

ORDINANCE NO. 175, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 23 OF THE CODE OF THE CITY OF FORT
COLLINS RELATED TO FUNDING OF ART IN PUBLIC PLACES
CONTRIBUTIONS FOR CONNEXION AND THE EXPENDITURE OF
UTILITIES' ART IN PUBLIC PLACES FUNDS AND RESCINDING FUNDS
PROVISIONALLY APPROPRIATED FOR SUCH CONTRIBUTIONS

WHEREAS, on April 25, 1995, the City Council adopted Ordinance No. 020, 1995, establishing the Art in Public Places ("APP") Program, adopting the Art in Public Places Guidelines, and setting goals and requirements for the acquisition, maintenance and exhibition of public art by the City; and

WHEREAS, on April 7, 1998, the City Council adopted Ordinance No. 047, 1998, which reenacted the APP Provisions of the City Code with certain modifications; and

WHEREAS, the APP Program requires capital City projects greater than \$250,000 to contribute 1% of capital cost to the APP Program; and

WHEREAS, on October 2, 2012, the City Council adopted Ordinance No. 078, 2012, which set the level of Utility contributions to the APP Program to .5% of annual operating revenue instead of 1%; and

WHEREAS, on November 7, 2017, the voters approved Ordinance No. 101, 2017, amending the City Charter to permit the City Council to (1) authorize the City's electric utility to provide telecommunication services and facilities, or (2) create a telecommunications utility; and

WHEREAS, on January 16, 2018, the City Council adopted Ordinance No. 011, 2018 authorizing the City's electric utility to provide telecommunication facilities and services in the City, and to issue securities and other debt obligations to fund the provision of such facilities and services; and

WHEREAS, on June 14, 2018, the City's Electric Utility Enterprise closed on the sale of \$142.2 million in bonds to fund the build-out and the initial operating expenses of a new telecommunications system; and

WHEREAS, at an event on June 28, 2018, the City announced the name "Connexion" for the telecommunications system; and

WHEREAS, on May 1, 2018, the City Council adopted Ordinance No. 056, 2018, which provisionally appropriated \$479,430 in bond proceeds for APP and \$130,096 in bond proceeds for maintenance thereof; and

WHEREAS, at the August 28, 2018, Council Work Session, the City Council reviewed the APP Program and asked staff to develop some options pertaining to whether Connexion

contributions to APP should be capped and when Connexion should begin to pay into the APP Program; and

WHEREAS, City Council directed staff to conduct public outreach and to provide any recommendations related to APP Program changes before the end of 2018; and

WHEREAS, City Staff has discussed options related to APP Program changes with the APP Board, the Energy Board, the Water Board, the Transportation Board, and the Economic Advisory Board; and

WHEREAS, all boards expressed a commitment to the value of public art and a desire to ensure the success of Connexion; and

WHEREAS, there was general support for and recognition that waiting until Connexion's buildout has begun to mature before using Connexion funds for APP would be best for the APP Program and for Connexion; and

WHEREAS, it is anticipated that 2022 will be the year in which Connexion buildout will see maturity and Connexion will have operating revenue; and

WHEREAS, City staff is proposing changes to the APP Program that would defer payment to APP of 1% of the Connexion construction costs until 2023, when a one-time payment would be made up to a cap based on Connexion's 2022 operating revenue, after which Connexion would contribute to APP as though it were a separate utility; and

WHEREAS, in 2012, when significant changes were made to Ordinance No. 078, 2012, amending the APP program Code provisions, between First and Second Reading, Code language about the permitted uses of utility funds, based on requirements in Article XII, Section 6 of the City Charter, was inadvertently omitted; and

WHEREAS, the City Attorney's Office is recommending that the omitted language be put back into the Code; and

WHEREAS, the City Council has determined that the proposed amendments are in the best interests of the City and are necessary for the public's health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 23-303 of the Code of the City of Fort Collins is hereby amended as follows:

Sec. 23-303. Accounting methods.

...

(c) Contributions to APP for each Utility will be kept and spent in such Utility's own fund, with the exception of maintenance, administration, repair and display costs. Each Utility fund will pay its share of maintenance, administration, repair and display costs annually to the APP program cost center in the Cultural Services and Facilities Fund. Monies credited to such Utility funds for APP shall be expended only for the acquisition or lease of works of art that provide a betterment to such utility or that are otherwise determined by the City Council to be for a specific utility purpose that is beneficial to the rate payers of such Utility.

Section 3. That Section 23-304 of the Code of the City of Fort Collins is hereby amended as follows:

Sec. 23-304. Construction projects greater than \$250,000.

(a) All requests submitted to the City Council for appropriations for construction projects estimated to cost over two hundred fifty thousand dollars (\$250,000.) shall include an amount equal to one (1) percent of the estimated cost of such project for works of art. This requirement shall also apply to appropriations partially funding a project that will have a total estimated cost of over two hundred fifty thousand dollars (\$250,000.) even if such individual appropriations are equal to or less than said amount. When the City Council approves the appropriations for any such project, one (1) percent of the appropriated amount shall be deposited into the appropriate cost center. If any construction project is partially funded from any source which precludes a work of art as an object of expenditure of such funds, the appropriation for works of art shall be equal to one (1) percent of the portion of the estimated project cost that will be funded from project funding sources that are not so restricted. Money collected in the APP cost centers shall be expended by the City for projects as prescribed by the APP Guidelines.


(b) The amount of annual contributions to the APP program for each Utility fund shall be limited to one-half (.5) percent of the budgeted operating revenue in such Utility fund for that year, except that the Light and Power Fund will be calculated based on budgeted operating revenues excluding revenues from telecommunication facilities and services, as such facilities and services are defined in § 26-1.

(c) In 2023, the Light and Power Fund will make a one-time payment for APP of one (1) percent of the bond proceeds expended on the construction of telecommunication facilities from 2018 through 2022, but limited to one-half (.5) percent of the 2022 operating revenue attributed to telecommunication facilities and services. This amount shall be in addition to any contributions credited to APP from appropriations for new construction projects in 2023.

(d) Except as set forth in Subsection (c), above, until January 1, 2023, the requirements of this Article shall not apply to activities and revenues attributed to telecommunication facilities and services. Beginning January 1, 2023, the requirements of this Article, as amended from time to time, will apply to telecommunications facilities and services as though they are a separate utility.

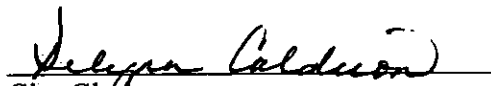
Section 4. That the amounts of ONE HUNDRED THIRTY THOUSAND NINETY-SIX DOLLARS (\$130,096) and FOUR HUNDRED SEVENTY-NINE THOUSAND FOUR HUNDRED THIRTY DOLLARS (\$479,430) for Art in Public Places provisionally appropriated and authorized for transfer in Sections 2 and 3 of Ordinance No. 056, 2018, are hereby frozen, unappropriated, rescinded or otherwise no longer authorized for expenditure. Any amounts due for Art in Public Places related to telecommunications facilities and services revenues or appropriations shall be budgeted, appropriated and made when and only as required by the Code provisions adopted as part of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 18th day of December, A.D. 2018, and to be presented for final passage on the 2nd day of January, A.D. 2019.



Mayor

ATTEST:



City Clerk




Passed and adopted on final reading on the 2nd day of January, A.D. 2019.



Mayor

ATTEST:



City Clerk

