

March 4, 2014

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, March 4, 2014, 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 Urban Renewal Authority meeting will be held after Citizen Participation Follow-Up. He noted a revised letter and Resolution for Item No. 13, *Resolution 2014-021 Directing the Mayor to Submit a Letter to Colorado's United States Senators and to Congressmen Jared Polis and Cory Gardner, Seeking Support for Funding for I-25 Phase I Improvements*, were included in Council's read-before packet.

Councilmember Cunniff withdrew Item Nos. 1 and 13, *Consideration and Approval of the Minutes from the January 28, 2014 Adjourned Council Meeting and the February 4 and 18, 2014 Regular Council Meetings and Resolution 2014-021 Directing the Mayor to Submit a Letter to Colorado's United States Senators and to Congressmen Jared Polis and Cory Gardner, Seeking Support for Funding for I-25 Phase I Improvements* from the Consent Calendar.

Citizen Participation

Monte Barry, Fort Collins resident, discussed bicycle and pedestrian accidents and suggested the use of public service announcements to address the issue.

Jack Daniels, 172 North College, thanked Council for helping to make Fort Collins a wonderful place to live and commended the honesty, integrity, and intelligence of the City organization.

David Hamm, Fort Collins resident, discussed future growth of the city and suggested additional infrastructure will be needed to meet the needs of the increased population. He opposed the construction of a stadium within city limits.

Citizen Participation Follow-up

Councilmember Overbeck stated he has had conversations with staff regarding pedestrian and citizen safety.

Mayor Pro Tem Horak stated staff has reviewed the city's accident statistics and are examining proactive possibilities for change.

Adjourn to Urban Renewal Authority Meeting

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adjourn until the conclusion of tonight's Urban Renewal Authority meeting. Yeas: Campana, Horak, Weitkunat, Cunniff, Overbeck, Poppaw and Troxell. Nays: none.

THE MOTION CARRIED.

(Meeting adjourned at 6:13 p.m. and reconvened at 7:15 p.m.)

CONSENT CALENDAR

1. Consideration and Approval of the Minutes from the January 28, 2014 Adjourned Council Meeting and the February 4 and 18, 2014 Regular Council Meetings.

The purpose of this item is to consider and approve minutes from the January 28, 2014 Adjourned Council Meeting and the February 4 and 18, 2014 Regular Council Meetings.

2. Second Reading of Ordinance No. 025, 2014, Appropriating Prior Year Reserves in the Water Fund to Fund the Replacement of the College Avenue Waterline From Mulberry Street to Buckeye Street.

This Ordinance, unanimously adopted on First Reading on February 18, 2014, appropriates funds for the replacement of the College Avenue waterline from Mulberry to Buckeye Streets, just south of Pitkin. Ordinance No. 134, 2013 appropriated funds for the design of this project. Design and cost estimating have been completed. This Ordinance appropriates \$2.1 million from reserves for the construction of this project.

3. Second Reading of Ordinance No. 026, 2014, Amending Subsection 2-31(a)(2) of the City Code, Pertaining to Executive Sessions Held for the Purpose of Meeting with Attorneys for the City.

This Ordinance, unanimously adopted on First Reading on February 18, 2014, amends subsection 2-31(a) of the City Code, which pertains to executive sessions held for the purpose of meeting with attorneys for the City. The purpose of the amendment is to more closely conform to the language in Article II, Section 11 of the City Charter.

4. First Reading of Ordinance No. 029, 2014, Appropriating Unanticipated Grant Revenue in the Recreation Fund for the Vida Sana Program.

The purpose of this item is to appropriate sub-grant funds from the Poudre Valley Health System Foundation and the Coalition for Activity and Nutrition to Defeat Obesity (CANDO) for the Vida Sana program to eliminate racial and ethnic disparities among Latino/Hispanic community members. Specific interventions include increasing access to facilities providing physical activity; providing social support to increase physical activity; and implementing a communitywide campaign for increasing physical activity that will be carried out by partner agencies.

5. Items relating to FC Bikes Program.

A. First Reading of Ordinance No. 030, 2014, Appropriating Unanticipated Grant Revenue in the Transportation Services Fund for the 2014 Fort Collins Bikes Program.

B. First Reading of Ordinance No. 031, 2014, Appropriating Unanticipated Grant Revenue From Kaiser Permanente in the Transportation Services Fund for the 2014 Fort Collins Bikes Program.

The purpose of this item is to request appropriation of unbudgeted grant funds received for the FC Bikes Program: (1) a Congestion Mitigation & Air Quality (CMAQ) grant (2014-2016) and (2) a Kaiser Foundation Health Plan of Colorado (KP) grant (2014). The City of Fort Collins' FC Bikes Program received a \$704,128 federal grant (CMAQ) through the Colorado Department of Transportation and the North Front Range Metropolitan Planning Organization. This is in addition to the City's local match of \$146,372, as appropriated in 2013 by City Council. In addition, the FC Bikes Program received a \$94,100 private grant from Kaiser Permanente (KP) through a Walk & Wheel - Local Government grant. A local match is not required for the KP grant. Funding from both grants will support FC Bikes Program initiatives, allowing for the refinement and expansion of existing services, including enhancements to bicycle safety education programs, expansion of encouragement campaigns, and new bicycle promotion initiatives, while also supporting the development and implementation of the 2014 Fort Collins Bicycle Master Plan.

6. First Reading of Ordinance No. 032, 2014, Appropriating Unanticipated Grant Revenue in the Wastewater Fund and Authorizing the Transfer of Existing Appropriations from the Drake Water Reclamation Facility Improvements Capital Project for the Drake Water Reclamation Facility's Nutrient Grant Project for South Process Train Improvements.

The purpose of this item is to appropriate grant funding in the amount of \$1,080,000 in the Wastewater Fund. The grant funds will be used for the planning, design, and construction of a portion of the Nutrient Removal Improvements required for the Drake Water Reclamation Facilities' South Process Train.

7. First Reading of Ordinance No. 033, 2014, Establishing Rental Rates and Delivery Charges for the City's Raw Water for the 2014 Irrigation Season.

The purpose of this item is to set rates for the rental and delivery of the City's raw water supplies. The Water Utility uses these rates to assess charges for agricultural use, for various contractual raw water obligations and for raw water deliveries to other City departments. The proposed rate for each type of water is based on several factors including market conditions and assessments charged by irrigation companies.

8. First Reading of Ordinance No. 034, 2014, Amending Sections 3.8.31 and 5.1.2 of the Land Use Code Pertaining to Hoop Houses.

The purpose of this item is to amend the Land Use Code to exempt hoop houses from the Building Code requirements and add hoop houses to the list of accessory structures allowed in the Code, and require urban agriculture licensees to locate hoop houses on their site plans. In July 2013, Council also directed staff to consider standards for the raising of farm

animals. Based on public outreach and staff research, staff found that the concerns raised regarding farm animals could be addressed with existing regulations and were limited to two neighborhoods within the City. In addition, numerous citizens expressed strong concerns about regulating their food production ability within the zone districts that currently allow farm animals. Thus, staff is not proposing amendments to the City's regulations regarding farm animals. Instead of developing regulations that could affect all residents within these districts (approximately 1,700 homes), staff is working with the concerned neighborhoods directly to resolve specific concerns.

9. Hearing and First Reading of Ordinance No. 035, 2014 Amending Chapter 9 of the City Code and Adopting by Reference the 2012 International Fire Code, with Amendments.

The purpose of this item is to update the International Fire Code (IFC). Poudre Fire Authority is responsible for the enforcement and administration of the International Fire Code within the City of Fort Collins. Every three years, the IFC is updated by the International Code Council (ICC) with the most recent update published in 2012. Poudre Fire Authority routinely reviews new codes, proposes local amendments and then seeks adoption of the Code changes by City Council. The proposed amendments, developed in conjunction with the local Fire Code Review Committee, include several changes to the local Code. Changes include regulations related to the placement of solar panels on residential roofs, additional clarification and requirements for emergency responder radio coverage in large buildings, minimal maintenance provisions for roof top gardens and provisions to protect firefighters from roof top hazards such as cables and wires.

10. First Reading Ordinance No. 036, 2014 Authorizing the Conveyance of Parcels of Real Property on North College Avenue to the Colorado Department of Transportation.

The purpose of this Ordinance is to obtain authorization from City Council to convey parcels acquired on North College Avenue for road improvements to the Colorado Department of Transportation. The City constructed the North College Avenue Improvements Project - Vine to Conifer in 2012. As required for all projects involving a Colorado Department of Transportation ("CDOT") facility, and per the intergovernmental agreement between the City and CDOT, any acquired property for road right of way purposes is required to be subsequently conveyed to CDOT. This Ordinance will authorize City staff to convey these acquired parcels to CDOT.

11. Items Relating to the Implementation of Phase Four of the Southwest Enclave Annexation.

A. Resolution 2014-018 Amending the City's Structure Plan.

B. Hearing and First Reading of Ordinance No. 037, 2014 Amending The Zoning Map Of The City Of Fort Collins And Classifying For Zoning Purposes the Property Included In Phase Four Of The Southwest Enclave Annexation To The City Of Fort Collins, Colorado

The purpose of this item is to implement Phase Four of the Southwest Enclave Annexation, the last phase within this enclave and consisting of approximately 400 acres. This is a request to amend the *City Structure Plan* map, apply appropriate zoning districts, and place Phase Four within the Residential Sign District. The *City Structure Plan* map will

March 4, 2014

be amended to finalize the Growth Management Area boundary for the Wildflower expansion area. The requested zone districts for Phase Four are Urban Estate (U-E), Rural Lands (R-U-L), and Public Open Lands (P-O-L).

12. Resolution 2014-019 Ratifying the Appointment of Amanda Manges Quijano to the Poudre River Library District Board of Trustees.

The purpose of this item is to appoint Amanda Manges Quijano to the Poudre River Library District Board of Directors to fill a vacancy that currently exists due to a term expiration for Robin Gard.

13. Resolution 2014-021 Directing the Mayor to Submit a Letter to Colorado's United States Senators and to Congressmen Jared Polis and Cory Gardner, Seeking Support for Funding for I-25 Phase I Improvements.

The purpose of this item is for City Council to consider approval of a letter to be submitted to the City's U.S. Congressional Delegation and to U.S. Representative Cory Gardner, seeking their support to fund Interstate 25 improvements in the 2014 reauthorization of the federal transportation bill.

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

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

THE MOTION CARRIED.

Consent Calendar Follow-up

Councilmember Troxell discussed Item No. 11, *Items Relating to the Implementation of Phase Four of the Southwest Enclave Annexation*, noting this item represents the final phase of the annexation.

Mayor Pro Tem Horak commended the detail and layout of Item No. 8, *First Reading of Ordinance No. 034, 2014, Amending Sections 3.8.31 and 5.1.2 of the Land Use Code Pertaining to Hoop Houses*.

Staff Reports

City Attorney Roy stated John Duval has been hired by the City Attorney's Office. Roy commended Mr. Duval's work and stated the City Attorney's Office is proud to have him rejoining the City.

Councilmember Reports

Mayor Weitkunat reported on the upcoming Colorado Municipal League Board of Directors meeting and stated Council will be attending the National League of Cities meeting in Washington D.C. next week.

Councilmember Campana reported the City has received medals in four of the five categories for efforts already completed relating to the national "Let's Move" campaign.

Councilmember Cunniff reported on the introductory campus stadium meeting.

**Consideration and Approval of the Minutes from the January 28, 2014
Adjourned Council Meeting and the February 4 and 18, 2014
Regular Council Meetings, February 18 Minutes to be Resubmitted**

Councilmember Cunniff stated the February 18 minutes did not adequately reflect the discussion City Attorney Roy had with Mayor Pro Tem Horak regarding the clarification of his motion.

City Clerk Nelson suggested Council vote on the remaining two sets of minutes and staff will amend the February 18 minutes and bring them back for Council's consideration at the next meeting.

Councilmember Cunniff made a motion, seconded by Mayor Pro Tem Horak, to approve the January 28 and February 4, 2014 minutes. Yeas: Weitkunat, Cunniff, Overbeck, Poppaw, Troxell, Campana and Horak. Nays: none.

THE MOTION CARRIED.

**Resolution 2014-021
Directing the Mayor to Submit a Letter to Colorado's United States Senators
and to Congressmen Jared Polis and Cory Gardner, Seeking Support
for Funding for I-25 Phase I Improvements, Adopted**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The purpose of this item is for City Council to consider approval of a letter to be submitted to the City's U.S. Congressional Delegation and to U.S. Representative Cory Gardner, seeking their support to fund Interstate 25 improvements in the 2014 reauthorization of the federal transportation bill.

BACKGROUND / DISCUSSION

Interstate 25 (I-25) is the primary transportation corridor for people and goods to and from Northern Colorado. The traffic volume along the highway has steadily increased in the last decade to the point that road conditions are becoming a problem. Ensuring that the highway is safe, in

March 4, 2014

good repair, and is sized appropriately to handle traffic needs is important to Northern Colorado's economic health.

Colorado Department of Transportation (CDOT) has proposed converting a free lane into a toll lane on I-25 between Colorado 7 (the Brighton exit) to Colorado 66 (Lyons, Longmont and Platteville exit) in order to accumulate the revenue needed to make improvements to the highway by 2075.

As an alternative, to expand the highway more quickly and efficiency, the North I-25 Coalition - a group of local officials representing 14 communities from Thornton to Fort Collins - is advocating that funding for north I-25 be included in the reauthorization of the federal transportation bill. The transportation bill will be discussed by Congress this fall.

Information provided by the North I-25 coalition derived from CDOT, Department of Local Affairs, Colorado State Demographer, and the U.S. Census data indicates, based on current road conditions and traffic volumes, that the north I-25 corridor has an anticipated 10-year lifespan.

If approved, the letter will go to the City's federal representatives - United States Senators Mark Udall and Michael Bennet, and Congressman Jared Polis. The same letter would also go to Congressman Cory Gardner who, until 2012, represented Fort Collins. Congressman Gardner is a leader in the United States House, understands the regional importance of this issue and is familiar with regional needs.

FINANCIAL IMPACTS

Funding north Interstate 25 improvements in the federal transportation reauthorization will ensure the region's economic health by maintaining a safe road surface and address growing congestion along the north I-25 corridor. Acting sooner could result in savings to taxpayers, both in minimizing congestion-related delays and in minimizing anticipated construction costs (project costs are anticipated to be \$1.2 billion if completed in the CDOT proposed timeline of 2075).

ENVIRONMENTAL IMPACTS

Delays along the north I-25 corridor can cause increased levels of air pollution."

Councilmember Cunniff stated the item's materials were not complete on-line as of Thursday and requested information regarding the timeline and current status of the materials and Resolution.

Mayor Pro Tem Horak read the complete Resolution into the record and discussed the need for federal funding and support of the I-25 communities.

Mike Pruznick, Fort Collins resident, stated the thinking behind this issue does not support sustainability.

Councilmember Campana commended Mayor Pro Tem Horak's work on the item.

March 4, 2014

Mayor Pro Tem Horak made a motion, seconded by Councilmember Troxell, to adopt Resolution 2014-021.

Mayor Pro Tem Horak discussed the need for federal funding for I-25.

Councilmember Cunniff supported the need for bridge reconstruction and highway maintenance but questioned the need for additional traffic lanes as history has shown they fill up shortly after being completed.

Councilmember Cunniff made a motion, seconded by Councilmember Poppaw, to delay consideration of the item until the next regular meeting due to the substantive changes in the Resolution.

Mayor Weitkunat noted time is of the essence regarding the item and stated this letter would at least put the Northern Colorado area in the discussion to receive federal funding.

Councilmember Troxell opposed postponing the item and commended Mayor Pro Tem Horak's work on the item and noted this is a regional effort.

Mayor Pro Tem Horak noted the discussed third lane would be a managed lane, which could either be a toll or HOV lane. He also noted the environmental impact statement for the area has already been approved by Council.

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

THE MOTION FAILED.

The vote on the motion to approve Resolution 2014-021 was as follows: Yeas: Troxell, Campana, Horak and Weitkunat. Nays: Cunniff, Overbeck and Poppaw.

THE MOTION CARRIED.

**Ordinance No. 024, 2014,
Appropriating Prior Year Reserves in the Keep Fort Collins
Great Fund to Fund Further Development of the West Central
Neighborhoods Plan, Adopted on Second Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on February 18, 2014, appropriates \$170,000 of KFCG Other Transportation Reserve funds for consulting services associated with the Transportation Element of the West Central Neighborhoods Plan. An update of the plan is scheduled for 2014. The requested funding enhances the overall planning effort by including an analysis of the neighborhood transportation network, consideration of growth on and around the

March 4, 2014

Colorado State University campus, recommendations and strategies, and detailed corridor vision and design for Prospect Road between College Avenue and Shields Street.

BACKGROUND / DISCUSSION

At the First Reading of Ordinance No. 024, 2014, City Council discussed the relationship of the West Central Neighborhoods Plan to other efforts including mitigation strategies for a potential on-campus stadium at CSU. Additional information has been included for the second reading in order to clarify these relationships.

The West Central Neighborhoods Plan is representative of the 16 Area Plans within the City of Fort Collins. These plans allow the application of City Plan at a scale appropriate to neighborhood areas and districts of the City. Area plans typically include elements expanding on land use, urban design, transportation, and other key topics. They take into consideration the expected growth and development within the plan area, but they do not typically evaluate the impact of specific development projects. It should be noted that the current plan is titled "West Central Neighborhoods Plan," while the new document under development will be renamed "West Central Area Plan." New attachments will reflect this change.

The Planning, Development, and Transportation (PDT) Service Area is also working with City Management to develop a process for evaluating and mitigating the impacts of an on-campus stadium. Additional information related to this project is being provided to City Council separately from this AIS.

This appropriation ordinance is critical to the success of the larger West Central Area Plan effort because it provides funding to support a robust analysis of the transportation network, modeling and forecasting of the future condition of the system, and a more detailed preliminary design for a highly constrained segment of Prospect Road. Without this supplementary funding, the new plan will lack the depth of analysis to provide these detailed transportation recommendations for the Plan Area as a whole, or design options for Prospect Road.

Per City Council's request at First Reading, the following items have been included for consideration:

Attachment 1: *Agenda Item Summary from the first reading.*

Attachment 2: *West Central Area Plan Neighborhoods Map. This map shows the plan area boundaries and identifies the names of the constituent neighborhoods.*

Attachment 3: *Fort Collins Area Plan Map. This attachment identifies all 16 of the currently adopted Area Plans within the City.*

Attachment 4: *Original West Central Neighborhoods Plan Offer (without transportation enhancements proposed by this appropriation). This document reflects the general scope of the project as approved by City Council during the last Budgeting for Outcomes process.*

Attachment 5: *West Central Area Plan Final Project Scope (including transportation enhancements proposed by this appropriation). This document reflects the final project scope if this appropriation ordinance is adopted.*

March 4, 2014

Attachment 6: West Central Area Plan Project Schedule. This is the anticipated timeline for the completion of tasks outlined in the final scope

Attachment 7: Development Review Flow Chart. This provides a brief overview of the steps that a private developer follows to design and construct public infrastructure necessary to address development impacts.

The Ordinance was amended on First Reading to reflect the correct focus area on Prospect Road."

Cameron Gloss, Planning Manager, discussed the boundary of the West Central area and stated this item would allow for a more elaborate transportation analysis of the area.

Paul Sizemore, FC Moves Program Manager, stated this item would appropriate \$170,000 of KFCG transportation reserves to expand on the West Central Neighborhoods Plan transportation element. This research will provide a new baseline of data which can then feed into other planning efforts, including stadium impact planning and other area plans. Sizemore went on to detail documents and information requested by Council at First Reading.

Gloss discussed the history and funding of area plans throughout the city and stated the Plan name has been changed to the West Central Area Plan to accurately reflect the land uses in the area.

Councilmember Cunniff commended staff for the follow-up work and asked about proposed outreach efforts. Gloss replied there is an extensive public involvement plan that begins in three weeks and will be ongoing for approximately nine months.

Councilmember Overbeck asked if notices would be included in utility bills. Gloss replied a broad range of techniques will be used, including utility bill notices.

Councilmember Campana asked about funding for the City's area plans. Gloss replied they have been approved through past budget cycles and funded by the City.

Councilmember Troxell made a motion, seconded by Councilmember Campana, to adopt Ordinance No. 024, 2014, on Second Reading.

Councilmember Troxell commended the additional work by staff.

Mayor Pro Tem Horak asked if a public engagement plan would be presented to Council. Gloss replied staff has completed a draft public involvement plan which will be distributed to Council shortly.

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

THE MOTION CARRIED.

March 4, 2014

**Ordinance No. 027, 2014,
Approving Revisions to the Fort Collins Utilities' Electric
Construction Policies, Practices, and Procedures, Adopted on Second Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

Ordinance No. 027, 2014, adopted on First Reading on February 18, 2014 by a vote of 6-0 (Campana recused) adopts the revised Electric Construction Policies, Practices, and Procedures (ECPPP). The ECPMP provides definition to developers and contractors related to the construction of electrical facilities.”

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

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 027, 2014, on Second Reading. Yeas: Troxell, Horak, Weitkunat, Cunniff, Overbeck and Poppaw. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 028, 2014,
Amending Chapter 26 of the City Code to Clarify the Application
of Wastewater Rates to Certain Residential Services, Adopted on Second Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

This Ordinance, adopted on First Reading on February 18, 2014 by a vote of 6-0 (Campana recused), revises the City Code concerning the classification of wastewater users and revises rates for wastewater service charges during the period of construction.”

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

Mayor Pro Tem Horak made a motion, seconded by Councilmember Poppaw, to adopt Ordinance No. 028, 2014, on Second Reading. Yeas: Troxell, Horak, Weitkunat, Cunniff, Overbeck and Poppaw. Nays: none.

THE MOTION CARRIED.

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

Items Relating to Recreational Marijuana, Adopted on First Reading

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

- A. *First Reading of Ordinance No. 038, 2014, Establishing Regulations for the Consumption and Possession of Marijuana Within the City of Fort Collins and Prohibiting the Transfer or Display of Marijuana on City-Owned Property.*
- B. *First Reading of Ordinance No. 039, 2014, Establishing Regulations for the Cultivation of Marijuana.*
- C. *Possible Action Items Related to the Licensing of Retail Marijuana Establishments:*

OPTION A:

First Reading of Ordinance No. 040, 2014, Extending the Temporary Ban on Marijuana Establishments within the City of Fort Collins.

OR

OPTION B:

First Reading of Ordinance No. 041, 2014, Adding a New Article XVII to Chapter 15 of the City Code to Govern the Licensing, Number, Location and Operation of Retail Marijuana Establishments.

AND

First Reading of Ordinance No. 042, 2014, Making Amendments to the City of Fort Collins Land Use Code in Order to Accommodate Retail Marijuana Establishments in the City.

The purpose of this item is to regulate the personal use and growing of marijuana as allowed under Amendment 64 and to either extend the ban on retail marijuana establishments or to adopt regulations for such businesses. At the February 11, 2014 Work Session, Council requested the following options be brought forward:

- *Proceed with the local ordinances addressing the personal use and growing of recreational marijuana.*
- *Extend the temporary ban for 2 years; or*
- *Enact regulations governing retail marijuana establishments with options to either allow or prohibit edibles with the exception of tinctures and oils.*

A temporary ban on retail marijuana establishments went into effect in September 2013 and is scheduled to expire on March 31, 2014. If the ordinance extending the temporary ban is adopted on Second Reading, the ban will be extended until March 31, 2016. If the ordinance allowing retail establishments is adopted on Second Reading, it would take effect prior to the expiration of the existing temporary ban.

STAFF RECOMMENDATION

Staff recommends the adoption of Ordinance Nos. 038, 2014 and 039, 2014 addressing the personal use, consumption and growing of recreational marijuana.

Based on the potential impacts on youth health and well-being, the cash nature of such businesses, and the impact that such businesses may have on the City's reputation, staff is recommending the extension of the temporary ban for 2 years.

BACKGROUND / DISCUSSION

Amendment 64

With voter approval of Amendment 64 in November 2012, communities throughout Colorado have been adopting local regulations to either ban or allow retail marijuana establishments. Fort Collins is in a unique position because Initiative 301 which reinstated medical marijuana businesses, was approved at the same time. Since November 2012, staff has been working diligently to re-license previous medical marijuana centers and to provide Council with local options to address retail marijuana in our community.

Amendment 64 allows the following:

- *Adults 21 years-of-age or older may legally possess, use, display, purchase, or transport one ounce or less of marijuana without a doctor's recommendation.*
- *Adults 21 years-of-age or older may possess, grow, process, or transport up to six marijuana plants, provided, however, that the cultivation of marijuana occurs in a locked and enclosed space.*
- *Local governments may opt out of allowing retail marijuana establishments or they may opt in and enact local regulations.*

Currently the City has:

- *11 licensed medical marijuana centers with 2 applications pending approval*
- *11 licensed cultivation centers with 3 applications pending approval*
- *2 licensed Manufacturing Infused Product facilities.*

Proposed Ordinances

Ordinance No. 038, 2014 addresses personal consumption and possession and prohibitions on the display and transfer of marijuana.

Amendment 64 allows adults 21 and over to possess up to one ounce of marijuana. It prohibits "open and public" use of marijuana. This ordinance provides local language to better define open and public consumption, to help with enforcement, and to allow violations to be written into our local municipal court.

March 4, 2014

Amendment 64 (the constitutional provision governing recreational marijuana) prohibits the open and public consumption of recreational marijuana, whereas Amendment 20 (the constitutional provision governing medical marijuana) prohibits the consumption of medical marijuana that is in plain view of, or in a place open to the general public. In order to make these provisions consistent, the proposed ordinance governing recreational marijuana defines "openly" as "perceptible from a place that is open to the general public" and "publicly" as "occurring on any publicly owned property, or any non-residential property that is open to the general public," and the proposed ordinance governing medical marijuana reflects the Amendment 20 language "in plain view of or in a place open to the public."

Adults 21 years-of-age and older are allowed to possess up to one ounce of recreational marijuana and medical marijuana patients are allowed to possess up to two ounces of medical marijuana.

The ordinance also prohibits displaying or transferring marijuana on City owned property which includes parks, trails, natural areas, streets and sidewalks.

***Ordinance No. 039, 2014** addresses the residential growing of recreational marijuana for personal use.*

Amendment 64 allows adults to grow six plants "provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale." However, the state law does not define these terms. The proposed ordinance defines what constitutes an "enclosed, locked space" and "open and publicly."

Fort Collins currently allows medical marijuana patients and caregivers to grow up to 12 plants in single-family detached residences. Growing is prohibited in multi-family residences for health and safety reasons.

Highlights of this ordinance include:

- *No cultivation in two-family, multifamily, or single-family attached dwellings.*
- *Cultivation may not occur in the open or be perceptible from the outside of a property.*
- *The use of compressed, flammable gases would be prohibited, as would all high-intensity lighting.*
- *The 12 plant limit for medical marijuana would remain in place, and would apply to recreational marijuana regardless of the number of inhabitants.*

With regard to the licensing of retail marijuana establishments, the choices available to the Council are to:

- *Do nothing, in which case the effect of that "default" to the state would have to be further analyzed;*
- *Refer to the voters the question of whether to allow such establishments in the City;*
- *Extend the temporary ban for the purpose of further study;*
- *Adopt regulations under which the establishments would be licensed and regulated.*

March 4, 2014

Staff is providing Council with ordinances that would either extend the ban for two more years or amend the City Code to allow for licensing and regulation.

Option A: Ordinance No. 040, 2014, extends the existing temporary ban for two years.

Based on Council discussion, a two-year extension would provide a reasonable amount of time to observe impacts in those communities licensing and regulating retail marijuana establishments. Based on those impacts and any additional studies that may occur in the two-year timeframe, Council could then make a more informed decision regarding retail marijuana businesses.

Council could also opt to extend the ban long enough to put an item on the November ballot related to the allowance of retail marijuana stores.

Option B: Ordinance No. 041, 2014, allows and regulates retail marijuana establishments.

Specifically, the proposed ordinance allows all existing licensed medical marijuana centers in good standing to apply for and receive a retail marijuana store license at its same location on the condition it maintains both the retail and medical license.

Should an existing medical marijuana center in good standing wish to relocate and seek a retail marijuana store license, the ordinance requires the location to meet the following:

1000 feet from:

- CSU
- Schools
- Public Playgrounds
- Medical or Retail marijuana stores

500 feet from:

- Child care centers
- Places of worship
- Public parks, pools, recreation facilities
- Halfway houses or rehab centers
- Residential Zoning

The proposed ordinance also contains an option for either allowing or banning the sale of edible products in retail marijuana establishments and an option for requiring a licensed retail marijuana store that is also operating a medical marijuana center to limit sales to those 21 and over.

Edible marijuana products are allowed in medical marijuana centers. The City cannot change the availability of these products to medical marijuana patients. Larimer County has banned the sale of retail edible products. Both retail stores in the County will be maintaining their medical marijuana business licenses.

March 4, 2014

The state addresses the protection of persons under age 21 from retail edible products in the rules and regulations as follows:

- *Packaging may not be designed to appeal to children. A retail marijuana establishment shall place no stickers or labeling on a container holding retail marijuana, retail marijuana concentrates, or retail marijuana product in a manner that specifically targets individuals under the age of 21, including but not limited to, cartoon characters or similar images.*
- *A retail marijuana establishment must ensure that each retail marijuana product is placed within a container prior to sale to a consumer. If the container is not child-resistant, the retail marijuana store must place the container within an "exit package" that is child-resistant. An exit package is "a sealed container or package provided at the retail point of sale, in which any retail marijuana or retail marijuana product already within a container are placed."*
- *Required warning statements include "This product is intended for use by adults 21 years and older. Keep out of the reach of children."*

Should Council opt to allow the sale of retail edibles, the above would apply, as would our local labeling requirement which states that all retail marijuana stores shall affix labels to all containers on the licensed premises that hold retail marijuana or retail marijuana products and shall clearly display potency profiles and contaminant results from licensed retail marijuana testing facilities. This is more restrictive than the state law in that we are requiring all retail marijuana and retail marijuana products to be tested.

The state is also imposing the following advertising restrictions to protect persons under the age of 21:

- *Television / Radio / Print / Internet / Event Sponsorship restrictions include not utilizing these types of advertising unless there is reliable evidence that no more than 30 percent of the audience is reasonably expected to be under the age of 21.*
- *Retail marijuana establishments shall not include in any form of advertising or signage any content that specifically targets individuals under the age of 21, including but not limited to cartoon characters or similar images.*
- *Retail marijuana establishments shall not engage in advertising via marketing directed towards location-based devices, including, but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and includes a permanent and easy opt-out feature.*

If Council chooses to allow retail marijuana establishments, then the following ordinance making changes to the Land Use Code would also need to be adopted.

Ordinance No. 042, 2014 *makes amendments to the Land Use Code to define and regulate retail marijuana establishments.*

March 4, 2014

The amendments identify the appropriate zones for retail marijuana establishments (which are proposed to be the same zones where the equivalent medical marijuana uses are currently permitted), add definitions, and prohibit such businesses from the "addition of permitted use" process.

FINANCIAL IMPACTS

The allowance of retail marijuana establishments would bring additional sales tax as well as a percentage of state share back money to the City. These amounts are difficult to determine at this point.

The City would also see an increase in cost for enforcement and implementation of a retail marijuana system.

BOARD / COMMISSION RECOMMENDATION

The Planning and Zoning Board approved a recommendation to make the following Land Use Code amendments:

- *Adding definitions for Retail Marijuana Store, Retail Marijuana Cultivation Facility, and Retail marijuana Product Manufacturing Facility.*
- *Adding the above uses to the same zones in which like medical marijuana uses are allowed.*
- *Prohibiting retail marijuana facilities from the "Addition of Permitted Use" process.*

PUBLIC OUTREACH

Outreach was conducted at a Community Forum held in October 2013. Feedback was also solicited and received on line through IdeaLab."

City Attorney Roy provided an overview of the proposed Ordinances, noting the two basic options for local governments, per the state regulations, are to ban or regulate retail marijuana operations. He reviewed the provisions of Amendment 64.

Ginny Sawyer, Policy and Project Manager, detailed the Ordinances and options therein. She also discussed the Planning and Zoning Board recommendations on the items and showed slides illustrating the locations of existing medical marijuana facilities and available land in the city.

City Manager Atteberry noted the staff recommendation is to extend the existing ban on retail facilities for another two years.

Steve Ackerman, Fort Collins resident, supported a regulated retail model.

Hauten Swaton, Fort Collins resident, supported a regulated retail model and opposed banning edibles.

Tom Anders, Fort Collins resident, stated he needs edible medical marijuana for pain control due to a brain stem stroke. Additionally, he supported a regulated retail model.

March 4, 2014

Ryan Wiens, Fort Collins resident, stated Council should enforce the will of the voters and supported the ability for residents to grow their own marijuana and a regulated retail model.

Ray Burgner, Fort Collins resident, opposed tax revenue as being a reason to allow recreational marijuana and stated the community's youth should be prioritized.

Desmond Coronado, Fort Collins resident, supported the ability of law-abiding citizens, who are of age, to purchase regulated retail marijuana.

Mary Kay Sommers, Fort Collins resident, supported the safest implementation possible and stated the community's youth should be prioritized.

Will Reynolds, Fort Collins resident, supported a regulated retail model.

Ken Correa, Fort Collins resident, stated he owns an edibles company, which is completely regulated by the health department. He opposed banning edibles and opposed continuing a retail ban.

Barbara Hain, Fort Collins resident, supported the Ordinances, stating the criminal element will then be eliminated.

Shawn Hauser, Sensible Colorado organization, supported a regulated retail model.

Joe Hodas, Denver resident, stated he is the chief marketing officer for a company which makes edible marijuana products. He illustrated the child-resistant packaging and labeling for his products and supported a regulated retail model and opposed a ban on edibles.

Ray Martinez, 4121 Stoneridge Court, stated there is no rush to make a decision on this issue, as more research should be completed. He stated crime has been increased by black market marijuana sales to other states.

Ashley Kasprzak, Team Fort Collins Executive Director, stated early substance use and abuse are major issues for the community's youth.

Larry Abrahamson, Fort Collins resident, stated Amendment 64 allows communities the opportunity to make a decision as to whether retail marijuana outlets are appropriate and Council should look at data and research from other communities prior to making a decision.

Bob Doyle, Colorado Tobacco Education and Prevention Alliance Executive Director, stated this would commercialize another drug, which would increase its use. He discussed the growth of the marijuana wax business and opposed allowing retail marijuana facilities.

Kirk Scramstead, Fort Collins resident, provided a presentation illustrating child-resistant packaging and warning labels, and discussed edible regulation.

Mayor Weitkunat stated the first Ordinance deals with regulations for the consumption and possession of marijuana within the City and prohibits the transfer or display of marijuana on City-owned property.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 038, 2014, on First Reading.

Mayor Pro Tem Horak noted Amendment 64 provided municipalities the right to define public use, which this Ordinance regulates.

Councilmember Cunniff stated there is not much controversy with this item and he will support the motion.

Councilmember Troxell asked how the state legislative session may impact this provision. Sawyer replied there currently is activity in the Legislature regarding this topic; however, it is not particular to personal use and consumption.

Mayor Weitkunat noted this Ordinance prohibits the display and transfer of marijuana on all City-owned property.

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

THE MOTION CARRIED.

Mayor Weitkunat stated the second Ordinance deals with establishing regulations for the cultivation of marijuana.

Councilmember Cunniff stated one of the provisions of this Ordinance involves impacts in multi-family dwellings in terms of mold, odor and other impacts. Sawyer replied the Building Department's Codes will deal with this type of issue on a complaint basis. She stated various odor complaints are challenging.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Campana, to adopt Ordinance No. 039, 2014, on First Reading.

Mayor Weitkunat noted this Ordinance regulates cultivation of marijuana, prohibits cultivation in open areas and multi-family residences, and institutes a twelve plant limit.

Councilmember Cunniff expressed concern the City has not been given the power to prohibit cultivation in multi-family residences. He stated impacts should be regulated and requested alternate language referencing such be presented for Second Reading.

City Attorney Roy requested Council detail its requests for alternate provisions.

Councilmember Overbeck also requested alternative language referencing impacts for this Ordinance.

Councilmember Troxell asserted the provision before Council is well within the guidelines of what the City can do.

March 4, 2014

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

THE MOTION CARRIED.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Poppaw, to adopt Ordinance No. 041, 2014, on First Reading, including the option to include Section E under Section 15-607.

Councilmember Troxell stated there is a great deal of concern in the community in terms of putting regulations into effect prior to understanding community impacts. He expressed concern regarding community values and the area's youth. He stated this action is directly at odds with the ability for youth to grow and thrive appropriately and supported a two year moratorium, opposing the motion.

Mayor Pro Tem Horak stated this is a polarizing issue and discussed the history of medical marijuana and the ability of municipalities to create their own regulations. He stated the argument of increased tax revenue is detestable as a reason for allowing retail facilities, but suggested a tax on the industry could be placed on the November ballot.

Mayor Weitkunat clarified the motion included Option E and did not include the Option related to retail sales of edibles.

Mayor Pro Tem Horak stated Option E requires a change from medical marijuana sales should those facilities opt to sell retail marijuana, and would require identification to prove age over 21.

Councilmember Cunniff stated he would support the motion as being a rational step in the right direction. He noted Council does not have the ability to prohibit recreational marijuana in Fort Collins. He suggested prohibiting retail sales would increase home cultivation and lead to greater amounts of the substance in the community.

Councilmember Troxell argued Councilmember Cunniff's opinion is naïve and stated marijuana will still be grown in residences. He discussed the differences between alcohol and recreational marijuana and suggested regulations should also include regulations on growing in homes.

Councilmember Campana stated staff should be afforded the opportunity to discuss its recommendation that the moratorium continue for two additional years.

City Manager Atteberry stated there are three reasons staff is recommending the extension of the moratorium on retail sales for two years: (1) the cash nature and quantity of marijuana which will be occurring at retail sites, resulting in significant policing concerns; (2) concern about impacts on the City brand as a family-friendly community and college town; and (3) concern regarding youth usage and brain development.

Police Chief Hutto stated the cash nature of the business creates potential issues as a nexus for crime. Additionally, he expressed concern regarding the continuation of black market marijuana in terms of export to other states and cited statistics to support that concern. Chief Hutto also expressed concern regarding the proliferation of marijuana in schools and stated retail sales of

March 4, 2014

marijuana will be a resource impact for public safety. He suggested the continuation of the moratorium would allow time to collect additional data from other communities.

Councilmember Campana asked if in-home cultivation decreases with the allowance of retail sales. Chief Hutto replied there is no definite data regarding that issue but stated he does not believe retail sales will eliminate in-home cultivation.

Councilmember Campana stated resources have already been spent to train officers to deal with marijuana and asked Chief Hutto to elaborate on those expenditures. Chief Hutto replied one full-time position has been dedicated to dealing with the reestablishment of medical marijuana facilities. He stated ongoing inspections and other issues with retail marijuana will demand at least one or two full-time positions.

Councilmember Campana asked if those costs have been compared to projected tax revenues. City Manager Atteberry replied in the negative but stated he would research the issue prior to Second Reading.

Councilmember Campana asked about the performance of the medical marijuana facilities in the community. Chief Hutto replied he does not currently have data regarding license issues but stated there have been burglaries and an armed robbery. Sawyer replied there have been license violations and one establishment was recently forced to pay a fine and serve days in suspension.

Councilmember Campana discussed awareness and availability and questioned what effect nearby availability will have on consumption. Sawyer replied those data points have not yet been established in other communities. Chief Hutto replied there is anecdotal evidence of a marked increase in marijuana usage in high schools when medical marijuana returned to the community.

Mayor Pro Tem Horak argued this testimony and data were not included in the written agenda materials and stated the staff recommendation should have been presented earlier. City Manager Atteberry replied there should have been more information in the written agenda materials and stated Council knew staff's recommendation earlier.

Councilmember Campana noted City Manager Atteberry stated the staff recommendation at the start of the item and stated he would elaborate as desired; the motion was made prior to City Manager Atteberry being given a chance to do so. Additionally, he stated Council received information at the work session regarding the staff recommendation.

Mayor Pro Tem Horak argued the data discussed by Chief Hutto is new information. Councilmember Campana agreed the data should have been included at the work session and in the agenda materials.

Mayor Pro Tem Horak stated staff had six months to prepare its data and recommendation.

Councilmember Cunniff asked if the cash nature of the marijuana business differs from that of bars and liquor stores. Chief Hutto replied liquor stores have historically been a target of crime, due in part to the cash nature of transactions, similar to other cash oriented businesses such as gas stations.

Councilmember Cunniff asked how long marijuana has been in Fort Collins. Chief Hutto replied it has likely been here as long as the city itself.

Councilmember Cunniff discussed drug-related incarceration rates and the fact there are many children whose parents have been jailed for victimless crimes. He stated social expectations are changing and evolving and argued banning retail sales would not eliminate the substance in the community.

City Manager Atteberry discussed a memo sent to Council in advance of its work session in February which outlined the issues mentioned by Chief Hutto.

Mayor Pro Tem Horak stated that memo should have been included in the agenda item summary. City Manager Atteberry agreed with Mayor Pro Tem Horak.

Councilmember Overbeck stated Fort Collins will not lose its standing by allowing retail sales of marijuana and stated it is a legitimate business.

Councilmember Campana argued a continuation of the ban for two years is not detrimental to Fort Collins' brand either and stated it would allow time for data to be collected, though he acknowledged City staff is capable of effectively creating necessary regulations.

Councilmember Poppaw stated this issue has been discussed for years and it is time to begin moving forward. She stated City staff is capable of creating regulations to protect the community's youth.

Mayor Weitkunat discussed the fact there are counter arguments for each point and stated Council needs to act responsibly and use the next two years to collect data, citing the hydraulic fracturing issue. She discussed Fort Collins' tough regulations on smoking tobacco and compared that to marijuana. Additionally, she argued Fort Collins' brand is at risk by allowing retail marijuana sales.

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

THE MOTION CARRIED.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 042, 2014, on First Reading. Yeas: Weitkunat, Horak, Cunniff, Poppaw, Overbeck and Campana. Nays: Troxell.

THE MOTION CARRIED.

Resolution 2014-020
Making an Appointment to the Fort Collins
Housing Authority Board of Commissioners, Adopted

The following is the staff memorandum for this item.

"EXECUTIVE SUMMARY

The purpose of this item is to appoint a Councilmember to the Fort Collins Housing Authority to fill the remainder of Councilmember Lisa Poppaw's term expiring on May 1, 2017.

BACKGROUND / DISCUSSION

Section 2-247 of the City Code provides that the Housing Authority shall consist of commissioners selected by the City Council in a manner provided by the State Statute. Section 29-4-205(3)(b) C.R.S. provides that the initial terms of the appointed commissioners shall be staggered from the date of their appointments so that, to the extent possible, the terms of an equal number of commissioners end each year and, thereafter, the term of the commissioners shall be for five years.

Current Council Liaison Councilmember Lisa Poppaw she has found it necessary to step down from the Fort Collins Housing Authority. Councilmember Poppaw is requesting a new Councilmember be appointed to fulfill her term which expires on May 1, 2017."

Councilmember Poppaw made a motion, seconded by Councilmember Overbeck, to adopt Resolution 2014-020, inserting Councilmember Cunniff as the appointee.

Councilmember Poppaw stated she needs to relinquish her position on the Housing Authority due to scheduling demands.

Councilmember Campana commended Councilmember Poppaw for her work on the Housing Authority and thanked Councilmember Cunniff for his willingness to take over the position.

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

THE MOTION CARRIED.

Other Business

Mayor Pro Tem Horak requested and received Council support to direct the City Manager to return with a proposal regarding Sunday MAX bus service. City Manager Atteberry replied he will return in two weeks with information.

March 4, 2014

Adjournment

The meeting adjourned at 10:15 p.m.

Karen Weikert
Mayor

ATTEST:

Wanda Nelson
City Clerk

