

November 19, 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, November 19, 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, Overbeck, Poppaw, Troxell and Weitkunat.

Councilmembers Absent: Horak

Staff Members Present: Atteberry, Jensen, Roy.

Agenda Review

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

CONSENT CALENDAR

1. Consideration and Approval of the October 15, 2013, Regular Council Meeting.
2. Postponing Indefinitely the Second Reading of Ordinance No. 094, 2013, Authorizing the Lease of City-Owned Property at 212 W. Laporte Avenue to Feeding Our Community Ourselves, Inc. For Up to Five Years.

Staff is requesting this item be postponed indefinitely. Feeding Our Community Ourselves, Inc. ("FoCo Cafe") was seeking approval to lease 212 West Laporte Avenue to house a non-profit cafe. Due to the proposed design and development of the Block 32-42 Master Plan, 212 West Laporte will no longer be available to lease. FoCo Cafe is currently seeking other sites to lease.

3. Second Reading of Ordinance No. 155, 2013, Appropriating Prior Year Reserves in the General Fund for the Purchase of a Police Scene Response Vehicle.

This Ordinance, unanimously adopted on First Reading on November 5, 2013, appropriates funding for a Police Scene Response Vehicle from the Camera Radar Reserve Account. Police Services has identified a suitable replacement vehicle, manufactured by Lynch Diversified Vehicles. The new scene response vehicle will cost \$171,476, to be funded from the Camera Radar Reserve account.

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4. Second Reading of Ordinance No. 157, 2013, Designating the Mark and Effie Miller Property, 315 Whedbee Street, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.

This Ordinance, unanimously adopted on First Reading on November 5, 2013, designates the Miller Property, 315 Whedbee Street as a Fort Collins Landmark. The owners of the property, Maggie and Bryan Dennis, are initiating this request.

5. First Reading of Ordinance No. 163, 2013, Appropriating Unanticipated Grant Revenue in the General Fund for the Natural Resources Radon Program and Authorizing the Transfer of Matching Funds Previously Appropriated in the Environmental Services Operating Budget.

The purpose of this item is to appropriate \$4,973 awarded to the City by the Colorado Department of Public Health and Environment, to transfer a matching amount of \$4,973 from the 2013 General Fund, and to combine these in the Natural Resources Radon Program account. The Radon Program carries out radon risk-reduction activities as identified in the current City Budget.

6. First Reading of Ordinance No. 164, 2013, Appropriating Prior Year Reserves in the General Fund for Waste Reduction and Diversion Projects Approved by the Waste Innovation Program.

The purpose of this item is to shift \$53,100 accumulated during 2013 in the Waste Innovation Program Fund (WIP) account into the City's General Fund account for an approved Streets Department project to buy a new piece of equipment called a Power Screen, for use at the Hoffman Mill Road Crushing Facility.

The Power Screen will significantly increase the Streets Department's ability to screen ground-up asphalt, concrete aggregates, and fill dirt, from the current maximum of 300 tons/day to 400 tons an hour. On an annual basis, the Mill Road Crushing Facility averages 100,000 tons of recycling. Products generated by the Facility are used on City streets paying projects or sold to the public.

7. Items Relating to the Drake-Shields Intersection Improvement Project.

- A. Resolution 2013-092 Authorizing the Mayor to Execute an Intergovernmental Agreement with the Colorado Department of Transportation in Support of the Drake/Shields Intersection Improvements Project.
- B. First Reading of Ordinance No. 165, 2013, Appropriating Unanticipated Grant Revenue in the Capital Projects Fund for the Drake Road and Shields Street Intersection Improvement Project.

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The purpose of this item is to appropriate unanticipated federal grant revenue for intersection improvements partially funded through Building on Basics funding.

8. Resolution 2013-093 Amending the City Council's Financial Management Policies by Updating the Revenue and Debt Policies Sections Contained Therein.

The purpose of this item is to approve an updated City Debt Policy and Revenue Policy. Neither policy has been updated in many years. Since the last update, staff has developed a new framework for updating, controlling, formatting and publishing financial policies. The most significant change to the Revenue Policy is the inclusion of six revenue principles that provide staff and City Council a foundation for making sound financial decisions that provide citizens of Fort Collins a diverse, stable and fair revenue stream equipped to provide the services necessary to keep Fort Collins great. Under the new Debt Policy, the City's discrete governmental funds are limited to \$70M in additional debt, compared to \$150M under the existing policy.

9. Resolution 2013-094 Adopting the City's 2014 Legislative Policy Agenda.

The purpose of this item is to adopt the City Council's 2014 Legislative Policy Agenda. Each year the Legislative Review Committee (LRC) develops a legislative agenda to assist in the analysis of pending legislation. The Legislative Policy Agenda is used as a guide by Council and staff to determine positions on legislation pending at the state and federal levels and as a general reference for state legislators and congressional delegation.

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

Ordinances on Second Reading were read by title by Deputy City Clerk Jensen.

3. Second Reading of Ordinance No. 155, 2013, Appropriating Prior Year Reserves in the General Fund for the Purchase of a Police Scene Response Vehicle.
4. Second Reading of Ordinance No. 157, 2013, Designating the Mark and Effie Miller Property, 315 Whedbee Street, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.
11. Second Reading of Ordinance No. 158, 2013, Amending Article III of Chapter 12 of the City Code Pertaining to Smoking in Public Areas.
12. Second Reading of Ordinance No. 156, 2013, Appropriating Unanticipated Revenue in the Stormwater Fund from Larimer County for Construction of Certain Stormwater Improvements in the West Vine Basin.
13. Items Relating to the Adoption of the Colorado Water Conservation Board Floodplain Regulations.

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- A. Second Reading of Ordinance No. 160, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Conform to Colorado Water Conservation Board Floodplain Regulations.
- B. Second Reading of Ordinance No. 161, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Clarify Certain Provisions.
- C. Second Reading of Ordinance No. 162, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Revise Certain Requirements.

Ordinances on First Reading were read by title by Deputy City Clerk Jensen.

- 5. First Reading of Ordinance No. 163, 2013, Appropriating Unanticipated Grant Revenue in the General Fund for the Natural Resources Radon Program and Authorizing the Transfer of Matching Funds Previously Appropriated in the Environmental Services Operating Budget.
- 6. First Reading of Ordinance No. 164, 2013, Appropriating Prior Year Reserves in the General Fund for Waste Reduction and Diversion Projects Approved by the Waste Innovation Program.
- 7. First Reading of Ordinance No. 165, 2013, Appropriating Unanticipated Grant Revenue in the Capital Projects Fund for the Drake Road and Shields Street Intersection Improvement Project.
- 14. First Reading of Ordinance No. 166, 2013, Amending Chapter 10 of the City Code to Revise Fees for Floodplain Use Permits, Reviews and Variances.

Councilmember Cunniff made a motion, seconded by Councilmember Poppaw, to adopt all items on the Consent Calendar. Yeas: Overbeck, Campana, Weitkunat, Cunniff, Troxell and Poppaw. Nays: none.

THE MOTION CARRIED.

Consent Calendar Follow-up

Councilmember Cunniff requested design details prior to Second Reading regarding Item No. 7, *First Reading of Ordinance No. 165, 2013, Appropriating Unanticipated Grant Revenue in the Capital Projects Fund for the Drake Road and Shields Street Intersection Improvement Project*. Additionally, he encouraged interested citizens to look at Council's Legislative Policy Agenda, adopted by *Resolution 2013-094, Adopting the City's 2014 Legislative Policy Agenda*.

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Councilmember Reports

Mayor Weitkunat reported on the National League of Cities, Congress of Cities meeting in Seattle and discussed her site tour of the Pike Place Market, noting it originally began as an Urban Renewal Authority.

Councilmember Troxell reported on the Universities Communities Council meeting and the Sustainable Cities Initiative and stated he attended a number of economic development sessions at the National League of Cities meeting.

Councilmember Cunniff reported on the closing session and other site visits he attended at the National League of Cities meeting.

Councilmember Poppaw stated Fort Collins won 5th place for the Digital Cities Award.

Councilmember Campana stated the National League of Cities meeting showed Fort Collins as a leader in many areas and reported on an urban forest site visit.

Councilmember Overbeck reported on a meeting with the Denver Tourism Bureau and the Mile High Holidays program which they are funding.

Mayor Weitkunat reported on a National League of Cities session regarding trains and the idea of eliminating train horn noise in cities. Additionally, she discussed the 16-day campaign to end violence against women.

Resolution 2013-195

Approving the Programs and Projects that will Receive Funds from the Federal Community Development Block Grant and HOME Investment Partnership Programs and the City's Affordable Housing Fund, Adopted

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The purpose of this item is to approve the programs and projects recommended for funding to complete the 2013 Fall Competitive Process allocating City financial resources to affordable housing and community development activities utilizing funds from the federal Community Development Block Grant (CDBG) program, the HOME Investment Partnership (HOME) program and the City's Affordable Housing Fund (AHF).

BACKGROUND / DISCUSSION

Resolution 2013-095 establishes which programs and projects will receive funding with Community Development Block Grant (CDBG), HOME Investment Partnership (HOME) and

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Affordable Housing Fund (AHF) dollars for the Fiscal Year 2013 program year which began on October 1, 2013. A combined total of \$1,114,166 was available for funding in the fall cycle. The CDBG Commission presents to the City Council a list of recommendations as to which programs and projects should receive funding.

The following table summarizes the total amount and sources of available CDBG, HOME and AHF funds for distribution during the 2013 fall cycle of the Competitive Process:

Available Funding

AMOUNT	FUNDING SOURCE
\$100,000	<i>FY 2013 CDBG Entitlement Grant Spring Cycle Carryover</i>
\$469,033	<i>FY 2013 HOME Participating Jurisdiction Grant</i>
\$232,086	<i>FY 2013 HOME Program Income</i>
\$313,047	<i>FY 2013 Affordable Housing Fund</i>
\$1,114,166	Total Available Funding

FINANCIAL / ECONOMIC IMPACTS

The Community Development Block Grant (CDBG) Program, and the Home Investment Partnership (HOME) Program provide federal funds from the Department of Housing and Urban Development (HUD) to the City of Fort Collins. These monies can be allocated to housing and community development related programs and projects, thereby reducing the demand on the City's General Fund budget to address such needs. The total amount of CDBG funds available for allocation for the fall cycle of the Competitive Process is \$100,000 and \$701,119 from HOME funds. The City's General Fund contributes \$313,047 of Affordable Housing Fund dollars for the fall cycle of the Competitive Process.

Through the provision of affordable housing, more of Fort Collins' work force can reside within the community. This means there is an available labor pool within the city, which is a positive benefit to economic sustainability.

ENVIRONMENTAL IMPACTS

Affordable housing programs help provide for a healthy environment. By offering affordable housing options for lower income people, more of Fort Collins' work force can live in the community instead of being forced to live outside the community and commute into the city for work. This helps reduce traffic congestion and, thus improves air quality.

Affordable housing developers, including for-profit and non-profit agencies, are utilizing green building practices in both new construction and major rehabilitation of existing housing unit projects.

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All affordable housing projects utilizing CDBG and HOME funds are required to pass a HUD Environmental Review which covers such items as noise impacts, floodplains, hazardous materials, etc.

BOARD / COMMISSION RECOMMENDATIONS

The CDBG Commission presents recommendations as to which programs and projects should receive funding from the available funding sources presented above. The following tables present the allocations recommended by the Commission to the City Council within each major category:

Affordable Housing Category

APPLICANT PROJECT / PROGRAM	FUNDING REQUEST	COMMISSION'S RECOMMENDATION	UNFUNDED BALANCE	PERCENT OF REQUEST FUNDED
HO-1 City of Fort Collins: Homebuyer Assistance Program - AHF	\$100,000	\$100,000	\$0	100%
HO-2 City of Fort Collins: Homebuyer Assistance Program - HOME	\$100,000	\$100,000	\$0	100%
HO-3 CARE Housing: Provincetowne Phase II	\$375,000	\$0	\$375,000	0%
HO-4 Housing Authority of Loveland: Larimer Home Improvement Program	\$30,000	\$30,000 (Grant)	\$0	100%
HO-5 Housing Catalyst: Cunningham Corner Rehab	\$887,842	\$849,651	\$38,191	96%
HO-6 JAG Properties: Acquisition of Six-Plex	\$250,000	\$0	\$250,000	0%
HO-7 Neighbor to Neighbor: Coachlight Plaza	\$34,515	\$34,515	\$0	100%
Affordable Housing Total	\$1,777,357	\$1,114,166	\$663,191	62%

All funding recommendations in the Affordable Housing category are in the form of a "Due on Sale Loan + 5% Simple Interest" unless noted as a grant.

Public Facility Category

APPLICANT PROJECT / PROGRAM	FUNDING REQUEST	COMMISSIONER'S RECOMMENDATION	UNFUNDED BALANCE	PERCENT OF REQUEST FUNDED
<i>PF-1 Crossroads Safehouse: Roof Project</i>	<i>\$50,000</i>	<i>\$0</i>	<i>\$50,000</i>	<i>0%</i>
<i>PF-2 Respite Care: Basement Lift System</i>	<i>\$50,000</i>	<i>\$0</i>	<i>\$50,000</i>	<i>0%</i>
Public Facility Total	\$100,000	\$0	\$100,000	0%

*The CDBG Commission has recommended all (100%) of the available funding amount of \$1,114,166 be allocated. Because there are not enough funds available to fund all proposals, the Commission has recommended that the two public facility proposals receive \$0 funding, citing affordable housing as a priority over these much needed projects. Of the five affordable housing proposals being funded, four are recommended for full funding, and the fifth (Housing Catalyst: Cunningham Corner Rehab) is receiving a recommendation for funding at 96% of the request. The justifications for the CDBG Commission's recommendations can be found in **Attachment 5**:*

PUBLIC OUTREACH

HUD regulations require a 30-day public comment period on the proposed allocation of CDBG and HOME funds as recommended by the CDBG Commission. Staff placed an ad in the Coloradoan newspaper presenting the list of recommended funding for programs/projects and indicated the public comment period would begin on October 21, 2013, and end on November 19, 2013. The ADA and Title VI compliant notice was also posted on the Social Sustainability web site and with four partner agencies in Fort Collins. To date, no public comments have been received."

Sharon Thomas, Community Development Block Grant (CDBG) Home Program Administrator, discussed the competitive process and criteria for grant distribution. She provided an overview of the grant requests received and noted there are not enough funds available to fund all of the proposals received.

Councilmember Cunniff asked about the fact that the public facilities programs did not receive funding. Kay Rios, CDBG Commission Chair, replied those two requests did not fit with Council's priorities.

Councilmember Cunniff asked if non-housing programs have been funded with CDBG funds in the past. Rios replied in the affirmative and stated those programs were likely funded in the past due to availability of funds.

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Bob Browning, CDBG Commission Vice-Chair, stated public facilities programs have been funded in the past, generally when they do not interfere with housing project due to established Council priorities. Additionally, the public facilities programs have additional sources of funding.

Councilmember Poppaw made a motion, seconded by Councilmember Troxell, to adopt Resolution 2013-195.

Councilmember Troxell commended the recommendations.

Councilmember Campana thanked the CDBG Commission for its work on the process.

Councilmember Poppaw thanked Ms. Rios and Mr. Browning for their effort and service to the Commission.

Councilmember Overbeck commended the Commission for its work.

Mayor Weitkunat commended the Commission and discussed the importance of the affordable housing piece.

Councilmember Cunniff noted the Crossroads Safehouse and Respite Care should be considered for funding in other arenas. He commended the Commission for its work.

Councilmember Poppaw commended the non-profit organizations for their work in the community.

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

THE MOTION CARRIED.

**Ordinance No. 158, 2013,
Amending Article III of Chapter 12 of the City Code
Pertaining to Smoking in Public Areas, Adopted on Second Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on November 5, 2013, expands the City’s Smoking Ordinance to include smoke-free outdoor dining areas, bar patios, and Transfort’s public transit facilities, shelters, benches, and platforms.

Staff has gathered additional feedback and information since the November 5 City Council meeting.

BACKGROUND / DISCUSSION

Since the November 5 Council meeting, staff has been gathering some additional information from the Colorado jurisdictions who already have experience with smoking bans on outdoor dining areas or bar patios. Edgewater and Arvada have already provided information, and requests have been made to get information from others. The information received includes:

- *Edgewater - After passage of the law, they had some on-going issues at a few locations where patrons continued to smoke on patios and in doorways within the 20 foot perimeter. This was primarily due to a change in policing in Edgewater which resulted in a relaxing of enforcement. The Police Chief was supportive of the ordinance and met with representatives from Jefferson County Public Health. They also went to the offending businesses and did some outreach to better explain the regulations. This has greatly improved their compliance rate. They believe that outreach and an educational approach to the businesses will help them be able to enforce no smoking in their establishments' patios, seating areas, and entryways.*
- *Arvada - Since their ordinance was adopted, they have issued fewer than 5 tickets. The City Manager's Office and the Police Department have engaged in efforts to communicate the ordinance requirements and provide a warning prior to enforcement. This process seems to be effective. They continue to provide education when they receive a complaint, and they send periodic reminder letters from the City Manager to all business owners in their Olde Town area. Their Olde Town presents a challenge because of the upsurge of new patios along the street and the increasing volume of pedestrian traffic, but overall the patrons of bars and restaurants are respectful of the law and of each other. Smokers step into an alley or away from the business when taking a smoke break. Non-smokers appreciate their effort and understand the constraints of the area. Olde Town and other businesses are thriving.*

Additional outreach efforts have included in-person visits with bars and restaurants that currently allow smoking on their outdoor dining area or patio (that staff was aware of). The following places were contacted and feedback varied.

Maya Cove: *Met with the owner. He said he would support whatever City Council decided, and he thinks it will level the playing field for some of the businesses. He also expressed that he thought smoking should be banned everywhere.*

Pitchers: *Met with manager in duty. Staff explained the proposed changes and City Council meeting date and time. Staff left a business card for questions and has not received a call from anyone.*

Pappy's: *Met with manager on duty. Staff explained the proposed changes and City Council meeting date and time. Staff left a business card for questions, and has not received a call from anyone.*

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Mulligan's: Met with manager on duty. Staff explained the proposed changes and City Council meeting date and time. Staff left a business card for the owner but has not heard from them.

Road 34: Staff left a business card and basic information with the bartender. The Manager was out until October 30. Staff has not received a call from anyone.

Island Grill: Staff left a business card and basic information with the hostess since the manager was out. Staff has not received a call from the manager.

Tony's: Staff left a business card with the kitchen manager. Staff received a call from a manager to let us know they are aware of the City Council meeting and that they will be there. He had some procedural questions. Staff referred him to his attorney regarding their legal questions. They are greatly concerned about the money they spent on their rooftop patio, and that this ordinance will negatively impact their business.

Surfside 7: The owner was not in, so staff left a business card for them to call. The owner did call and staff gave information about the proposed changes and the City Council meeting. They are greatly concerned about the potential negative impact this will have on their business.

Avogado's: Staff spoke to a manager and explained proposed changes and gave City Council meeting information.

MatchUps: Staff spoke with owner and provided information about proposed changes and City Council meeting. The owner was very concerned about the amount of money he spent to create a patio located away from public sidewalks.

Coopersmith's: Staff spoke with the manager on duty and gave information on the proposed changes and date and time of the City Council meeting.

Lucky Joe's: Staff spoke with the manager on duty and gave information on the proposed changes and date and time of City Council meeting.

Yeti: Staff spoke with the manager on duty and gave information on the proposed changes and date and time of the City Council meeting.

Washington's: Staff spoke with the manager and gave them information on the proposed changes and the date and time of the City Council meeting.

Pateros Creek: Staff spoke with the manager and gave them information on the proposed changes and the date and time of the City Council meeting.

Crankenstiein: Staff spoke with the manager and gave them information on the proposed changes and the date and time of the City Council meeting.

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Crazy Jack's: Staff spoke with the manager and gave them information on the proposed changes and the date and time of the City Council meeting."

Beth Sowder, Neighborhood Services Manager, stated this item would expand the City's Smoking Ordinance to include outdoor dining areas, bar patios, twenty feet from those patios, and Transfort facilities, shelters, benches, and platforms. She noted what other municipalities with similar regulations do and discussed concerns raised by Fort Collins bars and restaurants.

Ben Peart, Tony's Bar Operations Manager, discussed the unique situation with Tony's smoking patio and noted they also provide a non-smoking patio. He suggested an amendment to the Ordinance to either extend the time period for this Ordinance or to allow exemptions, as appropriate.

Tucker Veltcamp, Tony's Bar bartender, stated the front patio of Tony's is completely smoke-free and expressed concern a complete smoking ban will push smokers into public areas rather than the private rooftop smoking bar at Tony's.

Nick Hoover, Colorado Restaurant Association Government Affairs Coordinator, stated restaurants have made investments in smoking and non-smoking areas and requested an amendment that would allow for smoking on patios separate from non-smoking areas.

Lindsay Anderson, Estoria, discussed the patio smoking situation at her establishment and stated this Ordinance will push smokers into public areas and stated this will increase the City's maintenance costs.

Demitrius Katopudis, Tony's Restaurant and Lounge, opposed the Ordinance as written and requested an amendment to the Ordinance to allow for smoking patios such as the one at Tony's.

Jack Daniels, 172 North College, commended Fort Collins and encouraged Council to continue its good work.

Mayor Weitkunat opened the discussion relating to a continuance or amendment for the situation at Tony's and others. She noted the Clean Air Act was not meant to involve government intrusion in private business.

Councilmember Campana agreed with Mayor Weitkunat and stated phasing may make sense.

Councilmember Campana made a motion, seconded by Mayor Weitkunat, to continue Council's consideration of Ordinance No. 158, 2013, until December 17, 2013, in order to consider possible phasing.

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Councilmember Cunniff stated he would not support the motion as this is a public health issue which affects not only customers, but employees as well. He noted many of the patios under consideration are in public spaces.

Councilmember Troxell supported the expansion of the smoking Ordinance, but stated he would support a continuance.

Councilmember Overbeck stated he would not support the motion as a level playing field is needed.

Councilmember Campana commended staff work on the item and noted he will ultimately support the Ordinance but stated he is willing to consider a phasing of the new regulations.

Mayor Weitkunat expressed support for phasing.

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

THE MOTION FAILED.

Councilmember Troxell made a motion, seconded by Councilmember Poppaw, to adopt Ordinance No. 158, 2013, on Second Reading.

Mayor Weitkunat requested an amendment to the motion to change the date to allow the Ordinance to not take effect until midnight on January 17, 2014. Councilmember Troxell accepted the amendment; however, Councilmember Poppaw did not accept the amendment.

Mayor Weitkunat stated the extra two weeks allows time to look at a possible phasing. Councilmember Poppaw opposed a phasing.

Councilmember Campana discussed the marketing aspects of businesses and supported a delay of the Ordinance becoming effective to allow for businesses to educate clientele and develop marketing.

Councilmember Cunniff expressed concern that a delay in the Ordinance could delay the consideration of the broader public smoking issue. Sowder replied she did not believe a delay on this issue would affect the timing of the broader public smoking items.

Councilmember Cunniff stated he could support the January 17th date assuming it will not delay the broader issue.

Councilmember Cunniff made a motion, seconded by Councilmember Troxell, to amend the Ordinance to include an effective date of January 17, 2014.

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Councilmember Poppaw stated she would support the motion.

Councilmember Troxell stated he has no intent to delay the broader smoking items.

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

THE MOTION CARRIED.

The vote on the motion to adopt the Ordinance on Second Reading, as amended was as follows: Yeas: Troxell, Poppaw, Overbeck, Campana, Weitkunat and Cunniff. Nays: none.

**Ordinance No. 156, 2013,
Appropriating Unanticipated Revenue in the Stormwater
Fund from Larimer County for Construction of Certain Stormwater
Improvements in the West Vine Basin, Adopted on Second Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

This Ordinance, adopted on First Reading on November 5, 2013 by a vote of 5-0 (Campana recused; Weitkunat absent) appropriates funds for the construction of the West Vine Basin Stormwater Outfall Channel from Vine Drive north to the Cache la Poudre River.”

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

Eric Sutherland, 3520 Golden Currant, expressed concern regarding the number of recusals of Councilmembers and stated he did not believe a conflict of interest existed for Mayor Weitkunat and the discussion of the Foothills Mall redevelopment.

Councilmember Cunniff made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 156, 2013, on Second Reading. Yeas: Overbeck, Weitkunat, Cunniff, Troxell and Poppaw. Nays: none.

THE MOTION CARRIED.

**Items Relating to the Adoption of the Colorado
Water Conservation Board Floodplain Regulations, Adopted on Second Reading**

The following is the staff memorandum for this item.

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- A. *Second Reading of Ordinance No. 160, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Conform to Colorado Water Conservation Board Floodplain Regulations.*
- B. *Second Reading of Ordinance No. 161, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Clarify Certain Provisions.*
- C. *Second Reading of Ordinance No. 162, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Revise Certain Requirements.*

These Ordinances, adopted on First Reading on November 5, 2013 by a vote of 5-0 (Campana recused; Weitkunat absent) adopt new minimum statewide floodplain regulations promulgated by the Colorado Water Conservation Board (CWCB) in January 2011 and additional proposed Code language clarifications and City policy revisions. All communities must adopt the CWCB regulations by January 2014. The City of Fort Collins already has adopted many of these standards. Therefore, there are relatively few changes needed to meet the CWCB statewide regulations."

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

Eric Sutherland, 3520 Golden Currant, opposed the removal of farm land from farming so it can be developed through the Boxelder Stormwater Authority. He stated the Colorado Water Conservation Board will not loan on an organization as dysfunctional as the Boxelder Stormwater Authority.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 160, 2013, on Second Reading. Yeas: Weitkunat, Cunniff, Troxell, Poppaw and Overbeck. Nays: none.

THE MOTION CARRIED.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 161, 2013, on Second Reading. Yeas: Weitkunat, Cunniff, Troxell, Poppaw and Overbeck. Nays: none.

THE MOTION CARRIED.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 162, 2013, on Second Reading. Yeas: Weitkunat, Cunniff, Troxell, Poppaw and Overbeck. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 166, 2013,
Amending Chapter 10 of the City Code to Revise Fees for Floodplain.**

Use Permits, Reviews and Variances, Adopted on First Reading

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The purpose of this item is to adopt new and updated floodplain review fees in Chapter 10 (Flood Prevention and Protection) of the City Code. Chapter 10 outlines floodplain regulations that promote the public health, safety and general welfare and minimize public and private losses due to flood conditions in flood hazard areas. The floodplain regulations require that proposed activities, uses, improvements, or alternations within designated flood hazard areas be submitted to the City of Fort Collins for review to ensure compliance. These items are reviewed by staff from the City’s Stormwater Master Planning and Floodplain Administration Division. City Code specifies that applicants must pay floodplain review fees for these services. The current fees do not provide a mechanism to properly account for the significant review times associated with certain types of floodplain reviews including Conditional Letters of Map Revision (CLOMRs), Letters of Map Revision (LOMRs) and variance requests. Staff recommends that a new fee structure be established to better assign costs to floodplain review applicants. This Ordinance establishes specific floodplain review fees for:

- fences, accessory structures (sheds/garages), decks and fill or grading operations;*
- Building additions, improvements/remodels, redevelopment or new buildings;*
- Mobile homes, floodproofing of structures;*
- Variance applications;*
- City basin no-rise analyses and floodplain map revisions; and,*
- Federal Emergency Management Agency CLOMRs, LOMRs and LOMR-Fills.*

BACKGROUND / DISCUSSION

Chapter 10 (Flood Prevention and Protection) of the City Code outlines floodplain regulations that promote public health, safety and welfare and minimize public and private losses due to flood conditions in flood hazard areas. City Code includes methods and provisions for:

- 1. Restricting or prohibiting uses which could increase erosion, flood elevations or velocities;*
- 2. Requiring that uses vulnerable to flooding be protected at the time of initial construction;*
- 3. Controlling the alternation of natural floodplains, stream channels and natural protective barriers that help accommodate and convey floodwaters;*
- 4. Controlling filling, grading, dredging and development that increase flood damage; and,*
- 5. Preventing or regulating the construction of flood barriers that unnaturally divert floodwaters and increase flood hazards in other areas.*

City Code specifies that applicants must pay floodplain review fees for proposed activities, uses, improvements, or alternations within designated flood hazard areas these services. The intent is to institute a "user pay" approach wherein an applicant who is requesting floodplain review services pays instead of having those costs charged to stormwater utility customers, generally, through existing stormwater service fees. The current fees and their respective dollar amounts have not increased since they were originally adopted (early 1990s). The current fees do not provide a mechanism to properly account for the significant review times associated with different types of floodplain reviews including City Basin no-rise analyses and floodplain map revisions, FEMA Conditional Letters of Map Revision (CLOMRs) and Letters of Map Revision (LOMRs) and variance requests.

FLOODPLAIN USE PERMIT

All activities requiring the issuance of a floodplain permit will have a base floodplain use permit fee of \$50. For minor submittals that require limited review [approx. one (1) hour or less], the floodplain use permit fee will be the only fee required. For other submittals, more detailed Staff review is required. An additional fee is necessary to cover the costs associated with these reviews. The proposed fee structure is shown in **Attachment 1** and has categories of review fees to be collected based on the level of review.

In general, the typical categories of floodplain reviews are:

1. Minor Improvements / accessory structures;
2. Redevelopment, new buildings, additions, improvements/remodels greater than 50% of the value of the existing structure;
3. Mobile Homes, Floodproofing;
4. Variances; and,
5. Pre- and Post-Project Floodplain analyses (City basin, FEMA, CLOMR/LOMR).

Category 1 -- Minor Improvements / Accessory Structures

For fence, shed, garage and miscellaneous items, reviews are typically completed within one (1) hour so there are no additional proposed fees. For review items that involve more staff time, the floodplain review fees shall consist of the floodplain use permit fee of fifty (\$50) dollars plus the following additional fee based on the type of review submittal:

- Deck/improvement or remodel less than 50% of the structure value ----- \$150
- Fill or grading only ----- \$150

Category 2 -- Redevelopment, New Buildings, Additions, Improvements/Remodels Greater than 50% of the Value of the Existing Structure

Staff review for these items is dependent on the type of submittal. In general, more staff time is required to complete these reviews when compared to those identified in Category 1. Floodplain review fees shall consist of the floodplain use permit fee of fifty (\$50) dollars plus the following additional fee based on the type of construction:

- Slab on Grade Construction ----- \$150
- Enclosure ----- \$200
- Crawl Space ----- \$250

Category 3 -- Mobile Homes, Floodproofing

Staff review for these items is again dependent on the type of submittal. Floodplain review fees shall consist of the floodplain use permit fee of fifty (\$50) dollars plus the following additional fees:

- Mobile Home ----- \$250
- Floodproofing ----- \$250

Category 4 -- Variance Applications

The recommended variance fee is one thousand (\$1,000) dollars to better reflect the average number of hours (20) of staff review and preparation time associated with analyzing, presenting and documenting the variance to the Water Board.

Category 5 -- Floodplain Analyses (City Basin, FEMA, CLOMR/LOMR)

These submittals, by their nature, require significant Staff involvement and review. In those instances where a submittal to FEMA is required, Staff must review and acknowledge that the submittal meets Chapter 10 requirements in advance of the applicant submitting it for FEMA review. These submittals are typically associated with larger site development (new) and/or redevelopment. There are typically two (pre-project and post-project) submittals for each of the following submittal types. A pre-project floodplain use permit fee (not required for post-project submittals) of fifty (\$50) dollars is proposed along with the following additional fees.

- FEMA Basin CLOMR/LOMR-Fill (includes 1st and 2nd reviews) -----\$ 250
- City/FEMA No-Rise without hydraulic analysis (includes 1st and 2nd reviews)\$ 250
- City/FEMA No-Rise with hydraulic analysis (includes 1st and 2nd reviews) --\$ 500
- City Basin Prelim/Final Floodplain Map Revision
(includes 1st and 2nd review) ----- \$ 1,000
- FEMA Basin CLOMR/LOMR (includes 1st and 2nd reviews)-----\$ 1,000

In order to promote more complete submittals and reduce the number of floodplain analyses and CLOMR/LOMR reviews, Staff has proposed an additional fee for resubmittals after the 2nd review. This concept is similar to that used by several other Colorado communities. The additional review fees for 3rd (and higher) reviews have a base fee plus \$50 per hour for reviews taking longer than typical review times:

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	<u>Base Fee</u>	+	<u>Plus \$50/hour for Reviews > than</u>
• FEMA Basin CLOMR/LOMR-Fill ----- hours			\$125 3
• City/FEMA No-Rise with hydraulic analysis ----- hours			\$250 5
• City Basin Prelim/Final Floodplain Map Revision ----- hours			\$500 10
• FEMA Basin CLOMR/LOMR ----- hours			\$500 10

FINANCIAL / ECONOMIC IMPACTS

Stormwater staff performed an internal analysis using data collected over the last three years to determine the approximate average amount of staff time associated with specific floodplain reviews. **Attachment 2** presents the results and reveals that the current fees do not appropriately reflect the staff effort necessary to perform the review functions. As a result, staff recommends that the proposed new fee structure be established to better assign costs to floodplain review applicants. This approach is similar to that used by other Colorado communities.

BOARD / COMMISSION RECOMMENDATION

The proposed floodplain administration review fees were presented and discussed at the June 6, 2013 Water Board Work Session. At its September 19, 2013 meeting, the Water Board unanimously approved the stormwater floodplain review fees (**Attachment 3**).

PUBLIC OUTREACH

Staff notified customers (developers, engineers, etc.) of the proposed floodplain review fees by postcard mailing in late October 2013. The postcard provides general information and refers interested parties to a city webpage developed specifically for the proposed floodplain review fees.

Public meetings included the Fort Collins Chamber of Commerce on October 4, 2013 and a Fort Collins Utilities' Key Accounts meeting and presentation on October 15, 2013."

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

Ken Sampley, Stormwater Floodplain Manager, stated this item adopts new review fees for properties that pursue some type of activity within the City's designated floodplains. He stated the current fees do not provide a mechanism to properly account for the significant review times associated with certain types of floodplain reviews. Sampley discussed the process used to

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determine the proposed fees and stated the Water Board unanimously recommended adoption of the proposed fees.

Councilmember Troxell asked where this issue falls in terms of the 360 degree review of development and review fees. City Manager Atteberry replied he did not have the answer at this time, but would provide the information later.

Councilmember Troxell asked how this proposal would expedite the review process. Sampley replied scheduling is not part of the Ordinance; however, staff understands the expectations for an increased level of service will result from the increased fees.

Councilmember Troxell asked how these proposed fees increase safety. Sampley replied this encourages more detailed and thorough submittals which will in turn provide for increased staff time to work on other programs.

Councilmember Troxell expressed concern the fees have not been updated in years and questioned how this fee fits into the overall development review fee process.

Councilmember Cunniff noted the proposed cost recovery structure exactly matches the newly adopted financial management policies. He questioned why Boulder's fees of this type are substantially higher. Sampley replied Boulder varies its fees based on the complexity of the submittal.

Councilmember Cunniff questioned whether Boulder has considered additional costs. Sampley replied Boulder's fees include more detail; however, the proposed fees for Fort Collins are a good reflection of appropriate fees for this community.

Councilmember Troxell made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 166, 2013, on First Reading.

Councilmember Troxell stated he would support the motion and looks forward to gaining additional information.

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

THE MOTION CARRIED.

Resolution 2013-096
Adopting the 2013 Paved Recreational Trail Master Plan, Adopted

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

November 19, 2013

The purpose of this item is to consider adoption of the Paved Recreational Trail Master Plan. Pursuant to Council direction and City planning efforts, an interdepartmental Trail Team collected a great deal of information on the City's paved trail system and trail use and presented the results to Council at the December 11, 2012 Work Session. This information, along with detailed information on the history and condition of the trail system, trail design standards, funding issues and recommended trail projects and action items comprise the 2013 Paved Recreational Trail Master Plan. The Plan has been reviewed by several City boards and commissions, and all of them recommend adoption of the Plan.

BACKGROUND / DISCUSSION

The City's paved recreational trail system has been in existence since 1980 and is one of the most used and treasured recreational facilities the City provides to the community. 95% of respondents to the Trail Questionnaire said the paved trails are important or very important to their quality of life. Planning for the trail system has been part of the Parks and Recreation Policy Plan but a stand-alone comprehensive trail planning effort has not been undertaken, until now. This Plan helps staff understand how well the trail system is meeting the current needs of the community and how the trail system can be improved to meet future community needs.

The 2010 Plan Fort Collins effort and accompanying Transportation Master Plan update recommended a review of various aspects of the trail system and design standards to see if changes were needed to improve customer service. The Trail Master Plan fulfills this recommendation. Connections between the trail system and the transportation system were of particular interest. The two systems are well integrated, with 109 connections along 34 miles of trail. The Trail Master Plan includes a goal to have trail connections at every half-mile interval or less. Citizens have raised concerns about trail connections in the southeast part of Fort Collins. Recently, the north branch of the Fossil Creek Trail was constructed from Ziegler Road east to Radiant Park and continuing east to Strauss Cabin Road. In 2014 the Fossil Creek Trail will extend east from Lemay to the Power Trail with an underpass of Trilby Road and continuing south to Carpenter Road. An east/west trail south of Kechter Road between the Power Trail and Ziegler Road (providing access to Bacon and Kinard schools) will be constructed as trail right-of-way is acquired through the development process.

The interdepartmental Trail Team collected a great deal of information on the trail system and trail users. Volunteers conducted 588 interviews with trail users, utilized automatic trail counters and promoted an on-line trail questionnaire which generated 541 responses. This information, along with input from various City boards and commissions and a peer city review, was presented to Council at the December 11, 2012 work session. This information has been incorporated into the Trail Master Plan, along with detailed information on the history and condition of the trail system, trail design standards, funding issues and recommended trail projects and action items.

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In general, trails are important to residents' quality of life and there is a high level of satisfaction with the trail system. Trails are popular and well maintained, but not generally congested. People want more trails and the gaps in the system finished, more underpass/overpasses of busy roads and trails that are scenic and close to nature. Trails are used year-round, with bicyclists outnumbering pedestrians and males outnumbering females. Trail users are courteous and people generally feel safe on our trails.

FINANCIAL / ECONOMIC IMPACTS

The Plan's Recreational Trail Funding Chapter reviews historical trail funding and outlines possible future trail funding options. The Conservation Trust (Lottery) has been the primary source of funding to build the trail system. Due to General Fund budget shortfalls, \$730,000 of annual Conservation Trust funding were redirected to park and trail maintenance beginning in 2001, leaving \$430,000 for trail planning, design and construction. To help offset the loss, Natural Areas has contributed \$350,000 annually to paved trails since 2003, but this funding may not be available after 2014. Current plans call for the development of another 31 miles of trail, including 10 underpasses, at a cost of over \$23 million. It will take 53 years to build out the trail system utilizing the \$430,000 in annual Conservation Trust funding. If all Conservation Trust funding (currently \$1.2 million) was directed to trail development, it would take 19 years to complete the trail system. If a trail impact fee (with estimated annual income of \$500,000) was implemented and coupled with the \$430,000, it would take 25 years to build out the trail system, assuming funding increases commensurate with construction inflation.

ENVIRONMENTAL IMPACTS

Chapter Seven of the Plan, Recreational Trail Design Standards provides direction on trail placement and environmental sensitivity. Trails are allowed within the 100 foot buffer zone for rivers and waterways. Trails are generally located along habitat edges and are placed to avoid sensitive habitat and to prevent fragmentation of high quality habitat.

BOARD / COMMISSION RECOMMENDATION

The Trail Master Plan was reviewed by the following boards and commissions:

*Commission on Disability
Land Conservation and Stewardship Board
Natural Resources Advisory Board
Parks and Recreation Board
Senior Advisory Board
Transportation Board*

All of the boards and commissions recommend adoption of the Plan.

PUBLIC OUTREACH

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Trail user information was gathered in 2012 from a variety of sources, including volunteers who counted and interviewed trail users, an online trail questionnaire, and automatic trail counters.

The volunteer counts and interviews were conducted based on guidance by the National Bicycle and Pedestrian Documentation project: Counts were conducted over two-hour periods at ten different locations. In total, 228 separate counts were taken. The count data included type of user (bicyclist, runner/jogger, walker, and other), gender, direction of travel, helmet use, and use of leash with dogs. Similar to the counts, interviews were conducted over two-hour periods at ten different locations. In total, 588 interviews were completed. The interviews included questions on trip frequency and purpose, reasons for choosing a particular trail, as well as suggestions for trail improvements. 80 volunteers donated over 300 hours to this data collection effort.

The online questionnaire captured a variety of data and was open to the public and available via the project website. 541 responses were captured over a 12 week period."

Marty Heffernan, Cultural, Parks, Recreation and Environment Director, stated this item adopts the Paved Recreational Trails Master Plan. He discussed the process of developing the Plan and reported on the results of a survey of trails users. Additionally, Heffernan described the components of the Plan itself and discussed funding sources for trails, noting the build-out of the trails system will take quite some time given current funding levels.

Eric Sutherland, 3520 Golden Currant, stated sensible rules and regulations for the use of the trails system have been overlooked. He stated the issue of electric bicycles should be reconsidered and encouraged innovative funding sources.

Devin Hirning, 3508 Muskrat Creek Drive, stated the purpose of Council meetings is to be part of the public process and opposed the "rubber stamping" of plans such as this. He expressed concern regarding the Harmony Road barrier to bicyclists and pedestrians and opposed the fact this Plan does not address a crossing of the corridor in its top twenty priorities. Additionally, Mr. Hirning stated safe routes to parks and schools need to be addressed in the southeast part of town. He asked why the Planning and Zoning Board minutes were not included in the Agenda Item Summary for this item.

Rick Price, 1925 Wallenberg Drive, discussed comments made by City officials in terms of the City's financial status and "average" position regarding trails. He supported adoption of the Plan and encouraged the build out of the system in twelve years by reallocating 100% of the Conservation Trust Fund, finding funding in Building On Basics II, pursuing GOCO funds, allocating a parks and trails maintenance fee, and reallocating funds from the Highway User Tax Fund.

Mayor Weitkunat asked if changes to the prioritized trail projects list are possible, noting some projects with no funding are prioritized higher than those with partial funding.

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Councilmember Campana noted some of the prioritization was based on the timing of projects or the availability of necessary rights-of-way. He agreed that criteria versus a prioritization list may be more appropriate. Heffernan replied the intent of the Plan was to have some priorities to allow for increased specificity. He noted funding is not allocated on a project-by-project basis and suggested the possibility of taking away the prioritization component which would allow the flexibility to implement projects as Council deems appropriate.

Councilmember Campana supported the elimination of the prioritization component and commended Mr. Price for his ideas.

Councilmember Cunniff agreed regarding the removal of the prioritization component. He suggested wording changes for the Resolution.

City Attorney Roy discussed possible language changes regarding the removal of the prioritization component.

Councilmember Cunniff supported the Plan and asked how this could be tied to the overall City-wide transportation system. Heffernan replied Transportation Planning staff were involved throughout the planning process and stated an analysis of the current trail system was completed regarding connectivity.

Councilmember Cunniff asked about the Planning and Zoning Board minutes. Craig Foreman, Park Planning and Development Director, replied he went before the Board in late October and he did not receive the minutes in time to place them in the packet. He noted the Board recommended adoption of the Plan.

Councilmember Cunniff encouraged addressing the Harmony Road and regulations issues and supported getting the Conservation Trust money focused on trail construction.

Councilmember Troxell asked about the transportation integration with the trail system. Paul Sizemore, FC Moves Program Manager, replied the Harmony Enhanced Travel Corridor Plan provides a total of six potential crossing locations; two of which are integrated into the trail network at the Power Line Trail crossing and at the Mason Trail crossing. The timeframe for development of those crossings is dependent upon funding.

City Manager Atteberry noted major funding sources will be defined, and hopefully implemented, in the upcoming months.

Councilmember Troxell supported revisiting the electric bicycle discussion.

Councilmember Campana stated the \$23 million needed to build out the trail system is a large amount and noted many citizens simply desire connectivity. He encouraged staff to use signage or striping on the Power Line trail near Harmony in order to accomplish short term connectivity.

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Councilmember Overbeck supported a build-out of the trail system as soon as possible and questioned why there are twice as many cyclists as pedestrians on the trails. Heffernan replied there are more pedestrians near parks but noted cyclists tend to be the predominant trail users. He stated additional survey questions could address pedestrian issues in the future.

Mayor Weitkunat urged staff to include trail funding in the BOB 2 package.

City Attorney Roy suggested language inclusions for the Resolution regarding the elimination of the prioritization aspects of the plan.

Councilmember Cunniff made a motion, seconded by Councilmember Troxell, to adopt Resolution 2013-096, as amended. Yeas: Poppaw, Overbeck, Campana, Weitkunat, Cunniff and Troxell. Nays: none.

THE MOTION CARRIED.


Other Business

Councilmember Campana made a motion, seconded by Councilmember Poppaw, to adjourn to Tuesday, November 26, 2013, at 5:30 p.m. so that the Council may consider going into Executive Session to continue the annual performance reviews of the City Manager, City Attorney, and Municipal Judge and discuss the proposed compensation and benefits of those employees. Yeas: Campana, Weitkunat, Cunniff, Troxell, Poppaw and Overbeck. Nays: none.

THE MOTION CARRIED.


Adjournment

The meeting adjourned at 8:40 p.m.



Mayor

ATTEST:



City Clerk

