 2.8 miles, with the remaining 2.2 miles intermixed with street traffic on portions of existing McClelland Drive and North Mason Street. Along the entire length of the corridor, the BRT system runs parallel to the existing Burlington Northern Santa Fe (BNSF) railroad tracks. The BRT system is just west of, and parallel to, College*

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Avenue (US 287). Within the BRT travel-way, there will be two Transit Centers and twelve stations/stops, including six park and ride locations. The Project includes improvements to the existing Downtown Transit Center (the northern terminus for the BRT) and the construction of the new South Transit Center (the southern terminus for the BRT). Lastly, the Project includes expansion of the existing Transfort Maintenance Facility to accommodate six new exclusive BRT buses.

The implementation of the MAX BRT is an essential step to achieving the Transfort transit system vision. Removing bus traffic from the highly congested College Avenue corridor and creating an exclusive guideway will provide the backbone for the future transit system. The MAX BRT will provide the essential infrastructure to redesign the transit system to improve effectiveness.

Project Schedule:

FTA Design Review: January 2012  
Release Bid: February 2012  
Begin Construction: Spring 2012  
Begin Revenue Operations: Spring 2014

**FINANCIAL/ECONOMIC IMPACTS**

This Project Construction Grant Agreement between the Federal Transit Administration (FTA) and the City of Fort Collins is for construction and acquisition of the Mason Corridor Bus Rapid Transit (MAX) Project. The Grant provides for 80% of the funding from FTA, and 20% from Local Match:

80% FTA	\$69,467,076
20% Local Match	\$17,366,772
Total Project	\$86,833,848

Previous Council actions appropriated \$54,622,000 of FTA funds, and \$17,366,772 of Local Match. This Ordinance appropriates the remaining identified FTA funds of \$14,845,076, to achieve the total \$86,833,848 project cost. The Project Construction Grant Agreement is expected to be finalized in May 2012.

**ENVIRONMENTAL IMPACTS**

The construction of the MAX system was included in the National Environmental Policy Act (NEPA) Environmental Assessment for the Mason Corridor Bus Rapid Transit Project. On September 9, 2008, the Federal Transit Administration declared a Finding of No Significant Impact (FONSI) would result from the construction and operation of the MAX Bus Rapid Transit Project. On December 21, 2010, the FTA affirmed that the 2008 EA and 2008 FONSI are valid, and the changes in final design documented in the 2010 Environmental Re-Evaluation serve to amend the 2008 EA and 2008 FONSI.

The Environmental Assessment analyzed impacts on the following categories:

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<i>Land Use and Zoning</i>	<i>Wildlife/Ecological</i>	<i>Vegetation</i>
<i>Social Conditions</i>	<i>Threatened/Endangered Species</i>	<i>Noxious Weeds</i>
<i>Economic Conditions</i>	<i>Visual Quality</i>	<i>Construction</i>
<i>Environmental Justice</i>	<i>Cultural Resources</i>	<i>Transportation</i>
<i>Right-of-way</i>	<i>Hazardous Materials</i>	
<i>Air Quality</i>	<i>Parks and Recreation Resources</i>	
<i>Noise and Vibration</i>	<i>Farmland</i>	
<i>Water Resources and Water Quality</i>	<i>Public Safety and Security</i>	
<i>Wetlands</i>	<i>Cumulative Impacts</i>	
<i>Flooding and Floodplain Management</i>		

*For more detailed information concerning the environmental impacts and mitigation measures, please refer to the Mason Corridor Environmental Assessment located at: [www.fcgov.com/mason/environment.php](http://www.fcgov.com/mason/environment.php).*

Helen Migchelbrink, City Engineer, discussed the Mason Corridor Bus Rapid Transit project and stated this Resolution would authorize the Mayor to sign the Project Construction Grant Agreement with the Federal Transit Administration. This Ordinance would appropriate the remaining funding. Migchelbrink detailed some of the aspects of the project, including creating two-way traffic on Mason Street and the retention of trees.

Claire Thomas, Communication and Public Involvement Office, discussed the Art in Public Places aspects of the project and stated public surveys and open houses will be held regarding the proposed artwork. On-line information will be on-going and construction newsletters will be distributed throughout the project.

Gary Thomas, 727 Cherokee Drive, congratulated staff for its efforts on this project and noted this project will positively affect transportation for seniors in the community.

Eric Sutherland, 3520 Golden Currant, asked if there is a ridership model to support the Mason Corridor Bus Rapid Transit proposal.

Councilmember Horak requested information regarding College Avenue pedestrian crossings and asked when transit planning for the altered routes will begin. Bruce Hendee, Chief Sustainability Officer, replied Council approved a budget item for an urban design master plan last fall and stated staff is in the final stages of creating a request for proposal for a consultant to develop that plan for the corridor. East-west connections will be a significant aspect of that study.

Councilmember Horak asked when the system redesign will begin. Kurt Ravenschlag, Assistant Transfort General Manager, replied the transit system for the Mason Corridor has been in the planning process since 2002. Public outreach has occurred throughout the process and a citizen advisory committee presented to Council in 2009. A six-month public outreach process will occur prior to any changes taking place for these routes.



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Councilmember Troxell asked if the stations are going to be named and, if so, how the naming will occur. Thomas stated the station names are selected based on transit philosophy and ease of use. Stakeholders will be involved in the naming of two of the stations.

Mayor Pro Tem Ohlson asked about the public information process regarding the overpass element. Migchelbrink replied the overpass project will soon go out for bid and noted there will be a week in July in which the railroad will be out of service at which time the bridge will be put in place. In anticipation of that time, a comprehensive outreach effort is soon to be launched to explain the overpass element. Thomas replied construction schedules will determine a great deal of the outreach timing.

Mayor Weitkunat expressed appreciation for the robust communication group. Thomas replied there are two signs currently up on the Mason Corridor and additional signs will be placed as construction begins. Additionally, station signs are being developed for placement at each station location.

City Manager Atteberry stated Council will receive a brief report on a monthly basis regarding the project process.

Councilmember Horak requested the reports be repeated on Channel 14 and encouraged prompt, structured responses to citizen inquiries regarding the project. He requested additional information regarding the informed consent process over the next two years.

Councilmember Manvel made a motion, seconded by Councilmember Horak, to adopt Resolution 2012-005. Yeas: Weitkunat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

Councilmember Manvel made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 008, 2012, on First Reading.

Councilmember Horak requested detailed information regarding the informed consent public participation plan, specifically regarding route changes and College Avenue pedestrian crossings.

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

THE MOTION CARRIED.

### **Items Relating to Medical Marijuana, Adopted on First Reading**

The following is staff's memorandum for this item.

#### ***“EXECUTIVE SUMMARY***

- A. *First Reading of Ordinance No. 009, 2012, Repealing and Reenacting Chapter 15, Division 1, Article XVI of the City Code Relating to Medical Marijuana.*

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- B. *First Reading of Ordinance No. 010, 2012, Amending the Land Use Code to Delete All References to Medical Marijuana Businesses.*
- C. *First Reading of Ordinance No. 011, 2012 Amending Chapter 15, Article XVII of the City Code to Add Additional Provisions Regarding Medical Marijuana Patients and Primary Caregivers.*

*These Ordinances address actions needed as a result of the citizen initiated and voter approved ban on medical marijuana related business.*

*Ordinance No. 009, 2012, repeals the sections of the Code that were enacted to license and regulate such businesses and reenacts those provisions in a manner consistent with the adopted ballot language. The new language bans all medical marijuana business in the City as of 12:01 am, February 15, 2012.*

*Ordinance No. 010, 2012, addresses changes specific to the Land Use Code. It deletes such businesses from the list of permitted uses in Article 4, deletes definitions from Article 5, and deletes all references in Articles 1 and 3.*

*Ordinance No. 011, 2012, adds certain provisions to the Code sections dealing with primary caregivers and their patients.*

### **BACKGROUND / DISCUSSION**

*A citizen initiated measure to prohibit the operation of Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Product Manufacturing within the City of Fort Collins Corporate Limits was approved by the voters on November 1, 2011. All such businesses must close on or before February 14, 2012.*

*The three Ordinances presented bring consistency to both the City Code and the Land Use Code as the City moves forward in implementing the ban on medical marijuana related businesses.*

*Changes are also being made to the provisions dealing with primary caregivers and medical marijuana patients. These provisions would state that:*

- *any person who violates the regulations dealing with patients and primary caregivers commits a misdemeanor criminal offense;*
- *the fact that the City is regulating the use of medical marijuana by patients and primary caregivers should not be construed as creating an exception, defense or immunity for those persons under federal law; and*
- *if any of the provisions dealing with patients and primary caregivers is invalidated by a court, that holding shall not affect the validity of the remaining provisions."*

*Ginny Sawyer, Neighborhood Administrator, stated Ordinance No. 009, 2012, will repeal City Code Chapter 15, which provided regulations for licensing medical marijuana businesses, and enact language consistent with the ballot language which banned the businesses. Ordinance No. 010,*

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2012, will eliminate references to medical marijuana businesses in the Land Use Code. Ordinance No. 011, 2012, addresses more precise language relating to patients and caregivers.

Ken Correa, Solace Meds, 301 Smokey Street, requested the ability to use his current commercial building to remain a small caregiver within Fort Collins.

Gary Petersen, Fort Collins resident, supported allowing caregivers to remain in existing commercial spaces.

Peter Linder, Longmont resident and attorney, requested clarity regarding grow operations in non-residential areas.

Tina Valente, In Harmony Wellness, Fort Collins resident, requested consistency regarding the intended state regulations relating to fair patient access to medical marijuana.

Mayor Pro Tem Ohlson requested assurances that these provisions do not go beyond honoring the voters' wishes to ban the businesses and interfere with state constitutional provisions.

City Attorney Roy replied these regulations will apply limitations to cultivation sites within residential dwelling units, which will be the only locations in which medical marijuana can be cultivated. There will be no other zone districts with the City which allow for cultivation. Council has the ability to allow cultivation in additional zone districts.

Councilmember Manvel requested clarification regarding multi-family dwellings. City Attorney Roy replied it would be helpful for staff to receive input from Council regarding multi-family dwelling units prior to Second Reading.

Mayor Pro Tem Ohlson asked for staff's recommendation on that issue. Sawyer replied staff's original recommendation was to not allow cultivation in multi-family units, which was primarily based on mitigating impacts to neighbors with shared walls or ventilation systems.

City Attorney Roy stated staff could bring forth options and a recommendation on Second Reading.

Councilmember Troxell stated the medical community should weigh in regarding the demand for medical marijuana.

Councilmember Troxell made a motion, seconded by Councilmember Horak, to adopt Ordinance No. 009, 2012, on First Reading. Yeas: Weitkunat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

**THE MOTION CARRIED.**

Councilmember Troxell made a motion, seconded by Councilmember Horak, to adopt Ordinance No. 010, 2012, on First Reading.

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Councilmember Manvel asked if the proper interpretation this Ordinance limits growing medical marijuana to residences only. Peter Barnes, Zoning Supervisor, replied caregiver grows are only referenced in residential zone districts. However, Council can direct staff to consider other zone districts, though that would require a recommendation by the Planning and Zoning Board.

City Attorney Roy recommended the Second Reading of the Ordinance address the multi-family issue and that additional time be allotted to address zoning changes both with the Planning and Zoning Board and in a public outreach scenario.

Councilmember Manvel expressed concern that postponing zoning changes could have a detrimental impact on current businesses which may want to continue operations as caregivers in existing locations.

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

THE MOTION CARRIED.

Councilmember Troxell made a motion, seconded by Mayor Pro Tem Ohlson, to adopt Ordinance No. 011, 2012, with options regarding multi-family dwellings to be included on Second Reading, on First Reading.

Councilmember Horak expressed concern with the multi-family provision. City Attorney Roy clarified there is currently no regulation limiting the number of medical marijuana plants that can be cultivated in a dwelling unit within a multi-family dwelling. There is currently no zone district that explicitly permits medical marijuana cultivation.

Barnes clarified the caregiver model is not currently defined as a commercial use. City Attorney Roy stated, under state law, a caregiver may only recover the cost for the medical marijuana that is grown for patients; therefore, it is not a commercial use, if commercial means for-profit.

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

THE MOTION CARRIED.

Sawyer stated staff is not bringing forth any options for fee rebates given staff time in shutting down the businesses.

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

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**Ordinance No. 012, 2012,  
Amending Section 2-606 of the City Code and  
Setting the Salary of the Municipal Judge, Adopted on First Reading**

The following is staff's memorandum for this item.

***“EXECUTIVE SUMMARY***

*City Council met in executive session on November 9, 2011, to conduct the performance review of Municipal Judge Kathleen Lane. Ordinance No. 012, 2012, establishes the 2012 salary of the Municipal Judge.*

***BACKGROUND/DISCUSSION***

*City Council is committed to compensating employees in a manner which is fair, competitive and understandable. The goal as an employer is to attract and retain quality employees and to recognize and reward quality performance. In order to accomplish this goal the City Council and the Municipal Judge meet twice a year to discuss performance and set goals for the coming year. In 2011, the total compensation paid to the Municipal Judge included the following:*

<b><i>2011 SALARY AND BENEFITS</i></b>	<b><i>ANNUAL</i></b>	<b><i>NON-MONETARY BENEFITS</i></b>
<i>Salary (0.8 FTE)</i>	<i>\$ 93,045</i>	<i>Vacation (30 days per year)</i>
<i>Medical Insurance</i>	<i>8,400</i>	<i>Holidays (11 days per year)</i>
<i>Dental Insurance</i>	<i>552</i>	
<i>Life Insurance</i>	<i>164</i>	
<i>Long Term Disability</i>	<i>339</i>	
<i>ICMA (457)</i>	<i>2,791</i>	
<i>ICMA (401)</i>	<i>9,305</i>	
<b><i>Total Monetary Compensation</i></b>	<b><i>\$ 114,596</i></b>	

*Resolution 2006-124, which establishes the process for evaluating the performance of the City Manager, City Attorney, and Municipal Judge, states that any change in compensation for the City Manager, City Attorney and Municipal Judge will be adopted by the Council by ordinance in sufficient time for the change in compensation to take effect as of the first full pay period of the ensuing year. The Ordinance will amend the City Code to reflect Judge Lane's 2012 salary.”*

Amy Sharkey, Compensation and Benefits Manager, discussed the City's pay philosophy.

Eric Sutherland, 3520 Golden Currant, stated the City Attorney has given Council erroneous advice regarding ex parte communication.

Mayor Weitkunat stated Council's three direct employees are evaluated twice each year and the most recent evaluations have been very favorable for all three employees. She detailed the services provided by each of those employees and thanked them for their service.

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Sharkey stated Council does have the option to grant one-time performance awards to each of the employees at this time.

Councilmember Manvel made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 012, 2012, on First Reading, giving the Municipal Judge a base salary of \$95,436, one-time performance award of \$1,125 and total compensation of \$118,764 for 2012. Yeas: Weitkunat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 013, 2012,  
Amending Section 2-581 of the City Code and  
Setting the Salary of the City Attorney, Adopted on First Reading**

The following is staff's memorandum for this item.

***“EXECUTIVE SUMMARY***

*City Council met in Executive Session on January 17, 2012 to conduct the performance review of City Attorney Steve Roy. Ordinance No. 013, 2012, establishes the 2012 salary of the City Attorney.*

***BACKGROUND / DISCUSSION***

*City Council is committed to compensating employees in a manner which is fair, competitive and understandable. The goal as an employer is to attract and retain quality employees and to recognize and reward quality performance.*

*In order to accomplish this goal the City Council and the City Attorney meet twice a year to discuss performance and set goals for the coming year.*

*In 2011, the total compensation paid to the City Attorney included the following:*

<b>2011 SALARY AND BENEFITS</b>	<b>ANNUAL</b>	<b>NON-MONETARY BENEFITS</b>
Salary	\$ 161,650	Vacation (32.5 days per year)
Medical Insurance	8,400	Holidays (11 days per year)
Dental Insurance	552	
Life Insurance	282	
Long Term Disability	590	
ICMA (457)	4,850	
ICMA (401)	16,165	
<b>Total Monetary Compensation</b>	<b>\$ 192,489</b>	

*Resolution 2006-124, which establishes the process for evaluating the performance of the City Manager, City Attorney, and Municipal Judge, states that any change in compensation for the City*

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*Manager, City Attorney and Municipal Judge will be adopted by the Council by ordinance in sufficient time for the change in compensation to take effect as of the first full pay period of the ensuing year. The Ordinance will amend the City Code to reflect City Attorney Roy's 2012 salary."*

Councilmember Manvel made a motion, seconded by Councilmember Poppaw, to adopt Ordinance No. 013, 2012, on First Reading, giving the City Attorney a base salary of \$165,691, a one-time performance award of \$1,125 and total compensation of \$198,569 for 2012. Yeas: Weitkunat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 014, 2012,  
Amending Section 2-596 of the City Code and  
Setting the Salary of the City Manager, Adopted on First Reading**

The following is staff's memorandum for this item.

***“EXECUTIVE SUMMARY***

*City Council met in executive session on November 9, 2011, to conduct the performance review of City Manager Darin Atteberry. Ordinance No. 014, 2012, establishes the salary of the City Manager.*

***BACKGROUND / DISCUSSION***

*City Council is committed to compensating employees in a manner which is fair, competitive and understandable. The goal as an employer is to attract and retain quality employees and to recognize and reward quality performance.*

*In order to accomplish this goal the City Council and the City Manager meet twice a year to discuss performance and set goals for the coming year.*

*In 2011, the total compensation paid to the City Manager included the following:*

<b><i>2011 SALARY AND BENEFITS</i></b>	<b><i>ANNUAL</i></b>	<b><i>NON-MONETARY BENEFITS</i></b>
<i>Salary</i>	<i>\$ 190,571</i>	<i>Vacation (30 days per year)</i>
<i>Medical Insurance</i>	<i>8,400</i>	<i>Holidays (11 days per year)</i>
<i>Dental Insurance</i>	<i>552</i>	
<i>Life Insurance</i>	<i>332</i>	
<i>Long Term Disability</i>	<i>696</i>	
<i>ICMA (457)</i>	<i>5,717</i>	
<i>ICMA (401)</i>	<i>19,057</i>	
<i>Car Allowance</i>	<i>9,000</i>	
<b><i>Total Monetary Compensation</i></b>	<b><i>\$ 234,325</i></b>	

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*Resolution 2006-124, which establishes the process for evaluating the performance of the City Manager, City Attorney, and Municipal Judge states that any change in compensation for the City Manager, City Attorney and Municipal Judge will be adopted by the Council by ordinance in sufficient time for the change in compensation to take effect as of the first full pay period of the ensuing year. The Ordinance will amend the City Code to reflect City Manager Darin Atteberry's 2012 salary."*

Councilmember Manvel made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 014, 2012, on First Reading, awarding the City Manager a base salary of \$197,203, a one-time performance award of \$1,125 and total compensation of \$243,365 for 2012. Yeas: Weitkunat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

### Other Business

#### **Ethics Complaint filed by David Bell Against Gino Campana, Planning and Zoning Boardmember, Complaint Referred to the Ethics Review Board**

The following is staff's memorandum for this item.

#### ***“EXECUTIVE SUMMARY***

*On January 13, 2012, Mr. David Bell filed a written complaint with the City questioning the propriety of Gino Campana's participation as a member of the Planning and Zoning Board in discussions pertaining to a proposed Land Use Code change regarding buffer zones along rivers. Mr. Bell alleges that Mr. Campana should have recused himself since he is a land developer, and was negotiating the purchase of land for a development along the Poudre River.*

*Section 2-569(d)(1) provides that:*

*(d) ... Complaints and inquiries shall be submitted to the Review Board only according to the following procedures:*

*(1) Complaints.*

*a. Any person who believes that a Councilmember or board and commission member has violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the Mayor, who shall immediately notify the chairperson of the Review Board. The complaint shall be placed on the agenda for the next special or regular City Council meeting for review and possible action by the City Council.*

*b. Upon receipt of any such complaint, the City Council shall decide by majority vote whether to submit the complaint to the Review Board for an advisory*



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*opinion as to whether the violation alleged in the complaint has occurred and, if so, the action, if any, that should be taken with regard to such violation. In the event that such complaint is not submitted to the Review Board, the City Council may decide what, if any, other action pertaining to the same is appropriate.*

...

*The Council's decision as to whether to refer the complaint to the Ethics Review Board must be made by a majority vote, but does not require a resolution and may be decided by motion. If the Council decides to refer the matter to the Ethics Review Board, then the Board will convene at a later date and conduct its review and investigation in accordance with Section 2-569. If the Council decides not to submit the matter to the Ethics Review Board, it still may (but is not required to) decide what, if any, other action pertaining to the complaint is appropriate. For example, the Council could:*

- *take no action;*
- *direct the Council liaison to the Planning and Zoning Board to discuss the issue with the Planning and Zoning Board;*
- *send a letter from the Council to the Planning and Zoning Board reminding its members to confer with the City Attorney's Office regarding any potential conflicts of interest;*
- *request the City Attorney's Office to conduct a workshop with the Board to discuss the conflict of interest provisions applicable to Board members; or*
- *take any other action that the Council thinks is appropriate."*

Mayor Weitkunat stated on January 13, 2012, David Bell filed a complaint against Planning and Zoning Board member Gino Campana, alleging that Mr. Campana should not have participated in the Board's discussion of a particular proposed amendment to the Land Use Code. Section 2-569 of the City Code provides that upon receipt of any such complaint, the City Council shall decide by majority vote whether to submit the complaint to the Ethics Review Board of the Council for an advisory opinion as to whether the violation alleged in the complaint has occurred, and if so, the action if any should be taken with regard to such violation.

Nick Haws, 2221 Sandbur Drive, questioned the underlying motives and integrity of the complaint.

Joshua Takahashi, Fort Collins resident, questioned the timing of the complaint and opposed the conflict of interest complaint.

David Bell, Complainant, stated the complaint was filed as he believed the issue should be further investigated.

Mayor Weitkunat asked if there is a statute of limitations regarding complaints. City Attorney Roy replied in the negative and stated the timeliness of the complaint should not precluded Council's consideration of the complaint.

Councilmember Horak made a motion, seconded by Mayor Pro Tem Ohlson, to submit Mr. Bell's complaint to the Ethics Review Board for an advisory opinion.

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Councilmember Horak stated the Ethics Review Board was created specifically to allow a due process for citizen complaints.

Councilmember Troxell expressed concern regarding potential preconceived opinions held by the Ethics Review Board members, citing comments made by two of the members at a previous Council meeting.

Councilmember Horak disagreed, noting the recommendation will come before Council for a final determination.

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

THE MOTION CARRIED.


**Executive Session Authorized**

Mayor Pro Tem Ohlson made a motion, seconded by Councilmember Manvel, to adjourn into Executive Session to confer with the City Attorney and other affected members of City staff, as permitted under City Code Section 2-31(a)(2), regarding legal issues related to the reconstruction of the interchange at I-25 and State Highway 392. Yeas: Weitkunat, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

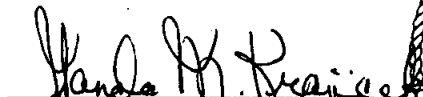
THE MOTION CARRIED.

**Adjournment**

The meeting adjourned at 9:50 p.m.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

