

AGENDA ITEM SUMMARY

April 15, 2014

City Council

STAFF

Sara Gonzales, Council Agenda Coordinator

SUBJECT

Consideration and Approval of the Minutes of the March 18, 2014 Regular Council Meeting.

EXECUTIVE SUMMARY

The purpose of this item is to approve the minutes from the March 18, 2014 Regular Council meeting.

ATTACHMENTS

1. March 18, 2014 minutes(PDF)

March 18, 2014

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 18, 2014, 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: Campana, Cunniff, Horak, Overbeck, Poppaw, Troxell and Weitkunat.

Staff Members Present: Atteberry, Nelson, Roy.

Agenda Review

City Manager Atteberry requested postponement of Item No. 2, *Items Relating to the Kechter Farm Annexation and Zoning*, to April 1, 2014. An amended Ordinance has been prepared for Item No. 16, *Items Relating to Recreational Marijuana*. The originally scheduled work session has been cancelled and items will be discussed at next week's work session.

Citizen Participation

Julia MacMillan, Citizens Against Asphalt Toxins, opposed the proposed asphalt plant off Taft Hill Road, citing health concerns and the plant's proximity to schools.

Karen Hare, Citizens Against Asphalt Toxins, opposed the proposed asphalt plant off Taft Hill Road, citing health concerns and the plant's proximity to schools.

Dr. Kevin Pass, 1130 St. German Drive, opposed the proposed asphalt plant off Taft Hill Road, citing health concerns.

Betty Aragon, 140 2nd Street, expressed concern regarding the redevelopment of Lincoln Avenue and stated traffic issues on Lemay near the Alta Vista, Buckingham and Andersonville neighborhoods need to be resolved.

Cheryl Distaso, Fort Collins Community Action Network, supported the proposed Lincoln Avenue design, but expressed concern regarding its cost. She expressed concern regarding the Lemay traffic and necessary improvements in the Alta Vista, Buckingham and Andersonville neighborhoods.

Lea Hanson, 908 Cheyenne Drive, Women's Commission, discussed International Women's Day and Women's History Month and reviewed the history of women in the community.

Rob Kagen, Buttonwood Drive, expressed concern regarding the effect of neurotoxins, including fluoride, on developing fetuses.

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Arvid Bloom, 1372 Iva Court, stated the community should be proud of its last fifty years and needs to look ahead and prepare for the next fifty years. He questioned the effect of the Affordable Care Act on the City's budget.

Mel Hilgenberg, 172 North College, announced community events and suggested uses for various properties around town.

Lois Tink, 2960 West Stuart, expressed concern regarding the lack of affordable housing in the community.

Kelly Giddens, Citizens for a Healthy Fort Collins, announced a health analysis bill being presented by Joanne Ginal and suggested the City support its adoption.

Monte Barry, 415 Howes, opposed liquor service at a City event and stated drinking and bicycle riding should not be encouraged.

Citizen Participation Follow-up

Councilmember Cunniff noted the asphalt plant is a concern of Council and its role in the issue is being discussed.

Councilmember Troxell commended Mr. Bloom's comments and discussed the role of Council's Futures Committee. He expressed appreciation for the topics discussed.

Councilmember Overbeck thanked Ms. Aragon and Ms. Distaso for their comments and stated he had met with the Citizens Against Asphalt Toxins group.

Councilmember Campana discussed affordable housing in the community.

Mayor Pro Tem Horak requested input from the Legislative Committee regarding the bill being presented by Representative Ginal. Councilmember Cunniff replied the bill is consistent with several City objectives and is being supported by the Committee.

Mayor Pro Tem Horak requested information regarding how the asphalt plant will be reviewed given the fact that its impacts will affect City residents. City Manager Atteberry replied staff is working on the issue and Council will be receiving additional information soon.

Mayor Pro Tem Horak suggested hosting a neighborhood meeting for the Alta Vista, Buckingham and Andersonville areas.

Councilmember Cunniff asked if Council would like to engage in lobbying efforts regarding Representative Ginal's bill and thanked Ms. Hanson for her discussion of women's issues.

Mayor Weitkunat thanked Ms. Hanson for her discussion of women's issues.

CONSENT CALENDAR

1. Consideration and Approval of the Minutes of the February 18, 2014 Regular Council Meeting and the February 25, 2014 Adjourned Council Meeting.

The purpose of this item is to approve the minutes from the February 18, 2014 Regular Council meeting and the February 25, 2014 Adjourned Council meeting.

2. Items Relating to the Kechter Farm Annexation and Zoning.

- A. Second Reading of Ordinance No. 005, 2014, Annexing Property Known as the Kechter Farm Annexation to the City of Fort Collins.

- B. Second Reading of Ordinance No. 006, 2014, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Kechter Farm Annexation to the City of Fort Collins.

These Ordinances, unanimously adopted on First Reading on January 7, 2014, annex and zone 88.21 acres located north of Fossil Creek Reservoir, approximately 1,320 feet south of Kechter Road, 2,640 feet east of South Timberline Road, just west of Ziegler Road, and southwest of Kinard Middle School. The property is located within the Fossil Creek Reservoir Area Plan. In accordance with the Intergovernmental Agreement with Larimer County, adopted in 1999, properties within the Fossil Creek Reservoir Area receive their land use approvals in the County and are annexed into the City prior to construction.

3. Second Reading of Ordinance No. 029, 2014, Appropriating Unanticipated Grant Revenue in the Recreation Fund for the Vida Sana Program.

This Ordinance, unanimously adopted on First Reading on March 4, 2014, appropriates sub-grant funds from the Poudre Valley Health System Foundation and the Coalition for Activity and Nutrition to Defeat Obesity (CANDO) for the Vida Sana program to eliminate racial and ethnic disparities among Latino/Hispanic community members. Specific interventions include increasing access to facilities providing physical activity; providing social support to increase physical activity; and implementing a communitywide campaign for increasing physical activity that will be carried out by partner agencies.

4. Items Relating to FC Bikes Program.

- A. Second Reading of Ordinance No. 030, 2014, Appropriating Unanticipated Grant Revenue in the Transportation Services Fund for the 2014 Fort Collins Bikes Program.

- B. Second Reading of Ordinance No. 031, 2014, Appropriating Unanticipated Grant Revenue From Kaiser Permanente in the Transportation Services Fund for the 2014 Fort Collins Bikes Program.

- C. Resolution 2014-027 Authorizing the Mayor to Enter into an Intergovernmental Agreement with the State of Colorado Department of Transportation for the Purpose of

Obtaining a Congestion Mitigation and Air Quality Grant in Support of the FC Bikes Program.

These Ordinances, unanimously adopted on First Reading on March 4, 2014, appropriate unbudgeted grant funds received for the FC Bikes Program: (1) a Congestion Mitigation & Air Quality (CMAQ) grant (2014-2016) in the amount of \$704,128; and (2) a Kaiser Foundation Health Plan of Colorado (KP) grant (2014) in the amount of \$94,100.

Resolution 2014-027 authorizes the Mayor to execute a grant agreement between the City and CDOT for the purpose of obtaining a CMAQ grant in support of the FC Bikes Program.

5. Second Reading of Ordinance No. 032, 2014, Appropriating Unanticipated Grant Revenue in the Wastewater Fund and Authorizing the Transfer of Existing Appropriations from the Drake Water Reclamation Facility Improvements Capital Project for the Drake Water Reclamation Facility's Nutrient Grant Project for South Process Train Improvements.

This Ordinance, unanimously adopted on First Reading on March 4, 2014, appropriates grant funding in the amount of \$1,080,000 in the Wastewater Fund. The grant funds will be used for the planning, design, and construction of a portion of the Nutrient Removal Improvements required for the Drake Water Reclamation Facilities' South Process Train.

6. Second Reading of Ordinance No. 033, 2014, Establishing Rental Rates and Delivery Charges for the City's Raw Water for the 2014 Irrigation Season.

This Ordinance, unanimously adopted on First Reading on March 4, 2014, sets 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 other City departments. The proposed rate for each type of water is based on several factors including market conditions and assessments charged by irrigation companies.

7. Second Reading of Ordinance No. 034, 2014, Amending Sections 3.8.31 and 5.1.2 of the Land Use Code Pertaining to Hoop Houses.

This Ordinance, unanimously adopted on First Reading on March 4, 2014, amends the Land Use Code to exempt hoop houses from the Building Code requirements and add hoop houses to the list of accessory structures allowed in the Code, and require urban agriculture licensees to locate hoop houses on their site plans.

8. Second Reading of Ordinance No. 035, 2014 Amending Chapter 9 of the City Code and Adopting by Reference the 2012 International Fire Code, with Amendments.

This Ordinance, unanimously adopted on First Reading on March 4, 2014, adopts the 2012 International Fire Code, along with local amendments, to provide protection of public health and safety and general welfare regarding fire prevention and suppression.

Staff is recommending that this Ordinance be amended on Second Reading by removing from subsections D103.4.1, D103.4.2, and D103.4.3 of Appendix D to the 2012 International Fire Code as adopted and amended in the Ordinance, the reference to the method of measuring the distance of the access roads: “measured as the hose would lay.” Because the length of an access road is easily determined by direct measurement, there is no need to refer to a measurement related to the way a hose would lay. This term could be ambiguous, cause confusion, and provides no help in making the measurement.

9. Second Reading Ordinance No. 036, 2014 Authorizing the Conveyance of Parcels of Real Property on North College Avenue to the Colorado Department of Transportation.

This Ordinance, unanimously adopted on First Reading on March 4, 2014, authorizes the conveyance of parcels acquired on North College Avenue for road improvements to the Colorado Department of Transportation. The City constructed the North College Avenue Improvements Project - Vine to Conifer in 2012. As required for all projects involving a Colorado Department of Transportation (CDOT) facility, and per the intergovernmental agreement between the City and CDOT, any acquired property for road right of way purposes is required to be subsequently conveyed to CDOT.

10. Second Reading of Ordinance No. 037, 2014 Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in Phase Four of the Southwest Enclave Annexation to the City of Fort Collins, Colorado.

Ordinance No. 037, 2014, unanimously adopted on First Reading on March 4, 2014, zones Phase Four of the Southwest Enclave Annexation, the last phase within this enclave and consisting of approximately 400 acres. The requested zone districts for Phase Four are Urban Estate (U-E), Rural Lands (R-U-L), and Public Open Lands (P-O-L).

11. First Reading of Ordinance No. 043, 2014, Appropriating Unanticipated Grant Revenue in the General Fund and Authorizing the Transfer of Appropriated Amounts Between Accounts and Projects for the Multi-Jurisdictional Northern Colorado Drug Task Force.

Fort Collins Police Services applied to the Office of National Drug Control Policy and the Department of Justice on behalf of the Northern Colorado Drug Task Force (NCDTF) for federal grant monies to fund a portion of the investigation of illegal narcotics activities in Larimer County. These grant awards will be used to offset operating expenses for each participating agency.

In addition, because of the significant decrease in federal funds available for drug enforcement, the NCDTF is transferring \$236,160 from its forfeiture reserve account to its 2014 operating budget to cover unfunded expenses. The majority of the forfeiture reserve account is made up of assets seized from people engaged in illegal drug activities.

12. First Reading of Ordinance No. 045, 2014, Authorizing the Purchasing Agent to Enter into an Agreement for the Financing by Lease-Purchase of Vehicles and Equipment and Appropriating the Amount Needed for Such Purchases.

The purpose of this item is to request the lease-purchase of vehicles and equipment for the cost of \$2,941,469. Payments at the 2.4% interest rate will not exceed \$313,029.11 in 2014.

Money for 2014 lease-purchase payments is included in the 2014 budget. The effect of the debt position on the City's financial rating will be to raise the total City debt to 2.38%. A competitive process was used to select Pinnacle Public Finance for this lease. A 2014 Finance Department analysis of current and historical equipment lease financing arrangements showed that lease-purchase is in the best interest of the City given the normal spread between lease rate and reinvestment rate. Staff believes acceptance of this lease rate is in the City's best interest.

13. First Reading of Ordinance No. 046, 2014, Adding a New Section to the City Code Dealing with the Selection of Special Counsel for the City and Establishing a Procedure for Considering Whether to Consent to Potential or Actual Conflicts of Interest on the Part of Special Counsel.

The purpose of this item is to establish a new process for selecting special legal counsel and for considering whether the City should waive conflicts of interest that such counsel may have in particular situations.

14. Items Relating to Federal and State Grants for the Fort Collins-Loveland Airport.

- A. Resolution 2014-022 Authorizing the City Manager to Execute the 2014 Grant Agreement (AIP Project No. 3-08-0023-33-2014) with the Federal Aviation Administration for Funding for Equipment and Improvements at the Fort Collins-Loveland Municipal Airport.
- B. Resolution 2014-023 Authorizing the City Manager to Execute a Grant Agreement (CDAG #14-FNL-01) with the Colorado Department of Transportation (Colorado Aeronautical Board) for the Funding of Equipment and Improvements at the Fort Collins-Loveland Municipal Airport.
- C. Resolution 2014-024 Authorizing the City Manager to Execute a Grant Agreement (CDAG #14-FNL-I01) with the Colorado Department of Transportation (Colorado Aeronautical Board) for Funding of an Intern Position Pertaining to the Fort Collins-Loveland Municipal Airport.

The purpose of this item is to authorize the execution of grant agreements received by the Fort-Collins Loveland Airport. Resolution 2014-022 authorizes the City Manager to execute a grant agreement from the Federal Aviation Administration (FAA) for up to \$1,000,000. This FAA Grant will be used to for capital projects including the acquisition of an Airport Rescue and Fire Fighting vehicle and the design and construction of a snow removal equipment building. Resolution 2014-023 authorizes the City Manager to execute a grant agreement from the State of Colorado, Division of Aeronautics for funds in the amount of \$400,000. This State aviation discretionary grant will be used to match the FAA 2014 entitlement grant for the acquisition of an airport rescue and fire fighting vehicle and for the design and construction of a Snow Removal Equipment Storage building. Resolution 2014-024 authorizes the City Manager to execute a grant agreement from the State of Colorado, Division of Aeronautics for funds in the amount of \$33,280. This second State grant will fund fifty percent of the Airport's intern program for 24 months.

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

Councilmember Cunniff made a motion, seconded by Councilmember Troxell, to adopt and approve all items not withdrawn from the Consent Calendar. Yeas: Cunniff, Horak, Weitkunat, Overbeck, Poppaw, Troxell and Campana. Nays: none.

THE MOTION CARRIED.

Consent Calendar Follow-up

Councilmember Cunniff discussed Item No. 4, *Items Relating to FC Bikes Program* and Item No. 7, *Second Reading of Ordinance No. 034, 2014, Amending Sections 3.8.31 and 5.1.2 of the Land Use Code Pertaining to Hoop Houses*.

Staff Reports

City Manager Atteberry introduced Barb Zar, Government and External Affairs Officer, and Brad Decker, Strategic Planning Manager, from Platte River Power Authority (PRPA).

Ms. Zar invited the community to PRPA's March 27th listening session.

Mr. Decker discussed changes in energy development, distribution, and storage, and stated price competitiveness is critical for PRPA.

Councilmember Troxell thanked the PRPA representatives for their presentation and noted PRPA's four municipalities are potential providers for ancillary services.

Mayor Weitkunat thanked the PRPA representatives for their presentation and encouraged attendance at the listening session.

Councilmember Reports

Mayor Weitkunat discussed the National League of Cities meeting in Washington D.C. She reported on a panel discussion regarding climate change and preparedness.

Councilmember Troxell reported on the University Communities Council meeting.

Councilmember Overbeck reported on a meeting at the Department of Justice regarding body-worn cameras and Community-Oriented Policing Services among other topics.

Councilmember Campana reported on his attendance at the National League of Cities meetings and commended Dan Weinheimer for his work.

Councilmember Overbeck reported on the Council Finance Committee meeting.

Items Relating to the Kechter Farm Annexation and Zoning, Postponed to April 1, 2014

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

- *Second Reading of Ordinance No. 005, 2014, Annexing Property Known as the Kechter Farm Annexation to the City of Fort Collins.*
- *Second Reading of Ordinance No. 006, 2014, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Kechter Farm Annexation to the City of Fort Collins.*

These Ordinances, unanimously adopted on First Reading on January 7, 2014, annex and zone 88.21 acres located north of Fossil Creek Reservoir, approximately 1,320 feet south of Kechter Road, 2,640 feet east of South Timberline Road, just west of Ziegler Road, and southwest of Kinard Middle School. The property is located within the Fossil Creek Reservoir Area Plan. In accordance with the Intergovernmental Agreement with Larimer County, adopted in 1999, properties within the Fossil Creek Reservoir Area receive their land use approvals in the County and are annexed into the City prior to construction”.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Poppaw, to postpone *Items Relating to the Kechter Farm Annexation and Zoning* to April 1, 2014. Yeas: Horak, Weitkunat, Overbeck, Poppaw, Troxell, Campana and Cunniff. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 007, 2014,
Authorizing the Lease of a Portion of City-Owned Property at 225 Maple Street to Feeding
Our Community Ourselves, Inc. For Up to Five Years, Adopted on Second Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The purpose of this item is to lease 4,446 square feet of City-owned property (which includes 3,011 square feet of building area) to a non-profit cafe. Feeding Our Community Ourselves, Inc. ("FoCo") wishes to lease a portion of 225 Maple Street to house a non-profit cafe with a minimal food processing facility. The terms of the lease are outlined in the Background/Discussion section of this Agenda Item Summary. Ordinance No. 007, 2014 was adopted on First Reading on January 7, 2014 by a vote of 6-1 (Nays: Horak). The Second Reading presents to City Council three options regarding restrictions of the cafe's serving hours.

BACKGROUND / DISCUSSION

Feeding Our Community Ourselves, Inc. ("FoCo") is a non-profit corporation that plans to operate a cafe open to the general public and provide meals to people of all income levels, while using local, organic, and sustainably-grown ingredients. FoCo is a 100% volunteer operated organization. In addition, the site will minimally process local fresh produce to increase its

availability to low-income citizens.

Second Reading of this Ordinance was postponed to March 18, 2014 to allow for public outreach. Staff decided that two meetings would be held and Neighborhood Services would facilitate both meetings. The first meeting was to allow FoCo to present its plans for the site to the neighborhood, followed by questions and answers. The second meeting was to share any possible changes being recommended to the proposed lease and address specific concerns identified at the first meeting.

The main concerns from the meeting participants, as well as opinions received through letters, emails and phone calls, were:

- 1. Security/Enforcement*
- 2. Parking Impacts*
- 3. City's vision for Civic Center and how this business fits that vision*
- 4. Potential changes to lease terms*
- 5. Process for customers to work for meals*
- 6. Hours of operation*

At the first meeting, FoCo's presentation included videos of other community cafes and stated that the cafe would be open for meal service to the general public Monday through Saturday, 11:00AM - 2:00PM. They further explained that there are no free lunches - customers would either pay or work for their meals. The limited hours of operation seemed less threatening to many of the neighbors.

The neighborhood concerns over parking are difficult to resolve. Parking is scarce in the area. There are concerns with increased parking problems with FoCo customer parking and the new residential/limited commercial building being planned for the northeast corner of Maple and Mason. City Planning explained that a parking study is being performed and they will be reaching out to the community in the next few months.

Prior to the first meeting, the plan was to work with FoCo and Parking Services to have four (4) on-street parking spaces signed as 2-hour parking at all times. Considering the neighbors' concerns, staff worked with FoCo and has changed the parking request to be four (4) on-street parking spaces signed as 1-hour parking, 8:00AM - 5:00PM, Monday through Saturday. While concerns still remain over parking, there was a preference to this option.

*At the second meeting, there were fewer neighborhood participants than at the first meeting. Between the first and second meetings, correspondence from the neighborhood indicated that they were more comfortable with the limited hours of operation and the operation hours being during the lunch hour. City staff did inform the neighbors that we would be recommending that the lease would include limited hours, those being the same hours that FoCo had presented to the City and to the neighborhood. The draft Lease Agreement (**Attachment 2**) does not currently include a restriction on hours of operation.*

After the second meeting, it was decided to give City Council three options regarding the restriction of hours. These options are:

1. *Restrict cafe serving hours to 11:00 AM to 2:00 PM, Monday through Saturday with up to five special dining events throughout the year. For the first year, the special dining events will be Mother's Day (10am - 1pm); Father's Day (10am - 1pm); two Bike to Work breakfasts (summer 6:30am - 9:30am and winter 7:00am - 9:30am).*
2. *Restrict cafe serving hours to 10:00 AM - 3:00 PM, Monday through Saturday with up to five special dining events throughout the year. For the first year, the special dining events will be Mother's Day (10am - 1pm); Father's Day (10am - 1pm); two Bike to Work breakfasts (summer 6:30am - 9:30am and winter 7:00am - 9:30am).*
3. *Do not restrict the cafe serving hours.*

In order to finalize the provisions of the Lease Agreement, it will be necessary for Council to specify which of the optional provisions relating to hours of operation should be included in the lease.

Staff recommendation is Option 1. The reason for recommending Option 1 is that since our first meeting with FoCo, they have always presented to the City that the cafe would be open between the hours of 11:00AM - 2:00PM, Monday through Saturday. This is why all the agenda item summaries, including the 212 W. Laporte location, specified those hours. At the first neighborhood meeting when the neighborhood was the most concerned about security in the area, FoCo presented to the neighbors that the hours of operation would be 11:00AM to 2:00 PM, Monday through Saturday. This is the model for other community cafes. The very first question asked about FoCo at the first meeting was "Could the hours of operation be limited in the lease?" Our recommendation includes the option to return in one year to the neighborhood to discuss changing the restricted lease hours, which would be followed with Council action.

LEASE TERMS (Lease is provided as **Attachment 2**)

Tenant: *FoCo will be the tenant.*

Lease Term: *Term of the lease is five years. FoCo has the option to terminate the lease at any time with a 90-day advanced written notice. (Article II)*

Rent: *Rent for the first year will be \$16,900. At the end of the first year, and each year after, the base rent will be adjusted according to the Consumer Price Index (CPI-U). (Article III and IV)*

Use of the Lease Premises: *FoCo may operate a cafe open to the general public, food processing (including food rescue), storage space, fundraising events and board meetings. (Article V)*

Restricted Operation Hours: *Based on Council's recommendation, this section of the lease will describe the hours of general public food service. (Article V)*

Maintenance: *FoCo is responsible for maintaining the Lease Premises including tenant-installed fixtures and equipment. The City is responsible for building systems and exterior maintenance. (Article VI)*

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Alterations and Improvements: All alterations, additions and improvements to the Leased Premises must be approved by the City as owner of the property. FoCo will be responsible for any remodeling and tenant finish costs. (Article VII)

Taxes (Real and Personal): FoCo is responsible for payment of any real property and assessments that may be imposed upon the Lease Premises. (Article IX)

Parking: The City will recommend to Parking Services that four (4) on-street parking spaces be signed as "One Hour Parking between 8AM - 5PM Monday through Saturday". (Article X)

Utilities: FoCo shall pay for all utilities used on the Leased Premises. (Article XII)

Building Signs: All signage must be approved by the City and must comply with all applicable laws. FoCo will be responsible for the cost, erection and maintenance of any signs. (Article XIII)

Subletting and Assignment: FoCo may not assign this lease or any interest without the prior written consent of the City. (Article XIV)

Contingency: This lease is contingent upon FoCo receiving all necessary approvals through the City's Development Review Process. (Article XXIX)

Lease Expiration/Termination: FoCo may remove all their improvements and any movable trade fixtures, equipment and furniture. (Article XXX).

FINANCIAL IMPACTS

Annual rent collected from this lease will result in at least \$16,900 In unanticipated revenue. Rent for this space is based on comparative market rents for industrial space and cold storage buildings.

PUBLIC OUTREACH

Two neighborhood outreach meetings were held on February 5, 2014 and February 19, 2014. Notifications were sent to property owners bounded by North College Avenue to North Whitcomb Street and West Mountain Avenue to Lee Martinez Park. **Attachment 4** is the overall summary of these two meetings.

Thirty-six members of the public attended the first neighborhood outreach meeting on February 5, 2014. This meeting was to present to the neighborhood the City's future plans for Block 32/42, the zoning and land use review process and for FoCo to present their cafe model. Residents had the opportunity to ask questions and provide their comments and concerns (**Attachment 5**).

On February 19, 2014, twenty-eight members of the public attended the second neighborhood outreach meeting. At this meeting, FoCo gave a short presentation followed by City staff and FoCo addressing the concerns identified at the first meeting (**Attachment 6**)."

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Helen Matson, Real Estate Services Manager, discussed the proposed plan for the building and the idea behind the FoCo Café.

Beth Sowder, Neighborhood Services Manager, discussed the public outreach program which has occurred since First Reading. She detailed the two public meetings, which were related to the FoCo Café lease and the EcoThrift lease.

Matson stated parking issues were a concern of neighbors and noted FoCo Café will have four one-hour parking spaces available from 8AM-5PM Monday through Saturday, all for the general public. She stated neighbors were also concerned about loitering; therefore, staff has proposed three options for dining hour restrictions. She stated staff is recommending Option 1, which would limit service hours to 11AM-2PM Monday through Saturday. Matson discussed the lease terms.

Jeff Baumgartner, FoCo Café co-founder, discussed the benefits of the Café to the community and stated the neighborhood meetings were beneficial and encouraging.

Claudia DeMarco, 913 Kimball Road, supported the FoCo Café and discussed its benefits to the community.

Chris Hutchinson, 1320 Whedbee, supported a restriction-free lease for the Café and stated the business needs are completely aligned with neighborhood needs.

Brian Majesky, 2817 Cherry Lane, FoCo Café architect, supported a restriction-free lease for the Café.

Margo Carlock, 415 Mason Court, supported a restriction-free lease for the Café.

Colleen Lyon, 2817 Cherry Lane, supported the Café and a restriction-free lease.

Ryan Wilson, 719 West Willox, supported the movement and idea of the Café.

Jack Daniels, 172 North College, thanked Council for its work and commended Fort Collins.

Councilmember Troxell expressed appreciation for the Baumgartner's bringing this concept to Fort Collins and asked why the neighborhood meetings combined the FoCo Café and EcoThrift lease issues. Sowder replied staff was of the opinion it would be more transparent for the neighbors to combine the topics. Laurie Kadrich, Director of Community Development and Neighborhood Services, replied this type of meeting is a direction Community Development and Neighborhood Services is taking overall and discussed the benefits of these types of joint meetings.

Councilmember Troxell noted all of the speakers were in favor of the Café and commended the public outreach process. He questioned the inclusion of the service hour restrictions and other aspects of the business model in the lease agreement. Matson replied staff was attempting to balance the needs of the Café with the needs of the neighborhood, which was more comfortable with the service hour restriction. Additionally, the Café has always stated those hours as its service hours and stated the business model inclusions are part of all leases, in terms of

descriptions of what is occurring on the property. Staff would not oppose changing the language.

City Manager Atteberry stated the restrictions in this lease agreement are not unusual but noted it is within Council's purview to change the restriction.

City Attorney Roy stated leases often include agreed-upon limitations on the use of the premises.

Councilmember Troxell supported Option 3, the restriction-free lease, and suggested rewording the lease to simply state the use as being a restaurant rather than including the business model information.

Councilmember Cunniff asked Mr. Baumgartner if the Café operations would change if the restrictions were not applied. Mr. Baumgartner replied the intent is to be open Monday through Saturday from 11AM-2PM; however, he noted any business needs to be flexible in order to survive and discussed some of the potential benefits of a more flexible option. He also stated the Café will not survive without neighborhood support.

Councilmember Campana expressed concern regarding the process to this point and questioned whether this will set a precedent regarding a neighborhood outreach process for all City-owned property leases. He supported providing additional flexibility for the Café.

Mayor Weitkunat stated a discussion regarding leases of City-owned properties needs to occur.

Councilmember Campana made a motion, seconded by Councilmember Troxell, to adopt Option 3 of Ordinance No. 007, 2014, on Second Reading, with no changes to the business model language in the lease.

City Attorney Roy suggested changing the language to specify a monthly rental rate rather than an annual rental rate. Councilmembers Campana and Poppaw accepted the change.

Councilmember Troxell questioned the use of the no set fee structure language. City Attorney Roy replied more specific language could be used and asked if Council wanted to specify the way in which charges will be established.

Councilmember Campana stated the language should be left in the lease as the controversial piece of this issue has been the no set fee structure.

Councilmember Cunniff stated the no set fee structure is one of the unique aspects of the Café and supported the inclusion of the language in the lease.

Councilmember Troxell asked about the completion of the minor amendment process being a condition of lease execution. Matson replied the building has been empty for many years and nothing can occur in the building without changes being made; therefore, this will allow the rent to be forgone until the Café is ready to use the building.

Councilmember Troxell asked if the \$1,000 minor amendment fee needs to be paid prior to signing the lease. Peter Barnes, Zoning Supervisor, replied the minor amendment fee will

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actually be \$600 and will need to be paid at the time of minor amendment application; it is not related to the lease execution.

Councilmember Campana asked about the rent commencement date language. Matson replied those dates have been left blank in order to provide flexibility in terms of when the Café will begin paying rent. Additionally, it will be up to the Café to determine the best time to sign the lease and rent will not be paid until the start of construction.

Councilmember Poppaw thanked those who commented and commended the Baumgartners for bring the Café to Fort Collins. She supported the unrestricted operating hours option.

Councilmember Cunniff commended the ultimate outcome of the process.

Councilmember Overbeck stated he would support the motion.

The vote on the motion was as follows: Yeas: Weitkumat, Overbeck, Poppaw, Troxell, Campana, Cunniff and Horak. Nays: none.

THE MOTION CARRIED.

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

Items Relating to Recreational Marijuana, Adopted on Second Reading

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

- A. *Second Reading of Ordinance No. 038, 2014, Establishing Regulations for the Consumption and Possession of Marijuana Within the City of Fort Collins and Prohibiting the Transfer or Display of Marijuana on City-Owned Property.*
- B. *Second Reading of Ordinance No. 039, 2014, Establishing Regulations for the Cultivation of Marijuana.*
- C. *Second Reading of Ordinance No. 041, 2014, Adding a New Article XVII to Chapter 15 of the City Code to Govern the Licensing, Number, Location and Operation of Retail Marijuana Establishments.*
- D. *Second Reading of Ordinance No. 042, 2014, Making Amendments to the City of Fort Collins Land Use Code in Order to Accommodate Retail Marijuana Establishments in the City.*

Ordinance Nos. 038 and 039, 2014, unanimously adopted on First Reading on March 4, 2014, regulate the personal use and growing of marijuana as allowed under Amendment 64.

Ordinance No. 039, 2014 has been amended to offer an option to allow marijuana cultivation in multi-family, single-family attached, and two-family dwellings.

March 18, 2014

Ordinance No. 041, 2014, adopted on First Reading on March 4, 2014, by a vote of 4-3 (Nays: Campana, Troxell, Weitkunat) enacts regulations regarding retail marijuana establishments.

Ordinance No. 042, 2014, adopted on First Reading on March 4, 2014, by a vote of 6-1 (Nays: Troxell) makes amendments to the Land Use Code to define and regulate retail marijuana establishments.

BACKGROUND / DISCUSSION

Amendment 64:

In November 2012, voters approved Amendment 64 which allows the following:

- *Adults 21 years-of-age or older may legally possess, use, display, purchase, or transport one ounce or less of marijuana without a doctor's recommendation.*
- *Adults 21 years-of-age or older may possess, grow, or transport up to 6 marijuana plants, provided, however, that the cultivation of marijuana occur in a locked and enclosed space.*
- *Local governments may opt out of allowing retail marijuana establishments or they may opt in and enact local regulations.*

Police Services Data:

From January 2009 through January 2014, Police Services has investigated 62 criminal incidents involving marijuana. This data did not include unlawful possession cases or paraphernalia related cases. Of the 62 incidents, eleven of these occurred at medical dispensaries or cultivation facilities, including 10 burglaries and one armed robbery.

*Police Services has also seen one explosion at an apartment complex involving the distillation of marijuana to make hash oil. In a separate case, a death occurred from a fire in a motel room, caused by the same activity. A full table of police statistics provided in **Attachment 3**.*

First Reading:

At the March 4, 2014 City Council meeting, Council adopted on First Reading the following four ordinances related to Amendment 64.

***Ordinances No. 038, 2014** addresses personal consumption and possession and prohibits the display and transfer of marijuana. The ordinance includes the following:*

- *Defines and prohibits the public use of both recreational and medical marijuana.*
- *Prohibits adults 21 years-of-age and older from possessing more than one ounce of recreational marijuana.*
- *Prohibits medical marijuana patients from possessing more than two ounces of medical marijuana.*
- *Prohibits the display or transfer of marijuana on any City owned property including parks, trails, natural areas, streets, and sidewalks.*

***Ordinance No. 039, 2014** addresses the residential growing of marijuana for personal use.*

Highlights of the ordinance include:

- *No cultivation in two-family, multifamily, or single-family attached dwellings.*
- *Cultivation could not occur in the open or be perceptible from the outside of a property.*
- *The use of compressed, flammable gases would be prohibited, as would all high-intensity lighting.*
- *The 12 plant limit for medical marijuana would remain in place, and would apply to recreational marijuana regardless of the number of inhabitants.*

During the discussion Councilmembers Cunniff and Overbeck requested an option to regulate growing in multi-family housing rather than banning such cultivation. Staff has discussed what would be necessary to mitigate the potential dangers and hazards related to growing marijuana in multifamily and staff continues to have concerns about the adverse impacts in this situation.

The following regulations have been added as an option in Ordinance No. 039, 2014 in an attempt to address allowing growing in multifamily:

- *The dwelling unit shall have a fire-suppression system (fire-sprinklers) installed at the time of original construction.*
- *Marijuana cultivation can only occur in an enclosed, locked space not exceeding 100 square feet.*
- *The use of a humidifier for marijuana cultivation is prohibited unless it was installed as part of the approved mechanical system for the dwelling unit.*
- *Extension cords and power strips for marijuana cultivation is prohibited.*
- *The use and storage of commercial grade fertilizer for marijuana cultivation is prohibited.*
- *Marijuana cultivation cannot be perceptible beyond any commonly shared wall.*

*If Council wishes to regulate marijuana cultivation in multi-family dwellings, rather than banning it, staff recommends continuing the Ordinance on Second Reading in order to allow time to more fully review the options and determine if there are different or additional regulations (**Attachment 4**).*

Building Services is responsible for all housing related complaints and would most likely field any complaints related to marijuana cultivation in a multifamily dwelling unit. Building staff is at maximum output with current staffing levels and increased construction related workloads. The addition of this responsibility will be challenging and would result in a budget offer seeking additional staff.

***Ordinance No. 041, 2014** allows and regulates retail marijuana establishments. The ordinance as adopted on First Reading includes the following:*

- *Allows existing licensed medical marijuana centers in good standing to apply for a retail marijuana license.*
- *Requires any medical center obtaining a retail license to maintain their medical license at the same location as the retail establishment.*
- *Retail marijuana stores must prohibit anyone under 21 from entering either the retail or the medical premises.*
- *Allows marijuana product manufacturing facilities and the sale of edible marijuana*

products.

- Does not require marijuana establishments (cultivation and product manufacturing) to operate a retail marijuana store in the City. Beginning October 1, 2014, cultivation facilities will be allowed to sell wholesale.

The City Manager and staff do not recommend allowing retail marijuana establishments, as outlined in a February 11 memo from the City Manager (**Attachment 2**).

Ordinance No. 042, 2014 makes necessary amendments to the Land Use Code to address retail marijuana establishments.

FINANCIAL/ ECONOMIC IMPACTS

In November 2013 Colorado voters approved additional taxes on retail marijuana. The approved measure includes a 10% sales tax, 15% of which will be shared with local governments that allow retail establishments with the remainder funding the Marijuana Enforcement Division and repaying the General Fund. A 15% excise tax was also approved. The first \$40 million of the annual excise tax revenue is earmarked for capital school construction.

Based on current revenue from medicinal marijuana, estimates of what the City may receive from the state and some additional research, staff is comfortable with a forecast amount of \$700k-\$900k in retail marijuana revenue annually.

The City will receive one-half of the \$500 application fee paid to the state for each retail marijuana application they receive from a medical marijuana establishment within Fort Collins. In addition, the City may impose an operating fee to offset costs, including but not limited to, inspection, administration, and enforcement of retail marijuana establishments. Staff has not yet determined what the annual operating fee will be for retail marijuana establishments. However, it is unlikely that the City can reasonably set the fee at an amount adequate to cover estimated costs.

Estimated costs for retail marijuana licensing include licensing staff, Building and Zoning Services, Police Services and the Marijuana Licensing Authority. These estimated costs break out as follows:

Police:

Anticipate the need for one full time officer (\$146,000/first year cost) and one investigative aide (\$72,000.)

Building Services:

Staff resourcing needs will vary, based on outcome of allowing cultivation in multifamily. If allowed, Building Services will be needed to follow-up on complaints, conduct investigations, and ensure corrections which would require a full time inspector (\$75,000 annually).

Clerk's Office:

Ongoing .5 Licensing Agent FTE (\$35,985) to handle retail and medical marijuana licensing activities post licensing (manager registrations, transfers of ownership, modification of

premises, changes of location, trade name changes, renewals, and disciplinary actions).

Licensing Authority:

Estimating \$25,000 annually for these services.”

Ginny Sawyer, Policy and Project Manager, reviewed changes made to the Ordinances since First Reading.

Steve Ackerman, Fort Collins resident, argued public safety needs are best served by allowing a limited number of licensed retailers to operate within the regulated envelope provided by the State.

Desmond Coronado, Fort Collins resident, opposed a ban on Cannabis clubs, stating their existence would allow a safe location for tourists to smoke marijuana.

John Guismueller, discussed the positive financial impacts to local businesses of allowing recreational marijuana sales.

Bill Fairbank, 1712 Clearview Court, expressed concern regarding increased marijuana use in schools, opposed edible sales, and expressed concern about advertising in print and at events.

Seth Stepleton, 613-A Maple Street, discussed marijuana testing facilities and recommended regulations be included for those facilities.

Ashley Kasprzak, Team Fort Collins Executive Director, discussed youth substance abuse concerns and encouraged the placement of a sales or excise tax for prevention, enforcement and treatment on the November ballot.

Siu Au Lee, 939 Pioneer Avenue, stated alcohol business regulations have not prevented underage alcohol use and abuse. She supported a ban on the sale of retail marijuana.

Nathan Scott, 4206 Fall River Drive, stated the past two years of medical marijuana sales have proven the commitment of businesses to keep marijuana out of the hands of youth. He discussed the benefits of marijuana edibles.

Ray Burgner, Fort Collins resident, opposed allowing retail marijuana sales.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 038, 2014, on Second Reading. Yeas: Overbeck, Poppaw, Troxell, Campana, Cunniff, Horak and Weitkunat. Nays: none.

THE MOTION CARRIED.

Councilmember Cunniff made a motion, seconded by Councilmember Poppaw, to adopt Option A of Ordinance No. 039, 2014, on Second Reading.

Councilmember Cunniff discussed concerns related to marijuana growing in multi-family structures. He stated large home grow operations would be the main source of marijuana for

youth and stated fewer people will opt to grow their own marijuana if regulated retail operations are available.

The vote on the motion was as follows: Yeas: Poppaw, Troxell, Campana, Cunniff, Horak, Weitkunat and Overbeck. Nays: none.

THE MOTION CARRIED.

City Attorney Roy read the changes to Ordinance No. 041, 2014.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 041, 2014, on Second Reading, including the most recent changes.

Mayor Pro Tem Horak made a motion to amend, seconded by Councilmember Overbeck, to revise Section 15-608 by selecting Option A, which includes a new Section C as read by Mayor Pro Tem Horak. This new Section would require that retail marijuana cultivation facilities be connected to a retail marijuana facility and would specifically limit the sale or distribution of the product to retail stores or product manufacturing facilities, for which the same licensee holds the license.

Councilmember Overbeck thanked Mayor Pro Tem Horak for the motion and discussed the benefits of the amendment.

Councilmember Cunniff asked about the impact of this amendment on manufacturing facilities. City Attorney Roy replied this is a limitation on cultivation facilities and the way in which they can distribute the product they grow, thereby limiting the amount that is grown.

Councilmember Cunniff asked about the requirement for excess marijuana produced by a retail establishment. City Attorney Roy replied distribution of excess product would be prohibited; although the destruction of excess product is not necessarily required.

Councilmember Cunniff stated he is leaning toward support of Option B, which would allow retail establishments to sell the same amount of the excess product that is sold at the storefront.

Police Captain Don Vagge stated state regulations currently outline how marijuana that is not going to be sold is to be destroyed and made unrecognizable.

Councilmember Campana suggested manufacturing facilities may need to be addressed as well.

Councilmember Troxell stated this discussion justifies the need for a two year ban and stated he will abstain on this vote.

City Attorney Roy noted according to the City Charter, a vote to abstain is a vote in the affirmative.

Councilmember Poppaw requested clarification as to wholesale sales. City Attorney Roy replied product cultivation would be limited to distribution in a licensee's own retail establishment and/or product manufacturing facility.

The vote on the motion to amend was as follows: Yeas: Campana, Horak, and Weitkunat. Nays: Cunniff, Poppaw, and Overbeck. Abstain: Troxell.

THE MOTION CARRIED.

Councilmember Campana stated he is not in favor of retail marijuana operations, but noted this is an historic vote and he would like to see the strictest regulations possible.

Councilmember Overbeck stated he was in favor of Option B in order to give businesses more flexibility.

Councilmember Cunniff asked if a report would be required in a year. City Attorney Roy replied that provision could be included at Council's discretion.

Councilmember Cunniff stated his concern is being overly restrictive on businesses and suggested the issue could perhaps be revisited in a few months, depending on business success with the given regulations.

Councilmember Troxell discussed his concerns with retail marijuana sales and stated he is supportive of a two year ban on retail sales.

Mayor Weitkunat stated the support for successful business models should translate to all businesses within the community; however, she stated she will not support this motion.

The vote on the amended motion was as follows: Yeas: Cunniff, Horak, Overbeck and Poppaw. Nays: Campana, Weitkunat and Troxell.

THE MOTION CARRIED.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 042, 2014, on Second Reading.

Barnes noted this Ordinance contains provisions relating to retail marijuana stores, retail marijuana cultivation facilities, retail marijuana product manufacturing facilities, and retail marijuana testing facilities.

City Attorney Roy noted this Ordinance amends the Land Use Code to establish appropriate zone districts where these kinds of businesses can be located, which are the same as those for the medical marijuana businesses.

Councilmember Cunniff stated he will accept this compromise but would have preferred the regulations to be more accepting of what the citizens have requested.

The vote on the motion was as follows: Yeas: Cunniff, Horak, Overbeck, Campana and Poppaw. Nays: Weitkunat and Troxell.

THE MOTION CARRIED.

(Secretary's note: See Other Business for additional discussion of Items Relating to Retail Marijuana.)

**Ordinance No. 044, 2014,
Appropriating Prior Year Reserves in the Keep Fort Collins Great Fund to Fund Sunday
Service for the MAX Bus Rapid Transit System, Postponed Indefinitely**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The purpose of this item is to appropriate funds to provide MAX Bus Rapid Transit service on Sundays. These funds would provide Sunday service for MAX only, from May 11, 2014 through December 28, 2014. The Sunday service would be provided between the hours of 8:00 am to 8:00 pm, with 15 minute frequencies. The service hours and frequency are designed to capture the following markets: church, mid-day shopping, and summer festivals. The expense in 2014 to provide MAX Sunday service is \$272,500.

BACKGROUND / DISCUSSION

There has been much community interest and input to add Sunday Transfort bus service. As a result, staff was asked to submit a proposal to provide MAX Sunday service beginning May 11, 2014. Transfort submitted similar budget offer requests in the 2013 - 2014 Budgeting for Outcomes process to provide MAX Sunday service (offer #119.6) and Sunday Transfort local service (offer #119.7), but they were not funded.

The biggest challenge facing Transfort in meeting this request is staffing availability. Transfort received notice in November 2013 that budget revisions were approved to increase headways and hours of service for east-west fixed route service to complement the new MAX service beginning May 2014. In addition, Transfort recently received notice that Colorado State University (CSU) accepted an offer to significantly increase transit services associated with the CSU campuses. These two separate enhancements add 26,000 hours of additional service to the 2014 schedule.

To meet this increased service demand, Transfort has increased bus operator staffing over the last couple months, but will still incur overtime expenses through the summer. Transfort has ongoing bus operator training classes planned for June - December 2014 to increase staffing levels up to an optimum level of efficiency. As a result of these staffing resource and training challenges, the maximum additional service that Transfort could accommodate in May 2014 would be the addition of Sunday service for MAX only. This is not an optimal scenario as the Transfort east-west fixed route service does not currently operate on Sundays which would limit access to MAX only via bike, walk or car.

To meet this additional Sunday service, Transfort will require an additional Dispatcher, Field/Training Coordinator, and Transit Service Officer. Dial-A-Ride service would also need to be provided within ¾ of mile of the MAX service during hours of operation per Americans with Disabilities Act requirements.

Transfort will need direction no later than April 1, 2014, as to whether Sunday MAX service will be provided in May 2014. There are a number of time sensitive activities that need to occur prior to Transfort being able to provide Sunday service (additional staffing, schedule development, printing of schedules, public outreach, etc.).

FINANCIAL / ECONOMIC IMPACTS

The provision of MAX service on Sunday from May 11 through December 28, 2014 will require funding of \$272,500. The requested 2014 appropriation provides funding for labor, fuel and maintenance to provide MAX service and the required complementary Dial-A-Ride service within ¾ of mile of MAX. A full year of MAX service on Sundays in 2015 will require funding of \$344,200. Staff recommends that the 2014 appropriation to fund MAX service on Sunday be provided from Keep Fort Collins Great - Other Transportation reserves.

Public transportation improvements, whether they are capital or operating, can have significant positive impacts on the local economy. Transit provides community access for work, school, medical, shopping, social and recreational trips. As in many communities, a large percentage of business activity occurs on Saturday and Sunday. The ability to increase the convenience of travel and access on Sunday to local businesses along the Mason Corridor will provide a positive economic climate within the community.

The American Public Transportation Association provides the following economic impact data:

- *Every dollar communities invest in public transportation generates approximately four dollars in economic returns.*
- *Every \$1 billion invested in public transportation supports and creates 36,000 jobs.*
- *Every \$10 million in capital investment in public transportation yields \$30 million in increased business sales.*
- *Every \$10 million in operating investment yields \$32 million in increased business sales.*

ENVIRONMENTAL IMPACTS

The MAX Bus Rapid Transit fosters more than economic development and improved transportation options; it embodies the City of Fort Collins' commitment to sustainability. Sustainability, by definition, means taking a broad look at how decisions and actions affect environment, economy, and social health. Through MAX, the City is able to positively impact all three of these components and further Fort Collins as a leader in sustainable development. The addition of MAX Sunday service will provide more options to safely and conveniently travel to key areas in the city, providing access to church, work centers, shopping areas, and recreation facilities, without the need of a car. As people utilize alternative modes of travel, congestion and pollution levels in our City will decrease, which means less CO₂ (one of the key measures used in evaluating the environmental health) will be emitted in the community.

BOARD / COMMISSION RECOMMENDATION

*This appropriation request has not been presented to the Transportation Board. However, the budget offers 119.6 and 119.7 in the 2013 -2014 budget for Sunday service were supported by the Transportation Board (see **Attachment 1** for Transportation Board minutes).*

PUBLIC OUTREACH

*Transfort staff has conducted public outreach since May 2013 regarding the planned service changes beginning May 2014 (see **Attachment 3** for list of outreach). Transfort frequently receives feedback from customers and potential customers asking that Sunday service be provided. Sunday service, in addition to increasing bus frequencies, late evening service and increased coverage are the requests heard most frequently. Attachment 2 provides the results of a recent survey regarding which additional services are most important. Sunday service ranks third behind increasing frequencies and extended evening hours of service. City Council approved a budget revision in November 2013 to increase Transfort service frequencies on select routes and extend evening service to compliment MAX.*

Kurt Ravenschlag, Transfort General Manager, stated this item would appropriate funds for Sunday MAX service, as well as the required complimentary Dial-a-Ride service, from May 11, 2014 to December 28, 2014. He noted there is no available funding for general Transfort service until January 2015 and discussed the 2014 Transfort budget and public outreach process.

Mayor Weitkumat asked if Sunday MAX service would be somewhat useless, given the lack of east and west connecting routes. Ravenschlag replied staff anticipates many riders on the Sunday MAX service, particularly during summer months, as biking and walking to stops would be possible. He stated staff is somewhat concerned about the use of MAX service without connecting routes during fall and winter months and stated Transfort is planning to submit budget offers for additional east-west connectivity on Sundays should MAX service be provided with this appropriation.

Mayor Pro Tem Horak suggested postponing this item in order to consider Sunday service with some connecting routes.

Councilmember Cunniff stated the budget process is a better place to contemplate the relative prioritization of this item.

Councilmember Campana commended Ravenschlag for his work and suggested the possibility of less frequent routes being utilized during summer months.

Councilmember Poppaw agreed with the idea.

Ravenschlag noted operating only during summer months presents a challenge due to the required support services.

Councilmember Overbeck asked about the cost savings of 60-minute interval service versus 15-minute interval service. Ravenschlag replied the cost savings would be \$90,000 for 2014 and \$140,000 for 2015.

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Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to postpone the item indefinitely.

Councilmember Troxell commended Councilmember Campana's suggestion but stated he would support the postponement in order to allow additional time for a more thoughtful process.

Councilmember Cunniff suggested the possibility of running MAX service during specific Downtown events. City Manager Atteberry replied there are limitations in terms of FTA funding for chartering special events; however, he stated he will develop some options.

The vote on the motion was as follows: Yeas: Horak, Weitkunat, Overbeck, Poppaw, Troxell, Campana and Cunniff. Nays: none.

THE MOTION CARRIED.

Resolution 2014-025

Authorizing the Retention of a Consultant to Recommend Appropriate Studies That Will Help the City Determine the Impacts that Hydraulic Fracturing and the Storage of its Waste Products May Have on Property Values and Human Health in the City of Fort Collins or on Lands Under its Jurisdiction, Adopted

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

Ballot Measure 2A, passed by Fort Collins voters in November 2013, places a five year moratorium on hydraulic fracturing and the storage of its waste products within the City of Fort Collins or on lands under its jurisdiction, in order to fully study the impacts of this process on property values and human health. The purpose of this item is to seek City Council authorization to proceed with hiring an outside consultant to help the City evaluate the way in which the City should carry out its responsibilities under Ballot Measure 2A to study these issues. Multiple studies are available for consideration. The consultant's help is needed to: (1) help evaluate relevant studies; (2) identify gaps in the data that will be provided by existing and upcoming studies, (especially as relevant for Fort Collins local land use patterns, hydrogeology, and existing local oil and gas exploration and production methods); and (3) identify ways to fill those gaps.

BACKGROUND / DISCUSSION

Background

On August 20, 2013, City Council placed a citizen-initiated ordinance on the November 5 ballot that imposed a 5-year moratorium on hydraulic fracturing and the storage of its waste products in Fort Collins. (See Attachment 1).

The ballot language states:

“An ordinance placing a moratorium on hydraulic fracturing and the storage of its waste products within the City of Fort Collins or on lands under its jurisdiction for a period of five years, without exemption or exception, in order to fully study the impacts of this process on property values and human health, which moratorium can be lifted upon a ballot measure approved by the people of the City of Fort Collins and which shall apply retroactively as of the date this measure was found to have qualified for placement on the ballot.”

The initiative was passed by the 56.4% of the voters of Fort Collins on November 5, 2013.

Outside Expertise Regarding Studies

The purpose of the moratorium is to enable the City to “fully study the impacts of... hydraulic fracturing and the storage of its waste products within the City of Fort Collins or on lands under its jurisdiction... on property values and human health”. At the end of the study period, staff and Council will be in a better position to assess the potential magnitude of the impacts that hydraulic fracturing may have on City residents, the need for local land use regulations to mitigate those impacts, and the extent of the City’s legal authority to enact such regulations.

There are a number of upcoming regional oil and gas studies that may yield pertinent data about environmental and public health impacts over the next several years. While these studies will yield new information specific to hydraulic fracturing, hundreds (perhaps thousands) of existing oil and gas studies and human health and environmental risk assessments already exist that reveal a great deal of information about potential environmental and human health impacts.

Given the large number of existing and planned studies, and the substantial cost associated with conducting studies, a potential first step for the City would be to hire an outside consultant to help evaluate relevant studies, identify gaps in data from existing and upcoming studies, (especially as relevant for Fort Collins local land use patterns, hydrogeology, and existing local oil and gas exploration and production methods), and recommend ways to fill those gaps.

The City proposes to seek outside expertise in human health and ecological risk assessments, interpretation of existing public health studies, environmental studies, risk assessments, remediation site characterizations, and economic conditions insofar as such conditions may affect property values.

The process for procuring the services in question is complicated by the fact that the Colorado Oil and Gas Association has filed suit against the City, seeking to have the voter-approved moratorium invalidated. Therefore, the expert retained by the City will likely serve not only as a consultant for the purposes of implementing Ballot Measure 2A but also as an expert witness in the litigation. Because of this potential dual role, staff is recommending that the consultant be retained for the purpose of providing “litigation services” within the meaning of the City Procurement Code, rather than “professional services.” The significance of this difference is that litigation services are procured by the City Attorney and not through a competitive process. In this situation, however, management staff, the City Attorney’s Office and outside counsel would work together to make the selection, and would seek input from the citizen groups who have sought to intervene in the above referenced litigation.

Desired Deliverables for Phase I

- Summary of existing data and information that are relevant to Ballot Measure 2A (e.g. the impacts that hydraulic fracturing and the storage of its waste products may have on human health and property values).
- Summary of possible future sources of data and information relevant to Ballot Measure 2A.
- Identification of anticipated contaminants of concern for current and possible future oil and gas exploration and production relevant to Ballot Measure 2A.
- Qualitative ranking of relative risks to human health and natural resources from existing and possible future oil and gas activities relevant to Ballot Measure 2A.
- Identification of data gaps in the studies in terms of their relevance to Fort Collins' local land use patterns, hydrogeology, and existing and possible future local oil and gas exploration and production, and recommendations on ways to fill those data gaps.

Proposed Timeline for Phase I

March 18 City Council considers a resolution authorizing the City to seek outside expertise
April Consultant selection complete
July Consultant/team recommendation due

Proposed Phase II - not to be contracted at this time

Additional funding may be needed for other consultant services toward the end of the moratorium period as the results from regional studies are becoming available in order to further evaluate their applicability to Fort Collins. Depending on the results available at the time, the need for more data, desire for consultation on management of environmental liabilities, interest in conducting stakeholder engagement, and/or desire to perform a determinist risk assessment, these activities could cost a few hundred thousand dollars.

FINANCIAL / ECONOMIC IMPACTS

\$50,000 has been identified in the City's existing budget to cover expenses associated with Phase I. It is the City's hope that the deliverables described above could be provided for less.

ENVIRONMENTAL IMPACTS

There are no direct environmental impacts associated with retaining outside expertise to evaluate studies relevant to Ballot Measure 2A, other than the minimal impacts associated with driving by the consultant/team and use of materials (paper, etc.) related to their work.

BOARD / COMMISSION RECOMMENDATION

Due to the urgent nature of obtaining Council direction on whether/how the City should proceed in obtaining outside expertise to help evaluate relevant studies, identify gaps, and recommend approaches for filling the gaps, boards and commissions were not engaged on this topic.

PUBLIC OUTREACH

Due to the urgent nature of obtaining Council direction on whether/how the City should proceed in obtaining outside expertise to help evaluate relevant studies, identify gaps, and recommend approaches for filling the gaps, public outreach was not conducted.”

Lucinda Smith, Environmental Services, stated this Resolution would allow retention of a consultant to aid in evaluating the existing and planned studies relevant to the moratorium ballot measure language, to identify whether there are any gaps in the data that will be forthcoming or that exist and to identify ways to fill those gaps, and to provide consultation and legal counsel regarding the studies. She noted the Colorado Oil and Gas Association is bringing suit against the City of Fort Collins seeking to invalidate the ballot measure. She detailed the proposed procurement process for this consultant and stated the estimated cost is approximately \$20,000-\$50,000, which has been identified in the City’s existing budget.

Councilmember Cunniff made a motion, seconded by Councilmember Overbeck, to adopt Resolution 2013-025.

Councilmember Troxell requested information regarding the proposed timeframe. Smith replied staff hopes to retain a consultant and have the initial analysis of available and anticipated data this summer. Laurie Kadrich, Community Development and Neighborhood Services Director, added a second phase may be needed with either this consultant or another to make recommendations regarding what is available that could be used to implement the ballot measure.

Councilmember Troxell stated the studies need to be relevant to Fort Collins and noted part of the challenge in completing those studies locally is the ban on operations.

Councilmember Cunniff stated this is evidence that the City is taking the moratorium and ballot language seriously and the will of the voters is being considered.

The vote on the motion was as follows: Yeas: Weitkumat, Overbeck, Poppaw, Troxell, Campana, Cunniff and Horak. Nays: none.

THE MOTION CARRIED.

**Ordinance No. 048, 2014,
Authorizing the Execution of a New Intergovernmental Agreement Pertaining to a
Regional Road Impact Fee Program, Adopting a Regional Road Impact Fee Schedule,
Ratifying Certain Past Actions Related to Such Fee and Amending
Sections 7.5-8 and 7.5-87 of the City Code, Adopted on First Reading**

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

The purpose of this item is to execute a new intergovernmental agreement (IGA) with Larimer County that allows for the collection of a Regional Road Impact Fee at the time of development.

The Ordinance adopts a fee schedule and ratifies past collections and certain actions that were inconsistent with the City Code. The Ordinance also amends Section 7.5-85(d) of the City Code pertaining to the remittance and expenditure of the fee.

BACKGROUND / DISCUSSION

In 2000, the City and Larimer County entered into an IGA with Larimer County agreeing that the City would collect a Regional Road Impact Fee. The fee is collected at the time a building permit is issued. The Regional Road Impact Fee helps generate revenue for off-site road improvements that are necessitated by new development. The fee revenues are only used on capacity related improvements that are of mutual benefit to both the City and the Larimer County.

The original written IGA was adopted in 2000 and expired in 2010; however, the parties have continued the Regional Road Fee Program as contemplated under the IGA. Even though the City's collection of the fee is not conditioned upon the Agreement (it is in the City Code, Chapter 7), having an IGA in place articulates the need and the desire for collaboration between the City and County in responding to continued growth and development which will increase demand for road capacity on the regional road system. Therefore, a new IGA has been prepared and is being presented for Council's consideration. The new IGA will remain in place indefinitely unless and until it is terminated by one of the parties. Either party can cancel it upon 60 days written notice.

Originally, the fee was envisioned as a true regional fee, with all communities in Larimer County collecting a fee for roads outside the major communities. Ultimately, Fort Collins was the only community other than Larimer County to adopt the fee. Because of this, the fee has operated as a Larimer County-Fort Collins collaboration of resources and staff making improvements to regionally significant roads within the Fort Collins Growth Management Area.

Recently completed projects include Taft Hill Road between Harmony and Horsetooth, the turn lanes at Taft Hill/Trilby intersection, turn lane improvements at Shields/Trilby and at Gulley's Greenhouse, and Taft Hill/LaPorte intersection improvements. Future projects that need Council recognition as being of substantial benefit include Shields Street from Vine to Wilcox and the Shields Street and Vine intersection improvements.

The Larimer County Land Use Code specifies that its Regional Transportation Capital Expansion Fees must be updated to reflect changes in road construction costs during the previous year. The methodology for adjustments is based on a two-year moving average calculated from the Colorado Construction Cost Index data compiled by Colorado Department of Transportation.

Larimer County's procedure for fee adjustments is to update the two-year moving average using the most recent prior year construction cost index data and calculate new adjusted fees. If the change is less than 5% the new fees become effective without further action by the Board of County Commissioners (BCC). If the increase exceeds 5% the County's Land Use Code specifies that the BCC review and approve the fee change. The County typically adjusts and adopts new fees in July of each year. The 2013 Fee Table is included as Exhibit B to the Ordinance. The fee change for a regional single family detached home will be a \$12 increase

(4.7% increase). Under the City Code, changes in the amount of the County fee do not take effect in the City until the City Council approves a new fee schedule. Council is asked to adopt the latest Regional Road Impact Fee schedule.

Ratifications

After the original IGA was adopted and the fee was added to City Code in 2000, fee adjustments were made in 2008, 2009, 2010, and 2011. However, the adjustments to the City's fee schedule were not presented to the Council for approval before being implemented. Therefore, because the Code requires Council approval of the fee schedule, Section 2 of the Ordinance ratifies those fee amounts.

Finding of Substantial Benefit

The City Code and the IGA both require that road improvements be listed on the County capital improvement inventory (CIP) and be considered by Council to be of substantial benefit to the residents of the City. Of the five projects completed under this program, one was not formally approved by City Council. That project at a cost of cost \$117,000 was the Taft Hill/LaPorte intersection improvements., Two future projects, that were not on the CIP, the Larimer County Shields Street Improvements and the Vine/Shields Intersection project, also have not been formally approved by Council to be of substantial benefit. The Larimer County Shields Improvements include curb and gutter, bike lanes and sidewalk from Vine to the Poudre River, and travel lanes and bike lanes from the Poudre River to Willox. The Vine/Shields project is an intersection improvement. Section 3 of this ordinance identifies all three projects as having substantial benefit to the residents of Fort Collins.

Operational Improvements

The City Code amendments, and the IGA, reflect additional operational changes, including:

- Clarifying that improvement projects shall be on the most recent Regional Road CIP and be approved by City Council as being of substantial benefit to City residents. Council approval of individual projects will no longer be required as long as those projects are on the Council approved Regional Road CIP and sufficient funds have been appropriated to construct the projects. Eliminating the holding period for revenues to allow for consistency with the way in which other fees are currently handled; fee revenues will be forwarded monthly to the County.
- Eliminating the requirement that any City Code modifications related to the program be approved by the County.

Past and Future Practices

City staff clearly acknowledges the inconsistencies between the Regional Road Fee practices, the City Code and IGA. These inconsistencies are driving changes to tracking agreements and contracts Citywide. In regard to the Regional Road Impact Fee Program, the following will now become practice:

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- *Any changes to this fee will be brought with other annual fee changes which are customarily brought to Council in December in conjunction with the annual budget appropriation ordinance. The County is aware of the lag time in our schedules.*
- *Planning, Development, and Transportation will “own” this fee and will ensure there is a review of the program at least every three years.*
- *The County will provide a “City-specific” CIP reflecting the benefit district to the City of Fort Collins.*

It is important to note the benefits of this program. Since Fort Collins is the only community participating, all improvements to date and into the future are within the City’s Growth Management Area (GMA) and directly benefit Fort Collins residents. The fees have been and are reasonable and have not exceeded the costs of any projects. Transportation is a high priority for the community and is an area that is in continual need of funding to meet shortfalls and improve infrastructure. This fee has facilitated improvements that otherwise would not have happened.

FINANCIAL / ECONOMIC IMPACTS

The fees are collected on behalf of Larimer County and the program. Revenues from the fees will pass through City accounts and will not affect City revenue limits under Article X, Section 20. Adoption will result in an increase to development fee payers.”

Councilmember Campana withdrew from the discussion of this item due to a conflict of interest.

Ginny Sawyer, Policy and Project Manager, discussed the origin of the regional road impact fee and stated this Ordinance would ratify the fee adjustments, finding substantial benefit for three projects, and adopting a new Intergovernmental Agreement (IGA). She discussed how these fees and Intergovernmental Agreements will be updated and adjusted in the future.

Councilmember Cunniff asked about the expiration of this IGA. Sawyer replied it expired in 2010. City Manager Atteberry stated this was a regional impact fee which was intended to last in perpetuity; therefore the expiration of the IGA was not intentional.

Councilmember Cunniff asked why the IGA was allowed to expire. City Manager Atteberry replied it was a mistake. Sawyer concurred and noted the new IGA is written in perpetuity, though any party can terminate with notice.

Councilmember Cunniff questioned why the fees were still collected by both the City and County despite the lapsed IGA. Mark Engemoen, Larimer County Public Works Director, replied the fee was originally intended to last in perpetuity and stated the IGA aspect was overlooked given the cooperative nature of projects completed between the City and County. He stated the original intention was to have more parties to the IGA, such as the City of Loveland.

Councilmember Cunniff expressed concern about other date-specific issues.

City Attorney Roy stated that, although the written agreement had expired, the City’s authority to collect the fee had not lapsed.

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City Manager Atteberry stated a review of every Ordinance and Resolution since 2000 has just begun to ensure dates and other commitments have been honored. Additionally, he stated he has requested that the Larimer County Manager would seek this kind of fee in jurisdictions throughout the County.

Mayor Weitkunat stated she was on Council at the time this fee was adopted and noted sunset provisions were frequently included on these types of agreements.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Troxell, to adopt Ordinance No. 048, 2014, on First Reading.

Councilmember Cunniff stated he would not support the motion given concerns that this regional fee only has Fort Collins and Larimer County as partners.

The vote on the motion was as follows: Yeas: Poppaw, Troxell, Horak and Weitkunat. Nays: Overbeck and Cunniff.

THE MOTION CARRIED.

Items Relating to the Boxelder Creek Watershed, Adopted on First Reading

The following is the staff memorandum for this item.

“EXECUTIVE SUMMARY

- *Resolution 2014-026 Authorizing the Execution of an Intergovernmental Agreement with Larimer County, the Timnath Development Authority, the Town of Wellington, and the Boxelder Basin Regional Stormwater Authority Regarding Improvements to County Road 52.*
- *First Reading of Ordinance No. 047, 2014, Approving the Sixth Amendment to the Fort Collins-Timnath Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management, and Related Issues, to Update the Terms of Cost Sharing for Stormwater Improvements in the Boxelder Basin.*

The purpose of this item is to approve an Intergovernmental Agreement (IGA) between the City and Larimer County and the Town of Timnath to share equally in providing the necessary funds to the Boxelder Basin Regional Stormwater Authority (BBRSA) to pay the cost of the County Road 52 Project that is over and above the allocated Colorado Water Conservation Board (CWCB) loan proceeds and to amend the Fort Collins – Timnath Intergovernmental Agreement (IGA) by revising Article 7 to reflect updated stormwater projects and associated cost sharing.

BACKGROUND / DISCUSSION

The Boxelder Creek Watershed encompasses over 265 square miles and extends from just north of the Wyoming border to the Poudre River on the south. Several local governments have worked together since 2005 to identify ways to mitigate flood hazards within the area that is tributary to Boxelder Creek from County Road 70 north of Wellington south to where Boxelder Creek floodwaters join the Cache La Poudre River. The Boxelder Creek 100-Year

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floodplain impacts approximately 4,900 acres of land within the regional area. Due to the numerous split flows and diversions that occur, the potential for overtopping frequently used roads and the probability of the existing conveyance system to become blocked, there is the potential for loss of life and/or bodily injury during the 100-Year Flood. The communities of Fort Collins, Wellington, Timnath, and Larimer County all share a common goal in mitigating the flood hazards associated with Boxelder Creek.

In August 2008, Fort Collins, Larimer County, Wellington and the City of Fort Collins entered into an intergovernmental agreement (IGA) to establish the Boxelder Basin Regional Stormwater Authority (BBRSA). The BBRSA was established to fund and implement the Boxelder Creek Regional Stormwater Master Plan Phase I regional stormwater projects listed below:

- Diversion of Coal Creek to Clark Reservoir*
- Edson (East Side) Detention Reservoir*
- Middle Boxelder Creek Stream Improvements*
- Larimer and Weld Crossing Structure.*

Construction of the first BBRSA regional stormwater project (Diversion of Coal Creek to Clark Reservoir) was completed in 2011.

In February 2009, Fort Collins and Timnath entered into an intergovernmental agreement (IGA) regarding Growth Management Areas (GMAs) for the two communities, associated issues authorizing the disposition of certain properties, and stormwater and floodplain issues associated with Boxelder Creek and the “Boxelder Creek Overflow Project.” There have been five (5) amendments to the IGA.

Revisions to the BBRSA’s Stormwater Master Plan and the stormwater provisions of the Fort Collins/Timnath IGA are necessary in order to address the following considerations:

- 1. The original proposed location of the East Side Detention Facility (ESDF) could not provide the required detention and would result in the condemnation of homes. An extensive Siting Study was initiated in 2010. Ultimately the site adjacent to the existing Gray Lakes Reservoirs was selected as the best location from flood reduction, cost and constructability perspectives.*
- 2. Locating the ESDF downstream of County Road 52 eliminated the need for the Middle Boxelder Creek Stream Improvements conceptually identified in the original stormwater master plan.*
- 3. Relocation of the ESDF downstream of County Road 52 results in a reduction in the original benefits of a reduced (narrower) floodplain and shallower overtopping of County Roads 54 to 60. The design and construction of County Road 52 Improvements will offset the financial impacts associated with road and bridge infrastructure costs.*
- 4. The Larimer and Weld Canal Crossing Structure (LWCCS) is needed to safely cross stormwater runoff over the canal.*

5. *It was determined that the ESDF could be enlarged in order to reduce downstream flows, allowing for the potential unblocking of two existing culverts beneath Interstate Highway 25.*
6. *Timnath entered into an IGA with the BBRSA to financially participate in the design and construction of the larger ESDF and LWCCS regional stormwater projects.*
7. *Fort Collins and Timnath agreed to amend their IGA to eliminate the original "Boxelder Creek Overflow Project" and instead jointly fund, design and construct the Boxelder Outfall Improvements Project on Boxelder Creek from Interstate Highway 25 downstream to Prospect Road and then to the Cache La Poudre River.*
8. *Upon completion of the ESDF, LWCCS, County Road 52 improvements and the unblocking of two existing culverts on Boxelder Creek beneath Interstate Highway 25, the Boxelder Creek Overflow 100-Year floodplain through Timnath is eliminated.*

*Accordingly an updated plan for stormwater improvements was developed which consists of one set of projects to be designed and constructed by the BBRSA and a second set of projects to be funded, designed and constructed by Fort Collins and Timnath. The two sets of projects are together referred to as the **Boxelder Creek Flood Mitigation Projects** and are described below:*

BBRSA Projects

- (a) *East Side Detention Facility (ESDF) -- An 1800 Acre-feet stormwater detention facility to be constructed on the east side of Interstate 25 adjacent to the Gray Lakes Reservoirs that includes an earthen embankment between County Road 50 and County Road 52, an un-gated 12' x 8' box culvert outfall, a reinforced spillway, and related appurtenances.*
- (b) *Larimer Weld Canal Crossing Structure (LWCCS) -- A defined weir on the south side of the Larimer Weld Canal at its crossing with Boxelder Creek crossing located approximately one mile south of ESDF that includes a lowered canal embankment fortified with grouted rip rap and related appurtenances.*
- (c) *County Road 52 Improvements (CR 52 Improvements) -- The installation of four 4' x 20' concrete box culverts under County Road 52, tree removal along the north side of the roadway, grading an area within the adjacent golf course north of County Road 52 and related appurtenances.*

Fort Collins / Timnath Projects

- (d) *Lake Canal Crossing of Boxelder Creek -- A siphon and associated appurtenances to transport flows in the Lake Canal beneath Boxelder Creek just west of Interstate Highway 25.*
- (e) *Boxelder Creek Outfall and Prospect Road Improvements -- A side spill weir (split flow channel) and flood conveyance channel on Boxelder Creek upstream of Prospect Road along with six 12' x 4' concrete box culverts beneath Prospect Road west of Interstate*

Highway 25, associated utility relocations (i.e. electric, water, wastewater, gas and telecommunications), roadway restoration, and a flood conveyance channel south of Prospect Road to the Poudre River and associated appurtenances.

- (f) *Boxelder Creek at Interstate Highway 25 -- Drainageway and channel improvements and grading adjacent to and upstream (east) of Interstate Highway 25 and the opening of two existing blocked culverts beneath Interstate Highway 25*

A staff update on the BBRSA and associated projects on Boxelder Creek was presented at the January 28, 2014 City Council Work Session.

FINANCIAL / ECONOMIC IMPACTS

In light of the BBRSA Stormwater Master Plan revisions, an update of the estimated Benefit/Cost Ratio of the regional stormwater projects was completed to confirm the financial benefits. The table below uses information on damage losses from the 2006 Boxelder Creek Regional Stormwater Master Plan and compares the losses with the current estimated construction costs for the remaining BBRSA projects (East SDF, LWCCS, and CR52 Improvements).

¹ Present Worth Damage Losses Estimated in 2006 Master Plan 10/30/2013			
Boxelder Creek Reach	Potential Damages at Existing Conditions	Potential Damages after construction of ESDF and LWCCS	Resulting Benefits (Damage Reductions)
Middle Boxelder Creek (CR54 to I25)	\$ 9,990,993	\$ 5,000,000	\$ 4,990,993
Boxelder Overflow	\$ 9,007,028	\$ -	\$ 9,007,028
Lower Boxelder Creek (I25 to Poudre)	\$ 2,015,535	\$ 811,806	\$ 1,203,729
Boxelder I 25 Split	\$ 10,224,807	\$ -	\$ 10,224,807
Cooper Slough	\$ 27,344,409	\$ 8,623,624	\$ 18,720,785
Cache La Poudre Overflow	\$ 2,311,180	\$ 220,493	\$ 2,090,687
Totals	\$ 60,893,952	\$ 14,655,923	\$ 46,238,029
²Current Construction Cost Estimate (ESDF, LWCCS & CR 52 Improvements)	\$ 11,700,000		
Estimated Benefit/Cost Ratio	3.95		
¹ Source: Table C-3 Appendices BOXELDER CREEK REGIONAL ST ORMWATER M ASTER PLAN October 2006			
² Initial Total Costs to be offset by Authority Revenue & TDA contributions & Additional Funding from New IGA			

Review of the table shows an updated Benefit/Cost Ratio of 3.95. In most instances, a B/C ratio of 1.5 or 2 is considered very good. Such a high B/C ratio is very unusual and demonstrates the dramatic benefits that construction of the BBRSA projects has with regard to the reduction in damages from a 100-Year flood event.

Summary – Fort Collins Benefits

There are significant financial benefits and reductions in flood damage to properties located with the City of Fort Collins and its GMA as shown in the summary table below.

Location	City of Fort Collins Master Plan Project Costs – <u>without</u> ESDF	City of Fort Collins Master Plan Project Costs – <u>with</u> ESDF	Savings with ESDF in place
Cooper Slough at Mulberry	\$15,300,000*	\$4,000,000**	\$11,300,000
Boxelder Creek at Prospect Road	\$6,100,000**	\$4,000,000****	\$2,100,000
Road Crossing Improvements on Boxelder creek	\$6,000,000***	\$0	\$6,000,000
Total	\$27,400,000	\$8,000,000	\$19,400,000

Cooper Slough

The BBRSA regional stormwater projects will eliminate the westerly Boxelder Creek overflow that extends south along the east side of Interstate Highway 25. The Cooper Slough will benefit by a dramatic reduction in 100-Year flood flows that currently cross beneath Interstate Highway 25 (I-25) in the Larimer and Weld Irrigation Canal and spill down the Cooper Slough Drainageway. Fort Collins saves \$11.3 Million in reduced stormwater infrastructure costs on the Cooper Slough.

Boxelder Creek

The BBRSA regional stormwater projects will eliminate the westerly Boxelder Creek overflow that extends south along the east side of Interstate Highway 25. The ESDF facility will reduce the 100-Year Flood flows downstream. With Fort Collins and Timnath agreeing to jointly fund and construct improvements near and upstream of the Boxelder Creek crossing of Prospect Road, the two large box culverts at the crossing of Interstate 25 (I-25) and Boxelder Creek can be unplugged. As a result, there is an estimated \$6 Million savings for roads within the Fort Collins GMA (County Roads 54, 52, 50, 48 and State Highway 14) and a \$2.1 Million savings for stormwater improvements at Boxelder Creek and Prospect Road.

County Road 52 IGA

The current total cost estimate to construct the ESDF, LWCCS and CR 52 improvements is \$11.75 million. Approximately \$9 million of CWCB loans will be used towards the projects. An estimated \$1.72 million of BBRSA funds and Timnath Development Authority (TDA) contributions will be received and applied towards the total project costs. That leaves a shortfall of \$1.03 million. Larimer County, Timnath and Fort Collins all benefit from the construction of the BBRSA projects and have agreed to share equally in providing the funding needed to cover the shortfall. To allow for contingencies, the entities have agreed to share equally the additional costs up to a maximum of \$0.5 million each (total of \$1.5 million). The County Road 52 IGA (Exhibit A to Resolution 2014-026) outlines the specific provisions of this agreement.

Sixth Amendment to the Fort Collins/Timnath IGA

Fort Collins and Timnath agree and acknowledge that it is in the best interest of both parties to work cooperatively and in coordination with the BBRSA to design and construct projects along Boxelder Creek and its associated flow paths to mitigate the impacts of flooding for the mutual benefit of the parties as well as the region. Accordingly, they have agreed to construct the Fort Collins/Timnath projects identified previously in this memorandum. The total cost of these projects is currently estimated to be \$4 million. Fort Collins and Timnath have agreed to share equally in the costs to complete the projects. As part of this agreement, Fort Collins will be able to use the remaining funds (\$1.75 million) originally placed into escrow as part of the original IGA towards its share of the project funding. Fort Collins will need to contribute an additional amount of up to \$250,000 to fully fund fifty percent (50%) of the total cost of the Fort Collins/Timnath Projects. The parties agree that the escrowed funds, together with the additional Fort Collins funds, are intended as a match to payments by Timnath, or the TDA on behalf of Timnath to complete the projects.

ENVIRONMENTAL IMPACTS

The BBRSA has already received Endangered Act Species (ESA) clearance for its projects and is working with the U.S. Army Corps of Engineers (USACE) to receive the required 404 Permit. In accordance with the language in the original Boxelder IGA, the location, size and impacts of any BBRSA or Fort Collins/Timnath stormwater improvements projects built on or in the vicinity of the Arapaho Bend Natural Area east of Interstate Highway 25 shall be minimized to the extent reasonably possible and that all construction activities and improvements shall be sensitive to the natural features of the affected property. Any area impacted by construction activities shall be restored to pre-construction natural conditions to the extent reasonably possible, using native vegetation.

As a result of the relocation of the ESDF downstream, the Middle Boxelder Creek improvements were eliminated, reducing potential impacts on the section of Boxelder Creek from County Roads 48 to 54. As a result of the replacement of the Boxelder Overflow Project originally identified in the IGA with the proposed Boxelder Creek Flood Mitigation projects, there will be a reduction in environmental impacts to Boxelder Creek, including the Arapaho Bend Natural Area. The Boxelder Outfall Project will also complete all appropriate environmental permitting including the ESA Clearance and USACE 404 Permit.

PUBLIC OUTREACH

Information on the Boxelder Basin Regional Stormwater Authority and progress on its regional projects is presented monthly at the BBRSA Board of Directors meeting which is held at 4:00 PM the fourth Wednesday of each month at the Leeper Center, 3800 Wilson Avenue, Wellington, Colorado. The Board Meeting agendas and minutes along with relevant studies, mapping and other information are available for review at the following BBRSA website hyperlink: <http://www.boxelderauthority.org/>. In addition, the BBRSA maintains a mailing list of parties who have expressed interest in receiving information and regularly distributes Board Meeting agendas and materials. The BBRSA also publishes and distributes a quarterly newsletter which provides information and updates on the authority and its programs.

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Comprehensive updates on the BBRSA were presented at the recent public meetings listed below:

- *January 28, 2014 City Council Work Session*
- *February 26, 2014 BBRSA Board of Directors Work Session.*”

Ken Sampley, Stormwater Floodplain Program Manager, reviewed the items and their benefit to the City.

Councilmember Cunniff requested information regarding the funding sources for the Boxelder Stormwater District. Sampley replied the Boxelder Stormwater Authority is funded by stormwater service fees and stormwater development fees. The City collects the Boxelder Basin fees and then distributes them to the Stormwater Authority.

Councilmember Cunniff asked if progress is being made regarding comparing acquisition costs within the 100-year floodplain to projects such as this. Sampley replied there are currently no projects for which that type of analysis would be appropriate; however, that will be completed in the future.

Councilmember Cunniff asked what Timnath’s source of funding will be. Sampley replied Timnath is planning to provide funding through the Timnath Development Authority; however, the agreements themselves show the Town of Timnath as being the responsible party.

Councilmember Overbeck asked if eminent domain processes are part of this agreement. Sampley replied initial notices of intent to acquire properties have been sent out and there is a possibility Council could be asked to consider the use of eminent domain.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Troxell, to adopt Resolution 2014-026.

Councilmember Cunniff stated he will not support the motion as he has had concerns regarding the Boxelder project, process and governance model.

Councilmember Overbeck agreed with Councilmember Cunniff and cited concerns regarding eminent domain.

The vote on the motion was as follows: Yeas: Troxell, Campana, Horak and Weitkunat. Nays: Poppaw, Overbeck and Cunniff.

THE MOTION CARRIED.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Campana, to adopt Ordinance No. 047, 2014, on First Reading.

The vote on the motion was as follows: Yeas: Troxell, Campana, Horak and Weitkunat. Nays: Poppaw, Overbeck and Cunniff.

THE MOTION CARRIED.

Other Business

Councilmember Troxell made a motion, seconded by Mayor Weitkunat, to reconsider the vote on the amendment to Ordinance No. 041, 2014, regulating retail marijuana establishments.

City Attorney Roy clarified Councilmember Troxell is moving to open the motion to amend and that a motion can be amended only one additional time.

The vote on the motion to reconsider was as follows: Yeas: Campana, Horak, Weitkunat, Overbeck, Poppaw and Troxell. Nays: Cunniff.

THE MOTION CARRIED.

Councilmember Overbeck made a motion to amend, seconded by Councilmember Poppaw, to replace Option A with Option B in Section 15-608 of Ordinance No. 041, 2014.

Councilmember Cunniff stated he would not support the amended motion given the fact the item was reconsidered after citizens had departed.

The vote on the motion to amend was as follows: Yeas: Overbeck and Poppaw. Nays: Cunniff, Horak, Weitkunat, Troxell and Campana.

THE MOTION WAS DEFEATED.

Councilmember Troxell clarified he wished to have the item reconsidered in order to clarify his abstention vote as being affirmative.

The vote on the motion to adopt Option A was as follows: Yeas: Horak, Weitkunat, Poppaw, Troxell and Campana. Nays: Overbeck and Cunniff.

THE MOTION CARRIED.

The vote on the motion to adopt Ordinance No. 041, 2014, as amended, was as follows: Yeas: Overbeck, Poppaw, Cunniff and Horak. Nays: Weitkunat, Troxell and Campana.

THE MOTION CARRIED.

Councilmember Cunniff stated the Council Legislative Committee has recommended Council support Representative Ginal's bill and asked if Council would recommend attendance during testimony regarding the bill by a member of the Legislative Committee. Council supported the suggestion.

Adjournment

The meeting adjourned at 10:28 p.m.

Mayor

ATTEST:

City Clerk