



Doug Hutchinson, Mayor  
Kelly Ohlson, District 5, Mayor Pro Tem  
Ben Manvel, District 1  
Lisa Poppaw, District 2  
Aislinn Kottwitz, District 3  
Wade Troxell, District 4  
David Roy, District 6

City Council Chambers  
City Hall West  
300 LaPorte Avenue  
Fort Collins, Colorado

Cablecast on City Cable Channel 14  
on the Comcast cable system

Darin Atteberry, City Manager  
Steve Roy, City Attorney  
Wanda Krajicek, City Clerk

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## **REGULAR MEETING**

**July 7, 2009**

### **Proclamations and Presentations 5:30 p.m.**

- A. Proclamation Declaring Justice as the Character Focus for the month of July 2009.
- B. Presentation of the "Character in Action" Recognition Award.
- B Recognition of the Winner of the Marcile M. Wood Award.

### **Regular Meeting 6:00 p.m.**

#### PLEDGE OF ALLEGIANCE

- 1. CALL MEETING TO ORDER.
- 2. ROLL CALL.

## 3. CITIZEN PARTICIPATION (limited to 30 minutes)

Individuals who wish to make comments regarding items scheduled on the Consent Calendar or wish to address the Council on items not specifically scheduled on the agenda must first be recognized by the Mayor or Mayor Pro Tem. **Before speaking, please sign in at the table in the back of the room.** The timer will buzz once when there are 30 seconds left and the light will turn yellow. The timer will buzz again at the end of the speaker's time. Each speaker is allowed 5 minutes. If there are more than 6 individuals who wish to speak, the Mayor may reduce the time allowed for each individual.

- State your name and address for the record
- Applause, outbursts or other demonstrations by the audience is not allowed
- Keep comments brief; if available, provide a written copy of statement to City Clerk
- Address your comments to Council, not the audience.

## 4. CITIZEN PARTICIPATION FOLLOW-UP:

This is an opportunity for the Mayor or Councilmembers to follow-up on issues raised during Citizen Participation.

## 5. AGENDA REVIEW: CITY MANAGER

### Consent Calendar

The Consent Calendar consists of Items 6 through 29. This Calendar is intended to allow the City Council to spend its time and energy on the important items on a lengthy agenda. Staff recommends approval of the Consent Calendar. Anyone may request an item on this calendar to be "pulled" off the Consent Calendar and considered separately. Agenda items pulled from the Consent Calendar will be considered separately under Item No. 34, Pulled Consent Items. The Consent Calendar consists of:

- Ordinances on First Reading that are routine;
- Ordinances on Second Reading that are routine;
- Those of no perceived controversy;
- Routine administrative actions.

6. Consideration and Approval of the Minutes of the May 19 and June 2, 2009 Regular Meetings and the May 12, June 9 and June 23, 2009 Adjourned Meetings.7. Second Reading of Ordinance No. 063, 2009, Appropriating Prior Year Reserves.

Ordinance No. 063, 2009, was unanimously adopted on First Reading on June 2, 2009. The Ordinance appropriates prior year's reserves for expenditures authorized in 2008 by Council but which could not be completed by the end of 2008.

8. Second Reading of Ordinance No. 064, 2009, Appropriating Prior Year Reserves in the Natural Areas Fund for the Purpose of Providing Natural Areas Programming Not Included in the 2009 Adopted City Budget and Authorizing the Transfer of Appropriations to the Capital Projects Fund.

This Ordinance, unanimously adopted on First Reading on June 2, 2009, appropriates prior year reserves in the Natural Areas Fund for the purpose of land conservation, construction of public improvements, fences and trails, restoration of wildlife habitat and other natural areas program needs to benefit the citizens of Fort Collins.

9. Second Reading of Ordinance No. 065, 2009, Appropriating Prior Year Reserves in the General Fund for Cultural Development and Programming Activities and the Fort Collins Convention and Visitors Bureau.

This Ordinance, unanimously adopted on First Reading on June 2, 2009, appropriates lodging tax revenues that were in excess of 2008 budgeted lodging tax receipts to Cultural Development and Programming ("CDP"), Visitor Events, and the Convention and Visitors Bureau ("CVB") accounts. Lodging tax revenues for 2008 were estimated to be \$746,241 and the 2008 budget appropriated an equal amount. However, actual receipts totaled \$833,468 for 2008 and the difference of \$87,227 has not been appropriated.

The CDP and Visitor Events accounts each had funds from revenue received and previous year lodging tax allocations which were not used during 2008. The unexpended 2008 funds are: CDP - \$75,207, and Visitor Events - \$54,031. These funds are in the General Fund reserves for lodging taxes and must be appropriated into the respective CDP and Visitor Events accounts.

10. Second Reading of Ordinance No. 066, 2009, Making Various Amendments to the City Land Use Code.

This Ordinance, unanimously adopted on First Reading on June 2, 2009 makes a variety of proposed changes, additions and clarifications in the 2009 annual update of the Land Use Code.

11. Second Reading of Ordinance No. 067, 2009, Appropriating Unanticipated Revenue in the Community Development Block Grant Fund.

The American Recovery and Reinvestment Act of 2009 appropriated \$1 billion in Community Development Block Grant (CDBG) funds to states and local governments to carry out, on an expedited basis, eligible activities under the CDBG Program. The City has received an allocation of \$271,137 of FY 2008 CDBG funds through the CDBG Recovery Program from the U.S. Department of Housing and Urban Development (HUD). Ordinance No. 067, 2009, unanimously adopted on First Reading on June 2, 2009, appropriates those funds.

12. Second Reading of Ordinance No. 068, 2009, Appropriating Unanticipated Revenue from the Colorado Department of Transportation in the Transit Fund for the Development of the Transit Strategic Plan.

Transfort has received a grant in the amount of \$15,000 from CDOT, under Section 5304, a statewide transit planning grant program, to contribute toward the work necessary to complete the 2009 Transit Strategic Plan with a total project budget of \$197,555. This Ordinance, unanimously adopted on First Reading on June 2, 2009, appropriates the grant funds.

13. Second Reading of Ordinance No. 069, 2009, Appropriating Unanticipated Revenue in the Capitals Projects Fund, Mason Corridor Project for the South Transit Center Project.

The Colorado Department of Transportation is providing funding for the design portion of the South Transit Center, which is a component of the Mason Corridor/MAX Bus Rapid Transit (BRT) Project. This Ordinance, unanimously adopted on First Reading on June 2, 2009, appropriates those funds.

14. Second Reading of Ordinance No. 070, 2009, Authorizing Acquisition by Eminent Domain Proceedings of Certain Lands Necessary to Construct Public Improvements in Connection with the Harmony Road and College Avenue Improvements Project.

The College Avenue and Harmony Road Improvements Project requires acquisition of various real property interests from five different properties which are located at the College/Harmony and Harmony/Mason intersections. This project is partially federally funded through the Colorado Department of Transportation and, since the project will modify College Avenue, which is a State highway, all aspects of the project, including property acquisitions, must comply with procedures for federally funded projects. The acquisition phase of this project will conform to the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 as Amended (Public Law 91-646). In accordance with these regulations, property owners must be informed about the possible use of eminent domain and their rights pursuant to Colorado Statute in the official Notice of Interest Letter. Authorization from City Council is needed prior to sending this information to property owners. This letter is the first official step in the acquisition phase and happens prior to the appraisals. This Ordinance, unanimously adopted on First Reading on June 2, 2009, authorizes the use of eminent domain for this project.

15. Second Reading of Ordinance No. 071, 2009, Appropriating Funds Transferred from the Fort Collins Urban Renewal Authority Fund into the Capital Projects Fund for the North College Avenue and East Willox Lane Improvement Project.

The Marketplace development is located on the northeast corner of North College Avenue and Willox Lane. It is a large commercial shopping center with a King Soopers grocery store anchor tenant. There will be significant, beneficial financial impacts to both the City and the Fort Collins Urban Renewal Authority from this project.

On May 19, 2009, City Council adopted, on Second Reading, Ordinance No. 049, 2009, authorizing acceptance of the transfer of funds from the URA to a City Capital Projects

account for the purpose of designing and constructing improvements to the northeast corner of North College Avenue and Willox Lane. However, this Ordinance did not appropriate those funds. Because the URA and the City are separate legal entities, it is necessary for Council to appropriate the transferred funds. Ordinance No.071, 2009, unanimously adopted on First Reading on June 9, 2009, accomplishes this.

16. First Reading of Ordinance No. 072, 2009, Appropriating Unanticipated Grant Revenue in the General Fund for the Restorative Justice Program and Authorizing the Transfer of Matching Funds Previously Appropriated in the Police Services Operating Budget.

A grant in the amount of \$21,574 and additional funds of \$5,000 have been received from the Colorado Division of Criminal Justice (DCJ) for salaries associated with 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. Restorative Justice is an alternative method of holding a young offender accountable by facilitating a meeting with the offender, the victim and members of the community to determine the harm done by the crime, and how to repair the harm. By identifying and repairing the harm caused by the crime, Criminal Justice Officials are optimistic repeat offenses by these youth will be reduced and the needs and concerns of the victims and affected community will be addressed. A \$7,191 cash match is required for the \$21,574 grant and will be met by appropriating funds from the police operating budget. A \$1,667 cash match is required for the \$5,000 additional funds and will be met by appropriating funds from prior program income.

17. First Reading of Ordinance No. 073, 2009 Appropriating Unanticipated Grant Revenue in the Light and Power Fund for the Energy Star New Homes Program and for the Residential Solar Grant Program and Authorizing the Transfer of Matching Funds Previously Appropriated in the Light and Power Operating Budget.

This Ordinance appropriates grant funds received from the State of Colorado's Governor's Energy Office totaling \$72,500. \$22,500 (\$45,000 with the Utilities match) will be used for the Residential Solar Program. \$50,000 was granted for the implementation of the ENERGY STAR New Homes Program. This will require a \$15,000 match from the Utilities and a \$35,000 match from other program partners. The Utilities funds will be transferred from existing Light and Power operating appropriations.

18. Items Relating to the Completion of the 2009 Spring Cycle of the Competitive Process for Allocating City Financial Resources to Affordable Housing and Community Development Activities Utilizing the Federal Community Development Block Grant (CDBG) Program, and Home Investment Partnership (HOME) Program, and the City's Human Services Program and Affordable Housing Fund.

- A. Hearing and Resolution 2009-060 Approving the Programs and Projects That Will Receive Funds from the Federal Community Development Block Grant (CDBG) and Home Investment Partnership (HOME) Programs, and the City's Human Services Program and Affordable Housing Fund.

- B. Hearing and Resolution 2009-061 Approving the Fiscal Year 2009 Home Investment Partnerships Program for the City of Fort Collins.
- C. Hearing and First Reading of Ordinance No. 074, 2009, Appropriating Unanticipated Revenue in the Community Development Block Grant Fund.
- D. Hearing and First Reading of Ordinance No. 075, 2009, Appropriating Unanticipated Revenue in the HOME Investment Partnership Fund.

The Resolutions and Ordinances will complete the 2009 spring cycle of the competitive process for allocating City financial resources to affordable housing programs/projects and community development activities.

19. First Reading of Ordinance No. 076, 2009, Dissolving the Telecommunications Board and Amending City Code by Repealing Sections Relating to the Telecommunications Board.

This Ordinance will dissolve the Telecommunications Board. Because of the current state of the telecommunications and cable TV regulatory environment and the City's limited role in either providing or regulating any form of data and telecommunications services, the charter and mission of the Telecommunications Board is no longer aligned with City needs and priorities. In light of that assessment, the Telecommunications Board can be dissolved without adversely affecting the City.

20. First Reading of Ordinance No. 077, 2009 Amending Chapter 26, Article VI, Division 4 of the City Code Relating to Excess Circuit Charge.

This Ordinance allows the Utilities to respond promptly to a customer's request for excess capacity service based on the proposed Code provision. The charges for the service will be stated in the Code and revised when electric cost of service studies are updated.

21. First Reading of Ordinance No. 078, 2009 Amending the City Code and the Traffic Code Regarding Obstructions of Parking Spaces for Persons with Disabilities.

This Ordinance will relocate Traffic Code Section 1208(10) regarding parking privileges for persons with disabilities to City Code, Section 20, for more logical placement within the Code and to increase effectiveness of enforcement. This Section prohibits any person from placing or allowing to remain, any snow, ice, litter or other materials onto any parking space which is identified for use by persons with disabilities, or on any area immediately adjacent thereto.

22. First Reading of Ordinance No. 079, 2009, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary to Construct Public Improvements Related to the Mason Corridor Bus Rapid Transit Project (Phase Two).

The Mason Express ("MAX"), bus rapid transit project is entering the right-of-way acquisition phase of the project. Project acquisitions have been broken into three phases. This Ordinance pertains to the second phase (Phase Two) and consists of eighteen distinct property ownerships. Phase One was adopted by Ordinance No. 059, 2009 on June 2, 2009.

As a critical, federally funded transportation project, staff requests authorization to utilize eminent domain, if necessary, and only if good faith negotiations break down, in order to ensure a timely acquisition of the necessary property interests.

23. First Reading of Ordinance No. 080, 2009, Repealing Ordinance No. 038, 2009; Expanding the Boundaries of the Fort Collins, Colorado Downtown Development Authority; and Amending the Plan of Development of the Authority.

Council adopted Ordinance No. 038, 2009 on May 5, 2009, that approved the inclusion of the Lemay/Lincoln Avenue Area Properties, and Howes/Laurel Street Area Properties within the boundaries of the District. As the Ordinance was being prepared for recording with Larimer County, the Assessor's staff contacted the Downtown Development Authority (DDA) and noted an error in the legal description of the DDA boundary amendment. Staff determined the error was perpetuated from the beginning of the inclusion process, due to inconsistent records that staff relies upon to routinely verify legal descriptions. Therefore, Ordinance No. 038, 2009 must be repealed and a new Ordinance approved with the corrected legal description and petition.

*NOTE: As a result of working together to solve the issue related to the legal description error, the DDA, County and City staff identified other errors in the official DDA boundary legal description. Staff used this housekeeping exercise as an opportunity to correct errors dating as far back as the 1980's, and has provided a corrected district legal description in the attached ordinance.*

The petitions for inclusion would change the boundaries of the DDA District and amend the Plan of Development of the Authority to include in the Lemay/Lincoln Avenue area and the South Howes Street area.

24. Resolution 2009-063 Approving the Acceptance of the Proposed Donation of the Sculpture "Transcend."

This Resolution accepts the donation of artwork, a sculpture entitled "Transcend" by artist Collen Nyanhongo, to the City. The sculpture will become part of the City's Art in Public Places collection.

25. Resolution 2009-064 Approving Expenditures from the Art in Public Places Reserve Account in the Cultural Services and Facilities Fund to Commission an Artist to Create Art Elements for the West Harmony Road Project.

This Resolution will approve expenditures of \$38,600 for design, materials, installation and contingency for a project by the artist Christopher Weed to create sculptural elements for the West Harmony Road Project.

26. Resolution 2009-065 Amending Policies Regarding the Issuance of Proclamations.

Adoption of this Resolution will amend the Council policies related to proclamations to clarify that proclamations are intended to honor local persons or to celebrate certain

community activities or events and are not intended to be a means by which the City takes a position on controversial matters that may be the subject of strongly divergent views within the community.

27. Resolution 2009-066 Reappointing Gordon F. Esplin as Temporary Judge and Authorizing the Execution of an Employment Agreement.

Council originally appointed Gordon F. Esplin as Temporary Judge (Assistant Municipal Judge) in 1989, and has reappointed him every two years thereafter. His current appointment terminated on June 30, 2009. Municipal Judge Kathleen M. Lane recommends that Mr. Esplin be reappointed for another two-year term.

Mr. Esplin has been paid \$85 per hour for his services for several years now. While that rate is well below the going rate for legal fees in Fort Collins, it is an appropriate rate for this occasional hourly service when compared with what other municipalities pay their Assistant Municipal Judges. Mr. Esplin has agreed to continue in this position at the current pay rate.

28. Resolution 2009-067 Making Appointments to the Commission on Disability and the Downtown Development Authority.

A vacancy currently exists on the Commission on Disability due to the resignation of Kimberly Imig. Mayor Doug Hutchinson and Councilmember Lisa Poppaw conducted interviews and are recommending that Carrie Sue Rogers fill the vacancy with a term to begin immediately and set to expire on December 31, 2011.

A vacancy currently exists on the Downtown Development Authority due to the resignation of Ryan Keiffer. Mayor Pro Tem Kelly Ohlson and Councilmember Ben Manvel reviewed the application on file. The Council interview team is recommending Janet Bramhall to fill the vacancy with a term to begin immediately and set to expire on December 31, 2011.

29. Routine Easements.

- A. Easement dedication for a permanent drainage easement from Lone Cactus Capital Group, LLC, to enlarge existing detention pond, located at 4800 Wheaton Drive (parking lot). Monetary consideration: \$10.
- B. Easement dedication for permanent utility easement from Lone Cactus Capital Group, LLC, for the relocation of a fire hydrant and meter pit that is related to a parking lot expansion being done at 4800 Wheaton Drive.

**END CONSENT**



30. Consent Calendar Follow-up.

- a. This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.

31. Staff Reports.32. Councilmember Reports.

### Discussion Items

The method of debate for discussion items is as follows:

- Mayor introduces the item number, and subject; asks if formal presentation will be made by staff
- Staff presentation (optional)
- Mayor requests citizen comment on the item (five minute limit for each citizen)
- Council questions of staff on the item
- Council motion on the item
- Council discussion
- Final Council comments
- Council vote on the item

**Note:** Time limits for individual agenda items may be revised, at the discretion of the Mayor, to ensure all citizens have an opportunity to speak. **Please sign in at the table in the back of the room.** The timer will buzz when there are 30 seconds left and the light will turn yellow. It will buzz again at the end of the speaker's time.

33. First Reading of Ordinance No. 081, 2009, Amending the Land Use Code to Reduce the Buffer Around Wastewater Treatment Plants. (staff: Ted Shepard; 10 minute staff presentation; 30 minute discussion)

The Mulberry Water Reclamation Facility will soon be significantly upgraded with aggressive odor controls and additional treatment technologies. This includes introducing bio-filters, covering all basins and adding a carbon filter. Reducing the buffer from 1,000 to 500 feet acknowledges the effectiveness of these measures. The reduced buffer exceeds the regulations and policies of the Colorado Water Quality Control Division.

34. Pulled Consent Items.35. Other Business.36. Adjournment.

Every Council meeting will end no later than 10:30 p.m., except that: (1) any item of business commenced before 10:30 p.m. may be concluded before the meeting is adjourned and (2) the City Council may, by majority vote, extend a meeting until no later than 12:00 a.m. for the purpose of considering additional items of business. Any matter which has been commenced and is still pending at the conclusion of the Council meeting, and all matters scheduled for consideration at the meeting which have not yet been considered by the Council, will be continued to the next regular Council meeting and will be placed first on the discussion agenda for such meeting.