

September 16, 2014

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

● **ROLL CALL**

PRESENT: Weitkunat, Overbeck, Poppaw, Campana, Troxell, Cunniff
ABSENT: Horak

Staff Present: DeMartino, Daggett, Knoll

● **AGENDA REVIEW: CITY MANAGER**

Assistant City Manager DiMartino stated there were no changes to the published agenda and announced a staff report by Downtown Development Authority Director Matt Robenalt.

● **CITIZEN PARTICIPATION**

Mel Hilgenberg, 172 North College, announced community events, and stated Greeley Water should give the Brinks family at least \$500,000 for its easement through their property.

Chris Winslow, Fort Collins Public Access Network, showed a slideshow of the Community Creative Center and supported funding of an Executive Director position for FCPan.

Mike Pruznick, Citizens for Recycling Choices, discussed the bag referendum petition.

Shannell Sedgwick, Fort Collins Public Access Network, supported funding of an Executive Director position for FCPan.

Tom Hoehn, 218 South Washington, asked about the fracking moratorium appeal and whether or not public input would be allowed.

Mike Devereaux, Fort Collins resident, supported funding for Sunday MAX service.

Cricket Elder, 801 Coulter, supported funding of an Executive Director position for FCPan.

Janice Lynne, Fort Collins resident, discussed the fracking moratorium appeal.

Gabe Kawamura, 724 Walnut Street, supported funding of an Executive Director position for FCPan.

Rob Kagen, 1225 Buttonwood, discussed reusable bamboo bags and supported the bag fee Ordinance.

Stephen Wallace, 2911 West Mulberry, supported an appeal of the court decision regarding the fracking moratorium.

Eric Sutherland, 3520 Golden Currant, expressed concern regarding tax increment financing related to the Old Town Square redevelopment.

Alexis Hmielak, Fort Collins Public Access Network, supported funding of an Executive Director position for FCPan.

Nancy York, 130 South Whitcomb, supported an appeal of the court decision regarding the fracking moratorium and encouraged Council to allow citizen input of at least two minutes per person.

Cathy Zitti, Fort Collins resident, opposed the disposable bag fee.

Jeremy Woodard, Fort Collins resident, opposed ticketing homeless residents.

Bob Kriswell, Citizens for Recycling Choices, opposed the disposable bag fee.

Cheryl Trine, 524 West Magnolia, supported an appeal of the court decision regarding the fracking moratorium.

Louis Sharpe, 801 Birky Place, supported funding of an Executive Director position for FCPan.

Desiree Fisk, Fort Collins resident, supported funding of an Executive Director position for FCPan and discussed homelessness in the community.

Elizabeth Hudetz, 1407 Ticonderoga, supported an appeal of the court decision regarding the fracking moratorium.

Andrew Schneider, Fort Collins resident, supported funding of an Executive Director position for FCPan.

Cheryl Distaso, Fort Collins Community Action Network, supported the disposable bag fee, Sunday MAX service, and funding of an Executive Director position for FCPan.

Lea Pace, Fort Collins resident, supported an appeal of the court decision regarding the fracking moratorium.

Jack Daniels, 172 North College, thanked Council for making Fort Collins a beautiful place to live.

● **CITIZEN PARTICIPATION FOLLOW-UP**

Mayor Weitkunat requested an update regarding the Colorado Oil and Gas Association (COGA) lawsuit. Assistant City Manager DiMartino replied that issue is scheduled for Council consideration on September 23, at which time public comment will be allowed.

Councilmember Cunniff noted there is not yet an adopted budget and stated the Sunday MAX service and FCPan Executive Director position will be discussed with the upcoming budget cycle.

● **CONSENT CALENDAR**

Councilmember Troxell made a motion, seconded by Councilmember Campana, to adopt and approve all items not withdrawn from the Consent Calendar.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Wade Troxell, District 4
SECONDER:	Gino Campana, District 3
AYES:	Weitkunat, Overbeck, Poppaw, Campana, Troxell, Cunniff
ABSENT:	Horak

1. **Consideration and Approval of the Minutes of the August 19 and September 2, 2014 Regular Council Meetings and the September 9, 2014 Adjourned Meeting (Adopted)**

The purpose of this item is to approve the minutes from the August 19 and September 2, 2014 Regular Council Meetings and the September 9, 2014 Adjourned Meeting.

3. **Second Reading of Ordinance No. 115, 2014 Amending Sections 19-66, 19-67, and 19-69 of the City Code Pertaining to the Rules for Civil Infractions. (Adopted)**

This Ordinance, unanimously adopted on First Reading on September 2, 2014, transfers civil infraction payment processing functions to the Municipal Court from Neighborhood Services and the Forestry Division in order to more efficiently process and track those citations and reduce redundancy since the Municipal Court is better equipped to handle this function.

4. **Second Reading of Ordinance No. 116, 2014, Extending Ordinance No. 024, 2013, Which Amended the Land Use Code by the Addition of a Temporary Planned Development Overlay Zone District for One Additional Year. (Adopted)**

This Ordinance, unanimously adopted on First Reading on September 2, 2014, requests a twelve-month extension of the Planned Development Overlay District pilot to September 9, 2015.

5. **Second Reading of Ordinance No. 117, 2014, Appropriating Unanticipated Grant Revenue in the Transportation Services Fund for the FY 2013-14 Safe Routes to School Program and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program. (Adopted)**

This Ordinance, unanimously adopted on First Reading on September 2, 2014, appropriates \$314,903 in Safe Routes to School grant funding to design and build a new multi-use path along Lindenmeier Road serving Tavelli Elementary School.

6. **Items Relating to Larimer County's Request for Right-of-Way and Temporary Construction Easements Across Five City Properties to Construct, Operate and Maintain Improvements Associated with the North Shields Street Widening and Cache la Poudre Bridge Replacement. (Adopted)**

A. Second Reading of Ordinance No. 118, 2014, Authorizing the Conveyance of a Deed of Dedication and a Temporary Construction Easement on McMurry Natural Area to Larimer County.

B. Second Reading of Ordinance No. 119, 2014, Authorizing the Conveyance of a Deed of Dedication and a Temporary Construction Easement on North Shields Pond Natural Area to Larimer County.

C. Second Reading of Ordinance No. 120, 2014, Authorizing the Conveyance of a Deed of Dedication and a Temporary Construction Easement on Poudre River Trail Property to Larimer County.

D. Second Reading of Ordinance No. 121, 2014, Authorizing the Conveyance of a Deed of Dedication and a Temporary Construction Easement on City Property Located at 812 North Shields Street to Larimer County.

- E. Second Reading of Ordinance No. 122, 2014, Authorizing the Conveyance of a Deed of Dedication and a Temporary Construction Easement on City Railbanking Property to Larimer County.

These Ordinances, unanimously adopted on First Reading on September 2, 2014, convey permanent rights-of-way and temporary construction easements to Larimer County for improvements related to the North Shields Street widening and Cache la Poudre River bridge replacement.

7. **First Reading of Ordinance No. 124, 2014, Appropriating Unanticipated Grant Revenue in the General Fund and Transferring and Appropriating Funds from the Community Development and Neighborhood Services Operating Budget for the Restorative Justice Program. (Adopted)**

The purpose of this item is to appropriate grant money to fund Restorative Justice Services within Community Development and Neighborhood Services. A grant in the amount of \$56,192 has been received from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) for all other offenses.

Required cash match is 25% or \$18,730. This will be met by appropriating \$11,170 in funds from the Community Development and Neighborhood Services operating budget designated for restorative justice. In addition, \$7,560 cash match is designated from the Eighth Judicial District Probation Department in the form of donated staff time of the Probation restorative justice specialist. The Probation staff co-coordinates the RESTORE Program with the RJS program director.

8. **First Reading of Ordinance No. 125, 2014, Amending Section 1.3.4 of the Land Use Code to Conform the Text to Previously Adopted Revisions. (Adopted)**

The purpose of this item is to expand prohibited uses in Section 1.3.4 of the Land Use Code to include the full scope of retail and medical marijuana uses that was defined in Ordinance No. 042 that were not included in Ordinance No. 086.

9. **First Reading of Ordinance No. 126, 2014, Designating the Bode Property, 220 Remington Street, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code. (Adopted)**

The owner of the property, Colleen Scholz, is initiating this request for Fort Collins Landmark designation of the Bode Property at 220 Remington Street.

10. **First Reading of Ordinance No. 127, 2014, Designating the Juan and Mary Barraza Property, 412 Wood Street, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code. (Adopted)**

The owner of the property, Mary Barraza, is initiating this request for Fort Collins Landmark designation of the Juan and Mary Barraza Property at 412 Wood Street.

● END CONSENT

● STAFF REPORTS

Matt Robenalt, Downtown Development Authority Executive Director, stated the DDA Board has adopted a final schematic design for the renovation of Old Town Square. He introduced Todd Dangerfield, Project Manager, Jim Leggitt, studioINSITE, and Keith Meyer, Ditesco Services.

Mr. Leggitt showed slides detailing the proposed renovation.

Councilmember Overbeck asked if citizens will have another opportunity for input. Mr. Robenalt replied design development will occur throughout the remainder of the year and stated details will be available on-line and at various DDA board meetings.

Councilmember Poppaw requested a link to the information from the City's website.

Councilmember Troxell requested information regarding the connectivity of the Old Town Square area to the river district further to the north. Mr. Robenalt replied the DDA has committed to develop the schematic level design for enhancements to Linden Street that would allow it to function as a hybrid street.

Councilmember Troxell asked about the orientation of the stage to the Old Town Square area rather than to the north. Mr. Leggitt replied the stage will be placed in such a way as to not block the dialogue between Linden Street and Old Town Square and so as to allow views from the audience of the Linden Street hotel.

Councilmember Campana agreed with potential issues regarding the location of the stage but supported the majority of the design.

Councilmember Cunniff discussed the design of the stage and the potential closing of Mountain Avenue on weekend evenings.

● COUNCILMEMBER REPORTS

Councilmember Overbeck reported on the City's household hazardous waste collection event.

Councilmembers Troxell and Campana reported on a tour of the Foothills Mall redevelopment project.

Mayor Weitkunat reported on the Council Finance Committee meeting, the final meeting of the CSU Stadium Advisory Committee, the City's hosting of the Downtown Colorado, Inc. seminar, and the Colorado Municipal League Mayor's summit.

● DISCUSSION ITEMS

11. **Second Reading of Ordinance No. 123, 2014, Authorizing the Conveyance of a Waterline Easement, Access Easement, and Temporary Construction Easement on City property to the City of Greeley. (Postponed to September 23, 2014)**

This Ordinance, adopted on September 2, 2014, by a vote of 5-1 (Nays: Overbeck; Poppaw absent) authorizes the conveyance of easements to the City of Greeley across the City property known as the City Ditch. The City of Greeley is acquiring necessary easements for its Greeley Bellvue Pipeline Project. Greeley has requested easements for its project across a strip of property owned by the City's Utility Department extending south from the Poudre River. The property lies outside City limits and is the location of the City Ditch. The Larimer County Canal No. 2 Irrigating Company utilizes this ditch through an existing easement agreement with the City. The easements requested by Greeley include a .19 acre (8,265 square feet) permanent waterline easement, a .133 acre (5,808 square feet) temporary construction easement, and an access easement across the existing ditch access road.

Eric Sutherland, 3520 Golden Currant, discussed the ownership issues related to the property in question.

Mel Hilgenberg, 172 North College, stated the Brinks property is a top open space area and opposed the use of the property for the easement. He stated Council should deny the City of Greeley the easement or require a large payment to the family for the easement.

Rose Brinks, LaPorte resident, expressed disappointment that Councilmembers have not visited the property and stated the City of Fort Collins does not own the land in question.

Councilmember Cunniff asked Ms. Brinks if she would prefer the City of Greeley to go through eminent domain proceedings. Ms. Brinks replied the City of Fort Collins should not be involved.

Councilmember Cunniff asked about the advantages to the City of Fort Collins to grant the easement rather than allow the City of Greeley to go through eminent domain proceedings. Lindsay Kuntz, Real Estate Specialist, replied staff believes it is in the City's best interest to convey the easements by negotiated agreement in order to retain certain terms and conditions.

Councilmember Troxell made a motion, seconded by Councilmember Campana, to adopt Ordinance No. 123, 2014, on Second Reading.

Councilmember Overbeck stated he would not support the motion due to the City's lack of process with the issue.

Councilmember Troxell supported the motion as being in the City's best interest.

Mayor Weitkunat supported the motion as being in the City's best interest and in the best interest of the environment.

Councilmember Cunniff stated he would not support the motion.

Mayor Weitkunat suggested the possibility of postponing the item for further consideration. Councilmembers Troxell and Campana accepted the postponement; however, Councilmember Campana requested specific direction for staff.

Councilmember Cunniff requested an analysis of the City's utility interests with the canal and how this agreement specifically addresses those interests.

Councilmember Troxell requested additional information regarding the land ownership dispute.

Councilmember Troxell made a motion, seconded by Councilmember Campana, to postpone Second Reading of Ordinance No. 123, 2014 to September 23, 2014.

RESULT:	POSTPONED TO SEPTEMBER 23, 2014 [4 TO 2]
MOVER:	Wade Troxell, District 4
SECONDER:	Gino Campana, District 3
AYES:	Weitkunat, Campana, Troxell, Cunniff
NAYS:	Overbeck, Poppaw
ABSENT:	Horak

12. **First Reading of Ordinance No. 128, 2014, Establishing Regulations for Persons Cultivating Marijuana in Non-Residential Structures. (Postponed to October 21, 2014)**

The purpose of this item is to prohibit two or more people from growing marijuana in a non-residential structure without having complete physical separation within the structure. Marijuana grown by caregivers and for personal use is not tracked or inventoried. The proposed ordinance is recommended by staff in an effort to prevent large, unregulated marijuana grows.

Ginny Sawyer, Policy and Project Manager, stated this Ordinance relates to growing marijuana for those without business licenses. She detailed the proposed provisions of the Ordinance.

Eric Sutherland, 3520 Golden Currant, stated the City's prohibition of growing marijuana in multi-family structures is unconstitutional. Additionally, he stated this Ordinance is unconstitutional as well.

Robin Shaffer, Elite Organics, opposed growing in non-residential structures and expressed concern regarding private caregivers not having to pay taxes and licensing fees.

Councilmember Troxell requested additional information regarding the lawlessness alluded to by Ms. Shaffer. Don Vagge, Deputy Police Chief, replied the City and Council have gone to great lengths to regulate and monitor both recreational and medical marijuana; however, the caregiver section is one not currently within the City's purview. The Colorado Department of Health has authority over caregivers; however, they do not do field inspections, therefore the City is requesting permission to do that.

Sawyer stated this Ordinance will aid in providing the tool of accountability.

Councilmember Overbeck asked if a public open house was held regarding this item. Sawyer replied in the negative.

Councilmember Overbeck asked if the community received formal notification about the item, other than the usual Council process. Sawyer replied in the negative.

Councilmember Cunniff asked if this item would prohibit the shared use of commercial structures for marijuana grows. Sawyer replied in the affirmative and stated the Ordinance also requires odors and gas emissions to be controlled.

Councilmember Cunniff expressed concern with the inclusion of subsection C. Vagge replied that section attempts to define separation requirements within Fort Collins and provides the opportunity for the Police Department to be able to enforce the issues relating to large-scale grows. Sawyer stated the elimination of that section makes it much more difficult to put accountability on the existence of plants.

Councilmember Cunniff stated he is skeptical with the overall impact of the Ordinance.

Councilmember Troxell made a motion, seconded by Councilmember Campana, to adopt Ordinance No. 128, 2014, on First Reading.

Councilmember Overbeck stated he would not support the motion as a better public process should have occurred.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to amend the motion to strike subsection C of Section 12-142.

Councilmember Cunniff questioned whether this is the correct tool to address concerns regarding the inability to identify the legal chain of custody for medical marijuana patients.

Councilmember Troxell questioned whether or not the rest of the Ordinance makes sense without subsection C.

Councilmember Campana stated subsection C would address unregulated warehouse marijuana grows and questioned how to deal with the issues in an alternative way. Councilmember Cunniff replied regulation of the activity rather than prohibition of the activity needs to be considered.

Sawyer stated this would be a less intrusive means to provide accountability on the law enforcement side without putting an onerous regulatory system on top.

Vagge stated the regulation of medical necessity is currently very poorly defined in State regulations.

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

THE MOTION FAILED TO PASS.

Mayor Weitkunat suggested other alternatives could perhaps be considered prior to Second Reading in order to alleviate Councilmember Cunniff's concerns.

Councilmember Overbeck opposed the lack of public process.

Council and staff held a discussion regarding the meaning of physical separation of cultivation areas.

Councilmember Troxell made a motion, seconded by Councilmember Campana, to postpone First Reading of Ordinance No. 128, 2014 to October 21, 2014.

RESULT:	POSTPONED TO OCTOBER 21, 2014 [UNANIMOUS]
MOVER:	Wade Troxell, District 4
SECONDER:	Gino Campana, District 3
AYES:	Weitkunat, Overbeck, Poppaw, Campana, Troxell, Cunniff
ABSENT:	Horak

Councilmember Troxell made a motion, seconded by Councilmember Campana, to postpone First

● **CONSIDERATION OF CITIZEN-PULLED CONSENT ITEMS**

2. **Second Reading of Ordinance No. 113, 2014, Approving the Seventh Amendment to the Fort Collins-Timnath Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management and Related Issues. (Adopted)**

This Ordinance, adopted unanimously on First Reading on September 2, 2014, updates a 2009 Intergovernmental Agreement (IGA) with the Town of Timnath to incorporate several amendments and new land use provisions. The Land Use portions of the agreement are intended to provide planned and orderly development of urban services along the I-25 Corridor and to establish appropriate Growth Management and Influence Areas to support such development.

Eric Sutherland, 3520 Golden Currant, discussed the importance of community separators and stated a large number of planning issues, such as affordable housing and regional transportation funding, need to be considered.

Councilmember Troxell made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 113, 2014, on Second Reading.

Councilmember Cunniff discussed the importance of community separators between Timnath and Fort Collins.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Wade Troxell, District 4
SECONDER:	Bob Overbeck, District 1
AYES:	Weitkunat, Overbeck, Poppaw, Campana, Troxell, Cunniff
ABSENT:	Horak

● **OTHER BUSINESS**

Councilmember Cunniff received Council support to obtain a detailed assessment of the situation with respect to Police overtime. Councilmember Poppaw suggested the discussion of the issue in a work session to coincide with budget discussions.

Councilmember Cunniff requested an update regarding the enforcement and inspection of construction waste diversion requirements.

● **ADJOURNMENT**

Councilmember Troxell made a motion, seconded by Councilmember Poppaw, to adjourn to 6:00 p.m., Tuesday, September 23, 2014, so that the Council may consider such business as may come before the Council.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Wade Troxell, District 4
SECONDER:	Lisa Poppaw, District 2
AYES:	Weitkunat, Overbeck, Poppaw, Campana, Troxell, Cunniff
ABSENT:	Horak

The meeting adjourned at 8:52 PM.



Seren Weitkunat
Mayor

ATTEST:

Wanda Nelson
City Clerk

