

April 16, 2013

**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 April 16, 2013, 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: Campana, Cunniff, Horak, Overbeck, Poppaw, Troxell and Weitkunat.

Staff Members Present: Atteberry, Nelson, Roy.

**Agenda Review**

City Manager Atteberry stated the staff report on the Water Supply Management Plan will be given at a future meeting and a Resolution has been added to Item No. 23, *Items Relating to the Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC*. He stated a possible Executive Session may occur prior to the Discussion Agenda.

**Citizen Participation**

Mel Hilgenberg, 172 North College, announced community events and encouraged the use of revenues from medical marijuana sales for law enforcement.

Nancy York, 130 South Whitcomb, welcomed the new Councilmembers and encouraged a discussion of the restoration of the watershed and a discussion regarding the City's economic development goal. She discussed wages at Securitas.

**Citizen Participation Follow-up**

Councilmember Poppaw requested staff follow-up on the Securitas issue.

**CONSENT CALENDAR**

6. Consideration and Approval of the Minutes of the March 18, 2013 Adjourned Meeting and the March 19, 2013 Regular Meeting.
7. Second Reading of Ordinance No. 051, 2013, Authorizing the Conveyance of a Non-Exclusive Drainage and Landscaping Easement and an Access Easement on the Hickory Trail Property to Charles Meserlian.

Charles Meserlian (the "Developer") is planning a 1.89 acre live/work residential development called Hickory Commons (the "Development") located in the 300 block of Hemlock Street, immediately north of the City's Salyer Natural Area and east of City-owned

property known as the Hickory Trail. The Development requires off-site drainage and landscaping improvements on the Hickory Trail property. In order to complete the installation of the planned improvements, the Developer is requesting that the City grant a 3,601 square foot non-exclusive drainage and landscaping easement and an access easement on City-owned property.

This Ordinance, unanimously adopted on First Reading on March 19, 2013, would authorize the conveyance of the non-exclusive drainage and landscaping easement and access easement on the Hickory Trail property.

8. Second Reading of Ordinance No. 052, 2013, Appropriating Prior Year Reserves in the Water Fund for the Construction of a Pre-Sedimentation Basin as Part of the High Park Fire Remediation.

The 2013 Budget for the Water Fund included \$987,953 for BFO Offer 244.1 – Fire Mitigation Capital Improvements. After further evaluation of the potential ways capital investment could improve the ability of Fort Collins Utilities to treat water from the Cache la Poudre watershed, a pre-sedimentation basin is being constructed. The total cost of this basin will be \$2,150,000.

This Ordinance, unanimously adopted on First Reading on March 19, 2013, appropriates \$1,250,000 from the Water Fund reserves so that the construction of the pre-sedimentation basin can be completed and operational before June 2013.

9. Second Reading of Ordinance No. 053, 2013, Designating the Oliver and Leota Chandler Property, 710 Mathews Street, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.

This Ordinance, unanimously adopted on First Reading on March 19, 2013, designates the Oliver and Leota Chandler Property at 710 Mathews Street as a Fort Collins Landmark. The owner of the property, Barbara Liebler, is initiating this request.

10. First Reading of Ordinance No. 058, 2013, Appropriating Prior Year Reserves.

City Council authorized expenditures in 2012 for various purposes. The authorized expenditures were not spent or could not be encumbered in 2012 because:

- there was not sufficient time to complete bidding in 2012 and therefore, there was no known vendor or binding contract as required to expend or encumber the monies
- the project for which the dollars were originally appropriated by Council could not be completed during 2012 and reappropriation of those dollars is necessary for completion of the project in 2013
- to carry on programs, services, and facility improvements in 2013 with unspent dollars previously appropriated in 2012

In the above circumstances, the unexpended and/or unencumbered monies lapsed into individual fund balances at the end of 2012 and reflect no change in Council policies.

11. Items Relating to the Design and Implementation of a Traffic Responsive Traffic Signal System at Signals Adjacent to the Railroad Tracks in the Vicinity of Lemay, Riverside and Mulberry.

- A. Resolution 2013-032 Authorizing the Mayor to Execute an Intergovernmental Agreement with the Colorado Department of Transportation to Use Federal Congestion Mitigation Air Quality (CMAQ) Funds for the Design and Implementation of a Traffic-Responsive Traffic Signal System at Signals Adjacent to the Railroad Tracks in the Vicinity of College Avenue, Lemay Avenue, Riverside Avenue and Mulberry Street.
- B. First Reading of Ordinance No. 059, 2013, Appropriating Unanticipated Grant Revenue in the Transportation Services Fund for the Design, Equipment Procurement and Implementation of a Traffic-Responsive Traffic Signal System.

The City's Traffic Operations Department was awarded a \$248,370 Federal Congestion Mitigation Air Quality (CMAQ) grant to design, procure equipment and implement a traffic responsive traffic signal system at select intersections that are impacted by railroad and truck operations. The project will be implemented at intersections along North College Avenue (U.S. 287), Riverside Avenue (SH 14), Mulberry Street (SH 14) and Lemay Avenue where trains and heavy trucks impact traffic on those major streets. The project is intended to reduce traffic delays by more quickly dispersing congestion at the intersections impacted by the passing trains.

12. First Reading of Ordinance No. 060, 2013, Appropriating Unanticipated Federal Department of Energy Grant Revenues in the Light and Power Fund.

This Ordinance appropriates \$845,323 of additional revenue related to the Renewable and Distributed Systems Integration (RDSI) project. This total includes \$372,500 of additional Department of Energy grant funding, as well as \$472,823 in other RDSI project revenues.

13. First Reading of Ordinance No. 061, 2013, Amending Section 2.2.10 of the Land Use Code by the Addition of a New Subparagraph (D) Pertaining to Parkway Landscaping Amendments.

This Ordinance amends the City's Land Use Code to add a new administrative process for changes to parkway landscaping in approved development plans. This is a necessary follow-up to new Streetscape Standards adopted by City Council on February 26, 2013. It involves parkway landscaping in single family housing developments where approved development plans specify turfgrass in the parkways (the strips of land between street curbs and detached sidewalks). These residential parkways are part of the City-owned right-of-way, but abutting property owners are responsible for parkway landscaping. The new process makes it easier for homeowners to request changes to approved plans.

14. First Reading of Ordinance No. 062, 2013, Approving an Intergovernmental Agreement Amending Certain Provisions of the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange.

This Ordinance approves an amendment to the Intergovernmental Agreement (IGA) between the City of Fort Collins and the Town of Windsor regarding the I-25/SH 392 Interchange. The First Amended IGA became effective on November 27, 2012. The IGA provides that Windsor and Fort Collins will annually share property and sales tax revenue generated in the area surrounding the I-25/ SH 392 Interchange (the CAC). The amount to be shared is the amount of increased taxes in the CAC beyond the amount collected in the base year. The IGA provided that the base year would be the revenues collected in the year 2012, the year the IGA became effective.

In discussions with the Town of Windsor, it was concluded that it would be more equitable if the base year for the increment calculation was 2010 rather than 2012. The tax revenues were reduced by as much as 25% in 2011 and 2012, since construction of the interchange was ongoing during that year. 2010 was the last year of tax revenues before construction began, and as such, would be a more accurate reflection of tax revenues for the purpose of determining increased increments to be divided.

A similar Ordinance was adopted by the Windsor Town Board on Second Reading on March 25, 2013.

15. First Reading of Ordinance No. 063, 2013, Authorizing the Conveyance of a Non-Exclusive Utility Easement on Springer and Williams Natural Areas to Platte River Power Authority.

Platte River Power Authority (Platte River) has requested a realignment of its existing easement (granted in 1982) across Natural Areas property to accommodate the proposed construction of the Woodward Inc. (Woodward) Link-N-Greens Campus, a master planned development, on adjacent property. As part of the development plan, Woodward is working with Platte River to reroute a portion of the overhead electric transmission line that crosses the Link-N-Greens campus. Subsequently, the transmission line will also need to be relocated from its current position on Springer Natural Area (Springer). To construct the new alignment, Platte River is requesting a 60 to 100-foot wide permanent easement, approximately 550 feet in length across the Springer and Williams Natural Areas to replace the 1982 easement. In addition, Platte River is requesting a temporary construction easement of roughly the same area. Natural Areas Department (NAD) staff is working with Platte River to delineate the final easement areas.

If the new alignment is approved, Platte River will vacate the existing 1982 easement in the north and west portions of Springer; remove all features associated with that part of the transmission line and restore the site. All impacts within the proposed temporary and permanent easement areas on Springer and Williams will be fully restored, as well. The overall restoration effort enables the site to be returned to a more natural riparian forest. The net benefit of the larger restoration in the former transmission line corridor will exceed the impacts caused by this project.

16. Resolution 2013-033 Authorizing the Acceptance of a Partial Donation of 1.345 Acres of Real Property from Interstate Land Holdings, LLC for Natural Areas Purposes.

The I-25 / SH 392 Interchange Project required the City to complete wetland mitigation improvements on property adjacent to Fossil Creek Reservoir Natural Area owned by Interstate Land Holdings, LLC. The owner of the property has agreed to convey the property to the City at an amount lower than the market value for the property. The owner has chosen to donate the remaining value of the property to the City. The purpose of this Resolution is to officially document the acceptance of the donation at a lower than market value for the benefit of the owner for tax reporting purposes.

17. Resolution 2013-034 Authorizing the Mayor to Execute an Intergovernmental Agreement Creating a Public Entity to Manage the Loveland to Fort Collins Stage of the USA Pro Challenge Cycling Race.

Fort Collins successfully partnered with Loveland, Estes Park, Windsor and Larimer County to secure a stage in the 2013 USA Pro Challenge (Pro Challenge), a seven day, professional cycling race. This Resolution authorizes the City to enter into an intergovernmental agreement with these local government partners to create a new public entity, the Northern Colorado Pro Challenge Local Organizing Committee (LOC), which would be responsible for planning, funding, promoting and conducting the Fort Collins-Loveland stage of the August, 2013 Pro Challenge.

18. Resolution 2013-035 Authorizing the Mayor to Enter into a Third Addendum to the Intergovernmental Agreement Between the City of Fort Collins and Poudre Valley Fire Protection District to Amend the Fire Chief's Spending Limit from \$20,000 to \$75,000 per Expenditure and Ratifying the First and Second Addenda to Such Agreement.

The City and the Poudre Valley Fire Protection District (PVFPD) entered into an Intergovernmental Agreement (IGA) in 1981 to establish the Poudre Fire Authority (PFA) to provide fire and emergency services to Fort Collins and surrounding areas. The IGA has been amended several times over the years and currently includes a spending limit for the Fire Chief, over which the Chief must seek Board approval. The proposed amendment (Addendum 3) will change the Fire Chief's spending limit from \$20,000 to \$75,000. In addition to allowing the increased spending limit, the Resolution also ratifies two previous Amendments to the IGA (Addenda 1 and 2) which were previously approved in inconsistent manners.

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

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

7. Second Reading of Ordinance No. 051, 2013, Authorizing the Conveyance of a Non-Exclusive Drainage and Landscaping Easement and an Access Easement on the Hickory Trail Property to Charles Meserlian.

8. Second Reading of Ordinance No. 052, 2013, Appropriating Prior Year Reserves in the Water Fund for the Construction of a Pre-Sedimentation Basin as Part of the High Park Fire Remediation.
9. Second Reading of Ordinance No. 053, 2013, Designating the Oliver and Leota Chandler Property, 710 Mathews Street, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.

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

10. First Reading of Ordinance No. 058, 2013, Appropriating Prior Year Reserves.
11. First Reading of Ordinance No. 059, 2013, Appropriating Unanticipated Grant Revenue in the Transportation Services Fund for the Design, Equipment Procurement and Implementation of a Traffic-Responsive Traffic Signal System.
12. First Reading of Ordinance No. 060, 2013, Appropriating Unanticipated Federal Department of Energy Grant Revenues in the Light and Power Fund.
13. First Reading of Ordinance No. 061, 2013, Amending Section 2.2.10 of the Land Use Code by the Addition of a New Subparagraph (D) Pertaining to Parkway Landscaping Amendments.
14. First Reading of Ordinance No. 062, 2013, Approving an Intergovernmental Agreement Amending Certain Provisions of the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange.
15. First Reading of Ordinance No. 063, 2013, Authorizing the Conveyance of a Non-Exclusive Utility Easement on Springer and Williams Natural Areas to Platte River Power Authority.
24. First Reading of Ordinance No. 064, 2013, Amending the City Code to Authorize the City Manager to Ban Open Burning in the City Upon Recommendation of the Fire Chief.
25. First Reading of Ordinance No. 065, 2013, Designating the Jessup Farm Property, 1908 South Timberline Road, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.

Councilmember Cunniff withdrew Item No. 17, *Resolution 2013-034 Authorizing the Mayor to Execute an Intergovernmental Agreement Creating a Public Entity to Manage the Loveland to Fort Collins Stage of the USA Pro Challenge Cycling Race*, from the Consent Calendar.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Poppaw, to adopt all items not withdrawn from the Consent Calendar. Yeas: Weitkunat, Cunniff, Horak, Campana, Overbeck, Troxell and Poppaw. Nays: none.

THE MOTION CARRIED.

**Consent Calendar Follow-Up**

Councilmember Poppaw commended the example of regional cooperation in regards to Item No. 14, *First Reading of Ordinance No. 062, 2013, Approving an Intergovernmental Agreement Amending Certain Provisions of the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange.*

**Staff Reports**

Jon Haukaas, Water Engineering Field Operations Manager, reported on an award received by the City for its Canal Importation Ponds flood mitigation project.

**Councilmember Reports**

Mayor Weitkumat reported on the Airport Steering Committee meeting. She noted the Airport houses the Civil Air Patrol and stated the Airport is still trying to pursue the grant for blended air space. She stated the Airport is still searching for a carrier and there are seven interested parties.

Mayor Pro Tem Horak reported on the Platte River Power Authority's strategic plan creation. He also reported on the Colorado State Land Board meeting and a meeting with the Warren Lake residents regarding tree removal.

**Resolution 2013-034**

**Authorizing the Mayor to Execute an Intergovernmental Agreement  
Creating a Public Entity to Manage the Loveland to Fort Collins  
Stage of the USA Pro Challenge Cycling Race, Adopted**

The following is the staff memorandum for this item.

***“EXECUTIVE SUMMARY***

*Fort Collins successfully partnered with Loveland, Estes Park, Windsor and Larimer County to secure a stage in the 2013 USA Pro Challenge (Pro Challenge), a seven day, professional cycling race. This Resolution authorizes the City to enter into an intergovernmental agreement with these local government partners to create a new public entity, the Northern Colorado Pro Challenge Local Organizing Committee (LOC), which would be responsible for planning, funding, promoting and conducting the Fort Collins-Loveland stage of the August, 2013 Pro Challenge.*

***BACKGROUND/ DISCUSSION***

*Fort Collins, Loveland, Estes Park, Windsor and Larimer County came together in 2012 to submit a bid to host a beginning and ending stage of the 2013 Pro Challenge. The Pro Challenge is an annual professional road cycling stage race featuring riders from sixteen international, professional teams. The race first occurred in Colorado in 2011; Northern Colorado, the first group to submit a regional bid, was awarded the 6th stage of the Pro Challenge. The race will be in Northern Colorado on Saturday, August 24, 2013. The exact route is yet to be determined; however, it will start at The Ranch, pass through Windsor, Loveland and Estes Park, and end in downtown Fort Collins.*

*As a Gold-level Bicycle Friendly Community, Fort Collins has demonstrated a commitment to cycling through education, encouragement, enforcement and engineering. This event provides media exposure on a statewide, national and international scale and furthers Fort Collins reputation as a leader in the cycling work. Additionally, the Pro Challenge will bring an estimated \$2 - \$4 million in publicity.*

*An event of this magnitude requires significant planning and coordination. Representatives from the partner entities, as well as other community organizations such as the Fort Collins Convention and Visitors Bureau and the Downtown Business Association, are working together to ensure the event is a success. The Pro Challenge owner, Classic Bicycle Racing, LLC (CBR), requires communities that are hosting the start or finish of a Pro Challenge stage to enter into a contract specifying all of the services and facilities the host community will provide. Given the regional nature of this partnership, it is in the best interest of all parties to create a new public entity with the power and authority to enter into contracts for the purpose of fulfilling Northern Colorado's race stage obligations, so that no one community bears sole responsibility and liability for the event. The purpose of this Resolution is to authorize the execution of an intergovernmental agreement between Larimer County, Fort Collins, Loveland, Windsor and Estes Park that would create a new public entity, the Northern Colorado Pro Challenge Local Organizing Committee (LOC).*

*The LOC would enter into the contract with CBR. Through that contract, the LOC would agree to provide services such as transportation, security, road closures, emergency medical services, permits, parking, volunteers, food, lodging, portable restrooms, trash removal and recycling. The LOC would also have authority to enter into other contracts for services and facilities (including contracts with each local government entity to provide in-kind services and facilities), accept donations and community sponsorships, organize volunteers, and assume general managerial responsibilities over the Northern Colorado stage of the Pro Challenge.*

*The LOC will be governed by a nine member Executive Committee, which includes one representative from each municipality. Kelly DiMartino, Assistant to the City Manager, is serving as the City's representative. Other members will be appointed by the municipal representatives based on expertise needed to put on the event. The LOC will have nine committees: Operations, Technical, Media and Public Relations, Marketing, Volunteers, VIP/Hospitality, Sponsorship/Sales, Education/Community Outreach, and Festival & Ancillary Events.*

### **FINANCIAL / ECONOMIC IMPACTS**

*As part of the 2013-2014 Budget Process, City Council approved \$50,000 for the event; the City has also agreed to provide \$50,000 of in-kind services. The event is expected to create a positive economic impact and local spending benefit."*

Councilmember Cunniff asked about the \$50,000 worth of in-kind contributions and whether overtime service and other types of ongoing staff time are considered in-kind. Kelly DiMartino, Assistant to the City Manager, replied the City is wanting to be very transparent with its expenses for this event and those types of expenses are going to be accounted for and will count against the in-kind contributions for the event. City Manager Atteberry replied he would consider overtime and other additional costs to be something beyond in-kind expenses.



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Councilmember Cunniff expressed concern about the open-ended nature of some of the expenses. City Manager Atteberry replied Council will be advised of the expenditures and noted cost control is of utmost importance.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt Resolution 2013-034.

Mayor Weitkunat stated this is an exciting event; however, other mayors have warned of the possibility of excessive expenditures.

Councilmember Troxell asked if there is a sunset related to the public entity creation. DiMartino replied there will be a nine member executive committee which will sunset at the conclusion of the event.

The vote on the motion was as follows: Yeas: Weitkunat, Poppaw, Horak, Troxell, Campana, Cunniff and Overbeck. Nays: none.

THE MOTION CARRIED.

City Manager Atteberry stated this event is a significant national event which will forward the bicycle culture in Fort Collins.

#### Executive Session

Mayor Pro Tem Horak made a motion, seconded by Councilmember Campana, to go into Executive Session for the purpose of meeting with the City Attorney, City Manager, and other affected members of City Staff to discuss potential litigation and related legal issues as permitted under Section 2-31(A)(2) of the City Code.

Councilmember Poppaw stated she would oppose the motion as the item was added to the agenda late and the issue should be discussed publically.

Mayor Pro Tem Horak supported the Executive Session, as the legal advice could be pertinent.

Councilmember Cunniff stated he could not support the Executive Session, unless given the assurance of substantial public discussion regarding the moratorium and Prospect Energy.

Councilmember Troxell supported the Executive Session.

The vote on the motion was as follows: Yeas: Weitkunat, Campana, Troxell and Horak. Nays: Overbeck, Poppaw and Cunniff.

THE MOTION FAILED AS THE VOTE REQUIRES A 2/3 MAJORITY VOTE.

**Ordinance No. 057, 2013**

**Terminating the Moratorium Imposed by Ordinance No. 145, 2012 with Respect to Oil and Gas Operations Conducted under an Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC and Exempting Such Operations from the Prohibitions Contained in Section 12-135 of the City Code, Second Reading Continued to April 23, 2013**

The following is the staff memorandum for this item.

**“EXECUTIVE SUMMARY**

*On March 19, 2013, Council approved an Operator’s Agreement with Prospect Energy to conduct oil and gas operation in the city limits. The terms of the Agreement ensure stringent public health and safety measures are in place through Best Management Practices (BMPs), which generally exceed current requirements mandated by the Colorado Oil and Gas Conservation Commission (COGCC), and provide strict controls on the release of methane gases and other volatile organic compounds (VOCs). The Council also adopted on First Reading, Ordinance No. 057, 2013, by a vote of 5-1 (nays: Ohlson, absent: Poppaw), removing the Moratorium imposed by Ordinance No. 145, 2012, with respect to an Oil and Gas Operator Agreement with Prospect Energy.*

**BACKGROUND/ DISCUSSION**

*During Council discussion on March 19, 2013, questions arose regarding the inclusion of Undeveloped Acreage (UDA) in the Operator Agreement. Staff responded incorrectly as to when staff was aware of the UDA. The UDA was disclosed on March 1, 2013. Staff received the first Operator Agreement that included the UDA on March 7, 2013.*

*Council further inquired as to how development of the UDA may occur. Generally, Prospect Energy is limited to the terms and conditions contained in a confidential Surface Use Agreement (SUA) with Anheuser-Busch, Incorporated signed in April 2011. According to the Larimer County mineral lease notice (Attachment 4), the SUA is for a primary term of three years expiring March 2014. If, at the expiration of the Primary Term of the SUA, lands not then included within a producing or spacing unit are not engaged in drilling or reworking operations, then the lease expires. According to the notice, an option to extend the agreement for an additional three years is available if Prospect Energy makes an additional payment.*

*In addition to any requirements imposed by the SUA, any oil and gas development would be required to comply with the Council-approved Operator Agreement. A key aspect of the Agreement requires the following:*

**Conceptual Review** – *No less than thirty (30) days prior to the submission of an Application for a Permit to Drill (APD) (note: APD is the Colorado Oil and Gas Conservation Commission (COGCC) permitting process), Prospect Energy will schedule a meeting with the City to review the proposed new well or drilling activity. The goal of this meeting would be for staff and the applicant to review the proposed oil and gas operation in a manner that ensures compliance with the operator agreement and applicable state and federal regulations. This pre-submittal meeting will also allow the applicant and staff to:*

- *explore site-specific concerns*

- *discuss project impacts and potential mitigation methods including field design and infrastructure construction to minimize impacts*
- *discuss coordination of field design with other existing or potential development and operators*
- *identify sampling and monitoring plans for air and water quality, and other elements of the operator agreement as contained in Exhibit A (Best Management Practices)."*

Laurie Kadrich, Community Development and Neighborhood Services Director, stated the adoption of this Ordinance would lift the moratorium for Prospect Energy, which would be allowed to drill new wells and not be subject to the limitation of the moratorium, which currently would only allow them to maintain existing wells. This Ordinance would also exempt Prospect Energy from the hydraulic fracturing ban, including any new wells that would be developed within the UDA.

Kadrich stated Council also has the option to consider an amendment to the Resolution, which is in response to comments received from citizens, related to concerns that this action would enable Prospect Energy to re-enter plugged and abandoned wells that are in the Fort Collins Field or the Undeveloped Area (UDA). Kadrich stated that is not the intent of Prospect Energy; this amendment would clarify that intent. This amendment would also restrict Prospect Energy to the rules that will be in place on August 1 for any drilling that would occur prior to that date. Kadrich continued to detail the agreement and showed maps of the Fort Collins Field and UDA. She discussed the requirements of the agreement, which would aid in environmental safety and public health, as well as those which would protect natural resources.

Mayor Weitkunat requested details on the changes to the Ordinance since First Reading. City Attorney Roy replied there are no changes in the Ordinance.

Gary Wockner, 516 North Grant, Clean Water Action, stated this issue should have been pulled and reviewed at a work session. He requested Council vote against lifting the moratorium and expressed concern about the potential for development in the UDA.

Maya Hesser, 2133 Ford Lane, congratulated the new Councilmembers and stated she feels betrayed by this potential agreement. She requested the moratorium be left in place until July in order to allow the City to discuss potential dangers with residents.

Rico Moore, 721 West Myrtle, corrected information presented regarding earthquake potential and opposed both the Ordinance and Resolution.

Danny Hesser, 2133 Ford Lane, requested the moratorium be left in place.

Nannette Hamilton, 1655 Dogwood Court, congratulated the new Councilmembers and Mayor Weitkunat. She opposed the lifting of the hydraulic fracturing ban.

Matthew Martinez, Fort Collins resident, expressed concern regarding the newly presented materials. He asked about bond requirements for the company.

Elizabeth Hudetz, 1407 Ticonderoga Drive, expressed concern about potential accidents and requested that Council continue the moratorium:

Lynda Blake, 5551 Cornerstone Drive, opposed all fracking in Fort Collins.

Robert Winkler, Weld County resident, supported an indefinite moratorium on all drilling.

Tom Hoehn, 218 South Washington, supported the fracking ban and moratorium.

Ward Giltner, Prospect Energy, congratulated the new Councilmembers and requested that Council adopt the agreement.

Janice Lynne, 218 South Washington, opposed the possible development of the UDA.

Kelly Giddens, Wellington resident, opposed exempting Prospect Energy from the fracking moratorium, citing health risks.

Rudy Zitti, 1626 Fantail Court, supported Prospect Energy and requested adoption of the operator agreement.

John Gascoyne, 718 West Mountain, stated Prospect Energy has operated in bad faith and encouraged protection of citizens.

Scott Hall, Prospect Energy, supported adoption of the Ordinance and stated Prospect Energy wishes to work cooperatively with the City and citizens.

Ward Luthe, Fort Collins resident, requested that Council uphold the moratorium.

Nancy York, 130 South Whitcomb, requested that Council uphold the moratorium.

Mayor Weitkunat noted neither the ban nor moratorium are being lifted, per se; this item only addresses Prospect Energy and existing operations within the city. Kadrich clarified the action before Council would apply to existing operations and expansion of new operations within the UDA for the existing operator only.

Councilmember Cunniff asked about the geology of the UDA and what could be produced there. Kadrich replied the operator had done internal studies about the area and believes the geology to be similar to that of the existing Fort Collins Field.

Councilmember Poppaw asked what boards and commissions have weighed in on this issue. Kadrich replied this item has not been reviewed with any boards or commissions.

Councilmember Poppaw asked who was in negotiations for this item. Kadrich replied she and Lindsay Ex were present during all of the meetings and attorneys and other staff members were present intermittently.

Councilmember Poppaw asked if any Councilmembers were involved. Kadrich replied no Councilmembers were involved during any of the negotiations.

Councilmember Campana stated there was more than a year of dialogue regarding operator agreements with the Planning and Zoning Board, the Air Quality Advisory Board, the Water Board,

and the Oil and Gas Advisory Committee. Kadrach agreed, but replied this specific operator agreement was not discussed with any of the boards or commissions.

Councilmember Poppaw stated this operator agreement received no vetting either with the general public or with boards and commissions.

Councilmember Campana stated the details were vetted and the information extracted from those meetings was taken to the negotiations. Kadrach replied that statement is accurate for most of the best management practices that are contained in the operator agreement.

Councilmember Campana asked about chemical disclosures. Lindsay Ex, Environmental Planner, replied the operator has committed to disclosing all the chemical used in its operations through both the FrackFocus.org website and to the City.

Councilmember Campana asked about the air quality monitoring in the operator agreement. Melissa Hovey, Senior Environmental Planner, replied staff has negotiated three different phases of air monitoring: background air monitoring, monitoring during any well completion phase, and monitoring in response to any spills, emergencies, or citizen complaints.

Councilmember Campana asked if water quality would be treated similarly. Bonnie Pierce, Environmental Data Analyst, replied the operator has agreed to baseline sampling, follow-up sampling at one, three and six years, and monitoring of additional chemicals to those on the COGCC list.

Councilmember Campana asked about on-site chemical storage. Pierce replied the agreement does not allow for permanent on-site storage for chemical waste.

Councilmember Campana stated his understanding is that the operator is only allowed to use a closed-circuit system for fracking, which in this case generates a bit of water rather than consuming any water. Kadrach replied in the affirmative.

Councilmember Campana asked about bonding and the aspects of the agreement related to any type of leakage or contamination. Kadrach replied the operator agreement outlines the requirements for follow-up should testing reveal contamination. Dan Weinheimer, Policy and Project Manager, replied all operators are required by the COGCC to carry a \$1 million general liability insurance policy and to bond \$2,000 per well on non-irrigated land, or \$5,000 per well on irrigated land. Wells deeper than 3,000 feet require a \$20,000 bond and there are other requirements for in-lieu bonds.

Councilmember Campana requested staff input regarding the seemingly recent discussions regarding the UDA. Kadrach replied the fact that Prospect Energy has a lease in that particular location had never previously been discussed. However, since December, that area has been shown as being available for oil and gas development. The specific information with the UDA was not brought forward to Council until the First Reading of the operator agreement.

Councilmember Poppaw requested the date of the First Reading of the operator agreement. Kadrach replied it was March 19, 2013.

Councilmember Poppaw asked how many of the currently seated Councilmembers were at that meeting and voting. City Clerk Nelson replied three of the current members were voting at that meeting.

Councilmember Poppaw noted this could potentially be the first time new Councilmembers are hearing about the UDA.

Councilmember Troxell asked about the potential involvement of Larimer County Public Health. Kadrach replied the Air Quality Board encouraged the City to work with the County Board regarding data collection and impacts on the City and County.

Councilmember Troxell requested comments on state legislation in process. Weinheimer replied Bill 1275 is not currently active and he reviewed the seven currently active bills. Kadrach replied the more stringent of the regulations in the agreement or any of the bills that may pass would apply to the operator.

Mayor Weitkunat asked about the agreement's protection of the health and well-being of citizens. Kadrach replied the agreement has many areas of additional requirements regarding air quality, emergency preparedness, observation allowances, and soils gas testing regulations. She stated the project team members approached each area of expertise and put out the best practices known for each area in order to provide the best protections for the community. In some cases, they are far above State and COGCC requirements, in some cases they are the same.

Councilmember Overbeck asked who funds City employee training and soil and air quality monitoring. Ex replied the City's Office of Emergency Management would commit regarding emergency situations. However, in the case of an emergency, the City has the ability to be reimbursed.

Councilmember Poppaw asked who would fund the reimbursement. Kadrach replied the operator would be required to reimburse the City.

Councilmember Troxell made a motion, seconded by Mayor Pro Tem Horak, to adopt Ordinance No. 057, 2013, on Second Reading.

Councilmember Poppaw made a motion, seconded by Councilmember Cunniff, to postpone the item to April 29th, after a work session can be held on April 23.

Councilmember Poppaw stated this issue deserves a work session due to its complexity and noted four of the seven Councilmembers were not present for First Reading and the item has not been properly publically vetted.

Councilmember Cunniff agreed with Councilmember Poppaw.

Mayor Pro Tem Horak suggested postponement could be a dangerous action but stated he could potentially support postponement of part of the item.

Councilmember Poppaw asked what portions of the item need more vetting. Mayor Pro Tem Horak replied the operator agreement is not the controversial part; the only portion that needs more vetting

is the UDA portion. He supported the stringency of the agreement and supported limiting the release of the moratorium to only the Fort Collins Field and not to the UDA.

The vote on the motion to postpone was as follows: Yeas: Overbeck, Poppaw and Cunniff. Nays: Campana, Troxell, Horak, and Weitkunat.

THE MOTION FAILED.

Mayor Pro Tem Horak made a motion to amend Ordinance No. 057, 2013, seconded by Councilmember Cunniff, to terminate the moratorium for the Fort Collins Field only.

City Attorney Roy clarified the intent of the motion to terminate the moratorium for Prospect Energy's operations only within the Fort Collins Field, to apply the operator agreement to allow new drilling only in the Fort Collins Field, and to exempt them from the ban with regard to all operations within the Fort Collins Field.

Councilmember Campana questioned why the best practices and high standards of health and safety should not be applied to the UDA. Mayor Pro Tem Horak replied the location of well pads is already known for the Fort Collins Field. The UDA does not have set well pads or specific parameters.

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

City Attorney Roy stated the Ordinance, as written, would lift the moratorium with respect to all oil and gas operations within both the Fort Collins Field and the UDA. He asked if Council intends to lift the moratorium on all oil and gas operations within the Fort Collins Field, or does it wish to do so only if those operations are conducted in accordance with a new operator agreement that applies just to the Fort Collins Field and not to the UDA. The hydraulic fracturing ban in Section 2 can only be lifted if done in connection with an operator agreement.

City Attorney Roy clarified Council can expand the exception that exists in the moratorium by amending Section 1 of the Ordinance, and not doing Section 2. Section 2 must be conditioned on a revised operator agreement, which the operator may or may not be willing to enter into.

Mayor Pro Tem Horak asked if Prospect Energy could operate in the Fort Collins Field under the existing agreement. City Attorney Roy replied they could operate if the City wanted to interpret that it applied to a portion of the area described in the agreement. However, if Prospect Energy takes the position that the agreement does not apply, it may contend there are no conditions it needs to honor contained within the agreement within that Field.

Councilmember Campana suggested a modified operator agreement that would cover the Fort Collins Field and allow some additional time for the UDA. He suggested Council condition approval on a modified operator agreement.

Councilmember Cunniff asked if the previously approved operator agreement requires modifications to operations at existing wells to comply with the inspection requirements of the agreement. Kadrich replied it does not require that, unless the operator drills a new well on an existing well pad.

Councilmember Cunniff stated he would not support the motion to amend and supported upholding the moratorium for the Fort Collins Field until remediation can be explored.

City Attorney Roy clarified the intent of the motion is to terminate the moratorium with regard to the operations in the Fort Collins Field, and the exception would be conditioned upon a new operator agreement. He proceeded to read the applicable amendments to the Ordinance.

Councilmember Troxell asked about the course of action for any potential changes. City Attorney Roy replied an Ordinance passed on Second Reading is final.

Mayor Pro Tem Horak stated his intent was that the moratorium would be lifted for the existing Fort Collins Field, and within that, the City needs an operator agreement substantially similar to the existing agreement for that Field. Additionally, the hydraulic fracturing ban is applied in the same manner.

Councilmember Troxell stated he is unclear about the status of the UDA, but assumed that would be discussed in the future. He expressed appreciation for the efforts of fellow Councilmembers but stated he is leery of such modifications on Second Reading and would therefore oppose the motion to amend.

Councilmember Cunniff agreed with Councilmember Troxell and stated he would not support the motion.

The vote on the motion to amend the motion to adopt Ordinance No. 057, 2013 on Second Reading was as follows: Yeas: Horak and Weitkunat. Nays: Troxell, Overbeck, Poppaw, Cunniff and Campana.

THE MOTION FAILED.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Poppaw, to postpone the item to next Tuesday, April 23, for a possible work session and adjourned meeting for possible action on the item.

The vote on the motion to postpone was as follows: Yeas: Poppaw, Cunniff and Horak. Nays: Overbeck, Weitkunat, Campana and Troxell.

THE MOTION FAILED.

Councilmember Cunniff, seconded by Councilmember Poppaw, to postpone the item for a work session on April 23 and contemplation of final action on Monday, April 29.

Mayor Weitkunat made a motion to amend Councilmember Cunniff's motion, seconded by Councilmember Campana, to consider final action on April 23, following the work session, effectively returning to the previous motion.

Councilmember Troxell asked about the timing issue between the 23rd and 29th. City Manager Atteberry replied staff has stressed the importance of timing.



Councilmember Troxell stated he would oppose the postponement motions and would prefer an up or down vote on the motion to approve the Ordinance on Second Reading.

Mayor Pro Tem Horak stated postponement to a date certain allows the process to continue.

Councilmember Poppaw stated Council is struggling with the issue and the public deserves a work session. She stated she would support the motion made by Councilmember Cunniff.

Councilmember Troxell questioned the necessity of a work session. City Manager Atteberry requested that Council give direction as to what information it may need for the work session. Mayor Weitkunat replied Council is seeking specific information on the UDA.

Councilmember Overbeck asked if public participation would occur at the continued meeting. City Attorney Roy replied Council's existing rules do not accommodate additional citizen input at an adjourned meeting.

Councilmember Overbeck stated having citizen input at the adjourned meeting would be very important to him.

The vote on the motion to amend Councilmember Cunniff's motion was as follows: Yeas: Cunniff, Horak, Weitkunat and Campana. Nays: Poppaw, Troxell and Overbeck.

THE MOTION CARRIED.

The vote on the motion to postpone Second Reading of Ordinance No. 057, 2013 to April 23, after a work session is held on the topic was as follows: Yeas: Cunniff, Horak, Weitkunat, Campana and Poppaw. Nays: Troxell and Overbeck.

THE MOTION CARRIED.

**Ordinance No. 064, 2013**  
**Amending the City Code to Authorize the City Manager to Ban Open**  
**Burning in the City Upon Recommendation of the Fire Chief, Adopted on First Reading**

The following is the staff memorandum for this item.

***“EXECUTIVE SUMMARY***

*During the spring and summer of 2012, Fort Collins and Larimer County experienced record setting fire weather following a prolonged drought. As a result, the community experienced not only the worst wildfire in the history of Larimer County, but the second largest wildfire in the history of Colorado and the second most costly season in lost homes and property. During this time, Governor Hickenlooper and the Larimer County Commissioner enacted fire bans due to the extreme fire conditions. The Fort Collins City Council also adopted a fire ban through an emergency ordinance (Emergency Ordinance No. 065, 2012). At that time, staff was directed to figure out a more efficient way to implement a fire ban and to avoid the emergency ordinance process.*

## **BACKGROUND/ DISCUSSION**

2012 was an extraordinary year from a fire danger standpoint and for the first time in recent memory, a fire ban was enacted within the city limits. Even during years when conditions are dry and high fire danger exists in the surrounding open spaces, the fire danger within the city limits is moderate, due to the amount of irrigated property, grass areas, shrubs and trees. However, in 2012, conditions became extreme, and there was an increase in all types of fires, including non-vegetation fires. Potting soil became very dry, which led to more ignitions from discarded smoking materials. Decks and other wooden debris became more susceptible to fire as fuel moistures dropped. It quickly became apparent that fire risks were increasing as the hot, dry and windy conditions persisted. This, coupled with a scarcity of firefighting resources in the state and region, including local crews committed to the High Park fire, eventually led to the determination that a fire ban was needed within the city limits.

Although such conditions do not happen overnight, they can become dangerous more quickly than the routine timeline required to pass an ordinance on First and Second Reading. In 2012, these conditions led to an emergency ordinance with a single reading. At that time, Council expressed concern with the use of an emergency ordinance as a tool in this circumstance, and directed staff to explore other options. In response, staff contacted numerous other jurisdictions to determine what they did in similar situations. Some of the practices of other jurisdictions are:

- Regulations that give the Fire Chief the authority to implement a ban.
- Special ordinances that authorize the City Manager to implement the ban.
- State implemented bans (which may raise home rule issues).

Of all the options explored, it appears that the most efficient, reactive, and easily implemented option is to give the City Manager the authority to implement a ban based on the input of the local fire officials, without Council approval. The City Manager would still be required to provide notice to the City Council within twenty-four (24) hours of the issuance of such a ban. The City Manager would also be authorized to lift the ban as conditions improve, which would allow flexibility to react quickly as conditions change.

This process is currently used in Timnath and is currently under consideration by the Loveland City Council, as well. The Ordinance will apply to all public and private property within the city limits, as well as to all City-owned properties outside of the city limits.

There will be two stages of restrictions based on the severity of the conditions allowing for a phased approach, much as is being done with the water restrictions. A violation of the prohibitions of Stage 1 or 2 fire restrictions in the city would be subject to a misdemeanor violation”

Bob Poncelow, Poudre Fire Authority Fire Marshal, noted County and State fire restrictions do not apply to the city limits of Fort Collins as it is a home rule city. During the High Park Fire, when an emergency ordinance to ban open burning within the city limits was brought before Council, staff was directed to explore other options to enact fire restrictions. Poncelow reviewed the definition of open burning and the types of criteria which will be examined when considering restrictions. He reviewed Stage 1 and 2 fire restrictions.

Councilmember Troxell asked about the emergency ordinance used last year. City Manager Atteberry replied this item would prevent the use of an emergency ordinance, as Council has typically opposed the use of that technique.

Councilmember Troxell supported the placement of the decision to enact restrictions with the City Manager, but stated he would like to see further efforts toward a less qualitative approach for enacting restrictions. City Manager Atteberry replied he has discussed that with Chief DeMint and suggested Council adopt the Ordinance on First Reading and allow staff to further study the issue. Chief DeMint, Poudre Fire Authority, noted quantitative measurements are not readily found and stated Poudre Fire Authority's wild land team developed a response plan built on fuel moisture and weather data.

Councilmember Cunniff asked how the community will be informed that a fire restriction is in place and requested information regarding penalties for violations. Poncelow replied a violation would be a violation of the Fire Code, which is typically a misdemeanor. Public outreach would be done through the PFA Public Affairs and Education Officer, in conjunction with the City's Communications Public Involvement Office and the County.

City Attorney Roy clarified a violation would be considered a misdemeanor criminal offense, subject to the penalty provisions of the Code.

Councilmember Poppaw made a motion, seconded by Mayor Pro Tem Horak, to adopt Ordinance No. 064, 2013, on First Reading. Yeas: Horak, Weitkumat, Campana, Troxell, Overbeck, Poppaw and Cunniff. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 065, 2013**  
**Designating the Jessup Farm Property, 1908 South Timberline Road,**  
**as a Fort Collins Landmark Pursuant to Chapter 14**  
**of the City Code, Adopted on First Reading**

Councilmember Campana withdrew from the discussion of this item due to a conflict of interest.

The following is the staff memorandum for this item.

***“EXECUTIVE SUMMARY***

*The owner of the property, Gino Campana of Jessup Farm LLC, is initiating this request for Fort Collins Landmark designation for the Jessup Farm Property at 1908 South Timberline Road.*

***BACKGROUND/ DISCUSSION***

*The property is eligible for designation as a Fort Collins Landmark under Designation Standards 1, 2, and 3 for its association with significant historical events and persons, and also for its architectural significance to Fort Collins.*

*The Jessup Farm is significant under Standard 1 for its association with agricultural contexts in Fort Collins since the late nineteenth century, including the open range cattle industry, farming and ranching, and sheep raising.*

*Additionally, the property is significant under Standard 2 for its association with prominent cattlemen James B. Arthur and Joseph Jessup, as well as members of the Johnson family, prominent farmers who first moved to the area in 1902.*

*Furthermore, the property displays architectural significance under Standard 3 as its buildings are distinctive examples of vernacular rural architecture holding high levels of integrity. The gabled-ell farmhouse represents a well-preserved and rare housing type in Fort Collins, while various outbuildings on the farm site illustrate changing agricultural practices in northern Colorado during the twentieth century.*

### **FINANCIAL/ ECONOMIC IMPACTS**

*Recognition of the Jessup Farm Property at 1908 South Timberline Road as a Fort Collins Landmark enables its owner to qualify for federal, state and local financial incentive programs available only to designated properties. Additionally, based upon research conducted by Clarion Associates, the property would see an increase in value following its designation. Clarion Associates attributed this increase to the fact that future owners also qualify for the financial incentives; the perception that designated properties are better maintained; the appeal of owning a recognized historic landmark; and the assurance of predictability that design review offers.*

### **BOARD / COMMISSION RECOMMENDATION**

*The Landmark Preservation Commission and staff recommend adoption of the Ordinance on First Reading. At a public hearing held on March 13, 2013, the Landmark Preservation Commission voted to recommend designation of this property under Designation Standards (1), (2), and (3) for its association with significant historical events and persons, and also for its architectural significance to Fort Collins”*

Karen McWilliams, Historic Preservation Planner, stated this Ordinance would designate the Jessup Farm Property as a City of Fort Collins Landmark. She reviewed the history and geography of the property and discussed the proposed building revisions.

Councilmember Troxell asked if the application was prepared by the applicant. McWilliams replied in the negative and noted most landmark designation applications are prepared by staff, generally with the help of Historic Preservation graduate students at Colorado State University.

Councilmember Troxell asked if the applications are reviewed for accuracy. McWilliams replied the Jessup Farm was surveyed originally in 1992 by a professional historic preservation consulting firm. At that time, the property was identified as National Register and Fort Collins eligible. Since then, the property was proposed to be nominated for Colorado’s most endangered properties list. All of the information has since been reviewed by staff and the Landmark Preservation Commission’s Chair.

Councilmember Troxell expressed support for the project and staff work on the item.

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Councilmember Cunniff asked if Council is considering only the historical designation and not a potential future project for the site. McWilliams replied in the affirmative.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 065, 2013, on First Reading. Yeas: Weitkunat, Poppaw, Horak, Troxell, Overbeck and Cunniff. Nays: none.

THE MOTION CARRIED.

**Other Business**

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adjourn to Tuesday, April 23, 2013, so that the Council may consider any additional business that may come before the Council. Yeas: Campana, Troxell, Cunniff, Horak and Weitkunat. Nays: Overbeck and Poppaw.

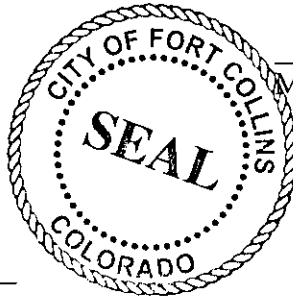
THE MOTION CARRIED.

**Adjournment**

The meeting adjourned at 9:45 p.m.

ATTEST:

Wanda Nelson  
City Clerk



Karen Weitkunat  
Mayor