

# AGENDA ITEM SUMMARY

September 5, 2017

City Council

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## STAFF

Delynn Coldiron, Interim City Clerk

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## SUBJECT

Consideration and Approval of the Minutes of the August 8, 2017 Special Council Meeting, the August 15, 2017 Regular Council Meeting and the August 22, 2017 Adjourned Council Meeting.

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## EXECUTIVE SUMMARY

The purpose of this item is to approve the minutes from the August 8, 2017 Special Council meeting, the August 15, 2017 Regular Council meeting and the August 22, 2017 Adjourned Council meeting.

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## ATTACHMENTS

1. August 8, 2017 (PDF)
2. August 15, 2017 (PDF)
3. August 22, 2017 (PDF)

August 8, 2017

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Special Meeting – 6:00 PM

● PLEDGE OF ALLEGIANCE

● CALL TO ORDER

● ROLL CALL

PRESENT: Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak  
Staff Present: Atteberry, Daggett, Winkelmann, Coldiron

● AGENDA REVIEW

City Manager Atteberry recommended withdrawal of Item No. 5, *First Reading of Ordinance No. 104, 2017, Appropriating Unanticipated Revenue in the Capital Projects Fund and Appropriating Prior Year Reserves in the General Fund for Transfer to the Capital Projects Fund for Construction of the Final Five Acres of the Gardens on Spring Creek and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program*, to the August 15, 2017 agenda.

He announced City Clerk Winkelmann will be leaving to take the City Clerk position in Grand Junction and stated Delynn Coldiron, the current Neighborhood Services Manager, will take the interim position to be ratified by Resolution at the next Council meeting.

● DISCUSSION ITEMS

1. **Resolution 2017-073 Directing the City Manager to Submit to the Colorado Parks and Wildlife Commission and Other Agencies the City's Comments on the Fish and Wildlife Mitigation and Enhancement Plan for the Northern Integrated Supply Project and Directing Testimony Regarding the Same. (Adopted)**

*The purpose of this item is to consider a resolution to adopt a set of draft comments regarding the State of Colorado Fish and Wildlife Mitigation and Enhancement Plan (the Plan) for the Northern Integrated Supply Project (NISP). As early as the turn of the 19<sup>th</sup> century, the Poudre River was known as a "hard working" river. Now, well into the 21<sup>st</sup> century, pressures on the Poudre have increased dramatically as the region thrives. In the early 1970s Fort Collins realized that the Poudre had the potential to be more than an industrial zone. Since that time, Fort Collins has invested many tens of millions of dollars in parks, natural areas, river restoration, flood mitigation, and a riverside trail. Fort Collins owns about 70% of the floodplain within the city's growth management area. The Poudre River trail starts west of the City at the CPW Watson Lake facility and with the exception of a short section yet to be completed near Timnath, runs to Greeley. Throughout the year visitors throng the River, including boaters, tubers, hikers, bikers, and anglers. According to a 2012 CPW report, the highest creel counts on the Poudre are in downtown Fort Collins not, as one might expect, in the upper reaches of the wild and scenic section.*

*In short, the 10 miles of the Poudre corridor through Fort Collins have become a defining feature of the community's connection to the outdoors, its culture, and its sense of place.*

*In 2015, Fort Collins City Council adopted a position regarding NISP in Resolution 2015-082. The resolution states that NISP would be harmful to Fort Collins and states "City Council cannot support NISP as it is currently described and proposed..."*

*In 2017, Fort Collins City Council adopted Resolution 2017-024 authorizing the City Manager and his designees to meet on a regular basis with Northern Water to discuss and explore Fort Collins' interests in order to ascertain whether those interests can be met pursuant to the terms of the resolution. To date, while several amicable meetings have occurred, Fort Collins and Northern Water have not reached any new understandings or agreements.*

*While staff's draft comment letter implicitly assumes that NISP will be permitted and constructed by recommending various changes to NISP and its operations, nothing in draft comment letter should be interpreted to be a change of Fort Collins' position regarding NISP.*

*While the Plan contains new, useful, and encouraging mitigation measures, staff continues to believe that NISP will have damaging impacts to Fort Collins and is concerned that the Plan does not sufficiently address a number of key concerns. In addition to describing a number of concerns, the comment letter also describes numerous recommendations to address the concerns.*

*The major elements of the proposed comments on the Plan are:*

- *Peak Flows*
- *Water Quality*
- *Mitigation, Restoration, Channel Improvements, and Conveyance*
- *Adaptive Management and Long-term Monitoring*
- *Uncertainties regarding agreements*
- *Mitigation and Enhancement Costs*
- *Big game habitat*

John Stokes, Natural Areas Director, stated this is an action item intended to review staff's proposed comments on the State of Colorado's fish and wildlife mitigation enhancement plan for the Northern Integrated Supply Project (NISP). Stokes discussed the public outreach process utilized and noted Council has two previously adopted Resolutions still in force regarding NISP.

Stokes stated the project is a water supply and storage project with 15 partners in the North Front Range area. The project would involve the construction of Glade Reservoir north of Ted's Place and water would be delivered through the yet-to-be-constructed Douglas Road Pipeline and partially in the Poudre River. Stokes stated a genuine effort is being made to address some of the City's concerns; however, further improvements are warranted.

Jennifer Shanahan, Natural Areas Department, discussed concerns related to peak flows and the City's recommendation that Northern Water take the current recommended peak flow program within the mitigation plan and improve it to consist of a 3-day period during which no diversion occurs. The second major theme involves the plan recommendations for working on the River and concerns that the proposal does not match the project impacts. The City is recommending restoration be increased, specifically of the River's connection to the floodplain. The City is also waiting for a quantitative analysis of water quality and is recommending the mitigation plan not be adopted until the results of the water quality analysis are made public.

Shanahan stated the City is recommending an independent stakeholder group be created to address adaptive management and monitoring.

Stokes stated a major element of the suggestions is that the total mitigation budget be increased by about \$18 million.

Delores Williams discussed the need for a free-flowing river and stated water from a low-level reservoir can be undrinkable.

Eric Sutherland questioned the binding effect of any adopted plans pursuant to federal approval. He stated this appears to be a surrender tactic by the City.

Gary Wockner, Save the Poudre, stated his group has been addressing the threats of NISP for 14 years and opposed the proposed City comments. He stated NISP will pull about \$1 billion worth of water out of the Poudre and will undermine the River.

Sarah Pitts, League of Women Voters, stated the Poudre is the defining feature of the community and stated it is not reasonable to rely on the mitigation plan proposals as Northern Water has been vague about the source of funding.

Councilmember Summers requested some clarification regarding whether the Reservoir can only be filled during years when runoff is excessive enough to divert. Stokes replied the primary water right being used by NISP is a junior water right and therefore, there may be years where no diversion can occur. A substantial portion of the water is not associated with the junior water right and is water that is exchanged from other ditch systems.

Councilmember Summers asked if more regular flows would occur if the Reservoir is constructed. Stokes replied the proposal is that some of the water diverted into Glade would be released back to the River and allowed to run for about 12 river miles down to Lemay, then it would be taken off the River, put in a pipe, and delivered to the east. A base flow would exist for 8 or 9 months of the year.

Councilmember Summers questioned whether Council would change its opinion if Northern Water agreed to all City recommendations.

Councilmember Overbeck discussed a letter from the Natural Resources Advisory Board which suggests delaying the approval of the mitigation plan until water quality effects have been fully described and Northern Water commits to a specific mitigation initiative. Stokes replied the staff letter reflects that and includes a suggestion that Colorado Parks and Wildlife not endorse this plan until the water quality information is available.

Councilmember Overbeck requested details regarding the escalation or inflation cost that will be included. Stokes replied the Denver region CPI is typically used.

Councilmember Stephens thanked the speakers and asked if there are concerns related to undrinkable water with this project. Shanahan stated algae has been discussed and the project falls within the flushing flow and base flow categories. Jill Oropeza, Water Quality Services Division Manager, stated the issue regarding warm water and algae is primarily a drinking water concern and the City's drinking sources will not be affected.

Councilmember Stephens asked what is binding and who would be enforcing requirements. Stokes replied the City's letter addresses uncertainties regarding agreements and the desire for more certainties to be included. Eric Potyondy, City Water Attorney, replied these plans are frequently included as part of the ultimate permit granted by the federal government, providing the mechanism by which these plans become legally enforceable.

Councilmember Summers asked who the independent oversight committee would include. Stokes replied it could be composed of individuals from not only Northern Water and Colorado Parks and Wildlife, but also scientists from CSU, the City of Fort Collins or other impacted cities.

Councilmember Summers asked if Northern Water has been found to operate with integrity and good intent. Stokes replied in the affirmative.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to adopt Resolution 2017-073.

Councilmember Summers stated the presentation to Colorado Fish and Wildlife will be critical and must not simply be a list of demands. The City needs to show its commitment to being a collaborative, productive partner.

Councilmember Cunniff expressed appreciation for the work that has gone into this; however, he stated staff's comments include too much "couching" language. He stated he does not want to validate the State's poor process.

Councilmember Stephens stated the City needs to express its concerns and issues.

Councilmember Martinez stated progress only comes through dialogue.

Mayor Troxell supported the Resolution and stated the letter recognizes impacts to Fort Collins and addresses mitigation of those.

Councilmember Overbeck thanked the League of Women Voters for their work and efforts. He stated he cannot support the Resolution given there are no certainties.

Mayor Pro Tem Horak stated the decision does not lie with the City; therefore, it makes sense to send comments. He suggested some wording changes to make the staff comments firmer.

Councilmember Cunniff stated he is partly concerned about the language, but is also concerned about the process.

Councilmember Stephens asked about the meeting occurring in Trinidad making it difficult for community members to attend. Stokes replied meetings are scheduled around the state and this one happened to be in Trinidad. He stated staff could ask the Commission if it would be willing to meet in Fort Collins.

Councilmember Overbeck supported the inclusion of stronger language; however, he stated he is still unlikely to support adoption of the Resolution.

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| <b>RESULT:</b>   | <b>RESOLUTION 2017-073 ADOPTED [4 TO 3]</b> |
| <b>MOVER:</b>    | Gerry Horak, District 6                     |
| <b>SECONDER:</b> | Kristin Stephens, District 4                |
| <b>AYES:</b>     | Martinez, Stephens, Troxell, Horak          |
| <b>NAYS:</b>     | Summers, Overbeck, Cunniff                  |

2. **Items Relating to a Proposed Charter Amendment to Add a New Section to Charter Article XII Pertaining to Telecommunication Facilities and Services. (Adopted on First Reading)**

A. *Possible Public Hearing and Motions Regarding Protest(s) of Ballot Language.*

B. *First Reading of Ordinance No. 101, 2017, Submitting to a Vote of the Registered Electors of the City of Fort Collins a Proposed Amendment to Article XII of the City Charter to Add a New Section 7 Pertaining to Telecommunication Facilities and Services.*

*The purpose of this item is to propose an amendment to Charter Article XII, Municipal Public Utilities. The amendment would authorize the City Council to provide, by future ordinance, telecommunications/broadband facilities and services as a public utility, to issue of up to \$150 million in bonds, the ability to go into executive session to discuss matters related to competition in the telecommunications industry, and the option to establish governance of this public utility through a board and/or to delegate rate-making authority to the City Manager. This measure does not mandate that the City provide municipal retail broadband services, or that a third-party be the provider.*

*Any protest of the proposed ballot language must be received no later than Monday, August 7, 2017, at noon. The protest(s) shall be heard, considered, and resolved by Council prior to adoption of Ordinance No. 101, 2017. If protest(s) are received, copies will be included in Council's "Read-before" packet.*

SeonAh Kendall, Economic Health Manager, discussed the strategic objectives broadband service would address and detailed the history of the topic.

Jeff Mihelich, Deputy City Manager, stated there is clearly a positive economic impact for cities with 1 gigabit service. Access to broadband will allow Fort Collins to retain talented employees and increase competition among incumbent servers. Mihelich commented on the reliability and redundancy of the 1 gigabit service over currently existing service. He stated this item would go on the November ballot should Council choose to move forward, and if voters pass the item at that time, additional Council steps, including funding, would occur. The beginning of service date would be at some point in 2019 with full build-out in 2022.

Mike Beckstead, Chief Financial Officer, discussed the major decisions which are part of the broadband timeline, specifically indicating a November approval automatically causes this to move forward. He stated the draft ballot language asks for three things: add telecommunications to the current light and power electric utility, or create a fifth separate utility, issue securities and other debt in an amount not to exceed \$150 million, and modify the governance to operate in a commercial enterprise.

Beckstead discussed the allowed role of staff members between now and the November election. Staff is recommending adoption of the Ordinance to place the item on the ballot.

City Manager Atteberry stated the process has been solid, with thorough public outreach.

Mayor Troxell noted this item has been protested; therefore, a hearing pursuant to City Code Section 7-156 will occur.

Eric Sutherland, protestor, disagreed this process has been adequate and stated the proposed charter and ballot language should have been available for public scrutiny two weeks before it was actually published. He stated the ballot language is inconsistent with state law and the City Charter.

Councilmember Martinez expressed concern regarding the availability of the ballot language to the public. He asked about the normal practice for such an issue. City Attorney Daggett replied there is no normal practice from a legal standpoint for providing language in advance of the agenda publication; however, drafts have been provided in recent years when there is a great deal of anticipated public interest. In this case, there was a Council work session on July 11 and this material was provided in that agenda with minor tweaks since.

Councilmember Martinez asked why the executive session expansion is included for this particular project. City Attorney Daggett replied the executive session language included deals with the self-contained set of provisions related to this particular service. City Manager Atteberry noted the executive session proposed changes are tied specifically to broadband business needs.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to deny the protest.

Councilmember Cunniff stated he would support the motion and the executive session being part of this change has been adequately explained.

Councilmember Martinez stated the executive session aspect should be separate and this practice appears to be different than best practices have been used in the past.

Mayor Troxell stated he would support the motion and found the protest to be confusing.

Councilmember Martinez asked if the protest relates to the ballot language. Mayor Troxell replied the spirit of the protest is the ballot language; however, the protestor's comments related more to how City elections are handled. City Attorney Daggett replied the protest is specifically about the form of the ballot question and title.

Councilmember Martinez asked if the executive session language is part of what is being protested. City Attorney Daggett replied the executive session language is part of what is being proposed.

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| <b>RESULT:</b>   | <b>MOTION TO DENY PROTEST ADOPTED [6 TO 1]</b>       |
| <b>MOVER:</b>    | Gerry Horak, District 6                              |
| <b>SECONDER:</b> | Bob Overbeck, District 1                             |
| <b>AYES:</b>     | Stephens, Overbeck, Troxell, Cunniff, Horak, Summers |
| <b>NAYS:</b>     | Martinez,  |

Bob Carnahan expressed concern about telecommunications services being provided by the City. He opposed using City funds or City bonding capacity to enter a highly competitive private industry.

Joe Rowan stated this process, though long, has not been honest. He stated the business plan has yet to be fully vetted.

Glen Akins stated the financial aspects of this proposal work and the business pricing is competitive.

Sarah Hunt expressed concern regarding the cost of the proposal and stated there is not enough information for voters to make an informed decision. She questioned privacy issues as well.

Adam Eggleston supported the Ordinance and being on the forefront of this technology.

Dan Rhodes stated broadband will change the architecture of Fort Collins and supported placing the measure on the ballot.

Colin Garfield supported placing the measure on the ballot.

Eric Sutherland stated a broadband utility could still be created even if voters reject the measure. He stated the City should have initiated this measure years ago.

Thomas Edwards supported a unanimous Council vote on placing the measure on the ballot.

Councilmember Overbeck requested staff comments on privacy and consumer protection. Beckstead replied information was added to the business plan that details the commitment to maintain privacy, not share data, and maintain net neutrality.

Councilmember Overbeck asked about buy-in from utilities staff. City Manager Atteberry replied new staff would be required and he has not heard any negative comments from staff.

Councilmember Overbeck asked how equity and inclusion will be addressed. Beckstead stated a low-income rate is being contemplated; however, specific equity and inclusion plans have not been discussed.

Councilmember Martinez asked if Council will still need to approve future decisions should the ballot measure be approved. City Attorney Daggett replied the Charter language gives Council the power to take action in the future without further citizen vote and would authorize Council to make decisions about the governance structure.

Councilmember Martinez asked when a low-income pricing model will be developed. Beckstead replied that has yet to be done primarily because, while it is important for the community, it will not have a material financial impact on the decision.

Kendall stated preliminary discussions have occurred with Poudre School District and the library regarding a low-income rate tier.

Councilmember Martinez asked what percentage of Fort Collins residents currently have broadband service. Kendall replied broadband, through the City's definition, is 10 mbps and up, and approximately 92% of households have that service.

Councilmember Martinez asked if an analysis of potentially filling a gap rather than creating an entire new service has been considered. Beckstead replied filling the 8% market gap is not something the City has considered.

Councilmember Martinez asked if broadband would be a separate utility enterprise. Beckstead replied Council will make the choice to either place it in Light and Power or create a fifth utility. The staff recommendation is to place it within Light and Power.

Councilmember Martinez asked if this could be eventually added to capital expansion fees. Beckstead replied Light and Power has a plant improvement fee and there is a potential for a

broadband public improvement fee that supports development into annexed areas; however, that would be decided by Council. City Manager Atteberry stated that option has never been discussed and is not foreseen. City Attorney Daggett stated the possibility of a fee would depend on what infrastructure is being addressed through said fee. Any fee would be subject to a Council decision.

Councilmember Martinez asked if there is an additional connection cost for individuals wishing to receive a City broadband service. Beckstead replied he believes the connection fee is included in the cost of service for residential customers.

Councilmember Martinez asked if prices would eventually increase for customers. Beckstead replied there will likely be some inflation in pricing as costs begin to change over time.

Councilmember Martinez asked if existing fiber can be utilized. City Manager Atteberry replied that is possible to some extent; however, that will not solve all issues.

Councilmember Martinez asked how Chattanooga is measuring the success of its broadband utility. Coleman King, Chattanooga, Tennessee utilities, replied success is being measured by the projected take rate being exceeded, telecommunications debt being totally paid off, positive community impact, and the savings and electric reliability for the electric system.

Councilmember Martinez asked if Chattanooga looked at partnerships with other providers. King replied in the affirmative and stated a third-party partnership was risky given the customer experience cannot be controlled.

Councilmember Overbeck asked where King began in the process in Chattanooga. King replied he started with the financial modeling, followed by network design and technology selection, managing implementation of the technology, and running the video platform.

Councilmember Overbeck asked how far along the build-out is in Chattanooga. King replied build out was completed in 2.5 years.

Mayor Troxell asked how Chattanooga has addressed security and privacy concerns. King replied privacy is considered of utmost importance and data is not sold.

Mayor Troxell requested input regarding technology obsolescence. King replied upgrades are made to the end components rather than to the fiber network itself.

Councilmember Summers asked if the financial aspects will make the \$150 million debt payable in 15 years. Beckstead replied the math works based on the operating income, principal and interest payments, and the cash flow model.

Councilmember Summers stated clarity provides credibility and suggested the public would be better served by having a specific plan to consider at the polls.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 101, 2017, on First Reading.

Councilmember Martinez asked about Li-Fi. King replied Li-Fi is Wi-Fi using light and is geared toward LEDs. It is a new service, but not a symmetrical type service; therefore the take rate is probably questionable.

Councilmember Cunniff asked if Li-Fi works through buildings and other obstructions. King replied in the negative.

Councilmember Martinez asked about Comcast offering a \$70 rate. Beckstead replied competitive pricing is an evolving target.

Councilmember Martinez noted Chattanooga got \$100 million from the federal government. Beckstead replied their total cost was \$330 million with \$110 million from federal grants. Most of that \$110 million went toward installing automatic interrupters into their light and power system to improve reliability.

Councilmember Cunniff discussed the importance of good public outreach given there are several questions remaining. He stated city-style infrastructure is needed, which entails fiber optic connections. He supported the motion and requested the support of citizens.

Mayor Pro Tem Horak supported placing the measure on the ballot.

Councilmember Stephens supported placing the measure on the ballot and discussed the applications for broadband.

Councilmember Overbeck commended the rigorous, honest process and stated he would support the motion.

Councilmember Martinez stated citizens have the right to vote on issues; however, he stated he may not support the Ordinance on First Reading as he has remaining questions. He questioned spending \$150 million for a 28% take rate and expressed concern that threats outweigh opportunities.

Councilmember Summers supported engaging the community and moving forward with the technology; however, he questioned the business plan and its execution.

Mayor Troxell thanked the speakers and discussed the history of the utilities in Fort Collins. He stated this is a natural progression and a ubiquitous utility which is an important piece of the community's future.

Mayor Pro Tem Horak stated this is not necessarily the last time citizens will vote on this item.

Councilmember Martinez stated that take makes the issue more palatable.

Councilmember Summers disagreed and stated it makes things more confusing.

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| <b>RESULT:</b>   | <b>ORDINANCE NO. 101, 2017 ADOPTED ON FIRST READING [5 TO 2]</b> |
| <b>MOVER:</b>    | Gerry Horak, District 6  |
| <b>SECONDER:</b> | Bob Overbeck, District 1   |
| <b>AYES:</b>     | Stephens, Overbeck, Troxell, Cunniff, Horak                      |
| <b>NAYS:</b>     | Martinez, Summers  |

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

3. **Items Relating to a Proposed Charter Amendment Regarding Municipal Court Functions. (Postponed Indefinitely)**

A. *Possible Public Hearing and Motions Regarding Protest(s) of Ballot Language.*

B. *First Reading of Ordinance No. 102, 2017, Submitting to a Vote of the Electors of the City of Fort Collins a Proposed Amendment to Section 1 of Article VII of the City Charter Pertaining to the Jurisdiction of the Municipal Court to Hear Civil Cases.*

*This item sets a ballot question that would modify the jurisdiction of Municipal Court to eliminate the Municipal Court's jurisdiction over civil cases while retaining the Court's jurisdiction to hear and try all proceedings initiated by the City alleging violations of the Charter and ordinances of the City. The Ordinance submits the question to Fort Collins voters at the November 7, 2017, Special Municipal Election. The Charter Amendment has been proposed in order to prevent future appeals to Municipal Court of civil actions that are more appropriately heard in Larimer County District Court and that the Municipal Court is not well situated to hear.*

*Any protest of the proposed ballot language must be received no later than Monday, August 7, 2017, at noon. The protest(s) shall be heard, considered, and resolved by Council prior to adoption of Ordinance No. 102, 2017. If protest(s) are received, copies will be included in Council's "Read-before" packet.*

Mayor Troxell stated this item involves a protest.

City Attorney Daggett stated Home Rule municipalities have the authority to create Municipal Courts and define their jurisdiction. The kinds of civil actions not involving charter or ordinance violations can currently be filed in Municipal Court; however, those have routinely been filed in District Court. Recently a land use decision appealed to Council was filed in Municipal Court.

Municipal Court Judge Kathleen Lane stated the Court's procedures and staffing are set up to deal with the types of cases it has traditionally seen: violations of the City Code, Traffic Code, and other codes. When this recent civil action was filed, she made the determination to assign the case to temporary Judge Teresa Ablao. The plaintiffs in the case filed a motion to disqualify Judge Ablao which was granted based on the potential appearance of a conflict. At that point, the Judge in Loveland was asked to take the case based on an intergovernmental agreement. Because of these difficulties, staff is proposing a change to the Charter to restrict the jurisdiction of the Municipal Court to its typical cases.

City Attorney Daggett noted Larimer County District Court has jurisdiction to review actions and decisions of the City. Municipal Court cases can be appealed to the District Court; however, the addition of that layer does delay a case reaching a true appellate court by potentially several months. She discussed the public outreach process.

Eric Sutherland stated this change would place Fort Collins in the same position as statutory cities in Colorado, and if that is the goal, Article 7 should be eliminated entirely.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to deny the protest.

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| <b>RESULT:</b>   | <b>MOTION TO DENY PROTEST ADOPTED [7-0]</b>                    |
| <b>MOVER:</b>    | Gerry Horak, District 6  |
| <b>SECONDER:</b> | Bob Overbeck, District 1                                       |
| <b>AYES:</b>     | Stephens, Overbeck, Troxell, Cunniff, Horak, Summers, Martinez |

Rick Hoffman questioned why this change is being rushed forward and stated this amendment will take away citizens' rights to take grievances to Municipal Court.

Kathryn Dubiel stated the Charter change does not address the underlying concerns related to conflicts of interest, staffing, expertise and budgeting. She stated there should not be a difference between citizen plaintiffs and the City as a plaintiff and disagreed the public outreach process was adequate.

Paul Patterson opposed the Charter change and stated it will take away citizens' rights to take grievances to Municipal Court. He disagreed the public outreach process was adequate.

Eric Sutherland stated there is no concurrent jurisdiction for cases where an allegation of abuse of discretion by Council is concerned.

Thomas Edwards supported placing the measure on the ballot to allow citizens to have a voice.

Coleen Hoffman questioned the urgency of this item.

Councilmember Cunniff asked how the public outreach arenas were determined. City Manager Atteberry replied he would need to return with that information.

Councilmember Cunniff expressed concern regarding the urgency of this item and opposed the public outreach process.

City Attorney Daggett stated staff did discuss the issue with Broomfield, Denver, Aurora, and several other jurisdictions. Few descriptive responses were received as these jurisdictions are not facing these types of cases being filed in their courts.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to postpone Ordinance No. 102, 2017 indefinitely.

Councilmember Stephens agreed the process was rushed and stated citizens need to better understand why they are voting.

Councilmember Overbeck stated a more thorough public process should have occurred.

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| <b>RESULT:</b>   | <b>ORDINANCE NO. 102, 2017, POSTPONED INDEFINITELY [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Gerry Horak, District 6  |
| <b>SECONDER:</b> | Ross Cunniff, District 5   |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak     |

4. **First Reading of Ordinance No. 103, 2017, Appropriating Prior Year Reserves in the General Fund for the Conduct of a Special Election on November 7, 2017, that was not included in the 2017 Adopted City Budget. (Adopted on First Reading)**

*The purpose of this item is to appropriate \$150,000 from prior year reserves for the conduct of the November 7, 2017, Special Election. This is an estimated amount based on prior participation in coordinated elections. Final costs will be determined by the number of eligible Fort Collins voters, and the number of entities participating/sharing in the cost of the election.*

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 103, 2017, on First Reading.

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| <b>RESULT:</b>   | <b>ADOPTED ON FIRST READING [UNANIMOUS]</b>                    |
| <b>MOVER:</b>    | Gerry Horak, District 6  |
| <b>SECONDER:</b> | Bob Overbeck, District 1                                       |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak |

5. **First Reading of Ordinance No. 104, 2017, Appropriating Unanticipated Revenue in the Capital Projects Fund and Appropriating Prior Year Reserves in the General Fund for Transfer to the Capital Projects Fund for Construction of the Final Five Acres of the Gardens on Spring Creek and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program. (Withdrawn)**

*The purpose of this item is to appropriate \$2,631,000 for construction of the Gardens on Spring Creek facility including the Great Lawn, Undaunted Garden, Foothills and Prairie Gardens. This item also appropriates the funds needed for the Arts in Public Places artwork that is part of the capital project.*

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| <b>RESULT:</b> | <b>WITHDRAWN</b> |
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6. **First Reading of Ordinance No. 105, 2017, Imposing a Moratorium Until December 31, 2017, upon the Acceptance of Applications for the Installation of and/or the Issuance of Right-of-Way Permits for New Antennas, Small Cell Facilities, Towers and Wireless Service facilities by any Third Party in City Rights-of-Way in any Zone District. (Withdrawn)**

*The purpose of this item is to consider a moratorium until December 31, 2017, on the installation of cellular facilities in public rights-of-way. This would allow the City time to draft and implement appropriate regulations on such installations while still complying with HB 17-1193, which expanded the right of companies to utilize the right of way for small cell installations.*

Mayor Troxell stated this item has been postponed to August 15, 2017 given the late hour.

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| <b>RESULT:</b> | <b>WITHDRAWN</b> |
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- **ADJOURNMENT**

The meeting adjourned at 10:06 PM.

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Mayor

ATTEST:

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Chief Deputy City Clerk

August 15, 2017

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

● **ROLL CALL**

PRESENT: Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak  
Staff Present: Atteberry, Daggett, Coldiron, Knoll

● **AGENDA REVIEW: CITY MANAGER**

City Manager Atteberry stated the agenda has been amended to reflect the withdrawal of Item 16, *First Reading of Ordinance No. 113, 2017, Amending Section 2-203 of the Code of the City of Fort Collins Relating to the Functions of the Cultural Resources Board*, and Item 25, *First Reading of Ordinance No. 020, 2017, Authorizing the Conveyance of a Portion of City-Owned Property at Running Deer Natural Area to Big Foot Properties, LLC*.

● **CITIZEN PARTICIPATION**

Eric Sutherland requested clarification regarding the Senior Center lease and discussed the poor performance of the Vine and Lemay intersection, stating the City's financial priorities are skewed.

Kathryn Dubiel discussed Item No. 19, *Resolution 2017-077 Approving Revised Costs and Fees for Fort Collins Municipal Court*. She stated the Municipal Court filing fee is egregious and should be consistent with other municipalities.

● **CITIZEN PARTICIPATION FOLLOW-UP**

City Manager Atteberry stated the financial transaction for the parking structure and the public/private partnership with the Elizabeth Hotel closed Tuesday, August 7, and related documents are public.

Mayor Troxell requested input regarding the Municipal Court filing fee. City Attorney Daggett replied the costs that are the basis for the fee relate to administrative costs and were not intended to cover Court operations or the Judge's time.

Mayor Troxell stated the Vine and Lemay intersection is a priority for the community.

● **CONSENT CALENDAR**

Mayor Pro Tem Horak withdrew Item No. 9, *Second Reading of Ordinance No. 099, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Blehm-Homestead Annexation to the City of Fort Collins, Colorado and Approving Corresponding Changes to the Sign District Map*, from the Consent Agenda.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt and approve all items not withdrawn from the Consent Agenda.

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| <b>RESULT:</b>   | <b>CONSENT AGENDA ADOPTED [UNANIMOUS]</b>                      |
| <b>MOVER:</b>    | Gerry Horak, District 6  |
| <b>SECONDER:</b> | Bob Overbeck, District 1                                       |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak |

1. **Consideration and Approval of the Minutes of the July 5 and July 18, 2017 Regular Council Meetings, the June 27, 2017 Special Council Meeting and the July 25, 2017 Adjourned Council Meeting. (Adopted)**

The purpose of this item is to approve the minutes from the July 5 and July 18 Regular Council meetings, the June 27, 2017 Special Council meeting and the July 25, 2017 Adjourned Council meeting.

2. **Second Reading of Ordinance No. 088, 2017, Amending the Land Use Code Sign Regulations. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 5, 2017, updates the Land Use Code (LUC) sign regulations with content neutral standards. The Ordinance has two changes from First Reading to correct an omission in a table and the definition of feather flag. In Section 3.8.7.2 Table G2 (page 29 of the Ordinance) did not include the duration of time a feather flag could be displayed. The table was corrected and now includes the display time. The definition of feather flag included an extra word that has been deleted (page 34 of the Ordinance).

3. **Second Reading of Ordinance No. 091, 2017, Appropriating Unanticipated Revenue Relating to a Federal Emergency Management Agency Grant for Acquisition and Remediation of Property Adjoining the Downtown Whitewater Park Area. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 18, 2017, appropriates a \$232,509 Federal Emergency Management Agency (FEMA) grant. The total budget approved by FEMA is \$265,725 which includes \$33,216 that has been previously appropriated by the City. The funds will pay for the acquisition and remediation of a property adjoining the downtown whitewater park area.

4. **Second Reading of Ordinance No. 094, 2017, Amending Part 18 of the Fort Collins Traffic Code Regarding the Towing and Impounding of Vehicles on Public Rights-of-Way. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 18, 2017, amends the Traffic Code to allow for the immediate removal and impoundment of vehicles on public streets and alleys as a means of enforcing violations to the Residential Parking Permit Program (RP3) for Colorado State University (CSU) major stadium events. The Code change would also allow the City to create new tow-away zones, if needed in the future.

5. **Second Reading of Ordinance No. 095, 2017 Amending Section 19-65 of the Code of the City of Fort Collins Regarding the Citation Procedure for Civil Infractions to Include an Exception for Parking on Yards. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 18, 2017, amends City Code to allow for immediate ticketing for parking on yards during Colorado State University (CSU) game days and major stadium events.

6. **Second Reading of Ordinance No. 096, 2017, Calling a Special Municipal Election To Be Held In Conjunction With the November 7, 2017 Larimer County Coordinated Election. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 18, 2017, calls a Special Municipal Election to be held in conjunction with the November 7, 2017 Larimer County Coordinated Election, and to preserve the opportunity for Council to place initiated or referred issues on the November ballot. If Council decides to place any measures on the ballot relating to Charter amendments, it would need to do so no later than August 29 in order to meet statutory requirements for publication. If Council does not take action by ordinance or resolution before the statutory deadline (September 8) to certify ballot language to Larimer County, the election will be cancelled and the provisions of this Ordinance will be of no further force and effect.

This Ordinance does not submit a specific measure to the November 7, 2017 ballot. Adoption of this Ordinance is a required step in preserving the option for City Council to submit any ballot measures that Council may desire, at the November 7, 2017 Coordinated Election.

7. **Second Reading of Ordinance No. 097, 2017, Vacating a Portion of Lincoln Avenue Right-of-Way Dedicated on the Fort Collins Original Town Plat Dated January 17, 1873, with the Reservation of a Drainage and Utility Easement. (Adopted)**

This Ordinance, unanimously adopted on First Reading on July 18, 2017, vacates a portion of Lincoln Avenue that is no longer necessary or desirable to retain for street purposes. During the design process for the Lincoln Corridor Improvements Project - Phase I, it was determined that there was a portion of right-of-way that was no longer necessary to retain. The request to vacate was made by the City of Fort Collins Engineering Department.

8. **Second Reading of Ordinance No. 103, 2017, Appropriating Prior Year Reserves in the General Fund for the Conduct of a Special Election on November 7, 2017, that was not included in the 2017 Adopted City Budget. (Adopted)**

This Ordinance, unanimously adopted on First Reading on August 8, 2017, appropriates \$150,000 from prior year reserves for the conduct of the November 7, 2017, Special Election. This is an estimated amount based on prior participation in coordinated elections. Final costs will be determined by the number of eligible Fort Collins voters, and the number of entities participating/sharing in the cost of the election.

9. **Items Relating to the Vida Sana Program. (Adopted)**

- A. Resolution 2017-047 Authorizing the City Manager to Execute a Grant Agreement with the Poudre Valley Health Systems Foundation for Delivery of Vida Sana Project Programming.
- B. First Reading of Ordinance No. 106, 2017, Appropriating Unanticipated Grant Revenue in the Recreation Fund for the Vida Sana Program.

The purpose of this item is to approve the Vida Sana subgrant agreement and appropriate subgrant funds in the amount of \$18,451 from the Colorado Department of Public Health and Environment, through the Poudre Valley Health Systems' (PVHS) Community Health Improvement Department. The Vida Sana Grant will address the needs of targeted health disparate populations in Fort Collins by allowing specific discounted programming cost for Northside Aztlan Community Center (NACC) exercise programs.

10. **First Reading of Ordinance No. 107, 2017, Appropriating Unanticipated Grant Revenue in the General Fund and Transferring Funds from the Community Development and Neighborhood Services Operating Budget to the Grant Budget for the Restorative Justice Program. (Adopted)**

The purpose of this item is to appropriate grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services (CDNS). A grant in the amount of \$67,612 has been received from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) for all other offenses. The grant period for is July 1, 2017, to June 30, 2018. This is the first year in a 3-year cycle for the Juvenile Diversion grant.

11. **Items Relating to Additional Allocations of Funding to Projects Funded in 2017 Spring Cycle of the Competitive Process for Allocating City Financial Resources to Affordable Housing and Community Development Activities Utilizing Funds from the Federal Community Development Block Grant Program, Federal HOME Investment Partnerships Program, the City's Affordable Housing Fund Program and the City's Human Services Program (HSP). (Adopted)**

- A. Resolution 2017-075 Rescinding Resolution 2017-042 and Approving Revised Allocations to the Programs and Projects that Will Receive Funds from the Federal Community Development Block Grant Program, HOME Investment Partnerships Program, the City's Affordable Housing Fund, and the City's Human Services Program.
- B. First Reading of Ordinance No. 109, 2017, Appropriating Unanticipated Revenue in the Community Development Block Grant Fund.
- C. First Reading of Ordinance No. 110, 2017, Appropriating Unanticipated Revenue in the HOME Investment Partnerships Fund.

The purpose of this item is to appropriate the additional funding received from the Department of Housing and Urban Development (HUD) for 2017 and distribute the final funding allocations proportionately in accordance with the Community Development Block Grant Commission's (CDBG) recommendations. This will complete all funding allocations related to the 2017 Spring Cycle of the Competitive Process. Resolution 2017-075 rescinds the resolution passed by the City Council in May 2017 to allocate funding and completes the final distribution of funding to the 2017 Spring Cycle of the Competitive Process for allocating \$1,174,289 in City financial resources to human service programs, affordable housing projects and the administration of the CDBG and HOME programs for the fiscal year that begins October 1, 2017. Ordinance No. 109, 2017, appropriates the increase in allocations to the FY2017 CDBG from HUD and Ordinance No. 110, 2017 appropriates the increase in allocations to the FY2017 HOME Participating Jurisdiction (PJ) Grant from HUD.

12. **Items Relating to the Interstate Land Holdings Annexation to the City of Fort Collins. (Adopted)**

- A. Resolution 2017-076 Setting Forth Findings of Fact and Determinations Regarding the Interstate Land Holdings Annexation.
- B. First Reading of Ordinance No. 111, 2017, Annexing the Property Known as the Interstate Land Holdings Annexation to the City of Fort Collins, Colorado.

The purpose of this item is to annex an area of approximately 12.139 acres in southeast Fort Collins. The property is situated on the northwest corner of the I-25 and Carpenter Road intersection. The Initiating Resolution was adopted on consent, July 5, 2017.

13. **First Reading of Ordinance No. 112, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in Interstate Land Holdings Annexation to the City of Fort Collins, Colorado and Approving Corresponding Changes to the Sign District Map. (Adopted)**

*This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2017-017.*

The purpose of this item is to zone the properties included in the Interstate Land Holdings annexation into the General Commercial (CG) and Public Open Lands (POL) zone districts.

14. **First Reading of Ordinance No. 113, 2017, Amending Section 2-203 of the Code of the City of Fort Collins Relating to the Functions of the Cultural Resources Board. (Adopted)**

The purpose of this item is to update how the functions of the Cultural Resources Board (CuRB) are described to better reflect the actual scale and responsibilities of the Cultural Services Department. The current City Code language is outdated. It references advising the Museum director, and matters pertaining to the operations of the Lincoln Center. The Cultural Services Director, staff liaison to the CuRB, is responsible for directing the Lincoln Center, Museum of Discovery, Gardens on Spring Creek, Carnegie Creative Center, and Art in Public Places program. The proposed new language more accurately reflects the entire scope of functions currently performed by the Cultural Services Department.

15. **First Reading of Ordinance No. 114, 2017, Repealing Article III of Chapter 15 of the Code of the City of Fort Collins Relating to Amusement Devices and Places. (Adopted)**

The purpose of this item is to repeal Article III of Chapter 15 of City Code to remove a license requirement on amusement devices and places, including but not limited to, pool tables, roller skating rinks, shooting galleries and electronic game devices.

16. **First Reading of Ordinance No. 115, 2017, Amending Section 2-493 of the Code of the City of Fort Collins Regarding Duties of Municipal Judges. (Adopted)**

The purpose of this item is to set out the duties of the Municipal Judges as referenced in Article VII, Section 1, of the City Charter.

17. **Resolution 2017-077 Approving Revised Costs and Fees for Fort Collins Municipal Court. (Adopted)**

The purpose of this item is to add two new fees to the approved costs and fees for cases in Fort Collins Municipal Court: a \$65 Sealed Records Fee and a \$300 Civil Case Filing Fee.

The Sealed Records Fee is mentioned in the state legislature's House Bill 17-1208 which takes effect on September 1, 2017. That law makes clarifications to the criminal justice records sealing process including allowing Municipal Court defendants whose non-traffic misdemeanor case is completely dismissed or of which they are fully acquitted to request that their records be sealed. The change allows sealing to be ordered directly by the Municipal Court in those cases without requiring such defendants to file a separate action in District Court as was required in the past. As for state court defendants, the law provides that Municipal Court defendants must pay a \$65 fee "to cover the actual costs related to the sealing of the criminal justice records, which may be waived by the Court upon a determination of indigency." See C.R.S. Section 24-72-702.5(2). *Note: This change does not impact the current process authorized by City Code in which underage possession cases are sealed automatically after dismissal without a request from the defendant or payment of a fee.*

The Civil Case Filing Fee is needed to offset at least a portion of the administrative expense to the Court of civil cases being filed by members of the public. The amount of the proposed fee, \$300, is based on the cost of approximately 10 hours of Court Administrator time. This is a very conservative estimate of the time needed to administer such a case and does not include the judicial expense involved. For comparison, the Colorado state District Courts currently charge a \$224 filing fee to Plaintiffs in civil actions, including Rule 106 (Colorado Rules of Civil Procedure) actions.

A final minor change proposed to the list of costs and fees is to revise the description of the Active Condition Fee to clarify that it does not apply to restitution payment conditions.

The background information included in this Agenda Item Summary has also been updated to indicate that Petitions for Indigence requesting waiver of costs are now accepted by the Court on all cases, not just misdemeanor cases. This change has already been implemented.

18. **Resolution 2017-078 Authorizing the Mayor to Execute an Intergovernmental Agreement Between the City of Fort Collins and Larimer County for the Construction of the Long View Trail Between Fort Collins and Loveland. (Adopted)**

The purpose of this item is to request Council approval for an intergovernmental agreement (IGA) between Fort Collins and Larimer County for the construction of the Long View Trail between Fort Collins and Loveland.

19. **Resolution 2017-080 Approving the Appointment of Delynn Coldiron as Interim City Clerk Effective as of the Date and Time of City Clerk Wanda Winkelmann's Resignation. (Adopted)**

The purpose of this item is to appoint Delynn Coldiron as Interim City Clerk, following the resignation of City Clerk Wanda Winkelmann.

● **END CONSENT**

● **CONSENT CALENDAR FOLLOW-UP**

Councilmember Overbeck congratulated Delynn Coldiron on her appointment as the Interim City Clerk.

● **COUNCILMEMBER REPORTS**

Councilmember Cunniff reported on the Capital Improvement Expansion Fee working group's inaugural meeting.

Councilmember Overbeck reported on his periodic review meeting with the Parking Advisory Board and stated the Board is seeking a more diverse membership. He congratulated the Downtown Business Association for a successful New West Fest. He reported on a CSU stadium and campus tour, Neighborhood Night Out, the Innovate Fort Collins event, and District 1 parks as well as provided an update on the Poudre Heritage Alliance.

Councilmember Stephens thanked the Mayor, League of Women Voters, and Women's Commission members for the Women's Equality Day proclamation. She commended Neighborhood Night Out participants.

Mayor Pro Tem Horak reported that he and Jennifer Shanahan, Natural Areas, testified before the Colorado Parks and Wildlife Commission regarding the NISP mitigation plan and the City's related comments. He reported on the Avery Park grand re-opening.

Councilmember Martinez reported on the Avery Park re-opening, the CSU stadium community open house, the volunteer appreciation event, Project Smile event, and the Spring Creek flood memorial event. He received one call regarding handicap parking spaces being taken away at New West Fest but noted the problem was quickly resolved by staff.

Mayor Troxell discussed the Spring Creek flood memorial event.

● **CONSIDERATION OF COUNCIL-PULLED CONSENT ITEMS**

20. **Second Reading of Ordinance No. 099, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Blehm-Homestead Annexation to the City of Fort Collins, Colorado and Approving Corresponding Changes to the Sign District Map. (Adopted on Second Reading)**

*This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2017-017.*

*This Ordinance, unanimously adopted on First Reading on July 18, 2017, zones the property included in the Blehm-Homestead enclave annexation into the Urban Estate (UE), zone district and Residential Neighborhood Sign District.*

City Attorney Daggett outlined the procedure for the hearing of this item.

Ted Shepard, Chief Planner, stated these parcels are recommended for Urban Estate zoning which complies with the Structure Plan map.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt Ordinance No. 099, 2017, on Second Reading.

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| <b>RESULT:</b>   | <b>ORDINANCE NO. 099, 2017, ADOPTED ON SECOND READING [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Gerry Horak, District 6   |
| <b>SECONDER:</b> | Bob Overbeck, District 1  |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak        |

21. **Second Reading of Ordinance No. 098, 2017, Annexing the Property Known as the Blehm-Homestead Annexation to the City of Fort Collins, Colorado. (Adopted on Second Reading)**

*This Ordinance, unanimously adopted on First Reading on July 18, 2017, annexes an enclave area of approximately 109 acres in southeast Fort Collins. The property is situated between South Timberline and Ziegler Roads, and bisected by Kechter Road. The 28-parcel enclave consists of the Blehm Subdivision, two abutting properties to the east of the Blehm Subdivision, Homestead PUD, and one abutting property to the west of the Homestead PUD.*

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to reconsider Item No. 8, Second Reading of Ordinance No. 098, 2017. Yeas: Troxell, Summers, Overbeck, Stephens, Cunniff, Martinez and Horak. Nays: none.

THE MOTION CARRIED.

John Baum opposed the proposed stormwater fees for the Blehm Annexation area. He questioned what benefit he will receive from paying such fees.

Brad Arzt opposed the proposed stormwater fees for the Blehm Annexation area.

Chris Hagerty stated he was told the stormwater fee could be waived and opposed the proposed fees given the low amount of impervious area on the lots.

James Ott opposed the proposed stormwater fees for the Blehm Annexation area.

Mayor Troxell requested input regarding stormwater fee calculation. Kevin Gertig, Utilities Director, replied many of the lots in the annexation area are 300,000 square feet and larger with little impervious area; therefore, per the City Code, there is a 72% discount on the stormwater fees.

Councilmember Cunniff asked about the minimum lot size for Urban Estate. Ted Shepard, Chief City Planner, replied the minimum lot size is 1/2 acre, or a cluster development plan not exceeding an overall gross of two units per acre is also allowed.

Councilmember Cunniff asked if there is the potential for a ten-acre lot to eventually be developed into 20 single-family homes. Shepard replied in the affirmative and stated each new individual smaller lot would be subject to the full range of City utility fees.

Councilmember Cunniff noted the fees not only address the kind of events a pervious surface can mitigate; they exist in part to reduce the damage caused by significantly larger events.

Councilmember Summers asked about the stormwater fees these properties have paid to the County. Shepard replied he is unsure if the County charges a stormwater fee and stated nothing occurs in terms of improvements through the City until a redevelopment transpires.

Councilmember Martinez stated the property owners have indicated they do not pay a stormwater fee to the County and asked if that is true countywide. Shepard replied stormwater fees may be paid for large capital projects in certain basins.

Councilmember Martinez asked what the properties will gain by paying the City stormwater fees. Gertig replied the same stormwater design and methods for the entire city will be incorporated into the annexed area as it is redeveloped. He discussed systemwide improvements that benefit the city and county.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 098, 2017, on Second Reading.

Councilmember Summers suggested adjusting the stormwater discount for the affected properties to 90%.

City Attorney Daggett made a suggestion related to phasing the stormwater fees if that is Council's desire.

Mayor Pro Tem Horak suggested addressing the Ordinance as is without changing the policy and fee on-the-fly.

Councilmember Summers stated the property owners should not have to pay a fee higher than that of a single-family house, particularly given the large portion of pervious land.

Mayor Troxell supported a deliberate examination of fees and annexation policies.

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| <b>RESULT:</b>   | <b>ORDINANCE NO. 098, 2017, ADOPTED ON SECOND READING [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Gerry Horak   |
| <b>SECONDER:</b> | Ross Cunniff, District 5  |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak        |

● **DISCUSSION ITEMS**

22. **Items Relating to the Gardens on Spring Creek. (Adopted on First Reading)**

- A. *First Reading of the Ordinance No. 118, 2017, Modifying Ordinance No. 074, 2016, Which Modified the April 7, 2016, Planning and Zoning Board Decision Approving the Major Amendment to the Centre for Advanced Technology 22nd Filing, Community Horticulture Center, #MJA 150006 Pertaining to the Gardens on Spring Creek to Remove Two Conditions, Specifically the West Sound Wall and Central Override Component of the Sound System.*
- B. *First Reading of Ordinance No. 104, 2017, Appropriating Unanticipated Revenue in the Capital Projects Fund and Appropriating Prior Year Reserves in the General Fund for Transfer to the Capital Projects Fund for Construction of the Final Five Acres of the Gardens on Spring Creek and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program.*

*The purpose of this item is modify the approved plan for the expansion of the Gardens on Spring Creek by removing the western sound wall and central override sound system; and to appropriate \$2,431,000 for construction of the Gardens on Spring Creek facility including the Great Lawn, Undaunted Garden, Foothills and Prairie Gardens. This item also appropriates the funds needed for the Arts in Public Places artwork that is part of the capital project.*

Michelle Provaznik, Gardens on Spring Creek Manager, discussed the history of and funding sources for the Gardens, which opened in 2004. The actual gardens on the property have been funded through fundraising efforts since that time. This item is part of the Cultivating Community Capital campaign to build five acres of new gardens, which will complete the master plan and build the great lawn and stage and other garden spaces. Provaznik discussed the proposed removal of the west sound wall and permanent sound monitoring system and stated the Gardens are seeking \$400,000 from the City to complete the necessary funding.

Barbara Albert expressed concerns related to noise and stated neighbors are not opposed to the sound wall.

Korey Albert objected to the Ordinance language and stated the noise levels will be out of compliance with the sound code. He suggested escrowing funds for the wall and sound mitigation system now.

Dick Thomas expressed concern related to noise.

Kevin Barrier stated the central override system and west sound wall were key components of the Planning and Zoning Board’s approval of the project and stated the project must go back before the Board if those key components are removed.

Randy Morgan supported the project and stated donations for the project are hinging on this approval by Council.

Dulcie Willis, Friends of the Gardens on Spring Creek, supported the project and stated it will be a cultural gathering place.

Jesse Eastman, Friends of the Gardens on Spring Creek, supported the project.

Councilmember Cunniff asked if a private developer who had changed their project would need to go back through the process or be able appeal to Council. City Attorney Daggett replied a private developer would go back through the process, though it may be a slightly different process. She stated this item is before Council as a proposed modification of the Ordinance Council adopted in 2016 under its legislative authority.

Councilmember Cunniff requested a more detailed explanation of the proposed operational changes that render the sound wall unnecessary. Provaznik replied the decibels coming off the stage will be decreased and sound engineers will be required to keep the decibels at certain levels which will keep it within the sound ordinance at the receiving lines of the property.

Councilmember Cunniff asked how much money the removal of the active monitoring system will save. Provaznik replied it is a \$50,000-\$60,000 savings.

Councilmember Cunniff asked how this expenditure would affect reserve balances. Mike Beckstead, Chief Financial Officer, replied there were \$4 million in unassigned, available General Fund reserves at the end of 2016, which would be the source of this funding.

City Manager Atteberry stated the only way he was comfortable recommending approval of this item was for the operations to be within the limits of the sound code; should that prove to be an issue during the first year of operation, additional sound mitigation will be discussed.

Councilmember Overbeck asked if any emails or other correspondence was received. Provaznik replied one email has been received.

Councilmember Overbeck asked how sound monitoring will occur. City Manager Atteberry assured Council limits will be met and code enforcement will not be necessary.

Mayor Pro Tem Horak suggested making a sound monitoring app available for neighbors and stated additional information regarding the plan for potential consequences of sound code violations be outlined prior to Second Reading.

Councilmember Stephens asked how the Denver Botanic Gardens and others conduct sound control. Provaznik replied sound at the Botanic Gardens is tracked with hand-held monitors and the sound engineer's board also indicates decibel levels. She stated annual neighborhood meetings are planned.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Martinez, to adopt Ordinance No. 118, 2017, on First Reading.

Mayor Pro Tem Horak expressed concern the Agenda Item Summary provided an inaccurate portrayal of the funding issues.

Councilmember Cunniff stated the impression of the City having a privileged development role exists and he expressed concern related to the process. He stated he will not support the motion

on First Reading but would reconsider if there is a guarantee that the sound code will be met without neighbors having to police the sounds.

Councilmember Stephens thanked the neighbors and stated lowering the volume may be a better solution than the wall.

Councilmember Martinez stated he would support the motion and supported citizens being able to see decibel levels in real time.

Councilmember Overbeck expressed concern about the notification process.

Mayor Troxell stated he would support the motion.

Mayor Pro Tem Horak suggested an amendment to move Second Reading to September 19. Councilmember Martinez accepted the amendment as friendly.

Councilmember Overbeck asked how the neighborhood will be engaged prior to Second Reading. City Manager Atteberry replied he will develop a strategy for that engagement and return to Council with a plan.

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| <b>RESULT:</b>   | <b>ORDINANCE NO. 118, 2017, ADOPTED ON FIRST READING [6 TO 1]</b> |
| <b>MOVER:</b>    | Gerry Horak, District 6   |
| <b>SECONDER:</b> | Kristin Stephens, District 4                                      |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Overbeck, Troxell, Horak             |
| <b>NAYS:</b>     | Cunniff   |

Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to adopt Ordinance No. 104, 2017, on First Reading, with Second Reading on September 19.

Councilmember Stephens thanked those involved with the Gardens and stated it will be a great project for the community.

Councilmember Cunniff expressed concern related to the public process.

Councilmember Martinez commended the project and thanked the donors.

Mayor Troxell stated this is a great project for the community and thanked those who have been involved in the process and project.

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| <b>RESULT:</b>   | <b>ORDINANCE NO. 104, 2017, ADOPTED ON FIRST READING [6 TO 1]</b> |
| <b>MOVER:</b>    | Gerry Horak, District 6   |
| <b>SECONDER:</b> | Kristin Stephens, District 4                                      |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Overbeck, Troxell, Horak             |
| <b>NAYS:</b>     | Cunniff   |

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

23. **Second Reading of Ordinance No. 101, 2017, Submitting to a Vote of the Registered Electors of the City of Fort Collins a Proposed Amendment to Article XII of the City Charter to Add a New Section 7 Pertaining to Telecommunication Facilities and Services. (Adopted as Amended on Second Reading)**

*This Ordinance, adopted on First Reading on August 8, 2017 by a vote of 5-2 (Nays: Martinez, Summers), submits to Fort Collins electors a proposed amendment to Charter Article XII, Municipal Public Utilities. The amendment would authorize the City Council to provide, by future ordinance, telecommunications/broadband facilities and services as a public utility, to issue of up to \$150 million in bonds, the ability to go into executive session to discuss matters related to competition in the telecommunications industry, and the option to establish governance of this public utility through a board and/or to delegate rate-making authority to the City Manager. This measure does not mandate that the City provide municipal retail broadband services, or that a third-party be the provider.*

Eric Sutherland questioned voters' expectations regarding the repayment of debt incurred to fund the broadband project. He stated the City is not being transparent or sincere in this process.

Rich Stave questioned several aspects of the calculations and funding and opposed an Executive Session on the topic.

Sidna Rachid thanked the City and Council for this proposal.

Ann Hutchison, Fort Collins Chamber of Commerce, stated the City does not fully understand the opportunities and challenges it is giving up by dedicating this much of the Utility bonding capacity to a single project. She suggested Council take more time and hold a special election in April rather than placing this on the November ballot.

Councilmember Martinez asked about fee escalation. Mike Beckstead, Chief Financial Officer, replied there is an escalation factor and a built-in revenue increase of about 3% per year to cover the cost of inflation.

Councilmember Martinez asked about an affordable tier rate. Beckstead replied that rate has yet to be calculated; however, the business plan makes a commitment to create such a rate.

Councilmember Martinez asked if broadband will be a joint enterprise or its own utility. Beckstead replied the ballot language modifies the current light and power enterprise structure to allow the City to do telecommunications inside of one of the existing light and power enterprises. It also gives Council the option to create a fifth utility either now or in the future.

Councilmember Martinez asked if weekend service will fit into the current budget. Beckstead replied in the affirmative.

Councilmember Martinez asked how many individuals responded to the online survey. Ginny Sawyer, Policy and Project Manager, replied the online survey attempted to duplicate the statistically valid survey of approximately 400 individuals. The online version garnered between 700 and 800 responses.

Councilmember Martinez asked why fiber is less expensive to maintain than copper. Beckstead replied fiber requires less energy to push the information between equipment ports; therefore, there is a lower energy cost to run the system.

Councilmember Martinez asked if the proposed broadband service will be shared or dedicated to each residence. Brad Ward, consultant, replied it is a combination of the two; in general, it is

private, dedicated service with some shared aspects of the overall technology in the network. Beckstead replied each premise will have a fiber connection from a node to that residence.

Councilmember Martinez asked if the City would be liable for any type of cyberattack. City Attorney Daggett replied that would need to be examined in terms of how the utility is operated and in reference to the governmental immunity act as it applies to this type of operation. Beckstead noted no personal information is being stored in this system.

Councilmember Martinez questioned risks and stated threats seem to outweigh opportunities.

Councilmember Summers asked how many other companies provide broadband service. Ward replied Century Link and Comcast control a large share of the residential market.

Councilmember Summers asked about the feasibility of the wholesale model. Beckstead replied there are communities who have built the fiber network and then have not been able to secure a service provider to use the network effectively. Wholesale is less attractive from a business risk standpoint and success would be dependent on the third-party service provider.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 101, 2017, on Second Reading, as amended.

Councilmember Martinez expressed concern that citizens will not be thoroughly informed in due time to vote in November.

Councilmembers requested the creation of a summary document for citizens.

Councilmember Summers made a motion, seconded by Councilmember Cunniff, to amend Ordinance No. 101, 2017 to focus specifically on a retail model proposal.

City Attorney Daggett read the necessary language changes for the amendment.

Councilmember Summers stated his goal for the amendment is to make the ballot language as clear as possible. He noted it is very unlikely a successful third-party service provider will be found; however, should one be found, a change can be made in the future.

Councilmember Cunniff stated he would provisionally support the amendment given the cleaner language.

Councilmember Overbeck stated he is not necessarily comfortable voting for the amendment given the late timing.

Mayor Troxell requested staff input regarding mitigation for identified risks and challenges. Beckstead replied part of the mitigation was to try to attract a third-party which has not yet occurred. A utility fee was also not utilized. At this point, hiring the correct consultants, adjusting the governance model, and providing exceptional customer service are the risk mitigation strategies.

Mayor Pro Tem Horak stated he would not support the amendment.

Councilmember Summers stated the business plan has been established around the retail model.

Councilmember Stephens agreed with Mayor Pro Tem Horak and stated the flexibility is important and is what was adopted on First Reading.

Mayor Troxell stated he would oppose the amendment in order to allow more flexibility.

The vote on the motion to amend was as follows: Yeas: Summers. Nays: Cunniff, Martinez, Horak, Troxell, Overbeck and Stephens.

THE MOTION FAILED.

Councilmembers Overbeck and Cunniff expressed support for the main motion.

Councilmember Martinez stated he is leery about the success of this proposal and expressed concern the technology will shift dramatically prior to the debt being paid off. However, he stated he will support placing the item on the ballot in order to give citizens proper input.

Councilmember Stephens stated she would support the motion as voters overwhelmingly supported exploring the option and her constituents have requested high-speed broadband service.

Councilmember Summers supported citizens making the decision; however, he expressed concern they haven't been given enough facts and clarity to make a decision.

Councilmember Martinez stated voters must be aware they are supporting the City's expenditure of \$150 million.

Mayor Troxell discussed technological and digital advances over the past decades and stated connectivity is essential for the community. He estimates the take rate will be much higher than the 28%.

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| <b>RESULT:</b>   | <b>ORDINANCE NO. 102, 2017 ADOPTED AS AMENDED ON SECOND READING<br/>[6 TO 1]</b> |
| <b>MOVER:</b>    | Gerry Horak, District 6  |
| <b>SECONDER:</b> | Ross Cunniff, District 5   |
| <b>AYES:</b>     | Martinez, Stephens, Overbeck, Troxell, Cunniff, Horak                            |
| <b>NAYS:</b>     | Summers  |

24. **Second Reading of Ordinance No. 100, 2017, Amending Portions of Chapter 17 of the Code of the City of Fort Collins Regulating Trespass and the Obstruction of a Highway or Passageway. (Adopted on Second Reading)**

*This Ordinance, adopted on First Reading on July 18, 2017, by a vote of 3-2 (Nays: Overbeck, Stephens, Absent: Summers, Troxell) amends Section 17-128 of the City Code regarding obstructing a highway or passageway, including adding restrictions around obstructing public fixtures. A minor change to Section 17-40(b) of the City Code (Trespass) is also included, which adds lying or "otherwise occupying" to the already prohibited list of climbing, sitting or standing on or in objects on public or private property not designed for such use, and adds planters to the list of examples of such objects.*

*In response to a citizen inquiry and comments received by citizens during the First Reading of the Ordinance, a Whereas clause has been added clarifying that it is the intent of this Council to ensure this Ordinance continues to apply to all people, and not just certain segments of the population. In*

*response to questions regarding sitting on objects, particularly planters, language has been added to Section 17-40(b) to clarify the extent of the prohibition.*

Jeff Mihelich, Deputy City Manager, showed a map of business entrances and 20-foot arcs around each in the Old Town area. He stated there are ample areas for individuals to rest and relax outside the 20-foot arcs. He noted the 20-foot distance from business entrances has been on the books for a number of years and is not recommended for change.

Lynn Thompson, Fort Collins Homeless Coalition, opposed the Ordinance as written and requested a change to the definition relating to resting in public.

Deborah James stated there are many sidewalk obstructions other than homeless individuals.

Sidna Rachid opposed the proposed Ordinance and cited statistics relating to jailing homeless individuals.

Shane Sheridan discussed potential unintentional violations of this Ordinance and stated it works to dehumanize part of the population.

Fran Levine opposed the Ordinance as written stating it would discriminate against homeless citizens.

Garrett Mumma opposed the Ordinance as written and discussed the definition of obstruction.

Andrew Bondi expressed concern regarding the seeming arbitrary nature of the 20-foot distance and stated this Ordinance will magnify the issue of homeless citizens in Old Town neighborhoods.

Holly Sample suggested the 20-foot distance be reduced to 6 feet.

Christianne Guerra opposed the Ordinance as written and stated homeless citizens need access to downtown amenities.

Adam Lovell opposed the proposed Ordinance and recommended the 20-foot distance be reduced to 6 feet.

Doug Henderson opposed the proposed Ordinance and recommended the 20-foot distance be reduced.

Nicholas Mouton opposed the proposed Ordinance and the 20-foot distance.

Dan (no last name given) stated he is a business owner and supported this as a common sense Ordinance.

Andy Auer opposed the proposed Ordinance.

Chi Chi Dougherty opposed the proposed Ordinance.

Mary Elyse Delphs opposed the proposed Ordinance.

Brian Munsy opposed the proposed Ordinance.

Barb Wilkins supported assistance for disabled individuals.

Steve Raimer supported reasonable access to businesses but opposed the proposed Ordinance. He suggested working on strategies to reduce homelessness.

Karen Miller opposed the proposed Ordinance

Nevin Mandel opposed the proposed Ordinance.

Shane Miller opposed the proposed Ordinance and stated its intent seems to be to reduce the number of homeless individuals in the Old Town area.

Cheryl Distaso, Fort Collins Homeless Coalition, opposed the proposed Ordinance as being too similar to the sit/lie ban. She stated the 20-foot distance is too great.

Councilmember Overbeck questioned why blocking accessible ramps is not already a City regulation. Mihelich replied that is considered obstruction and is already illegal.

Councilmember Overbeck questioned the definition of entrance. Mihelich replied entrance references the frame of any door used by the public or employees to access the building.

Councilmember Overbeck asked if blind spot obstructions are referenced in the proposed language. Mihelich replied in the negative.

Councilmember Overbeck asked about stakeholders identified in the Police Services memo. Kevin Cronin, Assistant Chief of Police, replied stakeholders were citizens, downtown businesses, various associations, and downtown police officers.

Councilmember Stephens asked who ensures the Ordinance does not discriminate. Cronin replied calls for service are answered by Police and officers observing a violation will also intervene in those situations. He noted officers are trained to avoid enforcement action and immediate arrests are reserved for violent situations.

Councilmember Martinez questioned the definition of “ordinary person.” City Attorney Daggett replied that term is usual for legal writing and is meant to reference a standard applicable to regular, common members of the public.

Councilmember Overbeck suggested a radius of somewhere between 6 and 20 feet.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 100, 2017, on Second Reading.

Councilmember Overbeck made a motion, seconded by Councilmember Stephens, to amend the motion to change the distance to 12 feet.

Councilmember Stephens expressed concern regarding the way in which the 20-foot distance could be enforced.

Councilmembers Martinez and Cunniff stated they will not support the amendment.

Mayor Troxell supported the main motion and stated passageways are addressed due to safety of all citizens.

Councilmember Stephens requested periodic updates and expressed concern this is not the perfect Ordinance.

The vote on the motion to amend was as follows: Yeas: Overbeck and Stephens. Nays: Horak, Troxell, Summers, Cunniff and Martinez.

THE MOTION FAILED.

Councilmember Martinez stated this Ordinance, with the 20-foot distance, has been around for many years and addresses the entire population.

Councilmember Overbeck opposed the motion and stated involving other aspects of town could have been a better process.

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| <b>RESULT:</b>   | <b>ORDINANCE NO. 100, 2017, ADOPTED ON SECOND READING [5 TO 2]</b> |
| <b>MOVER:</b>    | Gerry Horak, District 6  |
| <b>SECONDER:</b> | Ross Cunniff, District 5   |
| <b>AYES:</b>     | Martinez, Summers, Troxell, Cunniff, Horak                         |
| <b>NAYS:</b>     | Stephens, Overbeck   |

25. **First Reading of Ordinance No. 020, 2017, Authorizing the Conveyance of a Portion of City-Owned Property at Running Deer Natural Area to Big Foot Properties, LLC. (Withdrawn)**

*The purpose of this item is for City Council to consider the proposed sale of approximately 11.85 acres of land to Big Foot Properties, LLC, (Roger Hageman, Hageman Earth Cycle (HEC)). About eight months ago, the City Manager's Office inquired about the possibility of selling approximately 15 acres of land to HEC. The land was purchased by the City's Natural Areas Department eighteen years ago, along with additional land for Running Deer Natural Area. Prior to the City's purchase, the 15 acres was leased by HEC for the operation of a yard waste/organic material recycling business. The land has continued to be leased to HEC and the current lease will expire in 2018. The proposed sale area has been reduced to 11.85 acres after exclusion of a wetland and boundary adjustments.*

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| <b>RESULT:</b> | <b>WITHDRAWN</b> |
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26. **Items Relating to the Submission of a City-Initiated Ordinance Relating to Medical Marijuana Businesses to a Vote of the Registered Electors of the City at the November 7, 2017, Special Municipal Election. (Postponed to Date Certain)**

- A. *Possible Public Hearing and Motions Regarding Protest(s) of Ballot Language.*
- B. *Resolution 2017-079 Submitting a City-Initiated Ordinance Dealing with Medical Marijuana Businesses to a Vote of the Registered Electors of the City at the Special Municipal Election to be Held on November 7, 2017, in Conjunction with the Larimer County Coordinated Election.*

*The purpose of this item is to submit a City-Initiated Ordinance to the registered electors of the City at the November 7, 2017 special election. The proposed Ordinance amends Section 15-491 (a) and (b) of Article XVI of the City Code to allow Council to change or add any provisions in Chapter 15, Article XVI in order to stay current with state laws, rules and regulations relating to medical marijuana.*

*Any protest of the proposed ballot language must be received no later than Monday, August 14, 2017, at noon. The protest(s) shall be heard, considered, and resolved by Council prior to adoption of Resolution 2017-079. If protest(s) are received, copies will be included in Council's "Read-before" packet.*

(Due to the lateness of the hour, this item was postponed to August 22, 2017)

● **ADJOURNMENT**

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adjourn to 6:00 PM, Tuesday, August 22, 2017, for the purpose of considering agenda items prepared and posted in advance of that meeting, any unfinished matters from this meeting, and such other matters that may come before Council.

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| <b>RESULT:</b>   | <b>ADOPTED [UNANIMOUS]</b>                                     |
| <b>MOVER:</b>    | Gerry Horak, District 6  |
| <b>SECONDER:</b> | Ross Cunniff, District 5                                       |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak |

The meeting adjourned at 11:13 PM.

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Mayor

ATTEST:

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Chief Deputy City Clerk

August 22, 2017

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Adjourned Meeting – 6:00 PM

● ROLL CALL

PRESENT: Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak  
Staff present: Atteberry, Daggett, Coldiron

1. **Items Relating to the Submission of a City-Initiated Ordinance Relating to Medical Marijuana Businesses to a Vote of the Registered Electors of the City at the November 7, 2017, Special Municipal Election. (Adopted)**

A. *Possible Public Hearing and Motions Regarding Protest(s) of Ballot Language.*

B. *Resolution 2017-079 Submitting a City-Initiated Ordinance Dealing with Medical Marijuana Businesses to a Vote of the Registered Electors of the City at the Special Municipal Election to be Held on November 7, 2017, in Conjunction with the Larimer County Coordinated Election.*

*The purpose of this item is to submit a City-Initiated Ordinance to the registered electors of the City at the November 7, 2017 special election. The proposed Ordinance amends Section 15-491 (a) and (b) of Article XVI of the City Code to allow Council to change or add any provisions in Chapter 15, Article XVI in order to stay current with state laws, rules and regulations relating to medical marijuana.*

*Any protest of the proposed ballot language must be received no later than Monday, August 21, 2017, at noon. The protest(s) shall be heard, considered, and resolved by Council prior to adoption of Resolution 2017-079. If protest(s) are received, copies will be included in Council's "Read-before" packet.*

No protest of ballot language was received.

Ginny Sawyer, Policy and Project Manager, discussed the history of medical marijuana in Fort Collins and stated staff is proposing this measure which would ask permission for Council to make changes to the Code that would be consistent with the state. Council would still vote on any potential changes, which could include types of ownership structures, new license types, and off-premise storage facilities. Current license holders have expressed concern this measure would potentially give Council and the City more overreach to change and restrict the citizen-passed regulations; therefore, language has been included indicating the only possible changes would be those within the state code.

Eric Sutherland stated the Code should be authored and amended with respect. He stated codification should be self-sustaining and self-supporting without requiring the reference of other documents. He suggested repeal and reenactment to accomplish this.

Gregg Steinberg stated he has started a company in Fort Collins which produces a product used in medical cannabis cultivation facilities to enhance the growth and quality of their products. He stated his company needs the ability to cultivate for research and development purposes and that is currently very difficult under existing Fort Collins regulations; however, the state has changed regulations to allow such cultivation.

Matthew Wallenstein stated he is one of the co-founders of the aforementioned company and the new state law will allow them to test their product on cannabis plants. He stated it is important to have good science behind medical cannabis.

Councilmember Summers asked if the primary provision to be examined will be related to research and testing. Sawyer replied there are three provisions staff will likely bring forward: the prohibition of transporters, the allowance of medical marijuana research facilities, and the ability to conduct local background checks on new types of ownership interests. She noted each of the items could be placed on a ballot individually; however, this tactic seems more efficient.

Councilmember Martinez asked if Council could still act on prohibiting transporters if voters do not approve this measure. Sawyer replied that it would need to be taken to the voters individually.

Councilmember Martinez asked about the research license. Sawyer replied the license would allow researchers to grow a small amount of marijuana for research purposes and set up parameters wherein that marijuana could not be sold and must be destroyed.

Councilmember Martinez asked Mr. Wallenstein what his company will be researching. Mr. Wallenstein replied the use allowed by the state in which his company is interested is agronomic testing on cannabis to understand the effects of different growth products.

Councilmember Overbeck asked Mr. Steinberg if he anticipates spin-off businesses from his in the community. Mr. Steinberg replied their research applies not only to cannabis, but also to specialty fruits and vegetables and broad-acre crops. He stated their ability to test on the cannabis plant is crucial to increase their research.

Councilmember Overbeck asked how many people they anticipate employing should the measure move forward. Mr. Steinberg replied the company currently employs 40 people, and that will likely triple over the next three years; all of which will remain in this community if given the ability to cultivate cannabis here.

Councilmember Overbeck asked if there would be a limit to the number of research companies allowed in Fort Collins. City Attorney Daggett replied this ballot measure, if adopted, would allow Council to take action and consider whether setting a limit is appropriate.

Councilmember Martinez asked about cannabis contamination. Mr. Wallenstein replied that has been a concern and there is a large market for sustainably-grown, organic crops. He stated his company aims to provide tools which enable growers to provide such crops.

Sawyer stated the State House bill would allow for the following research purposes: testing chemical potency, conducting clinical investigation of marijuana-derived medicinal products, researching the efficacy and safety of administering marijuana as part of medical treatment, and researching marijuana-affiliated products or systems.

Councilmember Martinez asked if this helps or hinders law enforcement. Jim Lenderts, Marijuana Enforcement Officer, replied it helps law enforcement as it continues to allow for local control.

Councilmember Martinez asked if each of the three items discussed by staff could be taken to voters separately or in one question. City Attorney Daggett replied it may be possible to consolidate the provisions into one question.

Councilmember Martinez expressed concern regarding taking rights away from voters regarding each specific issue.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to adopt Resolution 2017-079.

Mayor Pro Tem Horak stated this measure asks voters if Council could potentially make changes, which would still need to be addressed by Ordinance and which could potentially be placed before voters at Council direction.

Councilmember Stephens stated the public will still have the opportunity to weigh in on these issues and discussed the importance of being able to weigh in on new license types and other issues as they come up.

Mayor Troxell stated he would support the motion and expressed support for the 2012 initiatives remaining intact.

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| <b>RESULT:</b>   | <b>RESOLUTION 2017-079 ADOPTED [UNANIMOUS]</b>                 |
| <b>MOVER:</b>    | Gerry Horak, District 6  |
| <b>SECONDER:</b> | Kristin Stephens, District 4                                   |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak |

2. **First Reading of Ordinance No. 105, 2017, Imposing a Moratorium Until December 31, 2017, upon the Acceptance of Applications for the Installation of and/or the Issuance of Right-of-Way Permits for New Antennas, Small Cell Facilities, Towers and Wireless Service facilities by any Third Party in City Rights-of-Way in any Zone District. (Adopted on First Reading)**

*The purpose of this item is to consider a moratorium until December 31, 2017, on the installation of cellular facilities in public rights-of-way. This would allow the City time to draft and implement appropriate regulations on such installations while still complying with HB 17-1193, which expanded the right of companies to utilize the right of way for small cell installations.*

Tyler Marr, Policy and Project Analyst, stated this is a recommended moratorium on small cell installations within the City right-of-way. This has come about as a result of a state bill which grants carriers the ability to attach equipment to existing structures and install stand-alone poles in the right-of-way. Marr noted the small cell facilities can be quite large and stated staff is pursuing Code changes to address aesthetic concerns and establish a process for review. Additionally, staff is working on developing a master lease agreement with the third-party companies which have expressed interest in installing small cell facilities.

Marr stated staff is requesting this moratorium on small cell installations, which would expire at the end of 2017, or as the regulations are adopted, to provide additional time to develop regulations.

Liz Walker, AT&T, stated small cells are an important part of the mechanism to deploy technology to meet the demand for wireless service, which is growing exponentially. She requested AT&T be a part of a collaborative process in developing new regulations.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Summers, to adopt Ordinance No. 105, 2017, on First Reading.

City Attorney Daggett stated this moratorium will automatically terminate December 31, 2017 unless regulations are adopted prior to that.

Councilmember Stephens stated she would support the motion and noted small cell facilities will be valuable to outlying neighborhoods such as Registry Ridge.

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| <b>RESULT:</b>   | <b>ORDINANCE NO. 105, 2017, ADOPTED ON FIRST READING [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Gerry Horak, District 6  |
| <b>SECONDER:</b> | Ken Summers, District 3  |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak       |

3. **First Reading of Ordinance No. 116, 2017, Amending Chapter 26 of the Code of the City of Fort Collins to Make Various Changes Related to the Raw Water Requirements, to Hereinafter Be Known as the “Water Supply Requirements.” (Adopted on First Reading)**

*The purpose of this item is to consider adoption of various changes to the Utilities Raw Water Requirements (RWR). The RWR are a dedication of water rights or cash-in-lieu (CIL) of water rights to ensure that adequate water supply and associated infrastructure are available to serve the water needs of development. The three main changes are decreasing the amount of RWR, increasing the CIL rate and moving to a cash-focused system. These changes will increase development costs in the Utilities water service area, but are necessary for meeting the water needs of that development. Following direction given at the February 14, 2017 City Council work session, staff has conducted additional outreach and addressed City Council questions. This item was presented on July 11, 2017 to the Council Finance Committee, which recommended the item be considered for adoption by the entire City Council.*

Kevin Gertig, Utilities Executive Director, stated staff plans to periodically bring raw water rates and cash in-lieu of rates before Council.

Donnie Dustin, Water Resources Manager, stated Utilities has three water impact fees: raw water requirements, plant investment fees, and tap fees. This item focuses on changes only to the raw water requirements for the Utilities service area. The amount requested is based on the use or type of development with the goal of generating adequate funds or water rights to provide a reliable water supply. Dustin detailed the proposed changes and costs and discussed the public outreach process. He noted the Water Board recommended adoption of the changes. Staff is recommending a delayed implementation to allow developers to finish projects under current costs.

Jeff Johnson, Affordable Housing Board, stated the Board is requesting three changes to the proposal: exempt the increase for cash in-lieu for qualified affordable housing projects, delayed implementation of any increase, and freezing future raw water increases pertaining to affordable housing at the time of the application.

Councilmember Stephens asked if members of the Affordable Housing Board are on the fee working group. Dustin replied in the affirmative.

Councilmember Cunniff expressed concern regarding consciously sacrificing some amount of rate payer return on assets relative to the market value of the assets. Lance Smith, Utilities Strategic Finance Director, replied this is an impact fee; therefore, over-collection cannot occur.

Councilmember Cunniff asked how much fees impact housing affordability in Wellington and Timnath. Carol Webb, Water Resources and Operations Manager, replied Wellington is increasing its water supply requirements to cover the costs of new development.

Councilmember Cunniff stated this is a step in the right direction; however, there may be more that could be done with a better understanding of future capital needs.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Martinez, to adopt Ordinance No. 116, 2017, on First Reading.

Mayor Pro Tem Horak asked why the April implementation date has been selected. City Attorney Daggett replied additional language addressing the issue will be included for Second Reading.

Councilmember Overbeck replied he will not support the motion given his inability to find a Natural Resources Advisory Board memo in his read-before packet. He requested all board and commission input be placed in the same packet in the future.

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| <b>RESULT:</b>   | <b>ORDINANCE NO. 116, 2017, ADOPTED ON FIRST READING [6 TO 1]</b> |
| <b>MOVER:</b>    | Gerry Horak, District 6   |
| <b>SECONDER:</b> | Ray Martinez, District 2  |
| <b>AYES:</b>     | Martinez, Stephens, Summers, Troxell, Cunniff, Horak              |
| <b>NAYS:</b>     | Overbeck  |

● **OTHER BUSINESS**

Councilmember Stephens requested and received Council support to direct staff to consider licensing requirements for tobacco retailers.

Mayor Troxell supported Councilmember Stephens and stated he would like to examine licensing requirements for all smoked products.

Councilmember Martinez also expressed support and questioned what is being done with tobacco tax revenue.

Councilmember Summers expressed support and discussed the importance of tobacco education and the role of licensing in that.

Mayor Pro Tem Horak suggested the formation of a memo including options and placement within Council's work plan.

Mayor Pro Tem Horak requested and received Council support for examining the expiration of Keep Fort Collins Great, including the base taxation rate in relation to basic services.

Mayor Pro Tem Horak stated Council received a memo regarding addressing stormwater fees at time of annexation. He requested and received Council support for moving forward with an action plan with the County.

Councilmember Martinez questioned why the prohibition on parking on grass exists only during game days. City Attorney Daggett replied parking on grass is always illegal; however, there is currently a lengthy notice provision prior to citation for a violation. That provision is being changed on stadium event days to allow for immediate citation for this type of violation.

Councilmember Martinez stated he would like that provision to be changed to apply for immediate citation year-round.

Mayor Pro Tem Horak discussed the Broadview Place fire and various violations at the property.

Councilmember Martinez requested an update to the absence policy for boards and commissions and subcommittees.

City Attorney Daggett discussed the extent of the current policy, which does not address subcommittees.

Mayor Troxell asked if Board chairs have discretion regarding effectiveness of members. City Attorney Daggett replied only Council can remove a Boardmember; however, anyone can make a request to the Council liaison or staff member.

● **ADJOURNMENT**

The meeting adjourned at 7:43 PM.

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Mayor

ATTEST:

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Chief Deputy City Clerk