

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 25

DATE: November 29, 2005

STAFF: John Stokes

SUBJECT

First Reading of Ordinance No. 169, 2005, Creating the Land Conservation and Stewardship Board.

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

FINANCIAL IMPACT

Assuming that the Board has nine members and meets approximately once a month, the direct financial impact is expected to be approximately \$2,500 a year - primarily for meals. This estimate does not include staff time or incidental costs. All expenses will be covered by the City's dedicated Natural Areas sales tax revenues.

EXECUTIVE SUMMARY

In November 2002, voters passed a ballot measure known as Open Space, Yes! (OSY), a continuation of the City's .25 cent sales tax for the acquisition and management of open space. Open Space, Yes! begins collecting and distributing revenues to the City's Natural Areas Program as of January 1, 2006.

Section 15 of OSY states that: "...the City Council shall designate a voluntary City Advisory Board, either existing or new, to advise and make recommendations to the City Council regarding the expenditure of the moneys for the purposes stated herein."

At the Council's August 9, 2005 work session, Council indicated to staff that it wished to create and appoint a Board with certain functions as well as describe an array of desired skill sets that prospective Board members could bring to the Board.

The following functions are described in the ordinance creating the Board:

1. To advise City Council regarding policy and budgetary matters pertaining to the Natural Areas Program, including but not limited to the expenditure of Open Space, Yes! and Larimer County Help Preserve Open Space dedicated sales tax revenues.
2. To advise Natural Areas Program staff and the City Council in connection with the proposed acquisition or disposition of land, interests in land, interests in water, and other interests in real property for the Natural Areas Program.

3. To advise Natural Areas Program staff regarding the development of management plans and public improvements for Natural Areas Program properties.
4. Upon request of the City Manager or at the direction of the City Council, to advise City Council in connection with the proposed acquisition or disposition of land, interests in land, interests in water, and other interests in real property for city programs other than the Natural Areas Program.

The following skill sets are set forth in the proposed Code section for prospective board members; they are not intended to be exhaustive or exclusive:

Experience or training in, or familiarity with, the following: land conservation and stewardship, public or outdoor recreation (such as wildlife observation, hiking, biking, horseback riding), conservation biology (including restoration ecology, range management, fire ecology, riparian ecology, and wildlife management); nature interpretation and education, land or resource management, and real property transactions.

At its October 5th meeting, the Natural Resources Advisory Board unanimously recommended that City Council adopt the proposed functions of the Land Conservation and Stewardship Board. (The Board also requested a minor grammatical clarification of language in the functions; this was addressed by staff.)

ORDINANCE NO. 169, 2005
OF THE COUNCIL OF THE CITY OF FORT COLLINS
CREATING THE LAND CONSERVATION AND
STEWARDSHIP BOARD

WHEREAS, heretofore, the citizens of Fort Collins approved a quarter-cent sales and use tax for natural areas and trails (the "Tax"), which expires on December 31, 2005; and

WHEREAS, at a special municipal election held on November 5, 2002, the voters of the city of Fort Collins approved Citizen-initiated Ordinance No.1, 2002, which extended the Tax for a period of twenty-five (25) years, expiring at midnight on December 31, 2030, for the purposes of acquiring, operating, and maintaining open spaces, community separators, natural areas, wildlife habitat, riparian areas, wetlands, and valued agricultural land, and to provide for the appropriate use and enjoyment of these areas by the citizenry; and

WHEREAS, Citizen-initiated Ordinance No.1, 2002 requires the City Council to designate a voluntary City advisory board, either existing or new, to advise and make recommendations to the Council regarding the expenditure of moneys for the purposes stated in said Ordinance; and

WHEREAS, at its August 9, 2005 work session, the general consensus of the City Council was that it wished to create and appoint a new board to advise the City Council on the issues described in Ordinance No. 1, 2002, and to generally provide for certain desired areas of expertise of particular interest in connection with appointments to that new board; and

WHEREAS, on October 5, 2005, staff presented to the Natural Resources Advisory Board ("NRAB") an outline of board functions and appointment considerations consistent with those provided herein, and the NRAB unanimously recommended that the City Council establish a new board as described.

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

Section 1. That a new Division 18 is hereby added to Chapter 2, Article III of the Code of the City of Fort Collins to read as follows:

DIVISION 18. LAND CONSERVATION AND STEWARDSHIP BOARD

Sec. 2-270. Creation.

There shall be and is hereby created a Land Conservation and Stewardship Board, hereafter referred to in this Division as the "board."

Sec. 2-271. Membership; term.

(a) The board shall consist of nine (9) members appointed by the City Council.

(b) Each member shall serve without compensation for a term of four (4) years, except that members may be appointed by the City Council for a shorter term in order to achieve overlapping tenure. Appointments shall specify the term of office of each individual. All members shall be subject to removal by the City Council. If a vacancy occurs on the board, it shall be filled by the City Council for the remaining unexpired portion of the term. No member shall serve more than two (2) consecutive terms. For the purposes of this section, a "term" shall include the balance of an unexpired term served by a person appointed to fill a vacancy if such unexpired term exceeds twenty-four (24) months.

(c) In connection with the solicitation, consideration and appointment of members to the board, the City Council may consider and give preference to an applicant's experience or training in, or familiarity with, land conservation and stewardship, public or outdoor recreation (such as wildlife observation, hiking, biking, or horseback riding), conservation biology (including restoration ecology, range management, fire ecology, riparian ecology, and wildlife management); nature interpretation and education, land or resource management, and real property transactions.

Sec. 2-272. Functions.

The duties and functions of the board shall be as follows:

- (1) To advise City Council regarding policy and budgetary matters pertaining to the Natural Areas Program, including but not limited to the expenditure of Open Space, Yes! and Larimer County Help Preserve Open Space dedicated sales tax revenues.
- (2) To advise Natural Areas Program staff and the City Council in connection with the proposed acquisition or disposition of land, interests in land, interests in water, and other interests in real property for the Natural Areas Program.
- (3) To advise Natural Areas Program staff regarding the development of management plans and public improvements for Natural Areas Program properties.
- (4) Upon request of the City Manager or at the direction of the City Council, to advise City Council in connection with the proposed acquisition or disposition

of land, interests in land, interests in water, and other interests in real property for city programs other than the Natural Areas Program.

Sec. 2-273. Officers; bylaws.

The board shall elect annually from its membership a chairperson and such officers as may be required. Bylaws may be adopted by the board, which bylaws shall not be inconsistent with the Charter, the Code or other policies that may be established by the City Council. A copy of the bylaws shall be filed with the City Clerk for the use of the City Council immediately after adoption by the board, and the same may be subject to the approval of the City Council.

Sec. 2-274. Minutes; annual report; work plan.

The board shall take and file minutes in accordance with the requirements of § 2-73 of the Code. On or before January 31 of each year, the board shall file a report with the City Clerk setting forth the activities of the board for the previous year. On or before November 30 of each year, the board shall file a work plan with the City Clerk for the following year.

Section 2. That existing Divisions 18 through 25 shall be renumbered as Divisions 19 through 26, respectively.

Introduced, considered favorably on first reading, and ordered published this 29th day of November, A.D. 2005, and to be presented for final passage on the 20th day of December, A.D. 2005.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 20th day of December, A.D. 2005.

Mayor

ATTEST:

City Clerk

- Stokes: We're trying to collect stories, and doing interviews. We've applied for a state historic grant to do a cultural resource survey. We would like to do it simultaneously with the County on their Red Mountain Property. We plan to do more oral interviews.
- Stokes: Keep in mind, one of our options is to work with the County to do a unified grazing plan. We'll be talking to them for the next couple years.
- Skutchan: What about the Wyoming property?
- Stokes: The Gallegos are pretty independent. They didn't bring in a rfp at all. The City of Cheyenne has talked about a unified management approach. The vision is we'll be able to have cross-boundary recreation access.

Linda Knowlton made the following motion:

Move the that Natural Resources Advisory Board recommends that City Council pass an Ordinance granting Folsom Grazing Association the right to lease 16,450 acres located on Soapstone Prairie Natural Areas as specified herein for the consideration of \$115,344.

The motion was seconded by Ryan Staychock and passed unanimously.

- Hart: I would speed up the public access as much as I could.
- Fischer: I would echo that. 2009 is too far out. It needs to get opened to the public. I don't advocate opening areas before we're ready, but I would try to expedite the preparations for public access. There's a whole variety of reasons it would be beneficial to get it open.
- Stokes: I agree. I have no objection to that.
- Staychock: I would also echo that, and would suggest that we keep the grazing.

➔ **Ordinance Creating the Land Conservation & Stewardship Board, John Stokes**

- Knowlton: Why do you need our recommendation?
- Stokes: I don't necessarily. But this board had indicated some desire to see it at a regular meeting so that it could, if it desired, make a recommendation to Council. This will be an ordinance. There are four core functions of the new Land Conservation & Stewardship Board.
- Knowlton: I'm wondering about the propriety of us doing that. Have other boards made recommendations about the creation of boards?
- Fischer: We've discussed our own bylaws. We are the predecessors of that board.
- Fischer: I'm not sure how the clause relates. Is there something grammatically incorrect?

Randy Fischer made the following motion:

Move that the Natural Resources Advisory Board recommend Council adoption of the functions of the Land Conservation & Stewardship Board as stated here, with a possible clarification of Item 2.

The motion was seconded by Jerry Hart and passed unanimously.

RESOLUTION 2002-075
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUBMITTING A CITIZEN-INITIATED ORDINANCE
TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY
AT THE SPECIAL MUNICIPAL ELECTION OF NOVEMBER 5, 2002

WHEREAS, under Article X, Section 1 of the Charter of the City of Fort Collins, the registered electors of the city have the power to propose a measure to the Council, and if the Council fails to adopt a measure so proposed, then to adopt or reject such ordinance or resolution at the polls; and

WHEREAS, an initiative petition relating to the continuation of the City's existing open space sales and use tax has been submitted to the City, and the City Clerk has certified said petition as sufficient for submission of the initiated ordinance to a vote of the people at a special municipal election; and

WHEREAS, the City Clerk has presented said petition to the City Council as provided in Article X, Section 5(f)(4) of the City Charter; and

WHEREAS, under Article X, Section 1(e) of the City Charter, upon presentation of an initiative petition certified as to sufficiency by the City Clerk, the Council shall either adopt the citizen-initiated ordinance without alteration within thirty (30) days or submit said citizen-initiated ordinance in the form petitioned for, to the registered electors of the city at the next special municipal election to be held within one-hundred twenty (120) days, unless any other regular or special city election is to occur within said period, in which case the initiative measure shall be consolidated with such other election; and

WHEREAS, Article X, Section 20 of the Colorado Constitution, requires that any proposed extension of an existing tax be submitted to a vote of the registered electors; and

WHEREAS, heretofore, the Council has called a special municipal election to be held on November 5, 2002 in conjunction with the Larimer County General Election.

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

Section 1. That there is hereby submitted to the registered electors of the City of Fort Collins at the Special Municipal Election to be held on Tuesday, November 5, 2002, the following proposed citizen-initiated ordinance:

CITIZEN-INITIATED ORDINANCE NO. 1, 2002

**CITIZENS' INITIATIVE TO CONTINUE THE CITY'S
EXISTING OPEN SPACE SALES AND USE TAX**

WHEREAS, the citizens of Fort Collins have shown strong support to preserve and provide open space, natural areas, community separators, wildlife habitat, and trails for today and for the future; and

WHEREAS, Fort Collins citizens currently enjoy the open spaces and natural areas; the recreation they provide, such as walking, hiking, biking, wildlife viewing, bird watching, and fishing; the educational opportunities and programs provided to people of all ages and backgrounds; and the beautiful landscapes and views they provide; and

WHEREAS, open space, natural areas, wildlife habitat, community separators, agricultural lands, and trails are resources that benefit all members of the Fort Collins community; and

WHEREAS, Fort Collins is a rapidly growing city in one of the fastest growing counties in the United States, and its open lands are rapidly disappearing; and

WHEREAS, land values in and around Fort Collins are quickly escalating; and

WHEREAS, the City of Fort Collins has demonstrated the ability to acquire important lands responsibly; to leverage funds through Great Outdoors Colorado, and to partner with Larimer County, land trusts, private landowners, and other public and private entities; and

WHEREAS, there is not enough existing funding to protect and preserve the desired open spaces, community separators, natural areas, wildlife habitat, and valued agricultural lands in and around Fort Collins.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 1. THAT for purposes of acquiring, operating, and maintaining open spaces, community separators, natural areas, wildlife habitat, riparian areas, wetlands, and valued agricultural lands, and providing for the appropriate use and enjoyment of these areas by the citizenry, the existing twenty-five one-hundredths (.25) percent sales and use tax authorized by Ordinance No. 29-1997 of the City Council of the City of Fort Collins and approved by the City of Fort Collins voters, be extended, for a period of twenty five (25) years, expiring at midnight on December 31, 2030 (the "Tax").

Section 2. THAT land conservation projects using revenues from the Tax shall be undertaken where there is an identifiable benefit to the residents of the City of Fort Collins as determined by the City Council, whether undertaken by the City of Fort Collins alone or in partnership with one or more entities. The projects shall be undertaken within the City of Fort Collins and its Growth Management Area boundary; in the areas between Fort Collins and the communities of Wellington, Windsor, Loveland, Timnath, Bellvue, and LaPorte; in the foothills west of Fort Collins; in the Poudre River corridor; and regionally.

Section 3. THAT 100 percent (100%) of the proceeds from the Tax shall be deposited into the Sales and Use Tax Fund and shall be apportioned as follows:

- a) Not less than 80 percent (80%) of the total annual revenue of the Tax shall be used solely for Land Conservation Activities as defined herein.
- b) Not more than 20 percent (20%) of the total annual revenue of the Tax shall be used solely for Operations Activities and Maintenance Activities as defined herein.

Section 4. THAT "Land Conservation Activities" are herein defined to solely include the following:

- a) Acquiring interests in real property for the purposes of conserving and protecting open spaces, community separators, natural areas, wildlife habitat, riparian areas, wetlands, and valued agricultural lands. Acquiring interests in real property includes, without limitation, fee simple acquisition, acquisition of perpetual conservation or agricultural easements, and acquisition of development rights, whether alone or in cooperation with one or more entities;
- b) Acquiring or leasing water rights and water storage rights for the purpose of conserving, restoring, and maintaining conserved and protected lands, or if acquisition of interests in real property is contingent on acquisition of water rights;
- c) Acquiring subsurface rights, such as mineral (e.g. gravel) rights;
- d) Allowing expenditure of funds for joint projects between Larimer County, other municipalities, trusts, foundations, GOCO, or other public or private entities for the purpose of land conservation;
- e) Improving acquired lands by restoring and enhancing native plant and animal communities;
- f) Providing funds to the Natural Areas Enhancements grants program to protect, restore and enhance native plant and animal communities on private and publicly owned natural areas;
- g) Hiring land agents, as necessary, to act on behalf of the City of Fort Collins in negotiating contracts with the owners of such interests in real property; and
- h) Administering and directly supervising Land Conservation Activities as described in this section.
- i) Land Conservation Activities shall not include any activities defined herein as Operations Activities or Maintenance Activities.

Section 5. THAT "Operations Activities" of conserved and protected lands is herein defined to solely include the following:

- a) Conducting educational and volunteer programs to involve citizens in the ownership of conserved and protected lands;
- b) Informing the public about City of Fort Collins open spaces and programs, such as producing and distributing newsletters, a website, and brochures;
- c) Providing public capital facilities to manage human usage of conserved lands, such as trails, fencing, wildlife viewing structures, restrooms, drinking water, trash receptacles, parking areas, signage, interpretive exhibits, or information displays;
- d) Developing, implementing and updating an overall program master plan, as well as site-specific management plans for conserved and protected lands;
- e) Administering the natural areas and land conservation programs, including on-going accounting, record keeping, scheduling, personnel management, interacting with the City Council and the citizens, and administering easement requests in accordance with the adopted natural areas easement policy;
- f) Law enforcement activities for the purpose of enforcing natural areas and open lands regulations and other applicable laws;
- g) Providing funds for Fort Collins transportation capital needs related to Land Conservation Activities, as outlined in Section 9; and
- h) Administering and directly supervising all Operations Activities described in this section.

- i) Operations Activities shall not include any activities defined herein as Land Conservation Activities or Maintenance Activities.

Section 6. THAT "Maintenance Activities" of conserved and protected lands is herein defined to solely include the following:

- a) Controlling noxious weeds and invasive species and maintaining native vegetation and habitats;
- b) Repairing, cleaning, or replacing public capital facilities as described in Section 5, such as trails, fencing, wildlife viewing structures, restrooms, drinking water, trash receptacles, parking areas, signage, interpretive exhibits, or information displays, and removing trash and debris;
- c) Controlling erosion and preventing soil loss due to natural causes or human impacts;
- d) Monitoring lands protected by less than fee simple acquisition at least annually, through the use of third party land trusts, the City of Fort Collins, or other appropriate parties, to ensure lands are protected and maintained in accordance with the terms of the acquisition and adopted management plans and agreements. Except as otherwise expressly agreed, owners of properties protected by less than fee simple acquisition shall be responsible for maintaining all lands, structures, enhancements, and facilities in accordance with the adopted site-specific management plans and agreements; and
- e) Administering and directly supervising all Maintenance Activities described in this section.
- f) Maintenance Activities shall not include any activities defined herein as Operations Activities or Land Conservation Activities.

Section 7. THAT all Land Conservation Activities as defined in Section 4 shall be accomplished by agreement with willing sellers.

Section 8. THAT the City of Fort Collins shall expend moneys for Land Conservation Activities in a timely and expedient manner, seeking to avoid substantial escalation in costs of real property or the real property being no longer available, including, where appropriate, cooperating with land trusts and other public and private land conservation entities.

Section 9. THAT not more than five percent (5%) of the total revenue of the Tax may be used for Fort Collins transportation capital needs, as provided in subsection 5g. Such revenue shall only be used for improvement of existing roads or acquisition of rights-of-way adjacent to property owned in fee simple by the City of Fort Collins that was acquired with the proceeds of this initiative. Such revenue shall not be used for such improvements or acquisitions adjacent to interests in real property that were acquired in whole or in part prior to January 1, 2006; provided that such revenue may be used to address the impacts of only the portion of property acquired on or after January 1, 2006 with the proceeds of this initiative. Acquisition of rights-of-way shall be at the fair market value of such right-of-way at the time such interest in real property was acquired by the City of Fort Collins. The equivalent of such fair market value of such right-of-way shall be transferred from the fund or account used for Operations Activities to the fund or account used for Land Conservation Activities.

Section 10. THAT all revenues generated on open space, natural areas, wildlife habitat, and other Land Conservation Activities performed or acquired with the Tax shall be used for the purposes stated herein. Revenues generated from leasehold interests in real property shall subsequently be used for Land Conservation Activities.

Section 11. THAT investment earnings on the revenues of the Tax shall be used for the purposes stated herein and apportioned as provided in Section 3.

Section 12. THAT, except with the express approval of the City Council, (a) no interest in real property acquired with the revenues provided by the Tax may be sold, leased, traded, or otherwise conveyed, (b) nor may an exclusive license

or permit on such interest in real property be given, (c) nor may the use of such interest in real property be converted to purposes other than those permitted hereby. Prior to such action, the proposed action shall be reviewed by the appropriate board, and a recommendation shall be forwarded to the City Council. Approval of the action may be given only by a majority vote of the members of City Council after a public hearing held with notice provided in accordance with the applicable law.

Section 13. THAT, except as provided in Section 9, (a) if any real property or interest therein acquired by use of proceeds of the Tax pursuant to this initiative ever be sold, exchanged, transferred, leased or otherwise disposed of, the consideration for such sale, exchange, transfer, lease or disposition shall be deposited into a fund or account for Land Conservation Activities and be subject to the same expenditure and use restrictions as those set forth herein for the original proceeds of the Tax, including restrictions set forth in this Section; and (b) if any real property or interest therein acquired by use of proceeds of the Tax pursuant to Section 1 of this initiative shall ever be converted to purposes other than those described herein, the City of Fort Collins shall pay into a fund or account for Land Conservation Activities, from any legally available municipal moneys other than the Tax, the then estimated fair market value of such property, as determined by an appraisal.

Section 14. THAT the City of Fort Collins is authorized to adopt such uniform rules, regulations, and ordinances as may be necessary for the administration and enforcement of this initiative in a manner consistent with the language herein; and that the City Council or its authorized representatives are hereby empowered to enter into and execute on behalf of the City of Fort Collins any agreements necessary for the administration and enforcement of this initiative in a manner consistent with the language herein.



Section 15. THAT the City Council shall designate a voluntary City Advisory Board, either existing or new, to advise and make recommendations to the City Council regarding the expenditure of moneys for the purposes stated herein.

Section 16. THAT the City of Fort Collins shall prepare for review by the appropriate board(s) and City Council quarterly financial reports to include revenues, expenditures, and balances in the applicable funds or accounts, and any other appropriate related accounts, and shall prepare a report to the public annually regarding the use of the revenues derived from the Tax.

Section 17. THAT the full amount of revenues, and any investment earnings thereon, derived from the Tax may be retained and expended by the City of Fort Collins, notwithstanding any state revenue or expenditure limitations including, without limitation, those contained in Article X, Section 20 of the Colorado Constitution.

Section 18. THAT, when the Tax expires at midnight on December 31, 2030, all moneys remaining from the proceeds of this initiative shall continue to be expended for the purposes set forth herein until completely exhausted, and on December 31, 2033, any funds remaining in a fund or account for Operations Activities and Maintenance Activities, as defined herein, shall be transferred to a fund or account for Land Conservation Activities, as defined herein.

Section 19. THAT this initiative shall become effective at 12:01 a.m. January 1, 2006.

Section 2. That the foregoing proposed citizen-initiated ordinance is hereby submitted to the registered electors of the City of Fort Collins at said special municipal election in substantially the following form:

**CITY OF FORT COLLINS
BALLOT ISSUE _____
CITIZEN-INITIATED ORDINANCE
TO CONTINUE THE CITY'S EXISTING
OPEN SPACE SALES AND USE TAX**

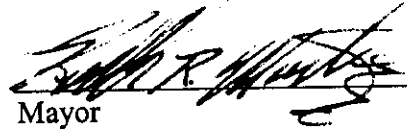
Shall there be an extension of the existing City of Fort Collins 0.25% sales and use tax for trail systems, wildlife habitat, natural areas and certain park projects, which was authorized by voter-approved Ordinance No. 29, 1997, and which is presently scheduled to expire December 31, 2005, with such tax to be extended through December 31, 2030, and with all revenue generated by such tax after December 31, 2005, to be used to acquire, operate and maintain open spaces, community separators, natural areas, wildlife habitat, riparian areas, wetlands and valued agricultural lands and to provide for the appropriate use and enjoyment of these areas by the citizenry, through land conservation projects to be undertaken where there is an identifiable benefit to the residents of the City, as determined by the City Council, either within the City or its Growth Management Area or regionally, provided that:

- Not less than 80% of the total annual revenue generated by the tax would be used solely for "land conservation activities"; and
- Not more than 20% of such total annual revenue would be used for "operations activities" and "maintenance activities" related to those land conservation activities;

and further provided that all such land conservation activities would be accomplished by agreement with willing sellers; and that the full amount of revenues derived from such extended tax, and any investment earnings thereon, may be collected and expended by the City, notwithstanding any state revenue or expenditure limitations, including, without limitation, those contained in Article X, Section 20 of the Colorado Constitution, all in accordance with citizen-initiated Ordinance No. 1, 2002?

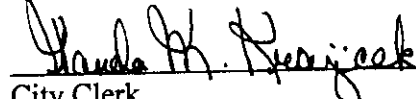
____ YES
____ NO

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 20th day of August, A.D. 2002.



Mayor

ATTEST:



City Clerk