

AGENDA ITEM SUMMARY

December 2, 2014

City Council

STAFF

Steven Catanach, Light & Power Operations Manager
Lance Smith, Strategic Financial Planning Manager
Janet McTague, Utilities Project Engineering Supervisor

SUBJECT

Second Reading of Ordinance No. 136, 2014, Amending Chapter 26 of the City Code Regarding Calculation and Collection of Development Fees Imposed for the Construction of New or Modified Electric Service Connections.

EXECUTIVE SUMMARY

This Ordinance, adopted on First Reading on November 18, 2014, by a vote of 3-2 (Nays: Weitkunat, Troxell; Campana recused; Poppaw absent) revises the City Code provisions relating to Electric Development Fees, in particular, Electric Capacity Fee Charges. The Ordinance clarifies that the fees due are based on the rates effective on the date of final payment.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, November 18, 2014 (w/o attachments) (PDF)
2. Ordinance No. 136, 2014 (PDF)

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November 18, 2014

City Council

STAFF

Steven Catanach, Light & Power Operations Manager
Lance Smith, Strategic Financial Planning Manager
Janet McTague, Utilities Project Engineering Supervisor

SUBJECT

First Reading of Ordinance No. 136, 2014, Amending Chapter 26 of the City Code Regarding Calculation and Collection of Development Fees Imposed for the Construction of New or Modified Electric Service Connections. (Option A or B)

EXECUTIVE SUMMARY

The purpose of this item is to revise (Option A) or clarify (Option B) the City Code provisions relating to Electric Development Fees, in particular, Electric Capacity Fee Charges. The Ordinances clarify that the fees due are based on the rates effective on the date of final payment, but Council is presented with two options on how the fees are to be collected.

- **Option A:** Option A is a timing change from current Code requirements. This option requires that 100% of the Electric Capacity Fee (ECF) be payable prior to the Utility initiating construction of the electric distribution system. Rates in effect at the time of payment would apply. Currently, only 50% of the fee is payable prior to construction with the remainder due prior to the electric system being energized. Option A also addresses how invoices issued prior to the adoption of this ordinance would be addressed.
- **Option B:** Option B does not change the timing of current Code requirements. It requires at least 50% of the Electric Capacity Fee (ECF) to be paid as a deposit prior to the Utility initiating construction of the electric distribution system. The remaining ECF (final payment) would be due prior to the system being energized. Rates in effect at the time of final payment would apply to the entire development. Because Option B is not a change from current practice or intent of the current code, it would apply to all invoices issued before or after the adoption.

No changes to the Electric Development Fee amounts are proposed as part of this ordinance. The ordinance changes the verbiage only. 2015 Electric Development Fee rate amounts are being adjusted in Ordinance No. 155, 2014 which was approved on first reading on October 21, 2014 and is scheduled for second reading on November 18, 2014.

STAFF RECOMMENDATION

Staff recommends adoption of Option A of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Light and Power crews construct the electric distribution system to serve all new developments in the city limits. The developer is responsible for the costs of this construction. The fees to recover the cost are adopted by Council by Ordinance and are codified in Chapter 26 Sections 26-473 through 26-475 of the City Code.

The current Code language requires developers to pay 50% of the fees prior to the Utility beginning construction of the electric system and the remaining 50% prior to the system being energized. This 50-50 payment has been the practice for at least 40 years. The current Code language also addresses the situation where the fees have increased between the time they are invoiced and the time they are paid, stating "If there is an increase in said fees between the time of application for electric service and the actual payment of the fees, the fee rates in effect at the time of payment shall apply."

Staff has consistently interpreted this to mean the rates at the time of final payment shall apply; however, it has recently been interpreted by others to read that rates in effect at the time of the first 50% payment would apply. Both Option A and B of this ordinance rewrite the Code to avoid this confusion and conflict in the future. In each option, the fees in effect at the time of final payment would apply.

Two options are being presented for Council consideration. Option A revises the City Code to make the full Electric Capacity Fee (ECF) payable prior to the Utility scheduling construction of the electric distribution system to serve the development. This option has the following benefits over the existing language and Option B:

- Option A avoids any possible confusion as to what fee is applicable and is easier for staff to administer.
- Xcel Energy, who provides natural gas service throughout the City, has revised its construction policies to require that the electric system be installed and energized prior to installation of Xcel's natural gas system. This change requires that the electric system be energized much sooner than was needed in the past. Maintaining the 50-50 policy would require the ECF balance to be paid shortly after the first 50% in order to get the electric system energized prior to Xcel's work. Because of this recent change in construction sequence, a single payment prior to construction should not result in any additional burden on the developers' cash flow.
- Option A eliminates the rare situation where the developer pays the first 50% of development fees, the electric distribution system is completely built, and then the project is delayed or abandoned. When this occurs, Light and Power resources are tied up to finance 50% of the costs of the construction until such time that the project is revived.

Option B is merely a rewrite of current Code to make the language clearer. Under this option, the first 50% payment would be considered a deposit required before the construction would be scheduled. The ECF balance would be due prior to the system being energized. The ECF due at time of final payment would be based on the fees in effect on the date the final payment was made with a credit for any previous payments or deposits.

Either option would be made effective 10 days after second reading. Option A allows for invoices issued prior to the effective date, including any currently outstanding invoices, to continue to be paid on a 50-50 basis at current rates until January 1, 2015. Any unpaid invoices as of that January date would then become 100% payable prior to construction continuing and/or energization of the electric system at the Electric Development Fee rates in effect at the time of payment.

Ordinance 136, 2014 was originally discussed by City Council on October 7, 2014. At that time several issues were of concern to Councilmembers and the Ordinance was postponed to November 18, 2014 to allow for additional public outreach with the development community.

One concern expressed at the October 7th discussion focused on the timing of these payments and the timing of construction for the development's electric system. Each option of the ordinance has been revised to address this concern. The Light and Power Project Engineering Staff and Field Service Crews are in close contact with the developers throughout the project. Utility construction is completed according to a detailed utility construction schedule (typically based on the depth of the Utility) as specified by the Electric Construction Rules and Regulations. Once payment has been received and all required work by other utilities and the developer is completed in accordance with the schedule, the Light and Power Utility will commence construction. Should the work load of Light and Power crews be such that construction cannot begin when all

requirements are met and the electric construction is requested, the development projects will be constructed in the order in which the payments are received. This clarification has been added to each option of the proposed ordinance.

FINANCIAL / ECONOMIC IMPACTS

Neither option changes the amount of electric development fees due for any project. However, Option A requires the full ECF to be paid before the electric distribution system can be scheduled for construction.

BOARD / COMMISSION RECOMMENDATION

The Energy Board discussed this topic at its October 2, 2014 Board Meeting. The following motion was passed unanimously: "Energy Board recommends City Council adopt Option A of the Ordinance being presented for first reading on October 7, 2014 making changes to the City Code regarding the electric capacity fee."

PUBLIC OUTREACH

Out-of-city customers were notified of the proposed ordinance and a public notice was issued in the Coloradoan. A letter was sent to 25 developers explaining the two options and inviting the developers to an open house to review the changes and provide feedback. No comments were received on either option.

ATTACHMENTS

1. Energy Board Minutes, October 2, 2014 (PDF)
2. Electric Development Project Timeline (PDF)
3. Electric Contractor Letter (PDF)
4. Powerpoint presentation (PDF)

ORDINANCE NO. 136, 2014
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF FORT COLLINS
REGARDING CALCULATION AND COLLECTION OF DEVELOPMENT FEES IMPOSED
FOR THE CONSTRUCTION OF NEW OR MODIFIED ELECTRIC SERVICE
CONNECTIONS

WHEREAS, the City Council is empowered and directed by Article XII, Section 6, of the City Charter to fix, establish, maintain and provide for the collection of such rates, fees or charges for utility services furnished by the City as will produce revenues sufficient to pay the costs, expenses and other obligations of the electric utility, as set forth therein; and

WHEREAS, pursuant to City Code Sections 26-473 through 26-475, the City imposes development fees, including an Electric Capacity Fee and a Building Site Charge, on parties developing properties for which new or modified electric service is required; and

WHEREAS, custom and practice of the Electric Utility has been to calculate development fees based on the rates adopted by City Council in effect at the time the fees are paid in full; and

WHEREAS, custom and practice of the Electric Utility has also been to collect development fees in installments that allow a developer to pay a deposit prior to the Utility constructing the new service, and then pay the remainder of the fees prior to the Utility energizing the new service; and

WHEREAS, during 2014, Electric Utility staff evaluated the description of the development fee calculation and collection process in light of questions posed by developers and changes in industry practices; and

WHEREAS, Electric Utility staff recommends the description of how the development fees are calculated and collected be clarified in the City Code to better reflect the custom and practice of the Electric Utility with regard to administration of such fees and scheduling of associated construction work; and

WHEREAS, Electric Utility staff also recommends updating the manner in which the City collects development fees for new or modified electric service connections to require full payment before the City schedules construction of the service; and

WHEREAS, based on the foregoing, it is the desire of the City Council to amend Chapter 26 of the City Code to clarify and update the process for calculation and collection of development fees imposed for the construction of new or modified electric service connections.

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

Section 1. That Section 26-473(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-473. Electric development fees and charges.

- (a) Any person desiring to connect to the City's electric distribution system, or to construct any structure to be served by said electric distribution system, shall pay to the utility all applicable electric development fees and charges as described in this Division prior to construction of the electric distribution system to serve said connection, whether such connection or the property served is inside or outside of the corporate limits of the City, in addition to any other applicable fees and charges described in this Article. Notwithstanding the foregoing or any provision of this Article to the contrary, said fees and charges may be paid over time to the extent that the deferral of all or any portion of such payment has been approved by the City Council by resolution. Said development fees shall consist of an Electric Capacity Fee ("ECF") to recover the allocated cost of the electric distribution system attributable to the new or modified service requested and a Building Site Charge ("BSC") to recover the cost of installing on-site electric service facilities to the user's side of the point of delivery.

...

Section 2. That Section 26-474(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-474. Residential electric development fees and charges.

- (a) An Electric Capacity Fee ("ECF"), calculated as set forth in this section and representing the cost to construct the electric distribution system infrastructure for a new or modified residential service shall be paid prior to the scheduling of any construction work required to provide said service. The ECF shall be determined based upon the most current construction information and the ECF charges in effect at the time of full payment.

(1) In the event of a customer request for revision to the system requirements for a new or modified service, construction of infrastructure improvements will cease until the customer has made payment in full of an updated ECF, including any increased construction costs associated with the revised system requirements; such increased amount, if any, shall be paid at the ECF rates in effect at the time it is paid in full.

(2) Notwithstanding the foregoing, the ECF for any new or modified service for which an invoice has been issued on or before December 15, 2014, shall be due in full and must be paid no later than December 31, 2014, in order for construction of related infrastructure improvements to continue. If payment in full based upon the ECF charges in effect as of December 15, 2014, is not received in 2014, no further construction of infrastructure improvements or

energizing of the subject service shall occur until the full ECF is paid based on the rate in effect at the time of full payment.

...

Section 3. That the current Section 26-474(c) of the Code of the City of Fort Collins is hereby renumbered as Section 26-474(d).

Section 4. That a new Section 26-474(c) of the Code of the City of Fort Collins is hereby adopted to read as follows:

(c) The utility will schedule and commence construction of a new or modified electric service upon receipt of payment in full of the associated electric development fees, and per the Utility Installation Sequence as defined in the Electric Construction Policies Practices and Procedures. If the utility is unable to commence construction when requested due to utility workload backlogs, the utility will schedule and commence the construction of new or modified electric service projects in the same order in which full payments are received.

Section 5. That Section 26-475(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-475. Nonresidential electric development fees and charges.

(a) An Electric Capacity Fee ("ECF"), calculated as set forth in this section and representing the cost to construct the electric distribution system infrastructure for a new or modified nonresidential service shall be paid prior to the scheduling of any construction work required to provide such service. The ECF shall be determined based upon the most current construction information and the ECF charges in effect at the time of full payment. The customer shall also be responsible for secondary service installation from the point of delivery to the service panel.

(1) In the event of a customer request for revision to the system requirements for a new or modified service, construction of infrastructure improvements will cease until the customer has made payment in full of an updated ECF, including any increased construction costs associated with the revised system requirements; such increased amount, if any, shall be paid at the ECF rates in effect at the time it is paid in full.

(2) Notwithstanding the foregoing, the ECF for any new or modified service for which an invoice has been issued on or before December 15, 2014, shall be due in full and must be paid no later than December 31, 2014, in order for construction of related infrastructure improvements to continue. If payment in full based upon the ECF charges in effect as of December 15, 2014, is not received in 2014, no further construction of infrastructure improvements or energizing of the subject service shall occur until the full ECF is paid based on the rate in effect at the time of full payment.

...

Section 6. That the current Sections 26-475(c) and (d) of the Code of the City of Fort Collins are hereby renumbered as Sections 26-475(d) and (e), respectively.

Section 7. That a new Section 26-475(c) of the Code of the City of Fort Collins is hereby adopted to read as follows:

(c) The utility will schedule and commence construction of a new or modified electric service upon receipt of payment in full of the associated electric development fees, and per the Utility Installation Sequence as defined in the Electric Construction Policies Practices and Procedures. If the utility is unable to commence construction when requested due to utility workload backlogs, the utility will schedule and commence the construction of new or modified electric service projects in the same order in which full payments are received.

Section 8. That the amendments to Chapter 26 of the City Code contained herein shall go into effect for all invoices paid on or after December 15, 2014.

Introduced, considered favorably on first reading, and ordered published this 18th day of November, A.D. 2014, and to be presented for final passage on the 2nd day of December, A.D. 2014.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 2nd day of December, A.D. 2014.

Mayor

ATTEST:

City Clerk