

DATE: April 16, 2013
STAFF: Wanda Nelson

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

6

SUBJECT

Consideration and Approval of the Minutes of the March 18, 2013 Adjourned Meeting and the March 19, 2013 Regular Meeting.

March 18, 2013

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Adjourned Meeting – 6:00 p.m.

An adjourned meeting of the Council of the City of Fort Collins was held on Tuesday, March 18, 2013, at 6:00 p.m. in the Council Chambers of the City of Fort Collins City Hall. Roll Call was answered by the following Councilmembers: Horak, Manvel, Ohlson, Troxell, and Weitkunat.

Councilmembers absent: Poppaw

(Secretary's note: Councilmember Kottwitz arrived at 6:07 p.m.)

Staff Members Present: Atteberry, Nelson, Daggett.

City Manager Atteberry withdrew Item No. 4, *First Reading of Ordinance No. 044, 2013, Authorizing the Conveyance to Woodward, Inc. of Two Non-Exclusive Permanent Drainage Easements and a Temporary Construction Easement on City-Owned Property*, to the March 26, 2013 meeting.

**Ordinance No. 047, 2013,
Enacting Water Rates Adjustments for the Water Supply Shortage
Response Levels Established in the Water Supply Shortage Response
Plan and Amending the Plan, Adopted on First Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

Based on the uncertainty of how much water supply will be available from our two main sources of supply, the Poudre River and Colorado-Big Thompson Project (CBT), which was presented to City Council as a staff report on February 5, the City Manager will declare Response Level 1 water restrictions for the City of Fort Collins on March 6 for the water restrictions to be effective on April 1, 2013.

The Water Supply Shortage Response Plan, Ordinance No. 048, 2003, recommends water rate adjustments for Response Levels 2, 3 and 4. In preparing for the potential of moving to Response Level 2 or higher, Fort Collins Utilities staff has determined the amount that water rates need to be increased for each Response Level. Revising rates to be revenue neutral is consistent with the intent of the Water Supply Shortage Response Plan and how the rates were developed in 2003. The rates being proposed in this Ordinance attempt to maintain revenues at the 2013 budgeted level for each

possible Response Level. The Ordinance also increases the Excess Water Use Surcharge for each Response Level beginning with Response Level 1.

Ordinance No. 048, 2003 does not allow the use of water fountains for public display for any of the Response Levels. In preparation for the implementation of the Water Supply Shortage Response Plan, the City Manager has recommended that certain facilities of the City containing water features be excluded from the water restrictions set forth in the Plan so as to allow City management to evaluate their operation and use on a case-by-case basis in response to water shortage conditions.

BACKGROUND / DISCUSSION

Going into 2013, staff is uncertain how much water supply will be available from our two main sources of supply, the Poudre River and Colorado-Big Thompson Project (CBT). The 2012 fires in the Poudre Canyon limited the amount of Poudre River water that was able to be treated for drinking water last year, due to poor water quality as a result of rain events over the burn area and fluctuations in the River's flow. In addition, persistent drought conditions continue that impact the amount of water supply available.

For 2013, it is unknown how much be able to be drawn from the Poudre River because of the fire-related water quality degradation. Thus, there may be the need to rely heavily on our CBT supplies from Horsetooth Reservoir. However, the amount of CBT water that will be available will not be clear until Northern Water declares the allocation available (or quota) to all unit owners in that project on April 12. It is anticipated that the quota may be low due to poor snowpack conditions. As such, not knowing how much water will be available staff believes it is in the best interest of the community's water supply resources to implement Response Level 1 water restrictions, effective April 1, 2013. On March 6, City Manager Darin Atteberry will declare the restrictions.

In April 2003, City Council adopted Ordinance No. 048, 2003, a Water Supply Shortage Response Plan. The Plan is a comprehensive document that outlines a series of measures to be enacted, including four water shortage response level water restrictions. This Plan was effective in responding to the 2003 drought efforts; therefore staff believes the Plan supports responding to the 2013 water supply conditions. Among other measures, Response Level 1 limits lawn watering to two days per week. Response Level 2 limits watering to one day per week and the adjustment to rates reflects a 15 percent reduction in water demand. Response Level 3 limits watering to one day per week for 2 hours that day and a 25 percent rate adjustment. No lawn watering is allowed between June 1 and August 31 for Response Level 4 and a 35 percent rate adjustment.

In case it is necessary to immediately move to a higher Response Level, the Rate Ordinance increases the quantity rate charges for Response Levels 2, 3 and 4. It also includes an increase to the Excess Water Use Surcharge, beginning with Response Level 1. The reason this surcharge is increased at Response Level 1 when the quantity charges are not increased is because this surcharge reflects the use by a customer in excess of the amount of water the City would expect to be available in a normal year from the water rights, City certificates and cash in-lieu of water rights assigned to the customer premise.

Water Rate Changes for Water Restrictions

The following water rate increases comply with the Water Supply Shortage Response Plan, Ordinance No. 048, 2003.

Proposed Water Rates

Monthly water rates will not change for Response Level 1. A fourth tier has been added for single family and duplex customers. The quantity charges will change, but not the base charges. All charges are for 1,000 gallons of water use.

Single Family

Tier	Gallons Used	2013 Rate	Level 2	Level 3	Level 4
1	0-7,000	\$2.189	\$2.625	\$3.074	\$3.633
2	7,001-13,000	\$2.516	\$3.150	\$3.689	\$4.360
3	13,001-20,000	\$2.894	\$3.780	\$4.427	\$5.232
4	>20,000	\$2.894	\$4.536	\$5.312	\$6.278

Duplex

Tier	Gallons Used	2013 Rate	Level 2
1	0-9,000	\$2.109	\$2.549
2	9,001-13,000	\$2.424	\$3.059
3	13,001-20,000	\$2.789	\$3.670
4	>20,000	\$2.789	\$4.404

Multi-Family – Summer Rate

	2013 Rate	Level 2	Level 3	Level 4
	\$2.547	\$3.395	\$4.212	\$5.173

Commercial – Summer Rate

	2013 Rate	Level 2	Level 3	Level 4
1st Step	\$2.201	\$2.903	\$3.599	\$4.610
Conservation Step	\$3.164	\$4.173	\$5.174	\$6.627

Proposed Excess Water Use Surcharge

The Ordinance also increases the Excess Water Use Surcharge for each Response Level beginning with Response Level 1. An annual water allotment is set based on the amount of raw water rights supplied for the account and is assessed for any use that exceeds it. The surcharges are per 1,000 gallons, in addition to the base and quantity charges. Any revenue from this surcharge is assigned to the Water Rights Reserve and not used for operational expenses.

Below is a table of the proposed increases for this surcharge:

Excess Water Use Surcharge

<i>2013 Rate</i>	<i>Level 1</i>	<i>Level 2</i>	<i>Level 3</i>	<i>Level 4</i>
\$3.060	\$3.366	\$4.440	\$5.504	\$7.050

At the time the City Manager declares that the City's municipal water supply conditions no longer require a water supply shortage response level, all water rates will revert to the rates shown in Chapter 26 of the City Code for subsequent billing periods.

Redefining Water Fountains

Ordinance 048, 2003 does not allow the use of water fountains for public display for any of the Response Levels. The ordinance defines “water fountain” as follows:

“Water fountain shall mean a water feature that either causes water to be sprayed into the air, or is a waterfall or fountain for public display. The term water fountain shall not mean a water feature of a pond or basin that performs a function essential to the support of fish life in that pond or basin.

In preparation for the implementation of the Water Supply Shortage Response Plan in the coming months, the City Manager has recommended that certain facilities of the City containing water features be excluded from the water restrictions set forth in the Plan so as to allow City management to evaluate their operation and use on a case-by-case basis in response to water shortage conditions.

This Ordinance amends the Water Supply Shortage Response Plan so as to revise the definition of “water fountain” to read as follows:

“Water fountain” shall mean a water feature that either causes water to be sprayed into the air, or is a waterfall or fountain for public display. The term water fountain shall not mean a water feature of a pond or basin that performs a function essential to the support of fish life in that pond or basin, a water feature in a City-operated swimming pool, or a water-dependent recreational fixture or play structure that is operated by the City for public use and enjoyment.

FINANCIAL / ECONOMIC IMPACTS

The rate increases are designed to generate the same revenue for the Water Fund as the original 2013 rate structure. The financial impact of implementing higher water rates through the Water Supply Shortage Response Plan is anticipated to be minimal to most residential and commercial customers who respond to the plan by using less water for irrigation. Those customers that do not reduce their water demand as expected for a given Response Level because of business processes or other reasons, will see an increase in the water charges on their utility bill.

The increase of the Raw Water Surcharge will also impact those customers who use more water than their annual allotment. Fort Collins Utilities is reaching out to customers who exceeded their annual allotment in 2012 through a letter explaining the water shortage situation and encouraging those customers to use less water and/or provide additional water rights, City certificates or cash in-lieu of water rights to avoid this surcharge in 2013.

Implementation of the Water Supply Shortage Response Plan may have a financial impact on the Water Fund. Attachment 1 shows the estimated revenue loss for each Response Level. The Plan calls for no rate adjustment at Response Level 1. It is estimated that remaining at Response Level 1 throughout the summer (May through October) will result in the loss of \$850,000 in operating revenue to the Water Fund.

ENVIRONMENTAL IMPACTS

The Response Level water rate adjustments promote conservation to sustain the needed water supplies to support indoor and health and safety uses. The water restrictions target lawn watering as grass is less vulnerable to limited watering. Depending on the level of restriction, lawns may go dormant and brown lawns will be visible throughout the community. However, landscape watering for trees, shrubs and vegetable gardens is not limited, but must use a hose with a shut-off nozzle or low-volume, efficient irrigation. These landscape features are vulnerable to a lack of water and expensive to replace. Trees are often watered when lawns are watered. During the 2002-2003 restrictions, many trees were adversely affected. The City will offer landscape survival care information to citizens during the water restrictions, with a strong emphasis on caring for trees.

PUBLIC OUTREACH

Staff has begun the following public outreach:

- *Communicated in the 2012 Year-End Letter to our Customers*
- *Contact with agricultural CBT renters, no water available for rent*
- *Numerous media interviews*
- *Contact with Northern Water staff*

A Water Supply Management Action Plan is being developed that will detail key activities to provide awareness and education to the community on the water restrictions. Activities include:

- *Bill inserts and City News articles, starting in March to customers*
- *Dedicated restrictions website*
- *An icon to graphically keep public aware of water supply monitoring*
- *Articles in City and local newsletters, newspapers and other outlets*
- *Newspaper and magazine advertising*
- *Outdoor advertising on bus benches and bus shelters*
- *Displays at events and public locations, such as City buildings, libraries and other venues*
- *Speakers Bureau that will give presentations to targeted customers, and to other interested organizations*
- *Coordinate meetings for targeted customers, such as homeowner associations, industry groups, key utility customer accounts, landscape contractors, restaurants and other*
- *Participate at events, such as Biz Ed, Residential Environmental Program, Earth Day, Chamber Green in Action, Water Works open house, ClimateWise events and others*
- *Offer watershed tours for key accounts, City employees and the general public*
- *Continue outreach for water rebates, sprinkler system audit program and other help for saving water*

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Outreach key messages and information about the water restrictions, as well as enforcement procedures, will prepare the Fort Collins community for the April 1 effective date.

The Water Supply Shortage Response Plan, Ordinance No. 048, 2003, states, “Upon such determination and declaration, the City Manager shall cause to be published in the local newspaper of record a notice of the restrictions and requirements corresponding to the Water Supply Shortage Response Level, as set forth herein, and the effective date of said restrictions and requirements...” The Public Notice is scheduled to be published in the Coloradoan on March 17 and March 24, and on the Fort Collins Utilities website.”

Donnie Dustin, Water Resources Manager, discussed the necessity for water restrictions and stated staff is hopeful there will not be a need to go beyond level 1 restrictions.

Lance Smith, Utilities Strategic Financial Planning Manager, discussed the necessity for water rate changes at Response Levels 2, 3, and 4. Those increases would simply maintain operating revenues at the current 2013 budgeted level. Smith reviewed the proposed rate increases.

Lisa Rosintoski, Customer Connections Manager, presented the Water Supply Management Action Plan, which is a comprehensive effort to inform and educate community members regarding water use management. She also discussed Water Restrictions Violations Management, which will focus on education and awareness prior to warnings and violations.

Bill Whirty, Manager of Parks, discussed the redefinition of water fountains to water features. This change will allow public water features and private water fountains to remain on during Response Levels 1 and 2, and off during Response Levels 3 and 4. Additionally, this Ordinance would change the watering days for large spaces from Friday, Saturday, and Sunday to Tuesday, Wednesday, and Thursday.

Councilmember Manvel requested additional information regarding the excess water use surcharge. Smith replied there are commercial customers which have an annual allotment. Less than half of the commercial customers (around 340) have an allotment.

Councilmember Manvel noted this surcharge would basically double rates for water used beyond the allotment. Smith replied in the affirmative.

Councilmember Troxell asked if the breweries fall under the commercial category. Smith replied in the affirmative.

Councilmember Troxell asked if there are any special agreements with the breweries, given that water is a primary ingredient in their products. Smith replied there is no distinction in terms of allotment, though businesses may increase their allotment by turning over additional water rights, or cash in lieu of, to increase the allotment.

Councilmember Troxell asked if staff has received any concerns from commercial customers. Smith replied the brewery industry does have some concerns. Rosintoski replied the industry is more concerned about the water quality.

Councilmember Troxell asked if the current fire near Lory State Park is anticipated to affect water quality. Kevin Gertig, Water Resources and Treatment Operations Manager, replied staff is currently ascertaining the extent of the Galena Fire and its impact on Horsetooth Reservoir.

Councilmember Troxell asked who will speak at various meetings regarding these changes. Rosintoski replied the speakers will be Fort Collins Utilities employees who will take turns addressing audiences as requests come in.

Councilmember Horak asked about the triggers for an increase in response levels. Dustin replied supplies will need to be determined after receiving the Colorado Big Thompson (CBT) quota, which will be the largest trigger. The Ordinance allows the City Manager discretion to change the Response Level.

Councilmember Horak asked if prior years' data has been used to support the current model. Dustin replied the operating revenues are based on an average year. There has not been a significant study in terms of price elasticity.

Councilmember Manvel asked about the revenue loss if there is no rate adjustment at Level 1. Smith replied there will be lost revenue for 2013 as the City is not doing water leases. There will likely be some response with the excess water use surcharge. There will be roughly a \$2 million revenue loss.

Councilmember Manvel asked why rate increases will not occur at Level 1. Smith replied the previous Ordinance did not recommend a rate adjustment at Level 1 and, in 2012, operating revenues were higher than anticipated which will offset the expected revenue loss.

Councilmember Manvel made a motion, seconded by Mayor Pro Tem Ohlson, to adopt Ordinance No. 047, 2013, on First Reading.

Councilmember Horak encouraged staff to differentiate between the rate increase and the water conservation issues as they are developing public outreach strategies.

Mayor Weitkunat noted the utilities are revenue neutral and commended the use of this plan.

The vote on the motion was as follows: Yeas: Weitkunat, Manvel, Kottwitz, Ohlson, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 048, 2013,
Amending Chapter 10 of the City Code Relating to Development
in the Poudre River Floodplain, Adopted on First Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The final component of the Stormwater Repurposing program is to review the level of regulation protecting life and property for areas within the Poudre River floodplain. Staff is recommending that Council adopt revisions to the City Code that will establish a “performance-based” criteria and regulation that places more emphasis on life safety through advance warning and evacuation.

The proposed Code language requires the development of a site-specific Emergency Response Preparedness Plan (ERPP) for additions, substantial improvements, change of occupancy, redevelopment and/or new development within the Poudre River 100-Year floodplain. The ERPP requires that procedures be established for evacuation a minimum of two hours in advance of when flood waters will impact the site and/or any portion of the designated evacuation routes. The Code language requires that the ERPP be reviewed and updated annually if there are substantive changes to elements of the plan. In order to facilitate the implementation of this new Code language, staff has developed the following documents:

- 1. A draft template that uses the requirements outlined in the proposed code language to guide the preparation of site-specific ERPP’s*
- 2. A draft ERPP annual checklist form.*

The Working Committee and North Fort Collins Business Association (NFCBA) support the new approach and recommend that the proposed revisions to the Poudre River floodplain regulations be presented to City Council for adoption. The Water Board recommended approval of the proposed revisions as an enhancement to the existing regulations, but encouraged Council consider prohibiting any new structures (i.e., development, redevelopment, etc.) in the 100-Year Floodplain.

BACKGROUND / DISCUSSION

City Council requested a review of the Stormwater program in October 2008. Staff identified a list of issues to be addressed that included a review of the Poudre River floodplain regulations. The review was to focus on whether revisions were needed to better address foreseeable flooding risks to improve life safety and reduce property damage using a sustainable approach that considers environmental, economic and social factors. The current regulations focus almost exclusively on protecting new structures from flooding damage.

Evolution of Floodplain Regulation Revisions

The floodplain regulations have undergone thorough investigation and extensive public outreach over the last 2 ½ years. Floodplain regulation options have been presented and discussed previously at four Council work sessions, four Water Board meetings and three Natural Resources Advisory Board meetings.

A Working Committee was created to provide public discussion on these revisions met eleven times with Stormwater and Poudre Fire Authority (PFA) staff between January 2011 and June 2012. The objective was to research, investigate and evaluate the potential development of an Adverse Impact Review (AIR) process and criteria. The current regulations allow non-residential development within the 100-year flood fringe on the Poudre River that meets specific criteria (i.e., freeboard, property use, etc.). Under these existing regulations, the potential flooding impacts associated with

such development are not analyzed. In addition, the group considered additional life safety and property damage reduction criteria. The overarching goal was to establish criteria that balance the competing economic, environmental, and public safety values of the Fort Collins community.

As a result of these efforts, and taking into account concerns expressed at Council work sessions regarding the development of an implementable approach that addresses community values, the proposed revisions have evolved over time.

Options presented to Council over this time include:

- *No change to the Poudre River floodplain regulations (null alternative).*
- *The Poudre River floodplain regulations be revised to adopt a 0.1 foot rise floodway*
- *The Poudre River floodplain regulations be revised to not allow any structures in the 100-year floodplain.*
- *Adverse Impact Review (AIR).*

The Working Committee and staff recommended to City Council that additional consideration be given to implementing specific life safety and property damage criteria that will enhance and support the existing floodplain regulations.

At the work session in October 2011, Council directed staff to:

- *Investigate a "scalable" AIR regulation that would require additional investigation for any development that happens in areas with a higher potential impact to the flood elevations;*
- *Work with PFA for the development of specific code language;*
- *Examine a notification process similar to the Land Use Code with clarification of the associated legal issues from the City Attorney's Office; and,*
- *Provide a consistent summary format for the various regulation comparison charts.*

In 2012, Stormwater and Poudre Fire Authority (PFA) staff worked in combination with the Working Committee to further evaluate the AIR process and develop specific life safety criteria. At its May 14, 2012 Working Committee meeting, the general consensus was reached to discontinue the development of a scalable AIR regulation for the Poudre River in consideration of:

- *the future construction of the Poudre River Downtown Core Improvements and subsequent reduction in potential development within the revised 100-year floodplain near College Avenue;*
- *the Link-N-Greens area will develop using a full CLOMR/ LOMR process that will include improvements and enhancements to the Poudre River adjacent to the site;*
- *understanding that the Poudre River RiskMAP process will result in dramatically changed (corrected) floodplain delineation, mapping and flood elevations;*
- *taking into account that the Floodway Surcharge Analysis identified primarily small floodway impacts to the Poudre River section within the Mulberry Corridor; and,*
- *noting that the Mulberry Corridor is in the Growth Management Area (GMA) and not within the City Limits.*

Floodplain Regulation Code Language Revisions

The current regulations allow non-residential development within the 100-year flood fringe on the Poudre River that meets specific criteria (i.e., freeboard, property use, etc.). In addition, “dryland access” by elevating the access roadways is a typical consideration to ensure the safe evacuation of properties, but only when feasible.

The final consensus of the Working Committee was that the Poudre River floodplain regulations should be revised to improve life safety by requiring the preparation of site-specific Emergency Response and Preparedness Plans (ERPPs) for additions, substantial improvements, change of occupancy, redevelopment and/or new development within the Poudre River 100-Year floodplain. Staff from the City and PFA were tasked with developing the final code language to incorporate proposed revisions to the Poudre River Floodplain Regulations into the City Code.

The current effective Federal Emergency Management Agency (FEMA) 100-Year flood elevations reflect significant flooding depths (i.e., 2 to 3 feet on Vine Drive east of College Avenue) on existing public arterials and collectors that serve these areas. Requiring the construction of new emergency fire apparatus (access) roads to serve these properties in times of flooding is not feasible as it will result in excessive grades and extended lengths of “elevated” roadways that do not appropriately provide for improved life safety and emergency response.

At the February 4, 2013 Working Committee meeting, staff proposed the following revisions which create a “performance-based” life safety regulation. Staff proposed that the Emergency Response and Preparedness Plan (ERPP) require procedures be established for evacuation a minimum of two hours in advance of when flood waters will impact the site and/or any portion of the designated evacuation routes. This places the emphasis on life safety through advance warning and evacuation instead of the costly and in many cases infeasible construction of “elevated” emergency access roads. It also avoids potential adverse floodplain impacts resulting from embankments constructed to elevate new access roads. The proposed Code language that reflects the elimination of the fire apparatus (emergency access) road requirements and includes the revised ERPP provisions is shown in Attachment 1.

In order to demonstrate how the process would work, staff presented the following documents:

- *A draft template that uses the requirements outlined in the proposed code language to guide the preparation of site-specific ERPP’s*
- *A sample ERPP for a property within the Poudre River 100 Year Floodplain situated along Vine Drive; and,*
- *A draft ERPP annual checklist form.*

The Working Committee provided valuable feedback and comments on the updated approach as well as the draft Code language and ERPP forms. The latest versions of the ERPP template and annual checklist form are included as Attachments 2 and 3, respectively.

FINANCIAL / ECONOMIC IMPACTS

The proposed approach of requiring Emergency Response and Preparedness Plans (ERPPs) places more emphasis on life safety through advance warning and evacuation instead of the costly and in many cases infeasible construction of “elevated” emergency access roads. This approach is also significantly less costly than the scalable AIR approach.

The requirement to prepare an ERPP is triggered by an addition, substantial improvement, change of occupancy, redevelopment and/or new development within the Poudre River 100-Year floodplain. Anticipated costs include those that are more easily estimated (initial preparation of the ERPP, annual review and update if conditions have changed) and implementation measures such as signage and instructions, emergency preparedness kit, mandatory practice drills, staff training, etc. which are more variable depending on the property location, type of structure, etc. The cost estimates for the ERPP itself are:

- *Initial Cost of ERPP Preparation* \$500 to \$4,000 (Depends on complexity of site)
- *Annual Cost (Monitoring / Notices)* \$0 to \$1,000 (Depends on use of own staff or contract with a meteorological consultant).

Given the typically significant project costs associated with any of the development actions that would trigger the requirement to prepare the ERPP, the costs involved with the ERPP process are considered by staff and the Working Committee as reasonable in order to improve life safety.

ENVIRONMENTAL IMPACTS

The existing Poudre River Floodplain Regulations provide protection to the Poudre River by restricting development in the floodway and also, to a lesser degree in the flood fringe. Staff believes that the regulations in the Land Use Code (especially related to buffer standards) provide the additional protections desired by this community and that any additional code language in Chapter 10 of City Code (Flood Prevention and Protection) would be redundant and not provide a measurable additional benefit.

When the Poudre River Floodplain Regulation Review was first initiated, one of the key areas of concern was protecting the natural and beneficial functions of the Poudre River near the Link-N-Greens Golf Course as this was the largest privately owned, undeveloped property along the Poudre River. The current floodplain regulations in combination with the Natural Resources Buffer regulations applied at the Link-N-Greens site are achieving the desired outcomes that were discussed at the beginning of the Poudre River Floodplain Regulation Review process. As part of the planned Woodward development of Link-N-Greens, considerable amounts of previously placed fill are being removed to lower the overbank to allow flows to spread out more frequently. This provides for reduced velocities and improved water quality. Some of this excavated material will be used to elevate the buildings to protect the structures from flood damage. An old meander bend is being recreated to allow the river to be more connected with the floodplain. Extensive plantings of native species will create more ecologically diverse habitats. Bank stabilization work will mitigate erosion problems along the stream banks. The river restoration work is being modeled to ensure that there is no rise in 100-year flood elevations on nearby property owners. The floodplain maps will be revised through the FEMA CLOMR and LOMR process to reflect the changes. This is clearly a success story of how the existing floodplain regulations and natural resources buffer regulations can work together to achieve property protection and improve natural and beneficial functions of the floodplain.

BOARD / COMMISSION RECOMMENDATION

Water Board

At its February 21, 2013 meeting, the Water Board had an extensive discussion regarding the original options and the Adverse Impact Review (AIR) approach. Several Boardmembers questioned whether the proposed ERPP process significantly increases life safety if the regulations still allow non-residential development in the 100-Year Floodplain. Staff noted that any new development, redevelopment, addition or substantial improvement is required by the floodplain regulations to elevate new structures above the 100-Year Floodplain and to meet freeboard (additional 2 feet) requirements. This greatly reduces potential flooding of and damage to the new construction. The current regulations, however, do not address emergency access to and evacuation of these structures for employees, customers, vendors, etc. The intent of the ERPP process is to provide emergency response plans aimed at improving life safety by encouraging evacuation of these structures in advance of potential flooding. Prohibiting any new structures in the 100-Year floodplain was championed by some Boardmembers as providing an even higher standard for life safety.

Concern was expressed that more emphasis should be placed on environmental considerations and protection of the natural and beneficial functions of floodplains. Staff noted that the existing regulations provide protection to the Poudre River by restricting development in the floodway and also, to a lesser degree in the flood fringe. Staff believes that the regulations in the Land Use Code (especially related to buffer standards) provide the additional protections desired by this community and that any additional Code language in Chapter 10 of City Code (Flood Prevention and Protection) is redundant and does not provide a measurable additional benefit. A key concern has been protecting the natural and beneficial functions of the Poudre River near the Link-N-Greens property. Staff from Stormwater, Natural Areas, and Parks have been actively involved in collaboration throughout the development review process. The proposed Woodward development is clearly a success story of how the existing floodplain regulations and natural resources buffer regulations can work together to achieve property protection and improve natural and beneficial functions of the floodplain.

The Water Board motion below was approved by a vote of 10 to 1:

“In order to mitigate life-safety hazards, the Water Board recommends that the existing Poudre River floodplain regulations be revised to incorporate the proposed code language introducing the requirement that a site-specific Emergency Response and Preparedness Plan be prepared and implemented for additions, substantial improvements, change of occupancy, redevelopment and/or new development within the 100-Year floodplain. The Water Board would further recommend that City Council consider excluding new developments or structures within the 100-year floodplain.”

Attachment 4 contains an excerpt of the minutes from the February 21, 2013 Water Board meeting

Natural Resources Advisory Board (NRAB)

At its February 20, 2013 meeting, the Natural Resources Advisory Board had an extensive discussion regarding the original options and NRAB's previous recommendation that Council adopt the option prohibiting new structures in the 100-Year Floodplain. Staff noted that any new development, redevelopment, addition or substantial improvement is required by the floodplain regulations to elevate new structures above the 100-Year Floodplain and to meet freeboard (additional 2 feet) requirements. This greatly reduces potential flooding of and damage to the new construction. The current regulations, however, do not address emergency access to and evacuation of these structures for employees, customers, vendors, etc. The intent of the ERPP process is to provide emergency response plans aimed at improving life safety by encouraging evacuation of these structures in advance of potential flooding.

NRAB members indicated that more emphasis should be placed on environmental considerations and protection of the natural and beneficial functions of floodplains. Stormwater staff noted that the existing regulations provide protection to the Poudre River by restricting development in the floodway and also, to a lesser degree in the flood fringe. Both Stormwater and Natural Areas staff stated that the regulations in the Land Use Code (especially related to buffer standards) provide the additional protections desired by this community. The proposed Woodward Development of the Link-N-Greens site presented to NRAB earlier in the evening was referenced as an example of how the existing floodplain regulations and natural resources buffer regulations can work together to achieve property protection and improve natural and beneficial functions of the floodplain.

The NRAB chose not to provide a recommendation on the proposed draft Code language, citing the life safety focus as being outside of its charter.

PUBLIC OUTREACH

In 2012, Stormwater and PFA staff worked in combination with the Working Committee to further evaluate the AIR process and develop specific life safety criteria. The Working Committee met five times in 2012 and recommended that the development of a scalable AIR regulation be abandoned and that staff develop final Code language to limit flood depths on new fire apparatus (emergency access) roads to six inches and require the preparation and implementation of Emergency Response and Preparedness Plans (ERRPs) for properties that pursue some type of development or redevelopment.

Working Committee

At its February 4, 2013 meeting, the Working Committee concurred with the staff proposal to eliminate the six-inch flood depth criteria for emergency access roads and instead modify the ERPP requirements to create a "performance-based" life safety regulation requiring procedures be established for evacuation a minimum of two hours in advance of when flood waters will impact the site and/or any portion of the designated evacuation routes. The Working Committee Meeting minutes are provided in Attachment 5. In summary, the Working Committee's recommendations to Council are:

- 1. Discontinue the development of a scalable AIR regulation; and,*

2. *Adopt the proposed draft Code language that requires new construction, additions, substantial improvements, redevelopment or change of occupancy of structures within the Poudre River 100 Year Floodplain to develop, obtain approval of, and implement an Emergency Response and Preparedness Plan.*

Chamber of Commerce

On February 8, 2013, the proposed Code language and accompanying ERPP process, template and annual checklist were presented to the Chamber of Commerce. Attendees provided varied input and feedback on the process, but in general expressed that the new approach was much preferable to the AIR process that had been under consideration previously.

North Fort Collins Business Association (NFCBA)

On February 12, 2013, staff received an email (Attachment 6) from the North Fort Collins Business Association (NFCBA) expressing appreciation for the work that has gone into the investigation of potential revisions to the Poudre River Floodplain Regulations. The NFCBA is in support of the updated approach and identified some concerns/questions to be addressed in finalizing the process:

1. *Clarify the potential liability for businesses, individuals that submit ERPP plans;*
2. *Recommend that the City consider providing training on the ERPP process;*
3. *Increase clarity on who is responsible for the ERPP (i.e. building owner, tenant);*
4. *Provide better information on expected initial / annual costs;*
5. *Recommend the City develop/offer a grant program for ERPP costs; and,*
6. *Requested that Council finalize the FP regulation review.*

Staff will address these issues in the finalization of the Code language and administrative procedures associated with the ERPP process.”

Jon Haukaas, Water Engineering Field Operations Manager, stated this Ordinance is one of the final components of the stormwater repurposing effort and is focused on Poudre River floodplain regulations.

Ken Sampley, Stormwater and Floodplain Program Manager, reviewed the regulations governing the Poudre River. Sampley reviewed the public and boards and commissions outreach process. He stated the staff recommendation is to implement a performance-based regulation, which is focused on improving life safety through advanced warning and evacuation. A site specific emergency response and preparedness plan (ERPP) will be required for additions, substantial improvements, change of building code occupancy, redevelopment and/or new development within the 100-year floodplain. Sampley stated the ERPP would be required in conjunction with the development review process and associated floodplain use permit. Staff is also recommending that an additional Code provision be added to Section 10.48 for Second Reading. This provision would recognize sites that will ultimately be removed from the 100-year floodplain and not require ERPPs for those sites.

Kevin Jones, Fort Collins Chamber of Commerce Business Advocacy Coordinator, thanked staff for work on this item. He supported the proposal as being business-friendly and requested regular training and outreach for affected businesses and the inclusion of an indemnification clause to

address liability for affected businesses. He opposed the Water Board recommendation to prohibit any structures in the 100-year floodplain.

Councilmember Kottwitz requested staff input regarding liability questions from the North Fort Collins Business Association. Sampley replied the Plans will be reviewed jointly by Poudre Fire Authority and the City of Fort Collins Stormwater master planning staff. Remodeling does not trigger the ERPP, unless it reaches the level of a cumulative substantial improvement. In terms of liability for the ERPP being out of date, failure to comply with the ERPP requirements would constitute a violation of Chapter 10 and could be a basis for enforcement action by the City; however, educational tactics will be employed. The Code does not contain any language specifically relating to the liability of individuals.

Councilmember Kottwitz asked about the ongoing cost of the ERPP. Sampley replied staff estimates the initial cost to be \$500-\$2,000. Annual costs would include some type of weather monitoring, up to about \$1000 per year.

Councilmember Manvel noted this does not apply to residential properties and asked if residential properties in the floodplain are allowed to have a major expansion. Sampley replied substantial improvements are not allowed for residential properties in the floodplain.

Mayor Pro Tem Ohlson asked about the risk map process. Sampley stated the risk map process with FEMA has just started and will take 3 to 5 years. It will essentially remap the Poudre River floodplain from its confluence with the Platte River all the way to the west of the city.

Mayor Pro Tem Ohlson asked if it would be possible for the floodplain to increase in size in some places. Sampley replied in the affirmative.

Councilmember Troxell requested specifics regarding the ERPP. Sampley replied the cost estimates were received from the engineering consultant who aided in preparing the form. The engineering time would go toward determining whether the property and/or evacuation route would be impacted based on elevation. The elevation models will be provided to engineering consultants by the City.

Mayor Weitkunat asked about stream flow gauge data. Sampley replied that data will provide flow information which can be translated into an actual elevation of the river; individual properties can determine when they may be impacted. That data is live on the stormwater web page.

Mayor Weitkunat asked why the City would not notify property owners, as it does in other emergencies. Sampley replied the City would notify through LETA if there is imminent flooding danger; however, because each property will be affected slightly differently, staff does not have the capability to individually notify property owners for lower levels of flooding.

Councilmember Horak asked if property owners can print the forms from the City's web page. Sampley replied the forms are not yet on the website as Council has not yet adopted the Code language; however, they will be available on the website.

Councilmember Horak noted the annual updates would not take an engineering consultant to complete.

Councilmember Troxell made a motion, seconded by Councilmember Horak, to adopt Ordinance No. 048, 2013, on First Reading.

Mayor Pro Tem Ohlson discussed the timing of this item and opposed the way the City responds when the business community or another special interest objects versus the way it responds when the public interest or environmental neighborhood groups object. He stated he would not support the motion.

Councilmember Manvel stated this is better than nothing, though he understands Mayor Pro Tem Ohlson's points. He requested information as to why residential structures should not have a safety plan in place prior to Second Reading.

Councilmember Kottwitz commended staff for work on the item but expressed concern regarding liability issues. She suggested a further examination of those issues in the future.

Councilmember Troxell commended staff and stated the City is taking a prudent step for the health and safety of property owners in the floodplain.

Councilmember Horak requested information regarding the liability issue. Deputy City Attorney Daggett replied the liability issue is not any different than with any other provision in the Code; therefore, the mere fact that something is a violation of the City Code does not turn it into a private cause of action for some party who may want to claim that another party is liable to them. There is no attempt to create private liability in this situation.

Councilmember Manvel asked if completing this plan would give a property owner protection from liability. Deputy City Attorney Daggett replied it is difficult to predict liability cases; however, in general, it could be argued that the property owner made a reasonable effort to provide safe premises.

Councilmember Manvel asked if he has support for staff completing a report on residential properties within the floodplain. He received sufficient support from Councilmembers for that request.

Mayor Weitkunat commended the outcome of this item and stated she would support the inclusion of residential areas in all City floodplains. She asked if application of these criteria to all City floodplains has been considered. Sampley replied staff received direction to look only at the Poudre River and there is currently no plan to extend the criteria to other floodplains.

Councilmember Manvel encouraged an examination of safety in the other floodplains on a future Council work plan.

Mayor Pro Tem Ohlson stated there should be no development in floodplains as they are important riparian and wildlife movement corridors.

Mayor Weitkunat stated life and safety should be of paramount concern as there is already development in the floodplain. Mayor Pro Tem Ohlson noted these regulations apply only to new structures or additions and asked why the plan is not going to be required retroactively. Sampley

replied the City cannot retroactively apply the regulations if there is not a condition of approval which would trigger the necessity for a plan.

Councilmember Manvel asked if the City could disallow residents from living in the floodplain without a safety plan. Deputy City Attorney Daggett replied staff could work on applying the regulation to existing structures; however, it would be difficult to develop an effective date.

Councilmember Manvel clarified he simply wants information regarding the residences, not an inclusion of the issue in the Code language.

The vote on the motion was as follows: Yeas: Weitkunat, Manvel, Kottwitz, Horak and Troxell. Nays: Ohlson.

THE MOTION CARRIED.

**Ordinance No. 046, 2013,
Amending Chapter 12 of the City Code to Establish
a Disposable Bag Fee, Failed to Pass**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

At its November 27, 2012 work session, Council requested staff develop an ordinance that would apply a fee on single-use grocery shopping bags. An ordinance is proposed that establishes a 10-cent fee on both plastic bags and paper sacks that are used in the community’s grocery (food) stores.

BACKGROUND / DISCUSSION

Like many communities around the country and throughout the world, people in Fort Collins have expressed concerns about shopping bags that are designed to be used once before they are thrown away. At its November 27, 2012 Work Session, City Council reviewed options for decreasing the amount of disposable shopping bags that are used in Fort Collins. In preparation, staff prepared a Triple Bottom Line Analysis of several approaches to reduce single-use bags including education and outreach, a ban, assessing a fee or tax, and requiring credit or reimbursement when customer brings their own bags. After discussing the information, City Council requested that staff develop an ordinance that would apply a fee on single-use grocery shopping bags (Attachment 2). Council also requested that staff continue to increase awareness and outreach regarding plastic bags, and to look for ways to improve the availability of recycling for plastic “film” bags in Fort Collins.

A number of US communities have enacted a fee on plastic and paper bags including:

- *Washington DC*
- *Basalt, CO*
- *Boulder, CO*
- *Montgomery County, MD*

In Fort Collins, negative impacts from single-use bags include the following:

- *Contributing to the volume of discarded material that enters landfills*
- *Climate change: a source of 772 metric tons of carbon dioxide equivalent (CO₂e) emitted from Fort Collins*
- *Littering, including in City natural areas and stormwater conveyances*
- *Reduction in value of single-stream recyclables (plastic bags are considered contamination when mixed with single stream items such as paper, cans and bottles)*

The proposed ordinance assesses a fee to help offset these impacts. Furthermore, community goals and values support action to decrease waste by reducing it at the source, which is expressed in City Plan, Principle ENV 14:

The City will apply the US Environmental Protection Agency's integrated "hierarchy" of waste management to help protect all environmental resources, including air, soil, and water, using source reduction as the primary approach, followed in order by: reuse; recycling/composting; energy recovery using emerging pollution-free technology; and, landfill disposal (where methane gas capture is employed), as a final resort.

Adopting a fee on bags that motivates shoppers to use fewer plastic or paper bags is expected to have the following results:

- *Encourage source reduction and re-use, the most effective actions that can be taken to manage the waste stream (by bringing a durable carryout bag with them to stores for their purchases, shoppers are practicing both of these important principles)*
- *Serve as a "gateway habit", reinforcing people's willingness to expand re-use efforts to other products*
- *Increase the Fort Collins community's ability to meet its goal of diverting 50% of trash from landfill disposal*
- *Help meet the community's goals for reducing greenhouse gas emissions*
- *Meet the public's interest in recovering even more materials that continue to be discarded*
- *Reduce "life-cycle" impacts of single use bags – which include impacts from material extraction to production and disposal of plastic bag use by transitioning to a bag type that has lower life cycle impacts*
- *Reduce stray litter and pollution in the community, and globally, including plastic bags in trees and waterways*

Proposed Ordinance Details

The proposed Ordinance charges a 10-cent fee on both plastic bags and paper sacks used in the community's grocery (food) stores. Nationwide, grocery stores generate 60% of disposable bags (<http://www.boulder.colorado.gov/files/05152012Agenda/AgendaFINALWeb.pdf>). The Ordinance defines grocery stores as retail establishments located in city limits that operate year-round and sell a full line of food stuffs. The definition does not include temporary vendors or vendors for whom food sales represents less than 2% of gross profit.

Following trends set in other communities that have adopted bag fees, the proposed ordinance splits the bag-fee revenue between the City (60%) and the grocery stores (40%).

Money (60% of fee) would be used by the City to pay for activities that include:

- *provide reusable carryout bags to residents and visitors;*
- *educate residents, businesses, and visitors about the impact of disposable bags on the city's environmental health, the importance of reducing the number of single-use carryout bags entering the waste stream, and the expenses associated with mitigating the effects of single-use bags on the city's drainage system, transportation system, wildlife, and environment;*
- *fund programs and infrastructure that allow the Fort Collins community to reduce waste associated with disposable bags;*
- *cover City's costs to collect, manage fees and administer new programs aimed at reducing consumption of single-use bags; and*
- *purchase and install equipment designed to minimize bag pollution, including recycling containers and waste receptacles associated with activities that reduce trash associated with disposable bags; and, mitigate the effects of disposable bags on the city's drainage system, transportation system, wildlife, and environment.*

Groceries would be able to retain 40% of the disposable bag fees to:

- *offset new administrative costs;*
- *provide educational information and signage about the disposable bag fee to customers;*
- *train staff in the implementation, collection, and administration of the fee;*
- *collect, account for and remit the fee to the City; develop and display informational signage to inform consumers about the fee, encourage the use of reusable bags, promote recycling of plastic bags; and, improve infrastructure to increase plastic bag recycling;*
- *Sell low-cost reusable bags to customers to use; and*
- *Provide alternative containers for customers who use federal or state food stamps, since these funds may not be applied to the purchase of carry-out bags.*

The Ordinance under consideration implements the fee starting as early as October 1, 2013. This allows six months following enactment of the Ordinance for grocery retailers and City staff to make the necessary financial, accounting, and education and outreach preparations.

To ensure grocery stores were collecting the 10-cent per bag fee, City sales tax staff will monitor a new remittance that would be submitted by retailers. If a lack of compliance with the Ordinance is suspected, Finance Department auditors will be authorized to conduct an audit, much as they are authorized to conduct sales tax audits of Fort Collins retailers. The Ordinance defines non-compliance by food stores with any provision of the Ordinance as a civil infraction.

Anticipated Effectiveness of Fee

In 2009, Washington DC was the first municipality in the country to implement a fee (5 cents per bag) on disposable plastic and paper bags. This initiative demonstrated significant reduction in disposable bag use. After the first year, Washingtonians reduced disposable bag use from 270 million in 2009 to about 55 million in 2010, a reduction of 80 percent (Washington Post, "District Businesses Not Harmed by Bag Tax"). The Alice Ferguson Foundation conducted a survey one

year after implementation of Washington DC’s bag fee ordinance to measure public perceptions and effects on businesses (<http://fergusonfoundation.org/wp-content/uploads/2012/12/AFF-DC-Research-Memo-2-15-11.pdf>). The survey showed that:

- 75% of Washington residents reported a reduction in their bag usage
- a majority of businesses reported that their bag consumption dropped at least 50%
- 78% of businesses had a neutral or positive response when asked how the bag fee was impacting their business.

There are two other compelling examples of the impact of modest fees on disposable bag use. In 2002, Ireland implemented a 15-Euro-cent tax (approximately 20 US cents) on plastic bags and found that plastic bag consumption decreased 90% in the first year after the policy was enacted (Environment California “Leading the Way Toward a Clean Ocean” p.14). In 2007, IKEA became the first major retailer in the United States to charge a fee; 5 cents for disposable plastic bags and 59 cents for reusable bags. IKEA has witnessed a 95% drop in disposable plastic bag use at the store (County of Los Angeles, California “An Overview of Carryout Bags in Los Angeles County” p.43).

In Fort Collins, a fee on bags may have the effect of changing shoppers’ selection at grocery stores for the type of sack they use to hold their purchases, from a single-use plastic or paper bag to a durable carry-out bag that can be used multiple times. Based on experiences in communities around the world, staff estimates reduced consumption of single-use bags by 50% in the first year, as people become accustomed to bringing their own durable bag with them to grocery stores. In the second year another estimated 50% reduction is anticipated and another 50% reduction will occur in the third year.

FINANCIAL / ECONOMIC IMPACTS

A 10-cent per bag fee in Fort Collins will create a new income stream. A study conducted for the City of Boulder in 2012 put the estimated number of bags affected by a fee on disposable grocery store bags at 145 per capita each year, based on information about bag use from large, medium, and small grocery stores and convenience (food) stores in Boulder. Applying this per capita amount to our population suggests about 22 million disposable bags would be covered by a fee in Fort Collins. A 10-cent/bag fee would create a fund of nearly \$1 million in the first full year of implementation.

Budget Year	2013 (Oct-Dec) (50% reduction)	2014 (50% reduction year-to-year)	2015 (50% reduction year-to-year)	2016 (50% reduction year-to-year)
<i>Estimated # disposable bags affected by fee</i>	<i>2.7 million 1/8 of 22 million bags used throughout year)</i>	<i>9.8 million</i>	<i>5.0 million</i>	<i>2.5 million</i>
<i>Fees remitted to City (60% of fee)</i>	<i>\$164,571</i>	<i>\$586,188</i>	<i>\$ 298,278</i>	<i>\$151,777</i>

Budget Year	2013 (Oct-Dec) (50% reduction)	2014 (50% reduction year-to-year)	2015 (50% reduction year-to-year)	2016 (50% reduction year-to-year)
<i>Fees remitted to grocery stores</i>	\$109,714	\$390,792	\$198,852	\$101,184
TOTAL	\$274,286	\$976,980	\$497,130	\$252,961

Using Boulder's per capita estimate as a proxy for Fort Collins, if each resident were to use 145 disposable bags per year to hold grocery shopping purchases instead of switching to a durable reusable bag, a 10-cent/bag fee would cost each resident \$14.50 annually.

Grocery stores stand to save money when a fee is imposed on disposable bags because they would no longer have to automatically provide customers with a bag that costs in the range of 2 cents to 5 cents each. Although bag manufacturers and retailers have not been willing to publicize exact numbers, savings may be roughly estimated at several thousands of dollars per month for each of the major grocery stores in Fort Collins. The option for grocers to begin charging for each bag can be seen to represent a market-based solution; customers may either choose to buy the bag or decline it and either go without, or bring their own. Administration of fee collection may add to a grocery store's operating costs, but those additional costs will be offsets by the revenue from the fee.

The benefits of having fewer disposable bags to clean up in public areas will save the City money; however, staff was not able to quantify the costs savings to overall litter programs from a reduced number of disposable bags. Having fewer disposable bags will also save money at recycling plants in Denver and will improve their profitability. From the Finance Department's perspective, a new .25 FTE clerk/accountant would be needed to carry out tasks for collecting a fee on grocery sacks, including entering filings from grocery stores as journal entries and copying remittance slips for Finance Department reports, and auditing. Another new .5 FTE environmental education specialist/planner would be needed to manage the use of the funds and implement new programs on which to spend fee revenues (education and outreach activities, purchase and distribution of durable bags to citizens, enhancement to local recycling opportunities for bags, etc.).

ENVIRONMENTAL IMPACTS

An Ordinance restricting disposable bags will have a small but measurable impact on the community's waste stream. According to Brendle Group, a local consulting firm hired by the City to evaluate options for reducing consumption of single-use bags, an estimated 220 tons/year of plastic bags from Fort Collins are sent to landfills for disposal, which represents .2% of the waste stream that Fort Collins sends for landfill disposal. (No data were available for disposable paper bags.) Over a three-year period of October 2013 through 2016, it is estimated that amount of disposable bags used in community Food Stores would be reduced by 60% compared to business as usual, thereby diverting a potential 709 tons of waste (281 tons/year).

Both plastic and paper single-use bags cause other types of environmental damage. Plastic is very visibly a problem in maritime states and communities, where a serious consequence of plastic bag pollution is lethal harm to marine life that ingests bags or get tangled in them, and plastic litter can

float around and wash onto shores. For landlocked Fort Collins, plastic bag litter may disappear with the wind or be broken down by sunlight and weather into smaller pieces. These bits of plastic are still pollutants, even if they don't resemble the bags they started off as; it is likely that studies understate the environmental issues and magnitude of problems caused by plastic particulates.

On the other hand, critics of restrictions on bags will point out that replacement bags, such as cotton fabric bags, create their own carbon footprint and may not be environmentally sustainable because of reliance on fertilizer, pesticides, and herbicides.

While plastic "film" bags and paper shopping bags are both recyclable, there is insufficient data on bag consumption and recycling quantities to estimate their current recycling rate in Fort Collins. There are at least 19 sites where plastic bags are accepted for recycling, including all grocery stores in town. Paper bags are recyclable at public drop-off locations as well as in the single-stream recycling offered in curbside collection programs throughout Fort Collins.

The new tons of avoided bag usage per year that are estimated to occur from passage of the Ordinance will reduce life cycle greenhouse gas emissions by an estimated 772 metric tons of carbon dioxide equivalent/year, compared to business as usual.

SOCIAL IMPACT

In October, 2012, the City contracted a consulting firm, Brendle Group, to conduct a triple bottom line evaluation of policy choices available to the City for restricting carry-out bags in Fort Collins. The report (<http://www.fcgov.com/recycling/pdf/triple-bottom-line-evaluation-plastic-bag-policy-options-10-2012.pdf?1351696764>) describes a number of social impacts to the community that would result from establishing fees on carry-out bags.

Among the positive social impacts are:

- *Taking action against the use of disposable bags represents progressive environmental sustainability, contributing to the perception of Fort Collins as a sustainable community*
- *Using reusable bags is a relatively easy and low-cost practice for consumers to adopt and may lead to other choices to counteract a disposable, throw-away culture of consumerism*
- *Alternatives to single-use bags are readily available and relatively easy to use*
- *Several grocers in Fort Collins have adopted similar policies voluntarily without noticing fewer numbers of customers*
- *When compared to an outright ban on bags, a fee can be seen to retain shoppers' choice; those who choose single-use bags can pay for them while shoppers who decline to use a bag or bring their own bag do not pay the fee*
- *Fewer disposable bags will reduce stray litter, such as bags caught in trees or floating in waterways, and improve the community's aesthetics.*

Some of the "cons" of establishing a fee on disposable bags include:

- *Regulating consumer choice*
- *Less availability of single-use bags for common second uses such as trash can lining and picking up pet waste*
- *Seen as a regressive measure that may affect low-income populations in a negative way*

- *May drive grocery shoppers to out-of-town stores (not enough evidence to support or deny this point; would work best for neighboring communities to implement fees at the same time to avoid this concern)*
- *Lack of national Extended Producer Responsibility (EPR) legislation means costs and responsibilities fall to local agencies to create/enforce restrictions on disposables such as carry-out bags; shifts the burden of litter and pollution cleanup from the polluting industry onto the consumer of the bags*

PUBLIC OUTREACH

During fall of 2012, meetings were held with members of the trash/recycling hauling industry, Chamber of Commerce members and staff, and a variety of City staff to discuss alternatives to reduce single use shopping bags, including the implications of a fee on disposable bags. Newspaper articles and columns, television bulletins, and spotlights on City webpages and utility bill inserts were published, and a public Open House was conducted on November 8, 2012, to introduce proposals to the community. Several representatives from the grocery industry attended the Open House. Comments from citizens and from specially affected interests were reported during a work session with the City Council on November 27.

Letters have been sent on three occasions over the past four months (November 5, 2012 and January 18 and February 21, 2013) to grocery store headquarter offices to keep them informed of the City of Fort Collins' interest in limiting the use of disposable bags."

Susie Gordon, Senior Environmental Planner, stated staff is making a recommendation to charge a \$0.10 fee on the use of plastic and paper bags in the city's grocery stores. The use of reusable shopping bags will increase the community goal to divert trash from landfills and reduce greenhouse gas emissions, and will reduce the amount of litter and pollution in our community and globally. Washing reusable bags will greatly reduce the potential for food

Gordon stated staff is proposing a split of the fee proceeds, with 60% going to the City for education and outreach, and to cover the City's administrative costs. The remaining 40% would be retained by the grocery stores to offset their new administrative costs of collecting the money and remitting it to the City. Stores would also be tasked with providing educational information and signage, as well as employee training. Gordon detailed projected proceeds and stated the fee would go into effect October 1, 2013, if the Ordinance is adopted.

Ross Cunniff, 2267 Clydesdale, supported the Ordinance as a minimum step in the right direction.

Councilmember Kottwitz asked if this would apply to the smaller bags used for vegetables or meat. Gordon replied in the negative and stated there are sanitation and weight issues which necessitate those bags.

Councilmember Kottwitz asked if the other cities cited as having a bag fee have voted on those fees. Gordon replied she was uncertain, but believed most of the fees were put in place by city leaders.

Councilmember Kottwitz asked what type of effect these laws have had in other cities. Gordon replied Washington D.C. has seen an 80-90% reduction and other cities have seen roughly the same amount of reduction.

Councilmember Kottwitz requested clarification as to whether or not some of the e. coli bacteria are harmful and some are not.

Councilmember Kottwitz asked where the proceeds would be allocated, once the part-time employees and program implementation costs are complete, particularly in 2014. Gordon replied the funds would go toward communication, education and outreach. Additionally, some of those funds would go toward augmenting litter collection.

Councilmember Kottwitz asked about the staff recommendation. City Manager Atteberry replied there are some staff concerns regarding whether or not this item needs additional time to process; however, Council has directed staff to proceed forward for this meeting.

Mayor Pro Tem Ohlson asked what would be done with additional time and why staff recommended approval. Gordon replied the typical public involvement activities could have been more in-depth.

Mayor Pro Tem Ohlson questioned why supermarkets have not weighed in on the issue. Gordon stated the grocery industry's lobbyist was in attendance at the previous Council meeting when this item was initially scheduled. She stated the grocers are not surprised by this potential move as it has occurred in many other municipalities with little negative effect.

In response to Mayor Pro Tem Ohlson's question regarding the staff recommendation for approval, Bruce Hendee, Chief Sustainability Officer, stated staff has questioned whether or not enough public outreach had been completed; however, staff does support the fee, subject to further information regarding bacteria, and noted the Climate Action Plan implementation will be aided by this item.

City Manager Atteberry stated staff should have included some information regarding concerns about the process.

Councilmember Troxell asked about the energy content of a plastic or paper bag. Lucinda Smith, Environmental Sustainability Director, replied the energy and water used to produce paper bags is typically more than for plastic. She stated both types of bags have embodied energy and can therefore be considered a resource.

Councilmember Troxell asked how much consumers currently pay for bags. Gordon replied stores do presumably pass the \$0.02 to \$0.05 charge per bag on to the customer.

Councilmember Troxell opposed the singling out of this one item to reduce the waste stream.

Mayor Pro Tem Ohlson made a motion, seconded by Councilmember Manvel, to adopt Ordinance No. 046, 2013, on First Reading.

Mayor Pro Tem Ohlson opposed the City's public process related to environmental issues. He stated the e. coli rumors were debunked by health officials.

Councilmember Kottwitz stated the Climate Action Plan implementation is a goal of the City and noted there should be additional consumer education related to the fact that paper bags are worse for the environment than plastic bags. She supported the "reverse tax" of rewarding customers for

bringing in their own bags and supported plastic bag recycling at grocery stores. Kottwitz supported allowing citizens to vote on the issue, as it could be considered a tax.

Councilmember Troxell supported a more comprehensive sustainability effort.

Councilmember Horak stated this is a fee, not a tax, as the proceeds will be going to specific purposes related to the fee. He suggested agenda items should be tied to at least one of the seven outcome areas for the City.

Councilmember Manvel stated he would support the motion as it is part of the direction the City has set for itself to have positive impacts on the climate.

Mayor Pro Tem Ohlson noted Whole Foods does not charge for a bag and stated regulations exist to place everyone on a level playing field.

Mayor Weitkunat cited examples of Fort Collins citizens responding on other environmental issues, such as recycling. She stated the Climate Action Plan can be achieved through education rather than fees.

The vote on the motion was as follows: Yeas: Ohlson, Manvel and Horak. Nays: Weitkunat, Troxell and Kottwitz.

THE MOTION FAILED.

Other Business

Mayor Pro Tem Ohlson asked if there is any support for the removal of the barrier between Council and chambers. Councilmember Horak agreed. Councilmember Kottwitz suggested the future Council should make the decision.

Adjournment

The meeting was adjourned at 8:43 p.m.

Mayor

ATTEST:

City Clerk

March 19, 2013

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting - 6:00 p.m.

A regular meeting of the Council of the City of Fort Collins was held on Tuesday, March 19, 2013, at 6:00 p.m. in the Council Chambers of the City of Fort Collins City Hall. Roll call was answered by the following Councilmember: Horak, Kottwitz, Manvel, Ohlson, Troxell and Weitkunat.

Councilmembers Absent: Poppaw

Staff Members Present: Atteberry, Nelson, Roy.

Agenda Review

City Manager Atteberry recommended changing the order of Item Nos. 28, *First Reading of Ordinance No. 057, 2013, Terminating the Moratorium Imposed by Ordinance No. 145, 2012 with Respect to Oil and Gas Operations Conducted under an Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC* and Item No. 29, *Resolution 2013-025 Adopting a Policy for Developing Primary Employer Business Assistance Packages*. Additionally, City Manager Atteberry noted the April 2 meeting will not need to be cancelled as identified under Other Business.

Citizen Participation

Martha Coleman, 351 High Court, claimed an ethics violation has occurred with National Association of Realtors' donations to Council campaigns.

Ross Cunniff, 2267 Clydesdale, discussed a campaign independent expenditure his campaign received as a result of an endorsement from the Fort Collins Board of Realtors. He repudiated the support and endorsement.

Mel Hilgenberg, 172 North College, discussed community events and suggested parabolic mirrors be placed in the City parking structures to aid in pedestrian safety.

Virginia Farver, Fort Collins resident, discussed the dangers of AMI meters and stated residents should be able to opt in rather than opt out of the program.

Dick Thomas, 1901 Wallenberg Drive, discussed ex parte communication and alleged it is unethical to prevent citizen input.

Devin Hirning, 2214 Fossil Creek Parkway, shared concerns relating to ex parte communications and expressed concern regarding the National Board of Realtors' election contributions.

Citizen Participation Follow-up

Mayor Pro Tem Ohlson asked if it would be possible to present information regarding other communities' dealings with ex parte contacts to Mr. Thomas. He noted citizens are allowed to speak about projects not yet in the planning process.

Councilmember Horak noted most other municipalities in Colorado have entirely new hearings for appeals; however Fort Collins has a hearing on the record, therefore disallowing new testimony and information. He stated there was some research completed regarding the parabolic mirrors in the parking structures which resulted in inconclusive results as to whether or not the mirrors aid in safety.

Councilmember Horak noted there is little way to exclude donations from campaigns.

Councilmember Kottwitz noted there are other organizations donating money for and against various campaigns.

Mayor Weitkunat asked if there is any information on possible dangers of the AMI meters provided to customers. City Manager Atteberry stated he would respond to the issue at a future Council meeting.

CONSENT CALENDAR

6. Consideration and Approval of the Minutes of the February 19, and March 5, 2013 Regular Meetings, and the February 12, February 26, and February 28, 2013 Adjourned Meetings.
7. Second Reading of Ordinance No. 034, 2013, Appropriating Unanticipated Revenue from the Colorado Department of Transportation into the Mulberry to Lemay Pedestrian Bridge-Poudre Trail project in the Capital Projects Fund.

The City's Engineering and Park Planning Departments were awarded a grant from the federally funded North Front Range Metropolitan Planning Organization totaling \$368,000 for the relocation of two existing steel pedestrian bridges and the construction of a new concrete section of the Poudre trail. The general vicinity of the project is between Mulberry Street and Lemay Avenue, along the north side of the Poudre River. This project will build the trail, bridge abutments and piers to receive one of the relocated pedestrian bridges. This Ordinance, unanimously adopted on First Reading on March 5, 2013, appropriates the grant money for the project.

18. Second Reading of Ordinance No. 035, 2013, Establishing Rental Rates and Delivery Charges for the City's Raw Water for the 2013 Irrigation Season.

This Ordinance, unanimously adopted on First Reading on March 5, 2013, approves procedures and rates for the rental and delivery of the City's raw water supplies. The Water Utility uses these rates to assess charges for agricultural use, for various contractual raw water obligations and for raw water deliveries to City departments and other entities. The proposed rate for each type of water is based on several factors, including market conditions

and assessments charged by irrigation companies. Rentals in 2013 will be substantially limited and different than past years due to fire and drought related water supply issues.

9. Second Reading of Ordinance No. 036, 2013, Authorizing the Purchasing Agent to Enter into an Agreement for the Financing of Vehicles and Equipment for Various City Departments by Lease-Purchase.

The City of Fort Collins is lease-purchasing vehicles and equipment for various City departments. This Ordinance, unanimously adopted on First Reading on March 5, 2013, authorizes the Purchasing Agent to enter into a lease-purchase financing agreement with Pinnacle Public Finance at an interest rate of 2.23%. The cost of the items to be lease-purchased is \$2,543,005. Payments at the 2.23% interest rate will not exceed \$269,450 in 2013. Money for 2013 lease-purchase payments is included in the 2013 budget requests. The effect of the debt position for the purpose of financial rating of the City will be to raise the total City debt by 2.0%. A competitive process was used to select Pinnacle Public Finance for this lease. Staff believes acceptance of this lease rate is in the City's best interest.

10. Second Reading of Ordinance No. 037, 2013 Repealing Ordinance No. 065, 1999, Resolution 1996-073 and Resolution 1988-081; Making Certain Amendments to the City Code and Land Use Code to Allow for the Discretionary Waiver of City Fees for Certain Kinds of Housing Authority Projects to Be Constructed in the City; and Authorizing an Agreement Between the City and the Housing Authority with Regard to Such Waivers.

Colorado statutes and a City ordinance exempt projects of the Fort Collins Housing Authority (FCHA) from City taxes and fees and, for many years, the City has waived fees for such projects. For the most part, the projects have been relatively small. In 2011, the Housing Authority partnered with CARE Housing, a non-profit agency, on an affordable housing project in the Provincetown subdivision. Although the interest of the Housing Authority in the project was small (technically a .001% partner), a waiver of City fees for the CARE Housing Provincetown Project was requested and granted by the City Council. The fee waiver totaled \$557,378. The magnitude of the waiver, as well as the fact that the Housing Authority held only a minor ownership interest in the project, prompted staff to examine the fee waiver policy for future Housing Authority projects. At a subsequent work session of the Council, staff was directed to provide some options for future projects, especially those in which the Housing Authority has only a minor interest. This Ordinance, unanimously adopted on First Reading on March 5, 2013, allows for the discretionary waiver of City fees for the Fort Collins Housing Authority and to limit waivers to certain kinds of projects.

11. Second Reading of Ordinance No. 038, 2013, Extending the Contract of the City's Employee Wellness Program Software Provider.

The City has contracted with the Mayo Foundation for Medical Education and Research (Mayo) to provide services associated with the assessment and management of existing and potential health risks of City employees. These services allow the City of Fort Collins Human Resources Department to collect and analyze data and support efforts to manage rising healthcare costs. Services provided by Mayo include employee health risk

assessments, health information and education, support for behavior modification, and disease management. These services are an integral part of the City's wellness and employee health benefit programs. Additionally, some organizations are integrating these services with an Onsite Employee Medical Clinic. There may be possible cost savings, efficiency and effectiveness benefits associated with this model. As the first step toward evaluating costs, benefits and options associated with a possible Onsite Employee Medical Clinic, the City will release a Request for Proposal (RFP) in the spring of 2013. Vendors will be asked to respond to the City's interest in evaluating proposals that incorporate these services into the clinic model. This Ordinance, unanimously adopted on First Reading on March 5, 2013 will extend the City's contract and allow time to evaluate options associated with a clinic while continuing usage of services provided by Mayo.

12. Second Reading of Ordinance No. 039, 2013 Amending the City Code and Creating a Parking Advisory Board.

This Ordinance, unanimously adopted on First Reading on March 5, 2013, creates a Parking Advisory Board. During the discussion at the First Reading of the Ordinance, Council requested more information about the public process, membership, geographical area, and costs of the potential Board. The remainder of this agenda item summary contains the information requested by City Council.

The Ordinance has been amended for Second Reading to include "downtown employees" on the list of potential downtown members of the Board.

13. Second Reading of Ordinance No. 040, 2013, Amending Section 2.2.11(C) of the Land Use Code Regarding the Period of Time that Project Development Plans and Plats for Large Base Industries Remain in Effect.

This Ordinance, unanimously adopted on First Reading on March 5, 2013, amends Land Use Code (LUC) Section 2.2.11(c), regarding a Project Development Plan and Plat to allow for the approval of a final plan within a twenty-five (25) year period of time for a Large Base Industry to be constructed in phases and as defined in Article 5 of the LUC.

14. Second Reading of Ordinance No. 042, 2013, Authorizing the Conveyance of a Non-Exclusive Drainage Outfall Easement and a Temporary Construction Easement on Archery Range Natural Area to Cottonwood Land and Farms, LLC.

This Ordinance, unanimously adopted on First Reading on March 5, 2013, authorizes the conveyance of a twenty-foot wide permanent non-exclusive drainage easement and a twenty-foot wide temporary construction easement, both approximately sixty feet in length across a small portion of Archery Range Natural Area to Cottonwood Land and Farms. The purpose of the easement is to install a 12-inch buried pipe to convey water from Cottonwood's East Rigden Pit to the Cache la Poudre River. The buried outfall pipe crossing Archery Range is part of a larger 2,700 linear foot drainage outfall pipe constructed on adjacent properties. The project site is located generally on the "Rigden Pit" property and the "Port of Entry Pit" property northeast of Horsetooth Road and Ziegler Road. Alternatives to this preferred alignment proved prohibitive both from an economic and engineering standpoint

15. Items Relating to the Conveyance of Easements on Salyer Natural Area to Charles Meserlian.

- A. Second Reading of Ordinance No. 043, 2013, Authorizing the Conveyance of a Non-Exclusive Drainage Easement on Salyer Natural Area to Charles Meserlian.
- B. First Reading of Ordinance No. 051, 2013, Authorizing the Conveyance of a Non-Exclusive Drainage and Landscaping Easement and an Access Easement on the Hickory Trail Property to Charles Meserlian.

Charles Meserlian (the “Developer”) is planning a 1.89 acre live/work residential development called Hickory Commons (the “Development”) located in the 300 block of Hemlock Street, immediately north of the City’s Salyer Natural Area and east of City-owned property known as the Hickory Trail. The Development requires off-site drainage and landscaping improvements on the Hickory Trail property. In order to complete the installation of the planned improvements, the Developer is requesting that the City grant a 3,601 square foot non-exclusive drainage and landscaping easement and an access easement on City-owned property.

The Development also requires a drainage easement on Salyer Natural Area for the discharge of stormwater that will be collected in a detention pond on the Development property and then released at a controlled rate through a buried pipeline within the Hemlock Street right-of-way. This easement only allows stormwater to cross the Salyer Natural Area Property to the Cache la Poudre River and does not involve construction of any improvements on Natural Areas Department property.

Ordinance No. 043, 2013, unanimously adopted on First Reading on March 5, 2013, authorizes the conveyance of the non-exclusive drainage easement on the Salyer Natural Area to the Developer. Ordinance No. 051, 2013, would authorize the conveyance of the non-exclusive drainage and landscaping easement and access easement on the Hickory Trail property.

16. Items Relating to Expanding the Boundaries of the Downtown Development Authority.

- A. Second Reading of Ordinance No. 045, 2013, Expanding the Boundaries of the Fort Collins Downtown Development Authority and Amending the Plan of Development of the Authority to Include Property Presently Known as the Max Flats Properties.
- B. Second Reading of Ordinance No. 049, 2013, Expanding the Boundaries of the Fort Collins Downtown Development Authority and Amending the Plan of Development of the Authority to Include Property Presently Known as the Link-N-Greens Property.

These Ordinances, unanimously adopted on First Reading on March 5, 2013, expand the boundaries of the Fort Collins Downtown Development Authority and amend the Plan of Development of the Authority to include a property in the 200 block of West Mulberry Street and a property in the 700 block of East Lincoln Avenue. The properties include the

former locations of Mason Automotive and King's Auto (southwest corner of Mulberry and Mason Streets) and the Link-N-Greens golf course.

17. First Reading of Ordinance No. 052, 2013, Appropriating Prior Year Reserves in the Water Fund for the Construction of a Pre-Sedimentation Basin as Part of the High Park Fire Remediation.

The 2013 Budget for the Water Fund included \$987,953 for BFO Offer 244.1 – Fire Mitigation Capital Improvements. After further evaluation of the potential ways capital investment could improve the ability of Fort Collins Utilities to treat water from the Cache la Poudre watershed, a pre-sedimentation basin is being constructed. The total cost of this basin will be \$2,150,000.

This Ordinance appropriates \$1,250,000 from the Water Fund reserves so that the construction of the pre-sedimentation basin can be completed and operational before June 2013.

18. First Reading of Ordinance No. 053, 2013, Designating the Oliver and Leota Chandler Property, 710 Mathews Street, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.

The owner of the property, Barbara Liebler, is initiating this request for Fort Collins Landmark designation for the Oliver and Leota Chandler Property at 710 Mathews Street.

19. First Reading of Ordinance No. 054, 2013, Authorizing Revisions to the Master Covenant for the Affordable Housing Units in the Provincetowne Condominiums Development.

This Ordinance authorizes revisions to the Master Covenant for the affordable housing units in the Provincetowne Condominiums development that would eliminate the requirement contained in the existing Covenant that future purchasers of the condominium units must qualify as being low-income families and modify the way that sales price limitations are calculated. The revised Covenant would retain the requirement that the units must be owner-occupied. The goal is to make it easier for owners of affordable units to find buyers for their units when they need or want to sell them. Staff is not recommending that the Covenant be released completely, because staff believes that the maximum sales price and owner-occupancy restrictions in the Covenant are useful to retain. The Affordable Housing Board recommends approval of the proposed changes to the Master Covenant.

20. Resolution 2013-021 Approving an Intergovernmental Agreement Between the City of Fort Collins, Platte River Power Authority, the Town of Estes Park, the City of Loveland and the City of Longmont for Participation in a Joint Compensation Study.

Fort Collins Utilities Light & Power is partnering with Platte River Power Authority, the Town of Estes Park, the City of Loveland, and the City of Longmont in hiring a consultant to perform a comprehensive compensation study for certain power utility positions. The results of this study will provide valuable market analysis, furthering the efforts to attract and retain key positions within the electric industry.

21. Resolution 2013-022 Directing that the Proceeds from the Public Service Company of Colorado Pipeline Project Be Used for Trails and Natural Areas.

Public Service Company of Colorado (PSCo) is constructing a high pressure gas pipeline through Fort Collins. PSCo has agreed to pay the City \$2 million as mitigation for the project impacts and as compensation for easements across four natural areas. Adoption of the Resolution directs the \$2 million PSCo payment shall be used only for trails and natural areas

22. Resolution 2013-023 Making an Appointment to the Landmark Preservation Commission.

This Resolution fills one vacancy on the Landmark Preservation Commission.

*****END CONSENT*****

Ordinances on Second Reading were read by title by City Clerk Nelson.

7. Second Reading of Ordinance No. 034, 2013, Appropriating Unanticipated Revenue from the Colorado Department of Transportation into the Mulberry to Lemay Pedestrian Bridge-Poudre Trail project in the Capital Projects Fund.
8. Second Reading of Ordinance No. 035, 2013, Establishing Rental Rates and Delivery Charges for the City's Raw Water for the 2013 Irrigation Season.
9. Second Reading of Ordinance No. 036, 2013, Authorizing the Purchasing Agent to Enter into an Agreement for the Financing of Vehicles and Equipment for Various City Departments by Lease-Purchase.
10. Second Reading of Ordinance No. 037, 2013 Repealing Ordinance No. 065, 1999, Resolution 1996-073 and Resolution 1988-081; Making Certain Amendments to the City Code and Land Use Code to Allow for the Discretionary Waiver of City Fees for Certain Kinds of Housing Authority Projects to Be Constructed in the City; and Authorizing an Agreement Between the City and the Housing Authority with Regard to Such Waivers.
11. Second Reading of Ordinance No. 038, 2013, Extending the Contract of the City's Employee Wellness Program Software Provider.
12. Second Reading of Ordinance No. 039, 2013 Amending the City Code and Creating a Parking Advisory Board.
13. Second Reading of Ordinance No. 040, 2013, Amending Section 2.2.11(C) of the Land Use Code Regarding the Period of Time that Project Development Plans and Plats for Large Base Industries Remain in Effect.
14. Second Reading of Ordinance No. 042, 2013, Authorizing the Conveyance of a Non-Exclusive Drainage Outfall Easement and a Temporary Construction Easement on Archery Range Natural Area to Cottonwood Land and Farms, LLC.

15. Second Reading of Ordinance No. 043, 2013, Authorizing the Conveyance of a Non-Exclusive Drainage Easement on Salyer Natural Area to Charles Meserlian.
16. Items Relating to Expanding the Boundaries of the Downtown Development Authority.
 - A. Second Reading of Ordinance No. 045, 2013, Expanding the Boundaries of the Fort Collins Downtown Development Authority and Amending the Plan of Development of the Authority to Include Property Presently Known as the Max Flats Properties.
 - B. Second Reading of Ordinance No. 049, 2013, Expanding the Boundaries of the Fort Collins Downtown Development Authority and Amending the Plan of Development of the Authority to Include Property Presently Known as the Link-N-Greens Property.
27. Second Reading of Ordinance No. 041, 2013, Amending the Land Use Code to Address Certain Recommendations Contained in the Student Housing Action Plan.

Ordinances on First Reading were read by title by City Clerk Nelson.

15. First Reading of Ordinance No. 051, 2013, Authorizing the Conveyance of a Non-Exclusive Drainage and Landscaping Easement and an Access Easement on the Hickory Trail Property to Charles Meserlian.
17. First Reading of Ordinance No. 052, 2013, Appropriating Prior Year Reserves in the Water Fund for the Construction of a Pre-Sedimentation Basin as Part of the High Park Fire Remediation.
18. First Reading of Ordinance No. 053, 2013, Designating the Oliver and Leota Chandler Property, 710 Mathews Street, as a Fort Collins Landmark Pursuant to Chapter 14 of the City Code.
19. First Reading of Ordinance No. 054, 2013, Authorizing Revisions to the Master Covenant for the Affordable Housing Units in the Provincetowne Condominiums Development.
28. First Reading of Ordinance No. 057, 2013, Terminating the Moratorium Imposed by Ordinance No. 145, 2012 with Respect to Oil and Gas Operations Conducted under an Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC.

Mayor Pro Tem Ohlson withdrew Item No. 17, *First Reading of Ordinance No. 052, 2013, Appropriating Prior Year Reserves in the Water Fund for the Construction of a Pre-Sedimentation Basin as Part of the High Park Fire Remediation* from the Consent Calendar.

Councilmember Troxell withdrew Item No. 21, *Resolution 2013-022 Directing that the Proceeds from the Public Service Company of Colorado Pipeline Project Be Used for Trails and Natural Areas* from the Consent Calendar.

Councilmember Horak withdrew Item No. 19, *First Reading of Ordinance No. 054, 2013, Authorizing Revisions to the Master Covenant for the Affordable Housing Units in the Provincetowne Condominiums Development* from the Consent Calendar.

Councilmember Manvel made a motion, seconded by Councilmember Troxell, to adopt and approve all items not withdrawn from the Consent Calendar. Yeas: Weitkunat, Manvel, Kottwitz, Ohlson, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

Councilmember Reports

Councilmember Troxell commended the City on its receipt of the Hart award. He reported on the National League of Cities meeting in Washington D.C.

Councilmember Horak reported on a meeting with the Federal Railroad Administration and other meetings at the National League of Cities.

Ordinance No. 052, 2013, Appropriating Prior Year Reserves in the Water Fund for the Construction of a Pre-Sedimentation Basin as Part of the High Park Fire Remediation, Adopted on First Reading

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The 2013 Budget for the Water Fund included \$987,953 for BFO Offer 244.1 – Fire Mitigation Capital Improvements. After further evaluation of the potential ways capital investment could improve the ability of Fort Collins Utilities to treat water from the Cache la Poudre watershed, a pre-sedimentation basin is being constructed. The total cost of this basin will be \$2,150,000.

This Ordinance appropriates \$1,250,000 from the Water Fund reserves so that the construction of the pre-sedimentation basin can be completed and operational before June 2013.

BACKGROUND / DISCUSSION

The High Park Fire, which began on June 9, 2012 and ended on July 11, 2012, has severely affected the Cache la Poudre watershed. The City has a large vested interest in the quality of water in the Poudre River. Since the fire, the water quality after any rain or snow melt has been, and will continue to be, challenging to treat. This pre-sedimentation basin is designed to remove sediment from the water before it is treated for our community.

The pre-sedimentation basin, currently under construction, is located at the Munroe Turnout at the Pleasant Valley Pipeline. The sediment removal from the basin will allow for a more consistent raw water quality coming into the plant, which is beneficial for determining chemical additions, process control and other treatment strategies. It will also remove sediment that is normal in the river during the spring run off season, where debris is carried into the water treatment facility pipelines and affects treatment. Given the current drought conditions, being able to treat as much water as

possible from both of the major watersheds serving Fort Collins Utilities customers is vital to meeting the community's water needs in 2013.

Staff will continue to update the City Council and community as more information becomes available. Based on literature of watershed fires, we could experience negative effects for years after this fire. In addition, these negative effects will change as the years go by, with immediate effects being the presence of ash and sediment in the River and longer term changes to the water quality such as metals concentration and algae growth leading to taste and odor issues are anticipated. Denver Water, for example, is still dealing with the Hayman fire more than a decade later.

FINANCIAL / ECONOMIC IMPACTS

Our region is known for its high quality water and the economic impact is significant to our city. Many businesses have located here specifically because our water exceeds drinking water standards. Without this pre-sedimentation basin it may not be possible to treat water from the Poudre River at times this summer which could require tighter water restrictions. Tighter restrictions could, in turn, have some financial impact on the commercial customers served by Fort Collins Utilities as well as a loss of revenue to the utility itself. With this capital investment it may be possible to avoid tighter water restrictions and minimize the associated potential financial impacts to the community.

By appropriating funds out of the Water Fund reserves, this capital investment can be recovered through rates over several years rather than immediately.

ENVIRONMENTAL IMPACTS

The City of Fort Collins along with two other water providers together serve over 320,000 citizens with high quality drinking water in northern Colorado. The ability to treat the Poudre River water, regardless of the raw water quality, is vital to the City's water supply and demand policy. The basin will also facilitate removal of the sediment from the river system, which will reduce the negative impact on downstream users of the river system."

Mayor Pro Tem Ohlson asked why the money is just now being allocated for the pre-sedimentation basin, which is already under construction. Kevin Gertig, Water Resources and Treatment Operations Manager, replied the pre-sedimentation basin was needed urgently; design and construction began within four weeks. The project has been referenced but details were not known until now. City Manager Atteberry noted this is not the typical process, but conversations were held with Councilmembers regarding this issue in the fall.

Mayor Pro Tem asked if the two other water providers are paying part of the cost of the basin. Gertig replied the City will request the other providers fund their fair share; however, due to the compression of the time schedule and need to get the basin on-line, those discussions have yet to occur. He stated he will return to Council with further details.

Mayor Pro Tem asked if it would have been possible to have the Water Board have a special meeting to provide feedback. Gertig replied this was vetted to the Water Board as an update.

Mayor Pro Tem Ohlson stated a photograph would have been helpful in the staff report and asked if an environmental review was required. Gertig replied the basin is on private property owned by the Northern Colorado Water Conservancy District and is located three or four miles from the Poudre River.

Mayor Pro Tem Ohlson asked if the structure would be permanent. Gertig replied it is essentially permanent. Photographs will be provided and any interested Councilmember may have a site tour.

Councilmember Horak made a motion, seconded by Councilmember Manvel, to adopt Ordinance No. 052, 2013, on First Reading.

Councilmember Horak requested additional clarification regarding the timing of this item.

The vote on the motion was as follows: Yeas: Weitkunat, Manvel, Kottwitz, Ohlson, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 054, 2013,
Authorizing Revisions to the Master Covenant for the Affordable Housing
Units in the Provincetowne Condominiums Development, Postponed Indefinitely**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

This Ordinance authorizes revisions to the Master Covenant for the affordable housing units in the Provincetowne Condominiums development that would eliminate the requirement contained in the existing Covenant that future purchasers of the condominium units must qualify as being low-income families and modify the way that sales price limitations are calculated. The revised Covenant would retain the requirement that the units must be owner-occupied and set a new Maximum Purchase Price Limit. The goal is to make it easier for owners of affordable units to find buyers for their units when they need or want to sell them. Staff is not recommending that the Covenant be released completely, because staff believes that the maximum sales price and owner-occupancy restrictions in the Covenant are useful to retain. The Affordable Housing Board recommends approval of the proposed changes to the Master Covenant.

BACKGROUND / DISCUSSION

Section 23-111 of the City Code requires City Council authorization by ordinance before the City can sell, convey or otherwise dispose of any interest in real property owned by the City. By executing the Master Covenant, the original Provincetowne Condominium unit owners agreed to restrict the use and resale of their units, and gave the City the power to enforce those restrictions. This constitutes an interest in the Provincetown Condominiums that is owned by the City. By amending the Covenant to reduce the restrictions on resale of the units, the City would be giving up part of its property interest in the units.

The proposed revised Master Covenant:

- *Eliminates the “Eligible Buyer” (i.e., low-income family) requirement;*
- *Retains the owner-occupancy requirement, and*
- *Changes the maximum purchase price of the units to be 95% of the Area Median Purchase Price as published quarterly by the National Association of Home Builders, instead of being based on a calculation of the amount an “Eligible Buyer” can afford.*

Attachment 1 presents a redline/strikeout version of the Revised Master Covenant showing the changes being made to the 2006 Master Covenant.

Brief History

In the mid-1990s, the City of Fort Collins received the Provincetowne property, consisting of approximately 330 acres, through the financial failure of a Special Improvement District (SID). The City Council’s goals at that time were to sell the SID property and recover the City’s costs, while meeting community goals for affordable housing and preservation of land for public facilities. In 1995, the City Council directed staff to market 170 acres of the Provincetowne SID property with an affordable housing “demonstration component.” The remaining approximately 160 acres was separately purchased by the City’s Department of Natural Resources to be used as a natural area.

The City used a “request for proposal” process to market the property and eventually sold the property to PrideMark Development Company, L.L.C. for \$1,800,000, with an agreement that at least 30% of the development project would be affordable housing that could only be sold to an “Eligible Buyer,” meaning a person, family or household whose annual income is no more than 80% of the Area Median Income for Fort Collins, and whose housing expenses would not exceed 38% of their income. The affordable units would have to be kept affordable for 25 years.

In 1998, Kaufman and Broad (K-B Homes) acquired Pridemark and started building the required affordable housing units as part of the Provincetowne Condominiums development (see Attachment 2 for a map showing the location of the Provincetowne Condominiums).

Through the sale of the SID property at a price below market value, the City of Fort Collins essentially subsidized the development of 90 units as affordable housing out of a total of 120 condominiums in the Provincetowne development in order to provide home ownership opportunities for low-income families. To help perpetuate the affordability of the units into the future, the City had the initial purchasers of the units sign, and subsequent owners acknowledge, a Master Covenant containing three key provisions that:

1. *Limited the sale of the units to “Eligible Buyers” as described above (again, City subsidy to the project was for low income home ownership purposes).*
2. *Restricted the future sales price of the units to the maximum amount that an Eligible Buyer would be able to finance with a 30 year loan at market rate interest, so that the units would remain affordable to low income families (this would prevent an initial/subsequent owner from gaining a “windfall” profit due to the City subsidy of the initial/subsequent unit price).*
3. *Restricted the units to be owner occupied (again, the City’s subsidy was to provide affordable home ownership opportunities and create an owner occupied development/neighborhood, not to allow investors to purchase the units as rentals, even though they may still be affordable rentals for low income families).*

The Master Covenant also contained specific provisions about the City's remedies in the event that a unit owner violated the covenants, and about what would happen to the Covenant in the event that a unit was foreclosed on.

In 2006, the City submitted its Provincetowne Covenant to FHA for review and "approval." This review showed that the City needed to make several changes to the Master Covenant in order to make it consistent with HUD regulations. For example, the Master Covenant said that the City would release the Covenant on a unit in the event of foreclosure or deed in lieu of foreclosure on the unit, if the City first got an option to buy the unit. This was not consistent with a HUD regulation that requires that covenants terminate automatically in the event of a foreclosure. In addition, some of the remedies the City had under the Master Covenant were not consistent with HUD regulations. The City then drafted, and HUD approved, a Revised Master Covenant that corrected these discrepancies. The City began using the 2006 Revised Master Covenant in October 2006, and notified the owners of affordable units in Provincetowne that before putting their units on the market they should contact the City about signing the 2006 Revised Master Covenant. Approximately 69 of the Provincetowne affordable housing units are still restricted by either the initial Master Covenant or the 2006 Revised Master Covenant.

In the fall of 2011, the City learned that the Provincetowne area lost its "certification" for FHA insured mortgage financing. It became the City's understanding that the loss was based on three "factors." First, the Provincetowne HOA failed to submit the proper recertification paperwork before the required deadline; second, there was a concern that there were not enough owner occupied units remaining in the project (staff's understanding is that there is a 51% minimum owner occupancy required by FHA); and third, FHA wanted the City to revise its Covenant to remove the income limitation on future purchasers.

The City has since learned that the Provincetowne units are again FHA compliant. The area was reinstated on July 24, 2012. That certification will expire July 24, 2014, unless a recertification is requested by the HOA. In rechecking with FHA about whether the City had to eliminate the low-income requirement for future purchasers contained in the existing Covenant, FHA responded that as long as all deed restrictions on all units in the project terminate upon foreclosure, FHA has no further issues with the Covenant.

However, over the past year and a half or so, staff has heard from realtors and owners regarding the pending sale of their Provincetowne units, complaining that it is hard to find income-qualified buyers for units, and that there is not a level playing field, from their perspective, because of the Covenant. Again, the Covenant only applied to initially 90 of 120 units. The original number of 90 units has been subsequently reduced to just 69 units mainly through foreclosures, because once a unit is foreclosed, the Covenant is released.

Apparently, over the past year several Provincetowne condominium units have been sold to purchasers that are not qualified as low-income families. In addition, there is information that implies that perhaps 10 of the remaining 69 units may not be owner occupied. Both cases represent violations of the Covenant. Staff is not sure how such situations can happen unless realtors and/or title companies are not thoroughly reviewing the Covenant. Also, there is a section of the Covenant that requires the seller to notify the City if they are considering sale of their unit and for potential purchasers to check with the City to assure the sale price is within the maximum limits allowed by

the Covenant. If the City had been properly notified the requirements of the Covenant would have been known to the seller, purchaser, and/or their realtors long before sale closings were scheduled.

In 2012, the Affordable Housing Board appointed a subcommittee to work with staff to review the 2006 Revised Master Covenant and see if further changes were warranted. The results of the staff subcommittee's work were presented to the entire AHB for discussion and a recommendation to the City Council.

Based on the concerns that have been raised about the effect of the Eligible Buyer restriction in the Covenant as well as other considerations, City staff and the AHB are recommending that a new 2013 Revised Master Covenant be adopted. The 2013 Revised Master Covenant would accomplish the following:

- 1. Eliminate the Eligible Buyer requirement so that future purchasers would not have to be low-income families;*
- 2. Redefine the maximum purchase price to be 95% of the Area Median Purchase Price as published quarterly by the National Association of Home Builders, rather than being calculated based on what an Eligible Buyer can afford;*
- 3. Retain the owner occupancy requirement because the units were originally sold to buyers with the indication that they would be living in an owner-occupies neighborhood;*
- 4. Retain the changes that the City made to the Covenant in 2006 to make the Covenant consistent with HUD regulations; and*
- 5. Make additional changes to improve the clarity and accuracy of the Covenant and ensure compliance with HUD regulation.*

A copy of the 2013 Revised Master Covenant, showing changes compared to the 2006 Revised Master Covenant, is attached as Attachment 1. If the 2013 Revised Master Covenant is approved, Provincetowne residents whose units are currently restricted by one of the previous covenants would be contacted and encouraged to execute the new Revised Master Covenant at their earliest convenience or prior to the sale of their units."

Councilmember Horak questioned the reason behind this item and asked how it will benefit citizens.

Mayor Pro Tem Ohlson expressed concern related to the fact that these units were supposed to be owner-occupied and many are not.

Ken Waido, Chief Planner, replied the City subsidized the construction of 90 townhomes. KB Homes completed the construction and sold the units to low-income families at below market prices. The townhomes were sold under the concept that the project would be owner-occupied; there were certain conditions upon resale. The three major components of the first master covenant were: the purchaser and future purchasers had to be low-income residents; the price had to be affordable to low-income residents; and the units had to remain owner-occupied. The Federal Housing Administration raised a concern with some of the provisions of that master covenant, particularly the income restriction on future purchasers. The Covenant was to be amended in the mid-2000s; however, it was discovered that amendment was never made. A maximum sales price limitation and the requirement that the units be owner-occupied are still part of the covenant.

Waigo stated 21 of the units have gone through foreclosure and the covenant was released on the foreclosed properties. Staff has determined it is possible that ten of the 69 remaining units have been rented. Waigo reviewed the staff recommendation.

Ross Cunniff, 2267 Clydesdale, questioned the 95% of the median metric being used and asked what metrics will be used to measure success.

Niel Smosna, 6721 Rose Creek Way, stated she recently tried to sell her unit in Provincetowne and was made aware of the covenant only as the sale was about to close. She stated she had never been made aware of these restrictions since the purchase of her home and supported the removal of the income restriction.

Valerie Schlageter, 375 East Horsetooth, The Group Real Estate, supported the Ordinance.

Mayor Pro Tem Ohlson noted the City intended to keep the units affordable and owner-occupied. He asked what the City can do in the future to assure these types of projects remain as intended. Waigo clarified the Affordable Housing Board is recommending the income limit on future purchasers be removed from the covenant; however, Council can ultimately opt to not remove that item.

Councilmember Manvel suggested there should be an enforcement policy, perhaps in the form of a lien, should these restrictions not be met.

Bruce Hendee, Chief Sustainability Officer, stated staff would work on a strategy to ensure accountability on future projects.

Mayor Pro Tem Ohlson asked how the rental issue will be addressed. Waigo replied letters will be sent to owners informing them that they are in violation of the covenant, which does have penalties associated with non-compliance of the covenant provisions. Owners will then be given the opportunity to correct the situation.

Mayor Pro Tem Ohlson questioned the 95% metric. Waigo replied the covenant written in 2006 combined some calculations which tied the family income to the purchase price of the unit. When the Affordable Housing Board looked at removing the income requirement, it needed a standard metric to be used for the maximum purchase price. At this point, that metric is higher than the market prices for the units.

Mayor Pro Tem Ohlson asked if the item could be postponed. City Manager Atteberry replied the item could be tabled until further information can be ascertained.

Councilmember Horak asked about the consequences for violations of the covenant. Laurie Kadrich, Community Development and Neighborhood Services Director, replied consequences include the City having a right to repurchase a unit and pursuing any legal remedies necessary.

Councilmember Horak asked what type of monitoring has been done since the issue arose in 2006 and requested an examination of the reasons behind this issue.

Councilmember Manvel made a motion, seconded by Mayor Pro Tem Ohlson, to postpone the item until staff is able to report back on an evaluation of the options related to the covenant.

Councilmember Horak suggested working with the Board of Realtors on this item.

Councilmember Manvel noted there are homeowners needing answers and requested an expedient solution.

The vote on the motion was as follows: Yeas: Weitkumat, Manvel, Kottwitz, Ohlson, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

Resolution 2013-022
Directing that the Proceeds from the Public Service Company of
Colorado Pipeline Project Be Used for Trails and Natural Areas, Adopted

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

Public Service Company of Colorado (PSCo) is constructing a high pressure gas pipeline through Fort Collins. PSCo has agreed to pay the City \$2 million as mitigation for the project impacts and as compensation for easements across four natural areas. Adoption of the Resolution directs the \$2 million PSCo payment shall be used only for trails and natural areas.

BACKGROUND / DISCUSSION

At the February 5, 2013 Council meeting, Council unanimously approved four ordinances conveying easements to PSCo on four natural areas needed for the pipeline project. PSCo agreed to pay the City 2 million dollars as mitigation for overall project impacts and as compensation for the value of the natural area easements. PSCo did not place restrictions on the use of the \$2 million.

The City has been conducting a paved trail study over the past several months and the information from the study is being used to develop a Paved Trail Master Plan. Staff estimates the cost to build out the paved trail system is \$24 million for 30.7 miles of trail. It will take 50 years to complete the trail system at current Conservation Trust funding levels (\$470,000 annually), reduced to 25 years if a trail capital expansion fee is created. Utilizing some or all of the PSCo funds for trails will help to complete key sections of this highly valued community asset.

The Natural Areas Department (NAD) has a significant number of land conservation and restoration projects in process. Using some or all of the PSCo funds for natural areas acquisition, conservation or restoration will enable the NAD to pursue projects that would otherwise have to be delayed, bypassed or reduced in scope.

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Councilmember Troxell expressed concern regarding Public Service Company of Colorado's (PSCo) use of eminent domain and its effect on private property owners. He noted the City's Structure Plan shows the intersection of Shields and Harmony as an activity center and this PSCo project potentially devalues the property and its value to the community. He suggested the possibility of postponing the item until further discussions can be held with PSCo.

Mayor Weitkumat noted this item would provide \$2 million in compensation to the City for this project's impacts on the City's Natural Areas.

Trudy Haines, Land Conservation and Stewardship Board, requested assurance these funds will go toward Natural Areas. She noted the Natural Areas staff has worked closely with PSCo on this project and stated the pipeline crossing the Natural Areas will increase public safety. She supported the Resolution.

Ed Reifsnyder, 4908 Chippendale Drive, supported the Resolution.

Rico Moore, 721 West Myrtle, suggested the City work toward a renewable energy future. He opposed the pipeline project and suggested the funds could be used for buying the mineral rights at Soapstone Natural Area.

Katherine Grimes, Land Conservation and Stewardship Board, supported the Resolution.

Ross Cunniff, 2267 Clydesdale, supported the Resolution and encouraged quick remediation.

Elizabeth Hudetz, 1407 Ticonderoga, opposed the pipeline but suggested asking for twice the amount of money if the pipeline does occur.

Patrick Edwards, 1731 Valley Forge, supported the Resolution and suggested some of the funds could be used for thinning of beetle kill trees.

Councilmember Troxell clarified he does not want the \$2 million to be diverted away from the Natural Areas and asked about other impacts this project will have on the Structure Plan and future development for the area. City Manager Atteberry replied he has sent a letter to PSCo, encouraging

the routing of the pipeline through City right-of-way rather than private property. At this point, there has been no response to that letter. He stated he would follow up with an additional contact with PSCo.

Councilmember Troxell encouraged a meeting with Councilmembers, PSCo, and other affected parties.

Mayor Weitkunat noted the big picture item deals with the interface the City has with other entities as they encroach on City properties.

Councilmember Manvel made a motion, seconded by Councilmember Troxell, to adopt Resolution 2013-022.

Mayor Pro Tem Ohlson asked if a letter could be written to PSCo by the Mayor and Council. Deputy City Attorney Daggett suggested Council make a motion directing the City Manager to draft such a letter for the Mayor's signature.

Councilmember Horak asked if there is an eminent domain proceeding tomorrow. Deputy City Attorney Daggett replied there is a hearing tomorrow related to immediate possession of the easement.

Councilmember Horak asked if Councilmembers could speak at the hearing. Deputy City Attorney Daggett replied she did not believe the City would be able to have input at the hearing. She noted the City is named in the eminent domain case because the City owns easements that are on the property that the pipeline will cross; however, PSCo is not disturbing the City's rights. She stated the City has not yet looked at the viability of arguing against the use of eminent domain in this case.

Councilmember Horak suggested a City representative be present at the hearing. Deputy City Attorney Daggett replied she would follow up on that possibility.

Mayor Pro Tem Ohlson thanked the Land Conservation and Stewardship Board for their work on the item.

The vote on the motion was as follows: Yeas: Weitkunat, Manvel, Kottwitz, Ohlson, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 041, 2013,
Amending the Land Use Code to Address Certain Recommendations Contained
in the Student Housing Action Plan, Adopted on Second Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The Student Housing Action Plan (SHAP), adopted by City Council on February 26, 2013, has identified both near-term and long-term action items to address concerns with compatibility between

multi-family development and existing neighborhoods. This Ordinance, adopted on First Reading by a vote of 5-1 (Nays: Troxell), will (1) improve understanding of compatibility by modifying the LUC to include good examples (photos, drawings) of what is allowed in certain zones; (2) amend MMN district development standards and LUC Sec. 3.8.30 multi-family standards to specify that no vehicular use area can be placed in the said setback from single- and two-family dwellings. Also, consider landscape requirements for this setback; and (3) better define and amend the LUC Sec. 3.8.16 (E) (2) requirement that 4+ bedroom developments need to provide additional open space, recreation areas, parking areas and public facilities as are necessary to adequately serve the development and retain the parking exemption in the TOD Overlay Zone.”

Councilmember Manvel made a motion, seconded by Mayor Pro Tem Ohlson, to adopt Ordinance No. 041, 2013, on Second Reading.

Councilmember Troxell stated he would not support the motion based on the details of this item, particularly related to the possibility of negative impacts on multi-family housing; however, he does support the Plan in general.

Councilmember Kottwitz agreed with Councilmember Troxell.

Councilmember Manvel noted this item would adopt the Plan and commended work on the item.

Mayor Weitkunat stated this is a good first step toward perfecting student housing issues.

The vote on the motion was as follows: Yeas: Horak, Manvel, Ohlson and Weitkunat. Nays: Troxell and Kottwitz.

THE MOTION CARRIED.

Resolution 2013-025
Adopting a Policy for Developing Primary Employer
Business Assistance Packages, Adopted

The following is the staff report for this item.

“EXECUTIVE SUMMARY

The City’s historical approach to primary employer business assistance has served the community well in the past. Several businesses have been retained and expanded as a result of business assistance packages developed by the Economic Health Office and approved by City Council. However, the time has come to move towards a more sophisticated approach to development and oversight of future business assistance packages. Therefore, this policy is intended to outline the basics of a formal process for developing business assistance packages for primary employers that maintains the flexibility of the historical approach but applies additional rigor and structure to the process.

BACKGROUND / DISCUSSION

In the City of Fort Collins, the community intentionally refers to economic activity as “economic health” rather than the traditional term “economic development.” The community has made this

purposeful distinction because it implies that the goal of City involvement is to ensure a balanced, sustainable and resilient economy. The City's long-range vision, which is articulated in City Plan Fort Collins, utilizes the basic tenets of sustainability as its guiding principles for the City's vision and acts as a foundation underpinning of all components of the plan. The three main tenets of sustainability include systems thinking, continuous improvements and a triple bottom line (TBL) analysis.

One of the primary purposes of the Economic Health Strategic Plan (EHSP) is the retention and expansion of primary employers. The City of Fort Collins uses a variety of local assistance tools to assist primary employers with relocation and expansion efforts. City Council and the EHSP have identified the need to develop a clear business assistance policy. There is an increased demand by taxpayers and public authorities to validate economic development assistance and to ensure the investments made to support businesses has a clear, mutual benefit to the community and business.

This policy statement will apply to requests for direct assistance by primary employers considering cost/benefits of remaining and/or expanding their operations in the City, as well as, any primary employer evaluating relocation to the City. For the purpose of this document, a "primary employer" or "primary job" will be defined as any business or job located within the City that derives a minimum of 50 percent of its income from the sale of goods or services outside the Fort Collins Growth Management Area (GMA).

Work Session Recap

On January 22, 2013, staff presented an overview of the business assistance package's current practices, an incentives benchmark study and the beginning development of a systems approach to primary employer assistance. During this work session, councilmembers suggested staff work by setting high-level criteria and sub categories that would allow projects to move up or down in terms of project feasibility. Suggestions were also given to view the policy statement process in a holistic approach instead of in isolation. In addition, Councilmembers recommended the need for a thoughtful process that is not driven by time, but continuous process improvements. It is staff's understanding that this involves a stepwise approach, marked with gradual progression and process improvements. (Attachment 1)

Policy Intent

Currently, the City does not employ a one-size-fits-all approach to developing business assistance packages. Instead, the City chooses to work collaboratively with the primary employer to build a package that is specific to the particular business needs. While this historical approach has worked for the City in the past, the time has come to move towards a more sophisticated approach to development of future business assistance packages. Therefore, the business assistance policy statement is intended to outline the basics of a formal process for developing primary employer business assistance packages that will maintain the flexibility of the historical approach while applying additional rigor and structure to the process. NOTE: the business assistance policy statement described here is not to the exclusion of other business assistance efforts that might occur (such as the Urban Renewal Authority's employment of tax increment financing).

The intent of the primary employer business assistance package policy is to:

“Encourage quality primary job retention and creation through private sector investment in our community that supports a balanced, sustainable and resilient economy.”

Policy Framework

As defined in the Primary Employer Business Assistance Package policy statement (Exhibit A to Resolution 2013-025), the framework outlines the refined process for developing business assistance packages in several areas:

1. *Applicability – Does the request meet the “primary employer” criteria?*
2. *Organization and management – Is there clear, defined roles and responsibilities assigned?*
3. *Available assistance tools – What tools will be available for this business assistance package?*
4. *Application requirements – Has the company provided the information required to analyze the project?*
5. *Evaluation criteria – Does the project align with City Plan, the Economic Health Strategic Plan and other City goals?*
6. *Business assistance inputs – Does the project meet the annual average wages, number of retained or net new jobs and health care premium assistance?*
7. *Economic and other analyses – Does the project pass the economic and TBL analysis?*
8. *Minimum company commitment – Has the company agreed to the minimum commitments required to move the project forward?*
9. *Compliance monitoring – Has the company and city staff agreed on the compliance measures?*
10. *Annual reporting – Based on the compliance monitoring, city staff will provide annual compliance updates to City Council.*

Policy Framework Work Plan

In an effort for continuous improvement through monitoring and future plan updates, staff is committed to bringing forward additional process improvements over the next few months. Each item will be developed, approved and reviewed from time to time with the City Manager, with notice to City Council when substantial changes are proposed. Below is a list of suggested improvements and a work plan for accomplishing these continuous improvements:

Item	Description	Anticipated Completion Date
<i>Application</i>	<i>The EHO will use existing applications, similar to the Community Development Block Grant funding request and the Urban Renewal Authority applications as a model for the initial application.</i>	<i>April 2013 (initial) Ongoing evaluation and improvements</i>
<i>Evaluation Criteria</i>	<i>Determine the screening criteria for all requests using a set of evaluation criteria designed to provide a holistic evaluation of the proposed project.</i>	<i>May 2013 (initial) Ongoing evaluation and improvements</i>
<i>Input Criteria</i>	<i>Development of input criteria that aligns with City objectives from the EHSP, City Plan, and/or other relevant strategies (such as target industry clusters).</i>	<i>May 2013 (initial) Ongoing evaluation</i>

Item	Description	Anticipated Completion Date and improvements
<i>Compliance Monitoring</i>	<i>All business assistance packages require a performance-based compliance before payment is distributed. Staff will work collaboratively with other city departments and businesses to provide annual report to council.</i>	<i>June 2013 (initial) Ongoing evaluation and improvements</i>
<i>Economic Impact Analysis Improvements</i>	<i>Use of a triple bottom line (TBL) approach to evaluate each project. Determination of the sound approach that evaluates revenues and costs (including, not only economic, but environmental and social costs).</i>	<i>Ongoing evaluation and improvements</i>
<i>New Tools</i>	<i>Staff is committed to ongoing evaluation of additional tools for their applicability to primary employers and job retention and creation.</i>	<i>On-going</i>

FINANCIAL/ECONOMIC IMPACTS

The business assistance package policy statement provides enhanced analysis of future primary employer business assistance proposals. No direct financial impact is incurred with the business assistance package policy statement.

ENVIRONMENTAL IMPACTS

Although the actual primary employer business assistance package policy statement does not have any environmental impact, staff is committed to work with the community, businesses and other identified groups to evaluate primary employer business impacts.

BOARD / COMMISSION RECOMMENDATION

Staff presented before the Economic Advisory Commission (EAC) on two occasions, December 19, 2012 and February 20, 2013. Staff requested feedback from EAC members on classification/ranking criteria. (Attachment 2, 3 and 4)

PUBLIC OUTREACH

Staff presented the business assistance package policy statement several times within the community. As mentioned above, staff presented before EAC in December 2012 and February 2013. Staff also presented the business assistance package policy framework to the Fort Collins Area Chamber of Commerce’s Local Legislative Affairs Committee on January 18, 2013 and March 8, 2013. Additionally, staff hosted an open house to the community on January 16, 2013, with the option of an online survey which was open from January 14, 2013 – February 8, 2013.”

Josh Birks, Economic Health Director, stated this policy provides a systems approach, based on the triple bottom-line and is related to the City’s embracing of economic health rather than economic development. This particular policy focuses specifically on the retention, expansion, and, in some

cases, attraction of primary jobs. A primary job is defined as any business or job located within the City that derives a minimum of 50% of its income from the sales of goods and services outside of the Growth Management Area. Birks reviewed the process for developing business assistance packages as well as the policy framework work plan.

Ross Cunniff, 2267 Clydesdale, expressed concern about the focus on primary employers that derive most of their income from outside the Growth Management Area.

Eric Sutherland, 3520 Golden Currant, stated this policy is too complicated.

Kevin Jones, Fort Collins Area Chamber of Commerce, supported the Resolution.

Patrick Edwards, 1731 Valley Forge, disagreed with the need for these types of incentive packages.

Maya Hesser, 2133 Ford Lane, stated taxes always hurt the citizens.

Walt Elish, Northern Colorado Economic Development Corporation, stated businesses want consistency and commended staff for work on the item. He supported the Resolution.

Councilmember Troxell stated this policy should encourage and foster the dynamic aspect of Fort Collins' role in the region and state as a primary employer. He requested staff input as to how this encourages more than a direct bilateral relationship with a particular employer. Birks replied the Strategic Plan guided the broader economic health strategies. This specific tool relates to direct assistance with specific companies and makes the process more transparent for all parties involved.

Councilmember Manvel asked about the use of metro districts. Birks replied metro districts relate more to redevelopment projects or development projects, which is not necessarily the focus of this policy. However, they can be used to further primary employer opportunities.

Mayor Pro Tem Ohlson asked when environmental impacts of companies will come into play. Birks replied the application will require information related to natural resource stewardship and those questions will be tied to the evaluation criteria. The policy will require that any project that comes forward has been evaluated against these criteria; staff will present specific criteria for Council consideration in May.

Mayor Pro Tem Ohlson asked about consequences for businesses not meeting promises. Birks replied all agreements are tied to certain targets of employment and other performance requirements and benefits received from the City may be prorated. Bruce Hendee, Chief Sustainability Officer, replied there is a verification section in the systems side of this policy.

Mayor Pro Tem Ohlson noted the City always fulfills its portion of these deals and asked about consequences for non-compliance on the business end. Hendee replied the accountability side is being developed.

Mayor Pro Tem Ohlson asked about the policy's plan for getting information out to the public. Birks replied the policy sets a plan for trying to create a window in which there is no longer confidentiality around projects so an opportunity to discuss the projects in an open way occurs earlier.

Councilmember Manvel asked about the applicability of this policy to the Woodward assistance package to be on First Reading next week. Hendee replied the Woodward project is a “once in thirty year project” and the assistance package does have some specifics that do not exactly match this policy.

City Manager Atteberry agreed with Councilmember Manvel’s point but suggested the policy could have the possibility of exceptions in unique cases, at Council discretion, perhaps related to scale, magnitude, and investment amount.

Councilmember Troxell noted this is a Resolution and the policy is not binding Council to a decision. He commended the framework as a step toward additional transparency.

Councilmember Kottwitz made a motion, seconded by Councilmember Troxell, to adopt Resolution 2013-025.

Councilmember Horak suggested a language change for Exhibit A to add the phrase “to the extent practicable” or other language which would eliminate a perceived direct violation of the policy with respect to the Woodward assistance package.

Councilmember Kottwitz accepted the amendment.

Councilmember Kottwitz encouraged tracking primary employers in the Northern Colorado area who have selected municipalities other than Fort Collins in which to locate, or have moved out of Fort Collins. Birks replied staff is committed to better positioning the City in terms of retaining and expanding current and perspective employers.

Mayor Pro Tem Ohlson stated he would not support the Resolution, though he did commend the changes to the application. He suggested additional consequences for non-compliance.

Mayor Weitkunat supported the Resolution as a great beginning policy.

The vote on the motion was as follows: Yeas: Weitkunat, Manvel, Kottwitz, Horak and Troxell.
Nays: Ohlson.

THE MOTION CARRIED.

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

**Items Relating to an Operator Agreement between
the City and Prospect Energy, LLC. Adopted on First Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

- A. *Resolution 2013-024 Approving an Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC.*

- B. *First Reading of Ordinance No. 057, 2013, Terminating the Moratorium Imposed by Ordinance No. 145, 2012 with Respect to Oil and Gas Operations Conducted under an Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC.*

EXECUTIVE SUMMARY

Council is considering the approval an Operator's Agreement with Prospect Energy that would permit Prospect Energy to conduct oil and gas operations in the city limits. The terms of the Agreement ensure stringent public health and safety measures are in place through Best Management Practices (BMPs), which generally exceed current requirements mandated by the Colorado Oil and Gas Conservation Commission (COGCC), and provide strict controls on the release of methane gases and other volatile organic compounds (VOCs). If the Agreement is approved, Council will consider adopting Ordinance No. 057, 2013 removing the Moratorium imposed by Ordinance No. 145, 2012 with respect to an Oil and Gas Operator Agreement with Prospect Energy.

BACKGROUND / DISCUSSION

Oil and gas production is currently limited to the Fort Collins Field (Attachment #2), located in the northeast portion of the city. The Fort Collins Field is regulated by the COGCC and has been in production since about 1925. In the city limits, the field consists of seven oil producing wells and seven injecting wells, all of which are managed by one operator, Prospect Energy. Prospect Energy is unable to drill new wells since Ordinance No. 145 (Moratorium) was approved December, 2012. In addition, the company is no longer able to utilize hydraulic fracturing since the adoption of Ordinance No. 032. Prospect Energy also holds certain leasehold interests within the City described as the Undeveloped Area (UDA), as depicted in Attachment #2. Council allowed for exemptions from Ordinance No. 032 provided a Council approved operator agreement was in place that includes strict controls on methane release and adequately protects the public health, safety and welfare of the city. The recommended agreement with Prospect Energy contains such provisions. A summary of those provisions follows with more detailed information contained in Exhibit A to Resolution 2013-024.

Summary of Controls for Methane Gas

Prospect Energy captures all gases from production and tanks and routes them to a thermal oxidizer for destruction. This method currently results in over 99% of all emissions being destroyed. The COGCC rule requires 95% of emissions be destroyed. This proposed Agreement requires at least 98% destruction and use of a thermo-oxidizer for emission destruction to be utilized for any new wells in the Fort Collins Field. In the UDA, Prospect Energy will capture and destroy emissions at the well (Exhibit A -Section 21 (b)) or send through a thermal oxidizer. Prospect Energy also agrees to comply with:

- *Environmental Protection Agency (EPA) Method 21 (Section 21 – Exhibit A)*
- *No uncontrolled venting of methane (Section 21 – Exhibit A)*
- *Minimal flaring during drilling and completions (Section 21 – Exhibit A)*
- *Develop and maintain a Leak Detection and Repair (LDAR) (Section 21 – Exhibit A)*
 - *Use a Forward-Looking Infrared (FLIR) camera*
 - *Notify the City for observation of testing*

- *Green Completions (Section 22- Exhibit A)*
- *Containment of all produced water or flowback fluids and no permanent storage of waste products (Section 45 – Exhibit A)*

***Summary of Best Management Practices
(Public Health and Safety Measures – details in Exhibit A)***

Setbacks – Any new wells drilled will conform to the current COGCC rules which will be five hundred (500) feet from any building and one thousand (1,000) feet from any institutional facility beginning August 1, 2013. However, in the Fort Collins Field, new wells must be constructed on existing well pads because of an existing Surface Use Agreement (SUA), which conform to previous COGCC setbacks. Those well pads are located near or within Water’s Edge, Richard’s Lake and Hearthfire subdivisions.

Conceptual Review – No less than thirty (30) days prior to the submission of an Application for a Permit to Drill (APD) (note: APD is the COGCC permitting process), Prospect Energy will schedule a meeting with the City to review the proposed new well or drilling activity. The goal of this meeting would be for staff and the applicant to review the proposed oil and gas operation in a manner that ensures compliance with the operator agreement and applicable state and federal regulations. This pre-submittal meeting will also allow the applicant and staff to explore site-specific concerns, to discuss project impacts and potential mitigation methods including field design and infrastructure construction to minimize impacts, to discuss coordination of field design with other existing or potential development and operators, to identify sampling and monitoring plans for air and water quality, and other elements of the operator agreement as contained in Exhibit A.

Community Notice –Prospect Energy must provide community and staff notice. Prior to an APD, the Agreement specifies mailed notice, posted notice, neighborhood meetings and also a notification to the public prior to the commencement of drilling. Consistent with Option “B” of the proposed Land Use Code regulations, notice is required for any oil and gas operation to surface owners within two thousand six hundred forty (2,640) feet of the parcel and to persons registered in writing with the Planning Director.

Closed Loop Pitless Systems – are required for the Containment and/or Recycling of Drilling and Completion Fluids. Wells shall be drilled, completed and operated using closed loop, pitless systems for containment and/or recycling of all drilling, completion, flowback and produced fluids.

Chemical disclosure and storage -the City will be provided, in table format, the name, Chemical Abstract Services (CAS) number, volume, storage, containment and disposal method for all drilling and completion chemicals (solids, fluids, and gases) used on the well pad. Fracture chemicals will be uploaded onto the Frac Focus website. The City will also post such information on the City website. The Company will not permanently store hydraulic fracturing chemicals, flowback from hydraulic fracturing, or produced water in the current City limits.

Electric equipment – Prospect Energy will be required to utilize electric-powered engines for motors, compressors, and drilling equipment and for pumping systems when feasible in order to mitigate noise and reduce emissions.

Emergency preparedness plan – Prospect Energy is required to develop an emergency preparedness plan for each specific facility site, which shall be in compliance with the International Fire Code. Among other provisions, the plan shall be filed with the Poudre Fire Authority and the City of Fort Collins Office of Emergency Management and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). The plan includes a provision establishing a process by which the operator engages with the surrounding neighbors to educate them on the risks of the on-site operations and to establish a process for surrounding neighbors to communicate with Prospect Energy.

Air Quality – Prospect Energy must comply with emissions regulations as required by State and Federal laws. In addition, there will be no uncontrolled venting of methane. All gas vapors will be captured to the extent practicable. Vapor capture equipment will operate at 98% efficiency or better. There are no gas sales lines in the Fort Collins field because the quantity and quality of gas is low and not marketable. If salable gas were to occur in the UDA, a sales line would be constructed. The Operator will develop and maintain a leak detection and component repair (LDAR) program according to EPA Method 21 for equipment used in permanent operations. LDAR will be performed on newly installed equipment, and then on an annual basis. A forward-looking infrared (FLIR) camera will be used as the preferred implementation method of EPA Method 21 as available from the state; if unavailable, other methods will be used in compliance with this method. Upon request from the City, Prospect Energy will implement EPA Method 21 should additional concerns arise. At least once per year, Prospect Energy will notify the City prior to FLIR camera use in case the City wishes to observe the method.

Prospect Energy and the City will split the costs of baseline sampling and analytical work performed by a third party consultant agreeable to both parties over a five (5) day sampling period. Prospect Energy will conduct air sampling during well completion. Periodic air monitoring will be performed for hydrogen sulfide (H₂S), a hazardous air pollutant (HAP). Prospect Energy will perform field monitoring using the Jerome 631 XC or equivalent instrument annually, or until such time that odors are not detected past the Fort Collins Tank Battery fence line in City Limits. The City may require additional air monitoring as needed to respond to emergency events such as spill, process upsets, or accidental releases or in response to odor complaints in City Limits.

During well completion, the capture and beneficial use of natural gas is preferred over flaring. However since the Fort Collins field has so little natural gas it is not reasonable to capture the gas and as such minimal flaring will occur. What flaring does occur will be monitored twenty-four (24) hours per day. During production the flare shall be fired with natural gas and shall be operated with a ninety eight (98) percent or higher VOC destruction efficiency. An automatic pilot system shall be used when feasible. Other ignition systems will include the installation and operation of a telemetry alarm system or an on-site visible indicator showing proper function.

Water Quality Monitoring Plan – Prospect Energy shall comply with COGCC Rule 609. In summary, this requires pre- and post-drilling testing. The rules require oil and gas operators to sample all “Available Water Sources” (owner has given consent for sampling and testing and has consented to having the sample data obtained made available to the public), with a cap of four (4) water sources, within one-half (1/2) mile radius of a proposed well, multi-well site, or dedicated injection well. Water sources include registered water wells, permitted or adjudicated springs, and certain monitoring wells. Prospect Energy agrees to the following requirements above and beyond the COGCC requirements: analyzing for dissolved metals as indicated in the Land Use Code;

sampling intervals to be baseline (before drilling), post-drilling at one, three, and six years. Analytical results will be shared with the COGCC, the City, and the landowner. All spills, for new and existing wells, shall be managed in accordance with COGCC regulations.

Soil Gas Monitoring – *The City, at its discretion, may conduct soil gas monitoring to assess well casing integrity. This would be typically completed within 90 days of new well completion. The City shall notify the Operator prior to entering the site for soil gas monitoring.*

Spills - *The Company shall comply with COGCC Rule 609 “Spills and Releases”, and notify the City and whenever there is notification to the COGCC. The Company shall also copy the City on any written correspondence to the COGCC or other regulatory authority.*

Transportation and circulation - *Prospect Energy shall include in their applications detailed descriptions of all proposed access routes for equipment, water, sand, waste fluids, waste solids, mixed waste, and all other material to be hauled on the public streets and roads of the City. The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, trips per day and any other information required by the Traffic Engineer. Preliminary information is required for this item for the Conceptual Review meeting, in accordance with Exhibit A. The Company shall comply with all Transportation and Circulation requirements as contained in the Land Use Code as may be reasonably required by the City’s Traffic Engineer.*

Wastewater and Waste Management - *There will be minimal waste water in the Fort Collins Field, as there will be no tank batteries (produced water and oil storage) in the City for the Fort Collins field. As described in “Closed Loop System” and “Green Completions,” there is no discharge of fluids and fluids are contained. Storage, transportation, and treatment of wastes during well drilling and completion are handled by third party contractors, under the direction of the Operator. Waste is stored in tanks, transported by tanker truck, and disposed of at licensed disposal facilities.*

In the UDA, new secondary containment shall be constructed of steel, with sufficient perimeter and height to hold one and one-half (1.5) times the volume of the largest tank and sufficient freeboard to prevent overflow. No potential ignition sources shall be installed inside the secondary containment area unless the containment enclosed a fired vessel. The requirements for secondary containment will meet the Fort Collins Stormwater Criteria Manual. No land treatment of oil impacted or contaminated drill cuttings are permitted. The use of a closed loop drilling system precludes discharge of produced water or flowback to the ground or the use of pits. Produced water or flowback will not be used for dust suppression. A copy of the field’s Spill Prevention, Control, and Countermeasure Plan (SPCC) will be given to the City, which describes spill prevention and mitigation practices. The Company will provide the City documentation of waste disposal and its final disposition.

Water supply – *Prospect Energy will identify in the site plan its source for water used in both the drilling and production phases of operations. The sources and amount of water used in the City shall be documented and this record shall be provided to the City annually or sooner, upon request of the City Manager. The disposal of water used on site shall also be detailed including anticipated haul routes, approximate number of vehicles needed to supply and dispose of water, and the final destination for water used in operation.*

Comparison with LUC Option “B”

During Council deliberations, direction was given to staff to proceed with negotiations for an Agreement with Prospect Energy that was consistent with the Land Use Code provisions reviewed by Council in Ordinance No. 144. While Ordinance No. 144 was not adopted it contained regulation for oil and gas exploration and production. One of the options was for a single-track development review process that generally contained more stringent regulations than currently required by the COGCC and was described as Option “B”. Staff prepared a matrix illustrating how the proposed agreement with Prospect Energy meets or exceeds requirements in Option B (Attachment 3).

Other Conditions of the Agreement

Through this Agreement, Prospect Energy will comply with all BMPs for New Wells as defined as a “Company-operated well spudded during the term of this agreement, and located on either a currently existing well pad or a new well pad that is located within the City limits.” In other words, BMPs will not apply to previously developed wells either inside or outside the city limits owned by Prospect Energy. Approving this agreement requires Prospect Energy to comply with the terms of the Agreement and removes any further development review permitting process. However, the Agreement provides for public and staff notice, staff review and periodic inspections of any New Wells. Prospect Energy will also be required to use the most stringent regulation in effect whether the regulation is a State, Federal or required by this Agreement.

The term proposed in the Agreement is for five (5) years with successive five (5) year terms, until either Party wishes to terminate the Agreement. The Agreement is binding to anyone who acquires either the Fort Collins Field or the Undeveloped Acreage (UDA). There is also a non-performance clause in the Agreement which allows for mediation and court remedies in the event the performance is not “cured.”

If Council approves this agreement, Prospect Energy has indicated they would continue operating the Fort Collins Field and potentially increase the number of wells by six (6) to eight (8). As required by a SUA all new wells will be drilled from existing well pads thus minimizing any future surface impact from the new drilling. It is likely that hydraulic fracturing would be utilized in the operation of the field. This fracturing would not be in conjunction with horizontal drilling and does not require intensive water usage seen in other natural gas developments. For example, the last six (6) hydraulic fracturing processes in the Muddy J Formation - Fort Collins Field averaged 114,129 gallons of water compared to 380,272 for a Wattenberg Vertical well or a Wattenberg Horizontal well requiring 2,992,374 gallons (data provided by COGCC). In addition, it is likely that the Fort Collins Field will not produce any marketable gas due to the extremely low quantity of gas contained in the field.

Prospect Energy also holds certain leasehold interests within the City described as the Undeveloped Area (UDA) as depicted in (Attachment #2). If Council approves this agreement Prospect Energy intends to explore oil and gas development in the UDA. It should be noted that Prospect Energy has Surface Use Agreements with the surface owners for the Fort Collins Field (since 1988, amended 2001) and the UDA (2011). Those agreements govern any potential well locations and associated facilities within the Subdivisions and other specified terms, including, but not limited to, landscaping and fencing around wells and associated production equipment.

FINANCIAL / ECONOMIC IMPACTS

A true triple bottom line analysis includes an assessment of environmental, social, and economic impacts. Staff analysis to date has focused on potential and possible environmental impacts if hydraulic fracturing is allowed. Staff was unable to conclusively determine financial impacts of any health and safety hazard related to hydraulic fracturing due to the significant number of variables that relate to the hydraulic fracturing process, transportation of material and waste produced, and removal of waste materials. A social impact analysis has not yet been undertaken for this discussion. It is assumed that social impacts of hydraulic fracturing are discussed and addressed in terms of concerns about health impacts, impacts to property and housing values, and quality of life.

Prospect Energy indicates that without this Agreement they would no longer be able to adequately operate the Fort Collins Field or expand into other existing lease holdings currently within the city limits.

ENVIRONMENTAL IMPACTS

Documented in Agenda Item Summary (AIS) 26, prepared for Council Hearing February 19, 2013.”

Laurie Kadrich, Community Development and Neighborhood Services Director, stated this agreement, if approved, would allow Prospect Energy to continue operating, or expand operations within the city limits in the Fort Collins field, as well as explore production opportunities on other leases that they own within the city limits, and use hydraulic fracturing in the process under certain conditions. Kadrich noted Prospect Energy has agreed to abide by all conditions of this agreement in the event the City is able to work with Larimer County to regulate oil and gas development within the growth management area. Kadrich reviewed the existing Fort Collins field location and discussed the possibility of expansion. She also discussed environmental and health impacts of the field and detailed the requirements of the agreement.

Deputy City Attorney Daggett read the revisions to the Ordinance.

Jeremiah Thomas, Fort Collins resident, stated the operator should not be allowed in city limits, but encouraged proper oversight if they are allowed to operate.

Becky Vass, Laporte resident, Frack Free Fort Collins, opposed the use of hydraulic fracturing, citing the City's recent ban, and opposed the operator agreement.

Maya Hesser, 2133 Ford Lane, credited Prospect Energy with fixing some issues related to the previous operator. She expressed concern relating to air quality and asked the City to ensure Prospect Energy becomes the safest operator in the state.

Lia Pace, Fort Collins resident, opposed the use of hydraulic fracturing, citing the City's recent ban, and opposed the operator agreement.

Danny Hesser, 2133 Ford Lane, opposed hydraulic fracturing and asked Council to maintain the moratorium for the growth management area. He asked that negotiations be conducted in a manner to demand accountability.

Devin Hirning, 2214 Fossil Creek Parkway, commended Scott Hall and Prospect Energy for making improvements over the previous operator but encouraged proper vetting of the agreement.

Elizabeth Hudetz, 1407 Ticonderoga, expressed concern regarding air quality issues and opposed hydraulic fracturing.

Mary Griggs, Prospect Energy Environmental Engineer, stated a disclosure of all the chemicals used is required by law and stated Prospect Energy aims to be a good steward of the environment.

Ross Cunniff, 2267 Clydesdale, expressed concern about the state's setback regulations and encouraged additional work on some of the issues prior to the acceptance of an operator agreement.

Patrick Edwards, 1731 Valley Forge, encouraged everyone to read the agreement and commended Prospect Energy for being a good neighbor. He supported the agreement.

Scott Hall, Prospect Energy Chief Executive Officer, requested approval of the operator agreement and noted many of the environmental concerns have been addressed in the agreement.

Rico Moore, 721 West Myrtle, discussed the hazards of hydraulic fracturing.

Councilmember Manvel asked if this agreement would restrict drilling to existing pads. Kadrach replied in the affirmative for the Fort Collins field. In the undeveloped acreage area (UDA), there are no existing wells; therefore, new development could occur in that area.

Councilmember Manvel asked what would happen to the agreement if a new operator purchases the field. Deputy City Attorney Eckman replied the agreement would go with the field and is assignable.

Councilmember Manvel asked about emergency notification provisions. Kadrach replied, if this agreement is approved, Prospect Energy will be required to notify the City, as well as the local emergency agency, of any kind of spill or problem, as well as their general reporting requirements. Mike Gavin, Emergency Management Office Manager, PFA, replied the intent was to have them report any spills and have emergency operations plans on site. Citizens would be notified using the various media emergency notification systems. Kadrach noted there is a specific requirement in the agreement requiring the operator to communicate with neighboring residents regarding potential hazards and emergencies.

Mayor Pro Tem Ohlson asked why this item has moved forward so quickly and asked why fracking is being considered. He questioned the apparent lack of public outreach regarding the item. Mayor Weitkunat replied the fracking ban exempted the local operator. Councilmember Horak replied the ban allowed the option of an operator agreement which would allow operations to continue on existing well pads.

Mayor Pro Tem Ohlson asked why fracking was going to be allowed in the UDA. He stated his understanding is that the memorandum of understanding (MOU) does not apply to the existing operation. Kadrach replied in the affirmative and stated the MOU would apply to any new development within the existing field, which is limited to the existing pads in the Fort Collins field. She clarified this would mean allowing additional fracking other than on the existing sites.

Councilmember Manvel asked if the undeveloped acreage was mentioned previously. Kadrich replied the specifics had not previously been addressed, other than the direction to work as quickly as possible to develop an operator agreement with the existing operator.

Mayor Pro Tem Ohlson stated he would have thought the MOU would have impacted the existing operations to the most reasonable extent possible.

Councilmember Manvel noted the best management practices, as outlined, do not apply to existing wells and asked if they would apply to existing wells if those wells are re-fracked. Kadrich replied in the affirmative, but stated this agreement would not apply to hydraulic fracturing on one of the existing seven wells. Deputy City Attorney Eckman stated the best management practices apply to new wells on old pads or not; routine maintenance and hydraulic fracturing would be allowed on existing wells without the application of best management practices.

Scott Hall, Prospect Energy, noted existing wells were excluded from best management practices with the exception of two items.

Councilmember Horak asked about future plans for the UDA. Mr. Hall replied that is exploratory acreage and there are no immediate plans to drill there as it is deemed risky. Should an exploratory well be successful, Mr. Hall anticipated drilling multiple wells from one pad in order to reduce the amount of surface disturbance.

Mayor Pro Tem Ohlson asked about the possibility of developing the UDA. Lindsay Ex, Environmental Planner, replied there are two key areas of wet meadow in the UDA; however, there should be no issue in protecting those areas. The operator agreement contains Land Use Code ecological protection standards similar to those for any other development in the city.

Mayor Pro Tem Ohlson asked about environmental restoration requirements. Ex replied the state regulates the restoration requirements; however, the City would have an ongoing relationship with the operator per the operator agreement.

Mayor Pro Tem Ohlson expressed concern that the state's regulations would not be strict enough. Ex replied that is an area in which staff feels comfortable using the Local Government Designee process to make comments and get the City's needs met.

Mayor Pro Tem Ohlson asked when staff knew about the UDA. Kadrich replied she became aware of it four or five weeks ago when Prospect Energy sent the first draft of the agreement.

Deputy City Attorney Eckman noted an ecological characterization study would be required if any new well is within 500 feet of any natural habitat or feature and, if impacts to these resources occur, mitigation plans to ensure no net resource loss, per the Land Use Code, will occur.

Councilmember Troxell made a motion, seconded by Councilmember Kottwitz, to adopt Resolution 2013-024.

Mayor Pro Tem Ohlson stated he would not support the motion as he was unaware of the UDA and stated the fracking ban should apply to that area. He opposed what he viewed as the reversal of the fracking ban.

Councilmember Troxell stated he would support the motion as this will allow the current operator to fulfill its mineral rights and allow the City to avoid potential litigation. He commended the open communication of Prospect Energy and commended the staff presentation and facts therein.

Councilmember Horak stated he would support the Resolution and commended work on the agreement and the spirit of cooperation of Prospect Energy. He did express concern regarding the potential of developing the UDA.

Councilmember Manvel stated he would not support the motion as there should have been additional process related to the UDA.

Councilmember Kottwitz disagreed regarding process concerns. She commended Prospect Energy for its commitment to the community and commended staff work on the expedient agreement.

Mayor Weitkunat stated she would support the Resolution as the existing operator has always been a part of the discussion.

The vote on the motion was as follows: Yeas: Weitkunat, Kottwitz, Horak and Troxell. Nays: Manvel and Ohlson.

THE MOTION CARRIED.

Councilmember Troxell made a motion, seconded by Councilmember Kottwitz, to adopt Ordinance No. 057, 2013, as updated, on First Reading.

Mayor Weitkunat requested an explanation of the moratorium termination with respect to Prospect Energy. Kadrich replied the operator agreement will be effective today, as it was done by Resolution; however, the moratorium on new drilling would still be in place until July 31. This Ordinance would remove that moratorium for Prospect Energy in order to allow it to continue existing operations and any expansion.

Councilmember Horak noted the type of hydraulic fracturing done by Prospect Energy is different than what most people think of as fracking. He requested additional assurances regarding potential development in the UDA as well as additional information regarding the implications of this termination.

Councilmember Manvel stated he would support the motion as it is logical due to the majority of Council supporting the agreement.

Councilmember Horak requested information regarding response and restoration following an emergency situation. Ex replied the emergency preparedness plan requires the operator to have adequate personnel, supplies, and training to implement the plan immediately and at all times during operations.

Mayor Pro Tem Ohlson expressed concern regarding the ability to frack on a piece of land unknown until recently.

The vote on the motion was as follows: Yeas: Weitkumat, Manvel, Kottwitz, Horak and Troxell.
Nays: Ohlson.

THE MOTION CARRIED.

Extension of the Meeting

Councilmember Manvel made a motion, seconded by Councilmember Troxell, to extend the meeting past 10:30 p.m. Yeas: Weitkumat, Manvel, Ohlson and Troxell. Nays: Horak and Kottwitz.

THE MOTION CARRIED.

Consideration of the Appeal of the February 7, 2013 Planning and Zoning Board Decision to Approve Sign Modifications for the Foothills Mall Redevelopment Plan, Amended the Planning and Zoning Board's Approval of Modification Regarding Signs

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The Planning and Zoning Board conducted a special meeting on February 7, 2013. A development application for the Foothills Mall Redevelopment Plan was one of the items for consideration on the agenda. The Plan is for a 76.3 acre mixed-use redevelopment of the existing Foothills Mall, consisting of a commercial component, a commercial parking structure, and 800 multi-family dwelling units. The development application also included a modification of standards request for sign regulations contained in Section 3.8.7 of the Land Use Code (LUC). The sign modifications that are the subject of this appeal were approved by the Board.

On February 21, 2013, Mayor Pro Tem Kelly Ohlson filed a Notice of Appeal with the City Clerk. The Notice did not contain any specific grounds for the appeal but did include a general description of the issues to be considered on appeal. The issues center on the Planning and Zoning Board's approval of modification requests to:

- 1. Allow two electronic message center signs (a.k.a. digital signs) to display messages in full color rather than in one color;*
- 2. Allow two electronic message center signs to exceed 50% of the total area of the sign face; and*
- 3. Allow two electronic message center signs along the South College Avenue frontage of the development instead of the one electronic message center sign allowed.*

BACKGROUND / DISCUSSION

Section 3.8.7 of the LUC contains regulations that govern the size, height, location, and design requirements for signs on private property. The Applicant, Alberta Development Partners, submitted a modification request pertaining to two electronic message center ground signs to be located along the South College Avenue perimeter of the site. Specifically, the modifications which are the subject of this appeal were for relief from the following standards:

1. *Section 3.8.7(M)(4)(c) – allow the two proposed electronic message center ground signs along South College Avenue to display messages in full color rather than one color.*
2. *Section 3.8.7(M)(4)(d) – allow the size of the two electronic message center ground signs along South College Avenue to exceed fifty percent (50%) of the total area of the sign face. Specifically, allow the size of each of the two signs to be sixty-four percent (64%) of the total area of the sign face*
3. *Section 3.8.7(M)(4)(h) – allow more than one electronic message center ground sign per street per development. Specifically, allow two such signs along the South College Avenue frontage of the development, with the signs separated by a distance of 1,164 feet.*

Action of the Planning and Zoning Board

After testimony from the staff, the applicant, and the public, the Planning and Zoning Board unanimously approved the modification requests to items 2 and 3 above, and approved the modification request to item 1 above by a vote of 5-2.

Allegations on Appeal

On February 21, 2013, Mayor Pro Tem Kelly Ohlson (the Appellant) filed a Notice of Appeal with the City Clerk. The only actions of the Planning and Zoning Board which are the subject of the Notice are in regard to the approval of the modifications to items 1, 2, and 3 above.

The Notice does not allege any specific allegations of error regarding whether the Board properly interpreted the Land Use Code or whether the Board conducted a fair hearing.

Review Criteria for Modification Requests

Section 2.8 of the LUC authorizes the Planning and Zoning Board to grant modifications to the standards contained in the LUC if it finds that the granting of the modification complies with the requirements of Section 2.8.2(H), which reads as follows:

(H) Step 8 (Standards): Applicable, and the decision maker may grant a modification of standards only if it finds that the granting of the modification would not be detrimental to the public good, and that:

- (1) the plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested; or*
- (2) the granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Land Use Code, substantially alleviate an existing, defined and described problem of city-wide concern or would result in a substantial benefit to the city by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the city's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the project practically infeasible; or*

(3)by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the owner of such property, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

(4)the plan as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be modified except in a nominal, inconsequential way when considered from the perspective of the entire development plan, and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

Any finding made under subparagraph (1), (2), (3) or (4) above shall be supported by specific findings showing how the plan, as submitted, meets the requirements and criteria of said subparagraph (1), (2), (3) or (4).

Summary

The details of each of the three modifications which are the subject of Mayor Pro Tem Ohlson's Notice of Appeal are found beginning on the bottom of page 7 through page 15 of the staff report for the Modification of Standards Request for Signage (Attachment 22 of Attachment 3). This report was included in the agenda materials presented to the Planning and Zoning Board, and includes a description of the standards, excerpts from the Applicant's Modification Request Letter (Attachment 20 of Attachment 3), and the staff evaluation and recommendation of each request.

The Planning and Zoning Board approved the modification request to allow full color electronic message centers by a vote of five to two, finding that the request satisfied the hardship standard as described in Section 2.8.2(H)(3) above because the unique size and configuration of the property makes it difficult for tenants to get adequate visibility along the street, thereby putting them at a disadvantage.

The Board unanimously approved the modification request to allow the size of each of the two electronic message center signs to exceed 50% of the sign face, finding that:

- 1. the request satisfied the 'equal to or better than' standard as described in Section 2.8.2(H)(1) above because the proposed sign size would be better than a larger sign which would comply with the code and eliminate the need for this modification; and*
- 2. the request satisfied the 'nominal, inconsequential' standard as described in Section 2.8.2(H)(4) above because the size exceeds the maximum allowed by only 6.85 square feet.*

Lastly, the Board unanimously approved the modification request to allow two electronic message center signs along the South College Avenue frontage instead of one such sign, finding that the request satisfied the nominal, inconsequential' standard described in Section 2.8.2(H)(4) above

because the intent of the code is met due to the length of the College Avenue frontage being about 1850 feet and the signs being placed 1164 feet apart.

The specifics of the Board's motions and reasons for approving the three modifications begin on line 1, page 54 and continue through line 17, page 60 of the verbatim transcript (Attachment 6).

Council Action Needed

Council should review the record and determine if the decision of the Planning and Zoning Board to approve the three modifications of standards should be upheld, overturned, modified, or remanded to the Board for further consideration."

Mayor Weitkunat stated she has a conflict of interest regarding this item and stated Mayor Pro Tem Ohlson filed the appeal and can therefore not take the Mayor's place.

Councilmember Kottwitz made a motion, seconded by Councilmember Manvel, to assign Councilmember Troxell as temporary Mayor Pro Tem for this item. Yeas: Weitkunat, Manvel, Kottwitz, Ohlson, Horak and Troxell.

THE MOTION CARRIED.

Mayor Weitkunat withdrew from the discussion of this item due to a conflict of interest.

Deputy City Attorney Daggett reviewed the appeal process.

Peter Barnes, Zoning Supervisor, reviewed the requests for sign code modifications heard by the Planning and Zoning Board. He noted four of the five modifications were approved unanimously and one was approved by a vote of 5 to 2. Three of the approved modifications have been appealed. The first allows for full-color digital signs, the second allows the digital aspect of the sign to account for 64% of the area of the sign face, rather than the 50% limit per the sign code, and the third modification would allow more than one electronic message center sign per street per development. In this case, that would mean two rather than one electronic message center signs along College Avenue. Barnes reviewed the standards examined by the Planning and Zoning Board when considering modifications and discussed the proposed signage and staff recommendations for the modifications.

Mayor Pro Tem Ohlson stated he visited the site simply to garner an impression of the geography.

Councilmember Manvel agreed with Mayor Pro Tem Ohlson.

Councilmember Troxell stated he and Councilmember Horak also attended the site visit.

APPELLANT PRESENTATION

Mayor Pro Tem Ohlson, appellant, provided a brief history of the City's sign code and stated it has a tremendous positive impact on the urban fabric of Fort Collins. He withdrew his appeal relating to the percentage of the sign size to be allowed as electronic. With regard to allowing two digital signs, Mayor Pro Tem Ohlson stated he could not find any grounds on which to grant that

modification and stated it does not meet any of the four criteria necessary for the granting of a modification and stated the two signs would be detrimental to the public good. With regard to allowing full color electronic signage, Mayor Pro Tem Ohlson noted staff did not recommend approval of this modification and also stated the granting of this modification would be detrimental to the public good. He urged Council to uphold the integrity of the recently revised digital sign code and noted driver safety should be taken into consideration as a possible detriment to the public good.

OPPONENT PRESENTATION

Carolyn White, land use counsel for the developer, stated there is a great amount of evidence supporting the Planning and Zoning Board's decision to grant the variances. She reviewed the public input at the hearing, which was generally supportive of the signage modifications. She stated that support indicates the modifications would not be detrimental to the public good. Ms. White reviewed the reasoning for the modification request to have two signs rather than one. She noted the signs would be 1,164 feet apart and the sign code allows electronic signs to be only 100 feet apart if they are on different properties. Staff recommended approval of this modification, and it was granted. With regard to the full color electronic message centers, Ms. White stated the developer is seeking a modification based on a unique hardship. She requested that Council uphold the decisions of the Planning and Zoning Board.

Bob Walters, Walton Foothills Holdings, noted this is a regional mall and attracting the best national tenants often requires national branding for signage and the proposed signage would allow for those tenants located on the interior of the project to advertise and would allow space for public announcements.

Julia Senesac, 1520 Hearthfire Drive, stated the property has no sight line from the south and it is a unique property with a unique need for signage.

APPELLANT REBUTTAL

Mayor Pro Tem Ohlson referenced the staff recommendation opposing the granting of the variance relating to the full color signs. He stated the success of the mall should not hinge on these modifications and commended the high quality of life in Fort Collins combined with affordable living. He stated the city's sign code contributes to this quality of life.

OPPONENT REBUTTAL

Ms. White requested that the decision of the Planning and Zoning Board be upheld and noted the Board granted these modifications based on the criteria necessary. She noted there were very few modifications requested on a project of this magnitude.

COUNCIL DISCUSSION

Deputy City Attorney Daggett noted the City Code provides that when a councilmember appeals an item, that member also participates in the discussion as a councilmember. She suggested referencing the modification related to two signs as modification one and the modification relating to full color signs as modification two.

Councilmember Manvel requested clarification regarding non-digital signs on the site. Barnes replied the sign package includes six monument signs along the College Avenue frontage, four of which would be static and the other two of which are proposed to be the digital message center signs. Those digital signs would be two-sided, but only one side of each would be digital. Additionally, there are ten on-site traffic directional signs located interior to the site, three secondary entry signs not located on dedicated streets, and six additional small static signs along Stanford.

Councilmember Manvel asked how large the signs along College Avenue would be allowed to be. Barnes replied signs could potentially be 90 square feet per side; however, they are proposing 47.5 square feet. Two of the static signs are 90 square feet per side and two other project entry monuments are 47.5 square feet.

Councilmember Manvel asked about the necessity for the signs to attract tenants, noting the testimony that the project has great tenant interest. Ms. White replied there is a difference between strong interest and signed leases. Tenant representatives are always concerned about visibility and signage is a critical requirement.

Councilmember Manvel asked if so many wayfinding signs are actually necessary. Ms. White replied there will be many brand new tenants seeking to announce their presence, this effort is aimed at the mall becoming a regional draw, and the entire sign program was designed to work as an integrated whole.

Councilmember Manvel argued the digital signs are irrelevant in terms of the mall being a regional draw. Ms. White replied the signs will provide information to individuals in Fort Collins who may or may not be in town to shop at the mall.

Councilmember Manvel noted the sign code needs to provide a balance between not distracting drivers and providing information. He asked if Ms. White would comment on the distractive qualities of digital signs. Ms. White replied a variety of studies have been done regarding digital billboards which have shown no difference from a safety perspective regarding LED versus static signs. When LED signs are animated, scrolling, or rapidly changing, safety does start to become impacted. The Colorado Department of Transportation has established a minimum dwell time of 5 seconds; however, the City of Fort Collins requires messages to remain for 60 seconds and there is no proposal to deviate from that requirement.

Councilmember Manvel asked about the attraction difference between a single color and full color sign. Ms. White replied the attention is probably similar; however, the recognition of what the sign is trying to promote is different.

Suspension of Rules

Councilmember Manvel made a motion, seconded by Mayor Pro Tem Ohlson, to suspend the rules and extend the meeting past 12:00 a.m. Yeas: Manvel, Ohlson and Troxell. Nays: Kottwitz and Horak.

THE MOTION CARRIED.

Councilmember Kottwitz made a motion, seconded by Councilmember Horak, to uphold the decision of the Planning and Zoning Board related to the modification for two signs, Section 3.8.7(M)(4)(h).

Mayor Pro Tem Ohlson stated he would support the motion.

Councilmember Horak stated the testimony and distance separating the signs make this modification acceptable.

Councilmember Kottwitz stated the two sign modifications appear to be inconsequential given their separation.

The vote on the motion was as follows: Yeas: Horak, Manvel, Kottwitz, Ohlson and Troxell. Nays: none.

THE MOTION CARRIED.

Councilmember Manvel made a motion, seconded by Mayor Pro Tem Ohlson, to overturn the decision of the Planning and Zoning Board related to full color signs, Section 3.8.7(M)(4)(c).

Councilmember Manvel argued the full color signs would be detrimental to the public good as the sign code was revised through a lengthy public process. He argued public safety and community aesthetics would be negatively impacted and stated it is a stretch that this modification is necessary due to a unique hardship, given the number of other signs on the site.

Councilmember Kottwitz disagreed and stated the mall property does provide a unique hardship and the regional aspect of the mall necessitates proper signage.

Councilmember Manvel stated people will soon discern what stores and features are on the property and full color digital signage is not necessary.

Mayor Pro Tem Ohlson commended staff's work on the project and integrity regarding not recommending approval of the full color modification.

Councilmember Troxell stated he would oppose the motion.

Councilmember Horak asked if the other approved modifications are similar to previous requests in the city. Barnes replied in the affirmative and noted no other modification requests have been received regarding the year-old digital sign code.

Councilmember Horak questioned whether or not a hardship has been proven. He stated making this change for the entire city makes more sense than just arguing a hardship for this property.

The vote on the motion was as follows: Yeas: Manvel, Ohlson and Horak. Nays: Troxell and Kottwitz.

THE MOTION CARRIED.

Deputy City Attorney Eckman recommended Council modify the Planning and Zoning Board's approval of the PDP to include a condition that the PDP not contain any electronic message center signs, except those in compliance with Section 3.8.7(M)(4)(c).

Councilmember Manvel made a motion, seconded by Mayor Pro Tem Ohlson, to modify the Planning and Zoning Board's approval of the PDP to include a condition that the PDP not contain any electronic message center signs, except those in compliance with Section 3.8.7(M)(4)(c). Yeas: Manvel, Ohlson and Horak. Nays: Troxell and Kottwitz.

THE MOTION CARRIED.

Other Business

Mayor Pro Tem Ohlson noted the regular April 2, 2013 Council meeting will not be cancelled.

Councilmember Manvel made a motion, seconded by Councilmember Troxell, to call a Special Council meeting for April 9, 2013. Yeas: Manvel, Kottwitz, Ohlson, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

Councilmember Troxell made a motion, seconded by Councilmember Kottwitz, to direct the City Manager to communicate with PSCo via letter and/or other communications about the impact of its pipeline project. Yeas: Manvel, Kottwitz, Ohlson, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

Adjournment

Councilmember Kottwitz made a motion, seconded by Councilmember Manvel, to adjourn to 6:00 p.m. on March 26, 2013, in order to consider any additional business that may come before the Council. Yeas: Manvel, Kottwitz, Ohlson, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

The meeting adjourned at 12:20 a.m.

Mayor

ATTEST:

City Clerk