

# AGENDA ITEM SUMMARY

## FORT COLLINS CITY COUNCIL

ITEM NUMBER: 14

DATE: December 16, 2008

STAFF: Steve Catanach  
Brian Janonis

### SUBJECT

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First Reading of Ordinance No. 161, 2008, Amending the City Code to Establish Marking Requirements.

### RECOMMENDATION

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Staff recommends adoption of the Ordinance on First Reading.

### FINANCIAL IMPACT

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City departments excavating in improved areas could bear the cost of removing water-based paint locate marks. Approximate cost will be \$70 per removal.

### EXECUTIVE SUMMARY

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Markings can have a negative and lasting (up to several months) impact on the aesthetics of a given area especially on decorative surfaces. This Ordinance is proposed as an addition to Chapter 23, Article V of the City Code requiring the use of chalk-based paint in the Old Town Area and on decorative surfaces throughout the city, except under certain conditions. Markings are defined in the proposed ordinance to include any mark to show the location of underground facilities or to mark other design or construction-related specifications, features or limits. Markings made with water-based paint must be properly removed within 45 days of the request, except under certain conditions. In a situation that requires markings to be made utilizing water-based paint, the person making the request through the Colorado Notification Association will be responsible for their removal. If the person making the request is unknown, such as when an engineering company contracts directly with a locate company instead of through the Notification Association, then the person causing the marking to be made will be responsible for removing the marking.

### BACKGROUND

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Anytime a person or entity plans on excavating, they are required to obtain utility locate markings to insure safety and avoid disruption of utility services. Utility locate markings show the location of existing underground utilities on the surface. Such markings are color-coded to indicate the type of infrastructure below, preventing damage to underground infrastructure and protecting the excavator. Utility locate marking requests are coordinated through the Colorado Notification Association. Such requests made through the Colorado Notification Association are coordinated

with utility companies or their contractors to provide locate markings within 48 hours of the request. In addition to the City Locate Department, there are two private locate companies that are contracted by Xcel, Comcast and Qwest to locate their facilities. Additionally, the City and the contract companies will do locate markings for engineering companies to identify construction conflicts.

Water-based paint and chalk-based paint are available for locate marking. Water-based paint is more durable than chalk-based; both provide specific advantages under varying circumstances. Chalk-based paint wears off of surfaces much quicker and easier preserving the aesthetics of the area. However, because of the short-lived nature of the marks, there is a specific risk that locate marks will disappear or fade while excavation is still going on. State statute declares locate marks are considered usable so long as the markings are visible, but for no more than 30 calendar days. If an excavation has not been completed within the 30-day period, or if the marks are no longer visible, the excavator is required to call the Notification Association and ask for a re-locate. A re-locate must be made before excavation can continue. Chalk-based marking in areas subject to vehicular traffic are erased very quickly by the friction of the tires. To prevent excessive calls for re-locates and to insure that marks are visible enough to ensure the safety of the public, water-based paint will be allowed in all drive lanes, parking lots or other areas subject to traffic.

Marking removal will be the responsibility of the person making the request through the Notification Association. If the locates were not coordinated through the Notification Association, the last person causing the marks to be made will be responsible for removal. Removal of markings made with water-based paint must meet all of the requirements specified within the City's water quality requirements as detailed in Section 26-498 of the City Code. It is anticipated that the cost of removal of water-based marks will have a financial impact on both contractors and those City departments that excavate. Current bids indicate that it will cost approximately \$70 to properly remove water-based paint marks from an area. The Utilities Locate Department will work with contractors and other City departments to minimize the area that is marked and to minimize the use of water-based paint.

ORDINANCE NO. 161, 2008  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING THE CODE OF THE CITY OF FORT COLLINS  
TO ESTABLISH MARKING REQUIREMENTS

WHEREAS, markings are often made on City right-of-way and on other public improvements to show the location of underground facilities or to mark other design or construction-related specifications, features or limits; and

WHEREAS, markings made with water-based paint tend to remain visible for a longer period of time than is necessary for the intended purpose; and

WHEREAS, excessive markings and markings that do not disappear within a reasonable period of time unless removed detract from the aesthetic appearance of public areas in the city; and

WHEREAS, markings are particularly noticeable in the Old Town Area and on decorative surfaces; and

WHEREAS, markings made on surfaces in drive lanes, parking lots or other areas designed for vehicular traffic tend to disappear as a result of the vehicular traffic on such surfaces; and

WHEREAS, chalk-based paint is a viable alternative to water-based paint for making such markings; and

WHEREAS, proper removal of certain markings made with water-based paint will eliminate markings that have served their intended purpose; and

WHEREAS, the City Council wishes to adopt a local ordinance establishing marking requirements in order to diminish the lasting impact of markings on the appearance of public areas in the city.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that a new Article XIV of Chapter 23 of the Code of the City of Fort Collins entitled "Location Markings on Public Property" is hereby added and reads in its entirety as follows:

**Article XIV.**  
**LOCATION MARKINGS ON PUBLIC PROPERTY**

**Sec. 23-380. Definitions.**

The following words and phrases, when used in this Article, shall have the meaning respectively ascribed to them unless the context otherwise clearly indicates:

*City right-of-way* shall mean an area dedicated to public use or impressed with an easement for public use which is owned or maintained by the City and is primarily

used for pedestrian or vehicular travel or for public utilities or other infrastructure. *City right-of-way* shall include but not be limited to the street, gutter, curb, shoulder, sidewalk, sidewalk area, parking area and any other public way.

*Decorative surfaces* shall mean those surfaces that are composed of ornamental materials or embellished for decorative purposes, such as those found on pavers, exposed aggregate, and stamped or stained concrete.

*Marking* or *mark* shall mean any mark, or the process of making such mark, on City right-of-way or public improvements in the City to show the location of underground facilities, or to mark other design or construction-related specifications, features or limits.

*Notification association* shall mean the statewide notification association of owners and operators of underground facilities created in Colorado Revised Statutes §9-1.5-105.

*Old Town Area* shall mean all public property and public improvements within the area bordered to the north by the northern boundary of Cherry Street right-of-way, to the west by the western boundary of the Howes Street right-of-way, to the south by the southern boundary of the Olive Street right-of-way, and to the east by the eastern boundary of the Peterson Street right-of-way, north to the point at which Peterson Street intersects with Jefferson, and from that point, the eastern boundary of the Jefferson Street right-of-way.

*Public improvements* shall mean any improvement, fixture or addition to real property or publicly owned facilities, whether permanent or not, made by a public entity.

**Sec. 23-381. Marking standards.**

(a) No person shall mark any City right-of-way or public improvements in the City with a marking that is more extensive than necessary to reasonably identify the location intended to be marked.

(b) Markings on decorative surfaces or within the Old Town Area must be made with chalk-based paint, except that water-based paint may be used if:

- (1) the marking is removed as required in section 23-282 or the marked surface is made invisible or excavated within forty-five (45) days of the marking; or
- (2) the marked surface is in a drive lane, parking lot or other area designed for vehicular traffic.

(c) No person shall mark City-owned property without the City's permission, which permission may be obtained by utilizing either the notification association or calling

the City Utilities locates section and such markings must be in accordance with any City specifications.

**Sec. 23-382. Removal of Markings.**

All markings that are made with water-based paint on City rights-of-way or other public improvements must be fully and completely removed unless such markings are made on areas designed for vehicular traffic. The removal method used must not destroy or materially alter the rights-of-way or other improvements, and must fully comply with applicable water quality requirements, as set forth in §26-498. Such markings must be removed within forty-five (45) days after being made. Any party that requests the marking through the notification association is responsible for removal of the marking. If a marking is not made through the notification association, the last person causing the marking to be made is solely responsible for removal of the marking.

**Sec. 23-383. Penalty.**

(a) Any person who violates any provision of this Article commits a misdemeanor criminal offense and upon conviction, shall be subject to the provisions of § 1-15. Each day such violation is committed or permitted to continue shall constitute a separate offense.

(b) As an additional means of enforcement, and not as an alternative to or substitute for prosecution for violation of the provisions of this Article, the City may remove or eradicate any markings which are not removed pursuant to the provisions of this Article and charge the party responsible for such removal the full cost incurred by the City to effect such removal. Any such costs incurred shall be immediately due and payable, and interest on such amounts due shall accrue at the statutory rate applicable to judgment awards. The City Manager may collect such amounts using any methods legally available, including conditioning of future licenses, permits or other grants or approvals, or renewals of the same, upon payment of any unpaid balance due hereunder.

Introduced, considered favorably on first reading, and ordered published this 16th day of December, A.D. 2008, and to be presented for final passage on the 6th day of January, A.D. 2009.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 6th day of January, A.D. 2009.

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Mayor

ATTEST:

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City Clerk