

April 19, 2016

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

● ROLL CALL

PRESENT: Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

Staff Present: Atteberry, Daggett, Winkelmann

● AGENDA REVIEW: CITY MANAGER

City Manager Atteberry announced a protest regarding the redistricting ordinance, filed by Eric Sutherland, will be discussed under Item No. 15, *First Reading of Ordinance No. 055, 2016, Amending the City of Fort Collins District-Precinct Map*. A fact sheet entitled "Reducing Homelessness in our Community" which is available for the public.

● CITIZEN PARTICIPATION

Cheryl Distaso, Fort Collins Homeless Coalition, stated homeless individuals were not included in the "Everyone Matters Day" proclamation. She questioned where homeless women are supposed to sleep after May 1 when fewer shelter beds are available. She encouraged Council to codify its decision to not ticket individuals for sleeping.

Ann Cleary stated her home is currently under the threat of eminent domain. She questioned missing emails as part of the email transparency system. Checks and balances are needed regarding the use of eminent domain.

Mary Janser expressed concern about fewer shelter beds being available for women after May 1. She asked that a public restroom be reopened between the two homeless shelters.

Mike Pruznick commented on Councilmember Martinez's alleged misinformation regarding the death of Doug Shields. He has filed paperwork to begin recall proceedings for Councilmember Martinez.

Vanessa Fenley, Homeward 2020, discussed the Project Homeless Connect event.

John Anderson discussed homeless issues, stating bureaucracy seems to be trumping humanity.

Jessica Aguila, Fort Collins Homeless Coalition, questioned why homeless community members were not included in the Everyone Matters proclamation and asked what homeless individuals should be doing if no shelter beds are available. She encouraged Council to codify their position that tickets will not be issued for sleeping.

Kelly Connor discussed gender inclusiveness at CSU and discussed ways in which the City is not inclusive in terms of homeless individuals.

Esther Aguilar expressed concern regarding ticketing for sleeping and questioned where homeless individuals are supposed to go if they are unable to take advantage of shelter beds.

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Carrie Gillis, Colorado Apartment Association President, discussed her group's production of the Colorado Housing Financial Assistance Guide.

Heather Wolhart discussed the Woodward purchase of her family's farm property and commended Woodward's commitment to the family and its history.

Deborah James stated she has been homeless for 9 months and discussed the difficulty in finding housing. She questioned where women should go should the 15 shelter beds be eliminated after May 1.

Deborah (no last name given) discussed advanced metering readings, stating they are invasive and requested a more reasonable charge for manual readings.

Eric Sutherland discussed Item No. 5, *Second Reading of Ordinance No. 046, 2016, Appropriating Prior Year Reserves in the General Fund and the Light and Power Fund and Transferring Appropriations from the Light and Power Fund to the General Fund for 2016 Projects Associated with the 2020 Climate Action Plan (CAP) Strategic Plan* and opposed funding additional studies.

Jennifer Reisch thanked Homeward 2020 for the services they attempted to provide at the Project Homeless Connect event and opposed the climate of fear being created by ticketing homeless individuals.

Steve Raimer stated it is cruel to ticket individuals who must sleep outside. He commended the City's efforts in getting individuals to shelters during the most recent storm but questioned what homeless individuals will do on a nightly basis.

Dee Amick discussed occasions along the Poudre Trail during which she has seen armed officials looking for people camping and placing their belongings in garbage bags. She has never felt threatened by individuals along the Trail.

Nancy York encouraged a more progressive and humane approach to the issue of homelessness and stated ticketing for sleep should not be allowed.

John Mark stated homeless rights are human rights and encouraged a conversation around homelessness.

Michael Norton stated the root of the homelessness issue involves federal support of corporations. He opposed ticketing for camping.

Pete Gazley, Citizens for Sustainable Economy, discussed the effort toward the non-consensual historical designation for the Woodward property stating it would take away property rights from the property's owner.

David May complimented Councilmember Martinez for his accessibility and work for the community.

● **CITIZEN PARTICIPATION FOLLOW-UP**

Councilmember Martinez asked how the missing emails referenced by Ms. Cleary are being addressed. City Attorney Daggett replied a small group of individuals is responsible for the review of the City's email archive on a weekly basis and new quality control measures are being considered.

Councilmember Martinez requested staff input regarding how the City is addressing the issue of homeless women in the community. City Manager Atteberry replied that issue will be addressed during staff reports.

Councilmember Cunniff encouraged a "plan, do, check, act" approach to the email archive. Additionally, he expressed his belief that human rights apply to every human; however, Council meetings should be about policy-making.

Councilmember Stephens stated Council has been working on the homelessness issue for some time. She discussed the importance of protecting the City's Natural Areas and it is counterproductive for individuals to accuse Council of doing nothing. Council is working on a number of solutions to address the homeless concerns.

Councilmember Overbeck discussed the importance of ensuring the public trust with a quarterly or semi-annual audit of the email archive system. He commented on the Project Homeless Connect event.

Councilmember Campana stated the dial is being moved on the homelessness issue and shelters are looking to expand the number of shelter beds year-around. The efficiency of getting those in need to shelters has increased with each storm.

Mayor Troxell stated the Everyone Matters Day proclamation does address every individual citizen and thanked individuals for their comments.

● **CONSENT CALENDAR**

Mayor Pro Tem Horak made a motion, seconded by Councilmember Campana, to adopt and approve all items on the Consent Agenda.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Gino Campana, District 3
<b>AYES:</b>	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

1. **Second Reading of Ordinance No. 040, 2016, Reappropriating Funds Previously Appropriated in 2015 But Not Expended and Not Encumbered in 2015. (Adopted)**

This Ordinance, unanimously adopted on First Reading on April 5, 2016, reappropriates 2015 appropriations approved by City Council that lapsed at the end of 2015. The authorized expenditures were not spent and could not be encumbered in 2015 because there was not sufficient time to complete bidding in 2015 and therefore, there was no known vendor or binding contract as required to expend or encumber the monies, or the project for which the dollars were originally

appropriated by Council could not be completed during 2015 and reappropriation of those dollars is necessary for completion of the project in 2016.

2. **Second Reading of Ordinance No. 041, 2016, Appropriating Prior Year Reserves and Unanticipated Revenue in the General Fund for Cultural Development and Programming Activities, Tourism Programming, and Convention and Visitor Program Services. (Adopted)**

This Ordinance, unanimously adopted on First Reading on April 5, 2016, appropriates \$378,605, of which \$159,265 is proposed for 2016 Cultural Development and Programming Activities (Fort Fund), \$19,868 is proposed for 2016 Tourism Programming (Fort Fund), and \$199,472 is proposed for 2016 Convention and Visitors Program activities, from a combination of Unanticipated Revenue (Lodging Tax) and Prior Year Reserves (unspent appropriations) in the General Fund Lodging Tax Reserves.

Lodging taxes are annually collected by the City of Fort Collins for Cultural Development and Tourism Programming activities. Between April 2011 and March 2016, based on the prior years' actual collections, lodging tax revenues were paid to the Fort Collins Convention and Visitors Bureau under a contract for Cultural Development and Tourism Programming. Anticipated revenue has been projected through each Budgeting for Outcomes cycle and then adjusted annually as needed based on actual collections. Lodging tax revenues collected in 2015 equaled \$1,450,960, which was \$378,605 above projected collections.

3. **Second Reading of Ordinance No. 042, 2016, Appropriating Prior Year Reserves in the General Fund for Pool Chlorination System Conversion at Three City of Fort Collins Pools. (Adopted)**

This Ordinance, unanimously adopted on First Reading on April 5, 2016, appropriates \$200,000 from prior year reserves in the General Fund to switch pool chlorination systems from chlorine gas to liquid chlorine. During a routine safety audit of the City pools, it was discovered that gaseous chlorine is being used to treat the pool water at all City pools except the Senior Center pool. As safety standards have evolved, best practice is to avoid gaseous chlorine due to the hazard posed to employees and citizens in the event of a failure incident. Conversion of the three City pools now using chlorine gas will enable the City to follow this updated best practice.

4. **Postponement of Items Relating to Dust Prevention and Control to May 3, 2016. (Adopted)**

- A. Second Reading of Ordinance No. 044, 2016, Amending Chapter 12 of the Code of the City of Fort Collins Related to Particulate Matter Emissions.
- B. Second Reading of Ordinance No. 045, 2016, Amending the Fort Collins Land Use Code by the Addition of Provisions Pertaining to Dust Prevention and Control.

Staff is requesting postponement of Second Reading of these Ordinances to May 3, 2016. During First Reading of the Ordinances on April 5, in addition to unanimously adopting the proposals based on revised language, Council also requested additional data and analyses to develop the right size threshold for when the Dust Control Manual should apply to dust generating activities. This postponement allows staff the necessary time to gather the requested data, conduct the analyses, and provide Council with a recommendation for a revised threshold.

5. **Second Reading of Ordinance No. 046, 2016, Appropriating Prior Year Reserves in the General Fund and the Light and Power Fund and Transferring Appropriations from the Light and Power Fund to the General Fund for 2016 Projects Associated with the 2020 Climate Action Plan (CAP) Strategic Plan. (Adopted)**

This Ordinance, unanimously adopted on First Reading on April 5, 2016, appropriates \$230,510 from the General Fund and \$245,483 from the Light and Power Fund to initiate four projects in the CAP that have been identified for immediate action and investment based on guidance provided by the City Council.

6. **First Reading of Ordinance No. 049, 2016, Appropriating Prior Year Reserves in the Recreation Fund for Remodeling the Lobby of the Edora Pool Ice Center and Authorizing the Transfer of Appropriated Amounts Between Projects for the Art in Public Places Program. (Adopted)**

The purpose of this item is to appropriate \$410,820 in Recreation Reserve funds for the Edora Pool Ice Center (EPIC) Lobby Improvements. The funds will be used to remodel and relocate the front desk, repurpose the snack bar area, create a recessed trash and recycling area, install new lockers, and renovate the overall appearance of the lobby area.

7. **Items Relating to the Fossil Creek Trail - College Avenue to Shields Street Project. (Adopted)**

- A. Resolution 2016-036 Authorizing the City Manager to Enter Into a Grant Agreement with the State Board of the Great Outdoors Colorado Trust Fund for the Fossil Creek Trail from College Avenue to Shields Street.
- B. First Reading of Ordinance No. 050, 2016, Appropriating Unanticipated Grant Revenue from Great Outdoors Colorado (GOCO) in the Capital Projects Fund for the Fossil Creek Trail-College Avenue to Shields Street Project.

The purpose of this item is to authorize the City Manager to enter into an intergovernmental agreement with Great Outdoors Colorado (GOCO) for purposes of accepting grant funding and to appropriate the grant funds for the construction of the Fossil Creek Trail from College Avenue to Shields Street. GOCO has awarded the City a \$1,000,000 trail grant. The proposed project would complete a major connection of the Fossil Creek Trail from College Avenue to Shields Street. The project involves 1.25 miles of new concrete trail and a major tunnel underpass structure at the Burlington Northern Santa Fe (BNSF) Railroad. The trail will connect to the existing Fossil Creek Trail just west of College Avenue and terminate at the existing trail on the east side of Shields Street. The layout of the trail has been discussed with appropriate City staff and area residents. Design of the trail tunnel underpass phase of the project has reached the final stage. Construction of the trail tunnel underpass will begin in 2016. GOCO requires a City resolution authorizing the City to enter into the grant agreement. Pursuant to the grant agreement the City has until June 2017 to complete the project.

8. **First Reading of Ordinance No. 052, 2016, Authorizing the Transfer of Previously Appropriated Funds in the Capital Project Fund from the Timberline Recycling Center Project to the Timberline Road – Drake Road to Prospect Road Improvement Project (Adopted)**

The purpose of this item is to transfer previously appropriated funds in the amount of \$87,102 from the Timberline Recycling Center into the Capital Projects Fund for the Timberline Road–Drake Road to Prospect Road Improvement Project. This funding constitutes the Local Street contribution, in aid of construction, for the Timberline Recycling Center on Timberline Road. The Timberline Road frontage improvements along the Timberline Recycling Center frontage will be constructed with this year's Capital Improvement Project.

9. **First Reading of Ordinance No. 053, 2016, Vacating the East Ridge Plat. (Adopted)**

The purpose of this item is to vacate various streets dedicated on the East Ridge plat that are no longer necessary or desirable to retain for street purposes. The right-of-way vacation includes various public streets, alleys and a portion of Timberline Road in an area bounded by Timberline Road to the west and Vine Drive to the north. The property is proposed to be replatted as East Ridge Second Filing which was approved through an Administrative Hearing on January 27, 2016.

10. **Resolution 2016-037 Authorizing the Purchasing Agent to Lease Additional Vehicles and Equipment Under the City's Standard Master Lease Agreement with Pinnacle Public Financing, Inc. For Schedule of Equipment No. 11: (Adopted)**

The purpose of this item is to request approval of the lease-purchase of vehicles and equipment for the cost of \$2,781,629 under the City's Master Lease Agreement with Pinnacle Public Finance and the "First Amendment" to that Agreement (jointly, the "Agreement"). Quarterly payments of \$146,687 at the 2.05% interest rate will not exceed \$293,374 in 2016. Money for 2016 lease-purchase payments is included and appropriated as part of the 2016 budget. A competitive process was used to select Pinnacle Public Finance for this Agreement. A 2016 Finance Department analysis of current and historical equipment lease financing arrangements showed that lease-purchase is in the best interest of the City given the interest rate offered for the lease. Staff believes acceptance of this lease rate is in the City's best interest.

● **CONSENT CALENDAR FOLLOW-UP**

Councilmember Cunniff requested additional detail regarding the timing of the appropriation for Item No. 6, *First Reading of Ordinance No. 049, 2016, Appropriating Prior Year Reserves in the Recreation Fund for Remodeling the Lobby of the Edora Pool Ice Center and Authorizing the Transfer of Appropriated Amounts Between Projects for the Art in Public Places Program*, specifically questioning why it was not included in the previous mid-cycle budget. City Manager Atteberry replied the timing is partially due to increased efficiencies in leveraging the already-existing closed time for bulkhead construction.

● **STAFF REPORTS**

City Manager Atteberry stated a memo has been released that speaks to efforts regarding homelessness being made by City staff, Council, and private partners over the past two years. It is unfair, incorrect and misleading for individuals to state homeless citizens do not matter in the city.

In terms of restrooms, City Manager Atteberry stated some have been closed due to public safety concerns and illegal activity. He briefly discussed the Project Homeless Connect statistics relating to shelter beds and permanent supportive housing in the community. He acknowledged the City does not currently support camping as a solution to homelessness. The City funds and supports its non-profit and private partners, but is not a direct service provider for homeless services in the community. He discussed the upcoming Outreach Fort Collins project, work with the faith-based community to provide shelter beds, and, pending voter approval, \$4 million in capital improvement plans.

Deputy City Manager Mihelich stated Catholic Charities has a vulnerable person designation which can be extended to individuals, allowing them a dedicated shelter bed. Conversations with both shelters regarding the possibility of providing the overflow shelter beds year-round have occurred.

Police Lieutenant Mike Trombley stated no camping citations were written in 2016 on nights when the shelters were full.

Councilmember Martinez asked if women over the age of 60 could qualify for the vulnerable person status. Deputy City Manager Mihelich replied that decision is made by Catholic Charities.

Councilmember Martinez asked how the City can aid in facilitating the issue regarding women, particularly older women, who do not have a safe place to sleep. Deputy City Manager Mihelich replied Catholic Charities can shelter 20 extra women and one extra family year-round without hiring additional staff and with approximately a \$4,000 cost. A formal proposal regarding this short-term solution will be placed before Council soon and the Nashville model utilizing faith-based organizations will be examined on a more long-term basis.

Councilmember Martinez encouraged Council to approve a short-term solution for homeless women.

Councilmember Cunniff stated Natural Areas will never be an appropriate place for camping and ticketing should still occur even on nights shelters are full when dangerous behavior is occurring in Natural Areas. He asked if there is a possibility of staffing public restrooms with volunteers or staff. Deputy City Manager Mihelich replied there could be ways to architecturally modify the restrooms or staff them in order to reopen them.

Mayor Pro Tem Horak suggested the City Manager could approve the \$4,000 expenditure for the additional shelter beds for women. Members of the public can allow limited camping on private property and encouraged involvement of the county and state.

Councilmember Campana stated the community is stepping up with regard to homeless issues, citing the extensive private funding of Homeward 2020.

Police Chief John Hutto discussed a statement made by Brenton Dolph during the April 5 Council meeting, alleging misconduct and criminal behavior by Police Officer Todd Hopkins. The allegations were immediately investigated and, when contacted at the April 5 Council meeting, Mr. Dolph was uncooperative and refused to give any further information at that time. Chief Hutto stated Internal Affairs Sargent Jackie Pearson conducted the investigation and found no evidence of any such actions. As a result of the investigation, Chief Hutto stated there seems to be no basis of truth to Mr. Dolph's allegations and he is proud of the professional and compassionate service provided by Officer Hopkins.

Councilmember Martinez thanked Chief Hutto for his report.

Councilmember Overbeck thanked Chief Hutto for his report and stated Officer Hopkins recently received a Human Relations Commission award.

Mayor Troxell thanked Chief Hutto for his report and expressed his support for Officer Hopkins.

● **COUNCILMEMBER REPORTS**

Councilmember Overbeck reported on the rolling coal legislation at the state level. He commended various groups who have expressed support for the legislation.

Councilmember Martinez reported on the Salvation Army monthly report.

Councilmember Stephens reported on the Northern Colorado Youth Suicide Prevention Coalition meeting. Youth suicide is at epidemic levels in Fort Collins.

Councilmember Campana reported seven swimmers from Fort Collins will be going to the Olympic trials in June. Additionally, he thanked a group of runners who sang Happy Birthday to him on a recent run.

Mayor Troxell reported on a visit to the Global Village Museum and discussion with John Roberts. Additionally, he reported on the Project Smile annual luncheon.

Councilmember Martinez noted Project Smile is funded by volunteers and further discussed the goals of the organization.

● DISCUSSION ITEMS

11. First Reading of Ordinance No. 054, 2016, Appropriating Prior Year Reserves in the Street Oversizing Fund to be Transferred Into the Capital Projects Fund and Appropriated Therein for the Construction of the Sharp Point/Nancy Gray Connection Project. (Adopted on First Reading)

*The purpose of this item is to appropriate \$984,000 of prior year reserves in the Street Oversizing Fund and \$116,000 from the Street Oversizing Fund Contributions & Aid into the Capital Project Fund for the Sharp Point/Nancy Gray Connection Project. The currently adopted Master Street Plan identifies Sharp Point Drive connecting Midpoint Drive with Nancy Gray Avenue. This identified connection includes an at-grade crossing of the Great Western Railroad tracks. Right-of-way has previously been dedicated for the roadway connection. Due to recent development to the south as well as support from the Larimer County Sheriff's Office (LCSO), staff has identified this connection as an immediate need.*

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 Martinez, to adopt Ordinance No. 054, 2016, on First Reading.

<b>RESULT:</b>	<b>ORDINANCE NO. 054, 2016, ADOPTED ON FIRST READING [6 TO 0]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Ray Martinez, District 2
<b>AYES:</b>	Martinez, Stephens, Overbeck, Troxell, Cunniff, Horak
<b>RECUSED:</b>	Campana

12. Second Reading of Ordinance No. 043, 2016, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary to Construct Public Improvements in Connection with the Prospect Road and College Avenue Intersection Improvements Project. (Adopted on Second Reading)

*This Ordinance, adopted on First Reading on April 5, 2016 by a vote of 6-1. (Nays: Overbeck) authorizes the use of eminent domain, if deemed necessary, to acquire property interests needed to construct improvements to the intersection of Prospect Road and College Avenue. The authorization is only for the six commercial properties at this location. There are two residential properties at the east end of the project that are not included here since work is still underway to further define impacts. These properties will be brought to Council at a later date for authorization.*

*Timely acquisition of the property is necessary to meet the anticipated construction schedule. Staff fully intends to negotiate in good faith with the affected owners and is optimistic that all property negotiations can be completed prior to the start of the Project. Staff is requesting authorization of eminent domain for the six commercial property acquisitions for the Project only if such action is deemed necessary.*



Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to adopt Ordinance No. 043, 2016, on Second Reading.

Councilmember Overbeck stated his questions regarding traffic calming on First Reading were addressed and additional meetings will be held between staff and residents of the area.

<b>RESULT:</b>	<b>ORDINANCE NO. 043, 2016, ADOPTED ON SECOND READING [UNANIMOUS]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Kristin Stephens, District 4
<b>AYES:</b>	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

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

**13. Items Relating to the Social Host Civil Citation. (Adopted on Second Reading)**

- A. *Second Reading of Ordinance No. 047, 2016, Amending Chapter 17 of the Code of the City of Fort Collins to Prohibit a Social Host from Allowing the Possession or Consumption of Ethyl Alcohol or Marijuana by Persons Under Twenty-One Years of Age.*
- B. *Second Reading of Ordinance No. 048, 2016, Amending Chapter 19 of the Code of the City of Fort Collins to Modify the Rules for Civil Infractions Related to Immediate Service of a Social Host Civil Citation.*

*These Ordinances, adopted on First Reading on April 5, 2016 by a vote of 6-1 (Nays: Martinez) amend City Code to prohibit a person from allowing the possession or consumption of ethyl alcohol or marijuana by persons under the age of twenty-one, and to allow for the immediate service of a civil citation in the event of a violation of such Ordinance.*

*Ordinance No. 047, 2016, has been revised to improve and clarify wording as discussed briefly during the Council's consideration of the Ordinance on First Reading. The revisions are not intended to modify the meaning or effect of the Ordinance.*

Laurie Kadrich, Planning, Development and Transportation Director, stated the goal of this Ordinance is to assist in reducing underage consumption of alcohol and/or marijuana by holding the host of the gathering responsible by a civil infraction.

Delynn Coldiron, Neighborhood Services Manager, stated the City's minor in possession ordinance is effective in certain situations to address underage drinking. However, it is not effective in addressing large parties where underage drinking is occurring. Coldiron discussed the use of the City's nuisance ordinance in addressing these types of situations and the gap filled by the social host ordinance in addressing certain situations. She noted the social host violation is the only civil violation option. This Ordinance would be a very small component in the tool box of means to address such issues. Staff is suggesting tracking the number of social host tickets being issued and the number of social host tickets being issued in place of a criminal option.

Jerry Gregory opposed adoption of the social host ordinance stating students already recognize parties are being monitored and existing criminal violations are effective.

Mike Pruznick questioned how this ordinance will affect rental businesses and landlords as landlords should be held responsible for multiple violations of tenants in some way.

Adam Musielewicz, Team Wellness and Prevention Program Director, discussed statistics related to underage drinking and issues that can arise at house parties.

Sam Laffey opposed adoption of the social host ordinance stating this is not the correct solution to underage consumption issues.

Juan Carl, ASCSU, opposed adoption of the social host ordinance stating this type of legislation is not effective in other cities.

Carrie Gillis, Northern Colorado Rental Housing Association, stated there is no data in Fort Collins to support the need for this ordinance.

Jackie Sarten stated the goal should be to change the culture regarding underage drinking in the community.

Councilmember Martinez questioned the effectiveness of this type of ordinance in other communities and suggested this topic needs to be further examined prior to its adoption. Civil infractions are part of public record.

Councilmember Martinez made a motion, seconded by Councilmember Campana, to postpone consideration of this item.

Staff and Council held a brief discussion regarding the best possible date for postponement.

Councilmember Cunniff asked if Police can create a policy regarding the situations in which this would be applied. Lieutenant Jeremy Yonce replied the Police Department has a number of policies addressing enforcement and behaviors and Police apply individual ordinances as they are written; therefore, it would be unusual to draft a policy specific to one ordinance.

Councilmember Cunniff asked if a policy could be drafted regarding the use of a nuisance infraction versus a social host infraction or an underage drinking citation. Lieutenant Yonce replied that could be examined at the direction of Council.

Councilmember Cunniff stated he would like the timing of the creation of such a policy to guide the timing of the postponement.

Police Deputy Chief Mike Trombley stated the creation of a specific policy as referenced would be a deviation from any other practice the Police Department has in terms of statutes, ordinances, or laws it enforces.

Councilmember Cunniff withdrew his request for a specific policy.

Councilmember Martinez stated the formation of a policy statement, even in the form of a memorandum, could be helpful given this particular ordinance and its civil penalty.

Councilmember Campana asked if there is an existing policy regarding the application of the nuisance ordinance. Coldiron replied there are some specific references within the ordinance as to how it applies.

Councilmember Campana suggested the inclusion of policies within the ordinance. Kadrich stated there is a significant difference between the public nuisance ordinance and the social host ordinance in that the procedures referenced by Coldiron have to do with landlord notifications and the piece of the operation that would be done from the Neighborhood Services side. A police officer has discretion in enforcing the social host ordinance itself.

Mayor Troxell suggested the inclusion of May 17 as the date for postponement. Councilmembers Martinez and Campana accepted the proposed date for their motion.

Mayor Pro Tem Horak stated he would not support the motion as the policy examination can be done independently following the adoption of the ordinance. He discussed the need for an additional tool which will aid in addressing illegal activity.

Councilmember Stephens stated she would not support the motion and supported adoption of the ordinance.

Councilmember Campana suggested a better ordinance may result from the delay.

Councilmember Martinez stated he would like to see a refinement of the implications of the ordinance and an examination of its enforceability and implementation. Additionally, he questioned whether this would be used a first or last resort.

The vote on the motion to postpone to May 17 was as follows: Yeas: Martinez and Campana. Nays: Cunniff, Overbeck, Stephens, Horak and Troxell.

**THE MOTION FAILED.**

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 047, 2016, on Second Reading.

Mayor Pro Tem Horak discussed the importance of analyzing the effects of the ordinance as time goes on. City Manager Atteberry committed to such an analysis.

Councilmember Cunniff expressed support for the ordinance and discussed the success of other civil enforcement issues in the City.

Councilmembers Overbeck and Campana stated they would support the ordinance.

Councilmember Martinez thanked those who spoke.

<b>RESULT:</b>	<b>ORDINANCE NO. 047, 2016; ADOPTED ON SECOND READING [6 TO 1]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Ross Cunniff, District 5
<b>AYES:</b>	Stephens, Overbeck, Campana, Troxell, Cunniff, Horak
<b>NAYS:</b>	Martinez

Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to adopt Ordinance No. 048, 2016, on Second Reading.

<b>RESULT:</b>	<b>ORDINANCE NO. 048, 2016, ADOPTED ON SECOND READING [6 TO 1]</b>
<b>MOVER:</b>	Gerry Horak, District 6
<b>SECONDER:</b>	Kristin Stephens, District 4
<b>AYES:</b>	Stephens, Overbeck, Campana, Troxell, Cunniff, Horak
<b>NAYS:</b>	Martinez

14. **Consideration of an Appeal of the Building Review Board's March 7, 2016, Decision Regarding the Coy-Hoffman Silos, 1041 Woodward Way. (Board Decision Overturned)**

*Woodward, Inc. (Woodward) is appealing the Building Review Board's (BRB) decision, on remand from a January 19, 2016 appeal, to uphold the Chief Building Officer's determination that two historic farm silos, located at 1041 Woodward Way, are "dangerous structures" and not structures that pose an "imminent danger."*

Mayor Troxell noted Council will be performing a quasi-judicial function regarding the decision of the Building Review Board related to the Chief Building Officer's decision that the silos on the Woodward property are dangerous, but not imminently dangerous.

City Attorney Daggett discussed the appeal process and defined parties-in-interest.

Mayor Troxell proposed time allotments for presentations and rebuttals at 20 minutes and 10 minutes respectively.

Carolynne White, Land Use Counsel for the appellant, requested 30 minutes for presentations and 10 minutes for rebuttals. Mayor Troxell and the parties opposed to the appeal accepted these time allotments.

Laurie Kadrich, Planning, Development and Transportation Director, reviewed the processes and timeline regarding the status of the silos to this point and discussed the silos themselves.

Councilmember Campana stated he visited the site today and reviewed the signage and fencing surrounding the silos.

Mayor Troxell requested parties-in-interest address any procedural issues.

Ms. White confirmed the physical evidence previously introduced is available should her team wish to reference it. Additionally, she requested the use of any unused presentation time for her team's rebuttal and objected to testimony not relevant to the question before Council and to the presentation of new evidence to which Woodward has not had the opportunity to respond. Ms. White also requested the right to respond to such evidence without waiving the right to object to it. For example, she objected to evidence regarding whether it would be physically possible or economically feasible to repair or restore the silos, evidence regarding how many people may have signed petitions regarding the silos, and whether or not the structures are proposed or suitable to be designated as historic landmarks. Ms. White introduced Martha Fitzgerald and Chuck Steese who will be presenting the argument for Woodward.

Gina Janett, Save Our Silos Steering Committee and party-in-interest opposed to the appeal, opposed to the inclusion of Ms. Fitzgerald's presentation as she did not appear at the Building Review Board meeting.

Ms. White stated Martha Fitzgerald and Chuck Steese are counsel for Woodward and therefore do not require separate standing as parties-in-interest.

Regarding the request for rolling over unused time from the presentation, Mayor Troxell stated time will not carry over to the rebuttal. Additionally, he requested objections be made at the time of presentation.

Ms. Janett asked if any of the information in the record can be addressed. Mayor Troxell replied in the affirmative.

### **APPELLANT PRESENTATION**

Martha Fitzgerald, Brownstein, Hyatt, Farber, Schreck attorney, discussed Council's direction to the Building Review Board to consider whether the silos could fail under conditions of a ten-year wind event. The Board ignored Council's direction despite undisputed evidence which demonstrated that the silos could fail in a ten-year wind event. Ms. Fitzgerald detailed the language of the remand and claimed the Board and Chief Building Official, Mike Gebo, continued to evaluate imminent danger as something that must be able to occur under everyday conditions without regard to a ten-year event. The evidence presented by the engineer for Woodward became the only, uncontroverted evidence addressing Council's question directly and the engineer found both silos to be imminently dangerous in a ten-year wind event.

Jim Rudolph, Woodward, Inc., reviewed the history of Woodward's ownership of the property and discussed Woodward's plan to preserve the historic fabric of the site, adaptively reuse the barn, milk house and silos, and secure public safety. Woodward is committed to safety.

Chuck Steese, Armstrong Teasdale attorney, stated Mr. Gebo felt so strongly that the danger presented by the silos was immediate that he posted a warning on the silo area and required fencing to be placed around the area immediately. The only Code provision that gave Mr. Gebo the right to instruct Woodward to install a fence around the silos is 109.2, and the only way he could do that is if he had already determined that there was imminent danger at the location. Mr. Steese discussed the condition of the silos as outlined by Woodward's hired engineering firm and requested Council find the silos to be imminently dangerous.

### **OPPONENT PRESENTATION**

Lisa Ashbach stated the City of Fort Collins is committed to protecting structures of historic significance. Woodward made written commitments to preserve the site's historic structures and Woodward, the Downtown Development Authority, and the City negotiated a financial incentive package to assist Woodward with funding to address many Fort Collins-specific development costs and obligations.

Ms. White objected to the relevance of Ms. Ashbach's statements.

Mayor Troxell requested Ms. Ashbach keep her comments relevant to the appeal.

Ms. Ashbach stated her comments are in rebuttal to a point in the appeal regarding vested property interests. She stated Woodward created a vested property right not to demolish the silos, but to preserve them.

Harry Rose argued Exponent, the engineering firm hired by the City, showed that if JVA's analysis was correct, the silos would have already fallen due to last winter's weather events. The silos can be repaired in place and are not an imminent danger.

Carole Hossan introduced approximately 1,600 petitions in support of Woodward keeping its promise to save and preserve the two Coy Farm silos.

Ms. White objected to the evidence as being new and not relevant.

Mayor Troxell stated the evidence will not be accepted as it is new and not believed by Council to be relevant.

Ms. Hossan stated Woodward should have started preserving the silos as soon as it purchased the property.

Gina Janett stated this decision is not a legal decision but rather an engineering decision relating to whether or not the silos are going to fail at any time. Woodward has provided no empirical, measured data that the silos are imminently dangerous. Ms. Janett questioned why Woodward's engineers went inside the silos to conduct tests if they thought they were imminently dangerous. Regarding the two engineering opinions, Ms. Janett stated Mr. Carpenter, of JVA, designs new structures to meet modern building codes while Mr. Bennett, of Exponent, is a certified safety assessment evaluator specializing in analyzing the condition and safety of existing buildings, including buildings affected by tornadoes. Ms. Janett requested that Council overturn Woodward's appeal because the Building Review Board and Chief Building Official have properly interpreted City Code.

Eric Fried argued Building Review Boardmember Reider's application of probability theory to the silos was deeply flawed and greatly overstated the risk posed by the silos. The Chief Building Official, the engineering experts hired by the City, and the Building Review Board made a careful, deliberate, unbiased and accurate technical decision that the silos are in fact dangerous, which means they can be repaired.

Bill Whitley discussed historical preservation in the City and stated voting against Mr. Gebo and the Building Review Board for political reasons sets a very bad precedent and directly contradicts Fort Collins Code on the importance of historic structures to the community.

Dee Amick stated the appellants are attempting to use deceptive legal tactics in order to devalue the Coy Hoffman silos. She discussed the value of the silos to the community and a creative solution should be examined. The new Woodward campus is probably the most photographed company in Colorado. Ms. Amick stated she was allowed to approach and photograph the silos which she would have assumed she would not be allowed to do if they were imminently dangerous.

Ms. White objected to Ms. Amick's statements as being irrelevant.

City Attorney Daggett stated Ms. Ashbach has a document that was handed to staff but not actually presented to Council or the appellants. Ms. Janett replied the document is in Council's packet on pages 229 and 230.

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

### **APPELLANT REBUTTAL**

Mr. Rudolph stated the real issue for Woodward is safety and the company would never choose to protect the silos and barn in their current state at the risk of life and safety. He discussed Woodward's plan to restore the barn and milk house and recognize the history of the silos through its adaptive reuse plan. Woodward cannot get insurance for the barn with the silos in place.

Steve Carpenter, JVA, stated JVA's calculations do not show the silos to be overstressed under their own weight. The calculations raise concerns with wind speeds around 60 miles per hour.

Mr. Steese noted the core samples taken from the silos were provided to Mr. Gebo and the analysis of those samples was consistent with that of the Swiss Hammer readings. Ms. Amick signed a release indicating she was aware approaching the silos may involve the risk of serious injury and/or death prior to being allowed to approach the site. A ten year wind event could cause the silos to fall. The only conclusion is that the silos are imminently dangerous.

### **OPPONENT REBUTTAL**

Ms. Ashbach stated Woodward may mitigate risk in the course of its business, but it cannot eliminate it. Council should ask the opinion of Paul Bennett of Exponent about the language regarding an imminent danger existing versus a structure being imminently dangerous.

John Sargents discussed the issue of demolition by neglect and the imminently dangerous concept cannot be taken as a permanent condition because a solution exists to stabilize and repair the silos.

Wendy Campbell requested Council question Paul Bennett during its discussion and consider the impact of its vote on the City Code regarding historic structures.

Mr. Whitley stated Woodward could have obtained insurance on the silos and barn if they had repaired them as required by Mr. Gebo in September 2015.

Mr. Fried discussed the Codes utilized by Mr. Gebo in his determination.

### **COUNCIL QUESTIONS AND DISCUSSION**

Councilmember Cunniff requested the language of the remand be read. City Attorney Daggett displayed the language and read a portion of Resolution 2016-009, adopted by Council to conclude the original appeal of the matter.

Councilmember Cunniff asked Mr. Gebo if he is of the opinion that the Building Review Board received and considered evidence and analysis regarding the effects of natural conditions and events of a one in ten year probability. Mr. Gebo replied in the affirmative.

Councilmember Cunniff requested an explanation of which portion of Section 109 Mr. Gebo felt was guiding him in posting the notice on the silos. Mr. Gebo replied the Building Official is authorized to post buildings when deemed dangerous and his declaration does not reference Section 109.

Councilmember Martinez asked what authority Mr. Gebo used to make his determination. Mr. Gebo replied the International Building Code is the standard code which covers all others and the ability to post notices was based on the International Building Code which authorizes the Building Official to do such things.

Councilmember Campana and Mr. Gebo discussed the definition of dangerous and how it was applied to the silos.

Councilmember Campana asked Mr. Bennett if he agreed with Mr. Gebo's assessment of that definition. Paul Bennett, Exponent Failure Analysis Associates, replied in the affirmative.

Councilmember Campana asked Mr. Bennett if he reviewed the silos for a one in ten-year wind event and if that is approximately 85 miles per hour. Mr. Bennett replied in the affirmative on both accounts and stated he did not find the structures could fail under those wind loads. Mr. Bennett stated he did not continue his analysis to determine under what wind speeds the silos would fail.

Councilmember Campana asked Mr. Bennett why he and Mr. Carpenter are arriving at different conclusions. Mr. Bennett replied the two different answers have to do with one's assumptions and analysis. The two engineers differ on the capacity of the structures and he looks at historical performance as one indicator of what the structures can resist. Mr. Bennett discussed various triggers in the City's code that aid in determining the danger potential of a structure.

Councilmember Campana asked Mr. Bennett if he is concerned the silos could collapse. Mr. Bennett replied he has not done the analysis on a full design load wind event; however, his report states they likely would collapse under a 1,700 year wind event.

Councilmember Campana asked if Mr. Bennett feels the threat exists despite not knowing when it will come to fruition. Mr. Bennett replied in the affirmative.

Councilmember Campana asked if there is an immediate issue which could cause collapse given no one knows when such a wind event could occur.

Councilmember Campana asked Mr. Bennett if he thinks the fence was justified. Mr. Bennett replied in the affirmative and stated he recommended that in his original report.

Councilmember Cunniff requested clarification regarding the difference of opinion between the two engineering approaches. Mr. Bennett replied he looks at existing structures and past performance. The two engineering firms are using similar or the same equations with different assumptions varying in conservativeness. The methodologies are different regarding new structures and he does not believe the silos will collapse in a ten-year wind event. Mr. Bennett discussed his opinions relating to imminent danger, stating those structures are potentially so unsafe they cannot be entered for repair. He does not believe that is the case with the silos.



Councilmember Campana asked about the fact that fencing is referenced in the imminent danger section of the Code whereas only signage is required in terms of a structure being an attractive nuisance. It appears the actions which have taken place address an imminent threat. Mr. Bennett replied the International Building Code's definition of dangerous discusses dilapidation and pieces that could fall off as well as attractive nuisance, which references the here and now. Life safety hazard can be minimized by limited access to the silos.

Councilmember Martinez asked what falling pieces would indicate. Mr. Bennett replied that would indicate dilapidation and decay.

Councilmember Martinez asked if pieces start falling off when things start collapsing. Mr. Bennett replied there is decay happening to the structures and they will eventually collapse if not repaired; however, he noted that is unrelated to a sudden collapse.

Councilmember Martinez asked how long the acid erosion will take to collapse the structures. Mr. Bennett replied the acid erosion is a byproduct of the silage that was once stored in the silos and noted the silos have been standing over 100 years.

Councilmember Martinez stated the fencing and signs have the appearance of dealing with an imminent danger. Mr. Bennett replied the fence is mandated under the International Building Code to mitigate a life safety hazard and attractive nuisance hazards.

Councilmember Martinez asked if Mr. Gebo acted on what Mr. Bennett suggested or on his own accord. Mr. Gebo replied it was based on Mr. Bennett's suggestion with which he agreed and stated part of the dangerous classification was being removed by fencing the site.

Councilmember Martinez asked if a fence was deemed necessary prior to getting the results of the analysis. Mr. Gebo replied the fence was installed after the analyses by both engineers. He stated it was the combination of the reports that led to his conclusion of them being dangerous and noted he was not aware of them prior to reading these reports.

Councilmember Stephens stated she is struggling with the ambiguity of the definition of imminent and asked why a dictionary definition has had to be used. Mr. Bennett replied the definitions are not air tight and are written by engineers rather than lawyers. The Codes have trended toward allowing the Building Official to make more decisions based on his best judgment. There is some guidance related to the definition of imminent in the Code Commentary section.

Mr. Gebo read sections of the Code Commentary section relating to the definitions of dangerous and imminently dangerous and his interpretation of imminent as being something that is about to happen.

Councilmember Stephens asked if the word imminent was always used. Mr. Gebo replied prior to this case, he was able to classify a building as dangerous through the historical chapter of the City Code; at that time, a dangerous classification allowed the building owner to repair or remove the dangerous structure as the owner saw fit. Now, the danger needs to be classified as imminent to give the owner that same option.

Mayor Troxell asked Mr. Bennett if he completed sensitivity analyses to understand his assumptions and how well they would hold up. Mr. Bennett replied his analysis looked at real world behavior and historical performance.

Mayor Troxell stated the sensitivity analysis is important and asked if the wind direction was included in the analysis. Mr. Bennett replied the wind load analyzed is a worst case scenario.

Mayor Troxell asked Mr. Gebo what condition would qualify as imminent. Mr. Gebo replied he would refer to the engineering reports he used in determining they are dangerous and not imminent. He stated he would always rely on additional professional support to make that decision.

Mayor Troxell stated there does not seem to be a perspective on "at any time" in applying what is imminent and asked if Mr. Bennett agreed. Mr. Bennett replied imminent danger, to him, is something that is so precarious and unsafe he would not be comfortable with anyone going in the structure to inspect or repair it.

Mayor Troxell asked about the fencing. Mr. Bennett replied the fencing was put in place as part of the dangerous definition.

Mayor Troxell expressed concern there is no clear definition of imminent and stated an expert should be able to clearly define the term.

Councilmember Martinez asked what the silos would have to look like in order for them to be declared imminent. Mr. Bennett replied he would need to see evidence of crumbling now.

Councilmember Campana asked Mr. Carpenter for his thoughts on the notion of capacity being calibrated to past performance. Mr. Carpenter replied it is something he considers; however, he prefers to do testing as well as visual inspections. Mr. Carpenter stated he agrees with Mr. Bennett on most of the assumptions, with the exception of capacity. He discussed the stave tongue-in-groove mechanism. His calculations in concert with visual inspection have led him to classify the structures as being imminently dangerous. He noted the silos go through freeze-thaw cycles frequently and are in a different condition than they were five years ago.

Mayor Troxell asked Mr. Carpenter to describe his definition of imminent with respect to the silos. Mr. Carpenter replied he believes the Code takes probabilities into account; therefore a ten-year recurrence is already accounted for in the formulas, loads, and wind speeds.

Councilmember Martinez requested clarification regarding Mr. Steese's comment that the Building Review Board did not follow the direction of Council's remand. Mr. Steese replied Mr. Bennett's report analyzes whether the silos could withstand wind events rather than could wind events cause them to fail. The imminent standard as described by Mr. Bennett was not the same standard put to the Building Review Board. The Board opted to disagree with the remand and look at something beyond the one in ten year wind event.

Councilmember Cunniff asked Mr. Steese if he disagreed with Council's remand motion as he previously read it. Mr. Steese replied it specifically references a one in ten year probability.

Councilmember Cunniff asked Mr. Steese if he disagrees that the Board received and considered evidence. Mr. Steese replied the Board received the evidence but it was ignored.

**Extension of Meeting past Midnight**

City Attorney Daggett recommended Council may want to consider making a motion to suspend the rules and extend the meeting past midnight.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to suspend the rules regarding the termination of the meeting at midnight to consider the remainder of this item and the remaining agenda item.

Mayor Pro Tem Horak supported completion of this item but questioned the consideration of the remaining agenda item.

Councilmembers Cunniff and Overbeck withdrew their original motion in order to consider a motion regarding Agenda Item No. 15.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to suspend the rules to continue the meeting past midnight to complete discussion and determination of this item. Yeas: Stephens, Horak, Troxell, Cunniff, Martinez, Overbeck and Campana. Nays: none.

THE MOTION CARRIED.

**15. First Reading of Ordinance No. 055, 2016, Amending the City of Fort Collins District-Precinct Map. (Postponed to May 3, 2016)**

*The purpose of this item is to amend the City of Fort Collins District-Precinct Map to (1) align the City precinct boundaries with the County precinct boundaries, which were amended in May 2015; and (2) adjust Council district boundaries to achieve a required population deviation between the most populous district and the least populous district. The district boundaries were last adjusted in August 2012.*

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to postpone Item No. 15, *First Reading of Ordinance No. 055, 2016, Amending the City of Fort Collins District-Precinct Map*, to May 3, 2016.

<b>RESULT:</b>	<b>ORDINANCE NO. 055, 2016, POSTPONED TO MAY 3, 2016 [UNANIMOUS]</b>
<b>MOVER:</b>	Ross Cunniff, District 5
<b>SECONDER:</b>	Bob Overbeck, District 1
<b>AYES:</b>	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

**CONTINUATION OF APPEAL HEARING**

Councilmember Campana made a motion, seconded by Councilmember Martinez, to overturn the March 7, 2016 Building Review Board decision sustaining the Chief Building Officer's determination the silos are not an imminent danger based on the evidence in the record and presented at this hearing because, on remand, the Building Review Board failed to properly interpret and apply the section of the remand regarding applying a one in ten year occurrence, and failed to properly interpret and apply City Code Section 547-12 and/or the International Property Maintenance Code Section 202 defining imminent danger. Additionally, Councilmember Campana moved that Council find the silos are an imminent danger based on the evidence in the record and presented at this hearing.

Councilmember Cunniff stated he appreciates the complexity of the case; however, he stated the Building Review Board did the best it could with the information it was given. He discussed the definition of imminent as being so dangerous it cannot even be repaired but the silos have not met that definition.

Councilmember Overbeck agreed with Councilmember Cunniff.

Councilmember Stephens stated she would support the motion; however, she expressed concern regarding the idea of demolition by neglect.

Mayor Troxell expressed appreciation for both engineering perspectives and noted judgment is an important part of engineering. He stated he would be supporting the motion.

Councilmember Martinez noted the fact that insurance cannot be granted for the silos or barn show the insurance company finds the structures to be imminently dangerous. City staff implied imminent danger when they required fencing and signage.

<b>RESULT:</b>	<b>BUILDING REVIEW BOARD DECISION OVERTURNED [5 TO 2]</b>
<b>MOVER:</b>	Gino Campana, District 3
<b>SECONDER:</b>	Ray Martinez, District 2
<b>AYES:</b>	Stephens, Campana, Troxell, Horak, Martinez
<b>NAYS:</b>	Overbeck, Cunniff

Mayor Troxell requested staff input in terms of next steps regarding this issue. Kadrich replied the action taken by Council will allow the demolition of the silos once the action becomes official upon adoption of a resolution of finding and fact.

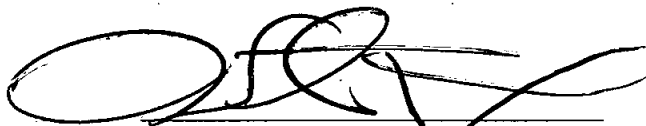
City Attorney Daggett stated the non-consensual historic designation process will move forward as it involves more than just the silos.

Kadrich stated the historic designation process is scheduled for second reading at the Landmark Preservation Commission on May 11.

● **ADJOURNMENT**

The meeting adjourned at 12:00



  
\_\_\_\_\_  
Mayor

ATTEST:

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