Regular Meeting  
December 15, 2020

PUBLIC PARTICIPATION OPTIONS

There will be three options for people who would like to participate in the meeting:

- Live via the Zoom online meeting,
- Live via the telephone,
- By submitting emails to Council at CityLeaders@fcgov.com.

All options will be available for those wishing to provide general public comment, as well as public comment during individual discussion items.

PUBLIC PARTICIPATION (ONLINE VIA ZOOM):

Individuals who wish to address Council via remote public participation can do so through Zoom at https://zoom.us/j/98241416497. (The link and instructions are also posted at www.fcgov.com/councilcomments.) Individuals participating in the Zoom session should watch the meeting through that site, and not via FCTV, due to the streaming delay and possible audio interference.

The Zoom meeting will be available beginning at 5:15 p.m. on the day of the meeting. Participants wanting to ensure their equipment setup is working should join prior to 6:00 p.m. For public comments, the Mayor will ask participants to click the "Raise Hand" button to indicate you would like to speak at that time. Staff will moderate the Zoom session to ensure all participants have an opportunity to address Council.

In order to participate, you must:

- Have an internet-enabled smartphone, laptop or computer. Using earphones with a microphone will greatly improve your audio experience.
- Join the Zoom meeting using the link on the front page of the agenda or on the City’s home webpage at www.fcgov.com.
- If you use the City’s home page, simply click on the “Participate remotely in Council Meeting” link shown near the top of the page.
PUBLIC PARTICIPATION (VIA PHONE)

- Dial the public participation phone number, 1-346-248-7799, and then enter the Meeting ID 982 4141 6497 followed by the pound sign (#).
- The meeting will be available beginning at 5:15 p.m. Please call in to the meeting prior to 6:00 p.m., if possible. For public comments, the Mayor will ask participants to indicate if you would like to speak at that time – phone participants will need to press *9 to do this. Staff will be moderating the Zoom session to ensure all participants have an opportunity to address Council.

When participating online or by phone, DO NOT Watch/stream FCTV at the same time due to streaming delay and possible audio interference.

PUBLIC PARTICIPATION (VIA EMAIL)

Individuals not comfortable or able to access the Zoom platform or participate by phone are encouraged to participate by emailing general public comments to CityLeaders@fcgov.com. If you have specific comments on any of the discussion items scheduled, please make that clear in the subject line of the email and send prior to the meeting Tuesday evening.

WATCH THE MEETING

Anyone can view the Council meeting live on Channels 14 and 881 or online at www.fcgov.com/fctv. Note: Only individuals who wish to address Council should use the Zoom link or call in by phone. Anyone who wants to watch the meeting, but not address Council, should view the FCTV livestream.

Documents to Share: If residents wish to speak to a document or presentation, the City Clerk needs to be emailed those materials by 4 p.m. the day of the meeting.

Persons wishing to display presentation materials using the City’s display equipment under the Citizen Participation portion of a meeting or during discussion of any Council item must provide any such materials to the City Clerk in a form or format readily usable on the City’s display technology no later than two (2) hours prior to the beginning of the meeting at which the materials are to be presented.

NOTE: All presentation materials for appeals, addition of permitted use applications or protests related to election matters must be provided to the City Clerk no later than noon on the day of the meeting at which the item will be considered. See Council Rules of Conduct in Meetings for details.

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 221-6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide 48 hours advance notice when possible.

A solicitud, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 221-6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione 48 horas de aviso previo cuando sea posible.

Proclamations and Presentations

5:45 p.m.

The Mayor will share highlights of each proclamation listed below but will not read proclamations in their entirety.

A. Proclamation Declaring December 24, 2020 as John Matsushima Day.
B. Proclamation Declaring December 31, 2020 as Mary Ontiveros Day.
Regular Meeting
6:00 p.m.

- PLEDGE OF ALLEGIANCE
- CALL MEETING TO ORDER
- ROLL CALL
- AGENDA REVIEW: CITY MANAGER
  - City Manager Review of Agenda.
  - Consent Calendar Review
    This Review provides an opportunity for Council and citizens to pull items from the Consent Calendar. Anyone may request an item on this calendar be “pulled” off the Consent Calendar and considered separately.
    o Council-pulled Consent Calendar items will be considered before Discussion Items.
    o Citizen-pulled Consent Calendar items will be considered after Discussion Items.
- PUBLIC COMMENT

  Individuals may comment regarding items scheduled on the Consent Calendar and items not specifically scheduled on the agenda. Comments regarding land use projects for which a development application has been filed should be submitted in the development review process** and not to the Council.
  - Those who wish to speak are asked to sign in at the table in the lobby (for recordkeeping purposes).
  - All speakers will be asked by the presiding officer to identify themselves by raising their hand, and then will be asked to move to one of the two lines of speakers (or to a seat nearby, for those who are not able to stand while waiting).
  - The presiding officer will determine and announce the length of time allowed for each speaker.
  - Each speaker will be asked to state his or her name and general address for the record, and to keep comments brief. Any written comments or materials intended for the Council should be provided to the City Clerk.
  - A timer will beep once and the timer light will turn yellow to indicate that 30 seconds of speaking time remain, and will beep again and turn red when a speaker’s time to speak has ended.

  [**For questions about the development review process or the status of any particular development, citizens should consult the Development Review Center page on the City’s website at fcgov.com/developmentreview, or contact the Development Review Center at 221-6750.]

- PUBLIC COMMENT FOLLOW-UP
## Consent Calendar

The Consent Calendar is intended to allow the City Council to spend its time and energy on the important items on a lengthy agenda. Staff recommends approval of the Consent Calendar. Anyone may request an item on this calendar to be "pulled" off the Consent Calendar and considered separately. Agenda items pulled from the Consent Calendar will be considered separately under Pulled Consent Items. Items remaining on the Consent Calendar will be approved by City Council with one vote. The Consent Calendar consists of:

- Ordinances on First Reading that are routine;
- Ordinances on Second Reading that are routine;
- Those of no perceived controversy;
- Routine administrative actions.

If the presiding officer determines that the number of items pulled from the Consent Calendar by citizens is substantial and may impair the Council's ability to complete the planned agenda, the presiding officer may declare that the following process will be used to simplify consideration of the Citizen-Pulled Consent Items:

1. All citizen-pulled items (to be listed by number) will be considered as a group under the heading “Consideration of Citizen-Pulled Consent Items.”
2. At that time, each citizen wishing to speak will be given a single chance to speak about any and all of the items that have been moved to that part of the agenda.
3. After the citizen comments, any Councilmember may specify items from the list of Citizen-Pulled Consent Items for Council to discuss and vote on individually. Excluding those specified items, Council will then adopt all “Citizen-Pulled Consent Items” as a block, by a single motion, second and vote.
4. Any Citizen-Pulled Consent Items that a Councilmember has asked to be considered individually will then be considered using the regular process for considering discussion items.

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<tbody>
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<td>The purpose of this item is to approve the minutes of the November 4, 2020 and November 17, 2020 Regular Meetings and the November 10, 2020 Adjourned Meeting.</td>
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<tr>
<th>2.</th>
<th>Second Reading of Ordinance No. 145, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Timberline Church Rezoning.</th>
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<tbody>
<tr>
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<td>Adequate notice for second reading of this Ordinance was not published in the Coloradoan. Therefore, Council voted on December 1 to postpone second reading to this December 15, 2020, Council Meeting.</td>
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*This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.*

This Ordinance, unanimously adopted First Reading on November 24, 2020, amends the City’s Zoning Map to change the zoning designation for the Timberline Church Campus from Low Density Mixed-Use Neighborhood (LMN) to Medium Density Mixed-Use Neighborhood (MMN). The area proposed to be rezoned is approximately 32.79 acres. The applicant proposes the rezoning to support future infill housing on the site and enable higher density housing than would be allowed with the current LMN zoning. Additional commercial and institutional uses may also be proposed. The church has been in discussions with CSU regarding a potential land swap to construct an attainable housing project. CSU would donate their 4.76 acres on Timberline Road, and the church will swap 8-10 acres for the CSU property.
The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 6-0 to recommend approval of the request with condition that the residential density be limited to 20 units per gross acre and that an Overall Development Plan (ODP) precede or accompany the Project Development Plan (PDP). The purpose of the condition of approval is to provide a density limit to help achieve a compatible transition with the surrounding neighborhood because the MMN zone district does not have a maximum density requirement. Additionally, the ODP would help identify the general design parameters for the property - including the general location and nature of proposed uses, transportation circulation, open space, buffers, and drainage features. A traffic study is also required. The ODP is required to be reviewed by the Planning and Zoning Board and would require at least one neighborhood meeting.

3. **Second Reading of Ordinance No. 146, 2020 Appropriating Prior Year Reserves in the Self Insurance Fund for Increased Premiums for Property Loss Insurance.**

This Ordinance, unanimously adopted on First Reading on December 1, 2020, appropriates funds to compensate for increased premiums for the City’s property loss insurance that were paid by the Self Insurance Fund for the 2020/2021 period.

The City’s Self Insurance Fund is currently over budget through October 2020 and is expected to remain over budget through year-end. The primary driver of this increase is the higher insurance premiums that have been realized in 2020. These increases are due to two factors: an industry wide adjustment in coverage due to increased risk exposure in the state of Colorado, and more hail storm damage realized at the City in prior years, most notably in 2018.

4. **Second Reading of Ordinance No. 147, 2020 Making Supplemental Appropriations for Roof Repairs on City Buildings Due to 2018 Hail Damage.**

This Ordinance, unanimously adopted on First Reading on December 1, 2020, appropriates additional insurance proceeds for further scope of work associated with completing roof repair work for a 2018 hail damage claim. These additional proceeds are for recovered depreciation, abatement of asbestos materials, code upgrades and project management.


This Ordinance, unanimously adopted on First Reading on December 1, 2020, appropriates grant revenue Transfort has been allocated by the Federal Transit Agency (FTA). Transfort was awarded $10,368,067 and will net the amount of $8,719,626 in Coronavirus Aid, Relief and Economic Security (CARES) Act through FTA apportionments to urbanized areas. CARES funding is provided at a 100-percent federal share, with no local match required, and is available to support capital, operating, and other expenses to prepare for and respond to COVID-19. Transfort confirmed this money would be available earlier in the year. At that time, Transfort planned to use the CARES funds to pay for what had previously been allocated from the General Fund for operating assistance, preventative maintenance, and contracted service costs.

6. **Second Reading of Ordinance No. 153, 2020, Adopting the 2021 Larimer County Regional Transportation Capital Expansion Fee Schedule.**

This Ordinance, unanimously adopted on First Reading on December 1, 2020, adopts the 2021 Larimer County Regional Transportation Capital Expansion Fee Schedule.
7. Second Reading of Ordinance No. 154, 2020, Declaring Certain City-Owned Property on Arapaho Bend Natural Area as Road Right-of-Way.

This Ordinance, unanimously adopted on First Reading on December 1, 2020, dedicates a strip of property owned by the Natural Areas Department (NAD) as road right-of-way (ROW) via the proposed Arapaho Bend Ponds Subdivision plat, and to authorize the City Manager to sign said plat. NAD is platting a 3.099-acre parcel for the construction of a new trailhead parking lot. This project triggers the development review process and the requirement to dedicate additional road right-of-way for Strauss Cabin Road.

8. Second Reading of Ordinance No. 155, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Cottonwood Manufactured Housing Community Rezoning.

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on First Reading on December 1, 2020, amends the City’s Zoning Map to change the zoning designation for the Cottonwood Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Cottonwood MHC is located at 1336 Laporte Avenue and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (MH) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

9. Second Reading of Ordinance No. 156, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property known as the Northstar Manufactured Housing Community Rezoning.

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on First Reading on December 1, 2020, amends the City’s Zoning Map to change the zoning designation for the North Star Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

North Star MHC is located at 1700 Laporte Avenue and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to a combination of the Manufactured Housing (MH) zone district and the Low Density Mixed-Use Neighborhood zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.
10. Second Reading of Ordinance No. 157, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Skyline Manufactured Housing Community Rezoning.

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on First Reading on December 1, 2020, amends the City’s Zoning Map to change the zoning designation for the Skyline Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Skyline MHC is located at 2211 West Mulberry Street and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to a combination of the Manufactured Housing (MH) zone district and the Low Density Mixed-Use Neighborhood zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

11. Second Reading of Ordinance No. 158, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Harmony Village Mobile Home Park Rezoning.

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on First Reading, amends the City’s Zoning Map to change the zoning designation for the Harmony Village Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Harmony Village MHC is located at 2500 East Harmony Road and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (M-H) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

12. Second Reading of Ordinance No. 159, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Hickory Village Mobile Home Park Rezoning.

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on Second Reading on December 1, 2020, amends the City’s Zoning Map to change the zoning designation for the Hickory Village Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to
be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Hickory Village MHC is located at 400 Hickory Street and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (M-H) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

13. Second Reading of Ordinance No. 160, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Pleasant Grove Manufactured Housing Community Rezoning.

This Ordinance, unanimously adopted on First Reading on December 1, 2020, amends the City’s Zoning Map to change the zoning designation for the Pleasant Grove Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Pleasant Grove MHC is located at 517 East Trilby Road and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (M-H) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.


The purpose of this item is to make amendments to the Land Use Code (“LUC”). There are proposed revisions, clarifications and additions to the LUC that address specific subject areas that have arisen since the last update was initiated in the Fall of 2019.

15. First Reading of Ordinance No. 162, 2020, Conveying a Replacement Telecommunications Easement to Qwest Corporation d/b/a CenturyLink QCon at the City’s Foothills Activity Center.

The purpose of this item is to convey a replacement telecommunications easement to Qwest Corporation d/b/a CenturyLink QCon (CenturyLink) at the City-owned Foothills Activity Center (“FAC”) as a result of an obligation associated with the replatting of the Foothills Mall and to replace a “blanket” easement granted in 1975. The easement accurately depicts CenturyLink’s existing telecommunication line on the FAC parcel.

16. First Reading of Ordinance No. 163, 2020, Approving the First Amendment to Ground Lease Agreement Between the Cities of Loveland and Fort Collins and Discovery Air, LLC, for Property at the Northern Colorado Regional Airport.

The purpose of this item is to approve an amendment to the long-term aviation land lease agreement between the Cities of Fort Collins and Loveland (Cities) and Discovery Air, LLC signed in January of 2019. The lease terms included a (50) year lease for a large-scale aviation development project. The
project has progressed since the execution of the original lease, and Discovery Air has obtained the necessary development approvals to continue pursuit of their development. Discovery Air has since determined it necessary to pursue a phased approach to its development and accordingly has requested that the Cities amend the original Lease. Due to the complexity and unique provisions of the original lease and this proposed amendment, the Northern Colorado Regional Airport Commission does not have the authority to approve and sign the Lease Amendment. The two Cities must each approve in accordance with their respective Municipal Codes and Charters. The Northern Colorado Regional Airport Commission reviewed the lease agreement amendment at its November 12, 2020, meeting, and unanimously recommended approval by the Councils.

The proposed Airport development includes the construction of corporate aircraft hangar facilities and associated office space, a potential aircraft support center, a restaurant, and all infrastructure to support these facilities. This lease amendment will allow success of the public-private partnership.

The Airport has approximately 200 acres of space available for aeronautical development. This proposal will use approximately 10% of the available land for what is considered to be the highest and best use of the property, which is in accordance with the Council adopted Airport Master Plan and Airport Commission Adopted Strategic Plan. The Airport will create revenues through lease payments from the property in addition to other revenues from the operations of the campus. The new buildings will create jobs and enhance the regional economic impact of the Airport.


The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Springer-Fisher Annexation No. 1. The applicant has submitted a written petition requesting two sequential annexations. Springer-Fisher Annexation No. 1 is the first of two sequential annexations located northwest of the East Mulberry Street and Greenfields Court intersection. Annexation No. 1 is 71.34 acres in size and establishes the required 1/6 perimeter boundary contiguity with the existing City boundary to the north.

The requested zoning for this annexation is General Commercial (C-G), Neighborhood Commercial (N-C), Employment (E), Low Density Mixed-Use Neighborhood (L-M-N), and Medium Density Mixed-Use Neighborhood (M-M-N) in compliance with the City of Fort Collins Structure Plan and the East Mulberry Corridor Plan. Portions of the property located in the M-M-N and L-M-N zone districts would be placed within the Residential Neighborhood Sign District while portions of the property located in the E, N-C, and C-G zone districts would not be placed in the Residential Sign District. Notice to parcels abutting platted streets was provided pursuant to §31-12-105, C.R.S. No project development plan proposal was submitted in conjunction with the annexation application.

This annexation request is in conformance with the Colorado Revised Statute as it relates to annexations, the City of Fort Collins Comprehensive Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.


The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Springer-Fisher Annexation No. 2. The Applicant has submitted a written petition requesting two sequential annexations. Springer-Fisher Annexation No. 2 is the second of two sequential annexations located northwest of the East Mulberry Street and Greenfields Court intersection. Annexation No. 2 is 5.46-acres in size and establishes the required 1/6 perimeter boundary contiguity with the extension of the municipal boundary created by the Springer-Fisher Annexation No. 1.

The requested zoning for this annexation is General Commercial (C-G) in compliance with the City of Fort Collins Structure Plan and the East Mulberry Corridor Plan and the property would not be included in the Residential Sign District. Notice to parcels abutting platted streets was provided pursuant to §31-12-105, C.R.S. No project development plan proposal was submitted in conjunction with the annexation application.
This annexation request is in conformance with the Colorado Revised Statute as it relates to annexations, the City of Fort Collins Comprehensive Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.


The purpose of this item is to appoint individuals to fill vacancies that currently exist on the Downtown Development Authority Board.

END CONSENT

• CONSENT CALENDAR FOLLOW-UP

This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.

• STAFF REPORTS

A. Staff Report: Community Dashboard Metrics - City Employee Safety Metrics (staff: Claire Goodwin)

• COUNCILMEMBER REPORTS

• CONSIDERATION OF COUNCIL-PULLED CONSENT ITEMS

Discussion Items

The method of debate for discussion items is as follows:

• Mayor introduces the item number, and subject; asks if formal presentation will be made by staff
• Staff presentation (optional)
• Mayor requests citizen comment on the item (three minute limit for each citizen)
• Council questions of staff on the item
• Council motion on the item
• Council discussion
• Final Council comments
• Council vote on the item

Note: Time limits for individual agenda items may be revised, at the discretion of the Mayor, to ensure all citizens have an opportunity to speak. If attending in person, please sign in at the table in the back of the room. The timer will buzz when there are 30 seconds left and the light will turn yellow. It will buzz again at the end of the speaker’s time.

20. Resolution 2020-117 Making Findings of Fact and Conclusions of Law Regarding the Appeal of the Landmark Preservation Commission's Determinations of Landmark Eligibility for 724 and 726 South College Avenue. (staff: Maren Bzdek, Paul Sizemore; no presentation; 10 minute discussion)

The purpose of this item is to make findings of fact and conclusions regarding the appeal of the Landmark Preservation Commission's Determinations of Landmark Eligibility for 724 and 726 South College Avenue. The appeal was heard by Council on December 1, 2020. The Council voted to overturn the Commission's decision.
21. **First Reading of Ordinance No. 164, 2020, Authorizing the City Manager to Execute an Agreement with the Developer of Montava for the Annual Use of Up to 25 Acre-Feet of Water of Fort Collins Utilities in a Plan for Augmentation for a Potable Water Supply for the Montava Property.** (staff: Liesel Hans; 15 minute presentation; 60 minute discussion)

The purpose of this item is to consider a perpetual agreement between HF2M Inc., the Developer of Montava (Developer), and Fort Collins Utilities (Utilities). Under the agreement, in exchange for cash payments, Utilities would annually deliver up to 25 acre-feet of augmentation water from the City's Rigden Reservoir in southeast Fort Collins to the Poudre River. The Developer (and successor entities) would use the augmentation water to replace the steam depletions from groundwater wells that would provide a potable water supply for Montava. The cash payments and water deliveries contemplated in the agreement are contingent on the Developer acquiring various City and Water Court approvals.

22. **Resolution 2020-118 Giving Staff Direction on Next Steps for City Council Adoption of Plastic Pollution Mitigation Strategies.** (staff: Molly Saylor; 5 minute presentation; 30 minute discussion)

The purpose of this item is to present a Resolution to Council that directs staff to prepare an ordinance for Council adoption, with anticipation that Council refers the adopted ordinance to the April election.

Based on Council feedback to date, the ordinance will include a hybrid approach, banning plastic bags and putting a fee on paper bags at all large grocers.

- **CONSIDERATION OF CITIZEN-PULLED CONSENT ITEMS**

- **OTHER BUSINESS**

  A. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers

  (Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

- **ADJOURNMENT**

  A. Consideration of a motion to adjourn this meeting to 6:00 p.m. on Tuesday, December 22:

  "I move that Council adjourn this meeting to 6:00 p.m. on Tuesday, December 22, for consideration of items relating to the Council Vacancy Process and such other business as may come before the Council."

Every Council meeting will end no later than 10:30 p.m., except that: (1) any item of business commenced before 10:30 p.m. may be concluded before the meeting is adjourned and (2) the City Council may, by majority vote, extend a meeting until no later than 12:00 a.m. for the purpose of considering additional items of business. Any matter which has been commenced and is still pending at the conclusion of the Council meeting, and all matters scheduled for consideration at the meeting which have not yet been considered by the Council, will be continued to the next regular Council meeting and will be placed first on the discussion agenda for such meeting.
PROCLAMATION

WHEREAS, John Matsushima will celebrate his 100th birthday on December 24, 2020, was born in Lafayette, Colorado and was the eldest of a family of eight children, raised by hard-working immigrant parents on their farm in Platteville, Colorado; and

WHEREAS, John’s early fascination with feeding cattle became a career at which he excelled. With scholarship support, he earned both Bachelor’s and Master’s degrees in Animal Science at Colorado A & M, now known as Colorado State University. He subsequently earned his PhD at the University of Minnesota and began his teaching career at the University at Nebraska eventually returning to CSU in 1961 continuing his research and teaching more than 10,000 students in beef nutrition; and

WHEREAS, John’s professional research took him to all 50 states as well as 32 countries but he always enjoyed returning home to Fort Collins where he and his wife, Dorothy, raised their children: Bob (wife Beth) and Nancy (husband Gene). John loves spending time with his family, especially his grandchildren (Cristina and Jim, Catie and Preston, Ryan & Jason) and great-grandchildren (Callaway, Parker, Kenzo & Landry), is very proud of his family and being an American citizen; and

WHEREAS, John joined the Rotary Club of Fort Collins more than 50 years ago, he holds the distinction of never missing a weekly meeting, even when traveling internationally, ascended to the Presidency of his Club and wrote the History of his Club for the Centennial in 2018, one of 10 books he published; and

WHEREAS, John’s motto of “Learn the good things, forget the bad” and smile for all he meets, whether bowling or accepting an award, is inspirational.

NOW, THEREFORE, I, Wade Troxell, Mayor of the City of Fort Collins, do hereby proclaim December 24, 2020 as

JOHN MATSUSHIMA DAY

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 9th day of December, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
PROCLAMATION

WHEREAS, Vice President for Diversity Mary Ontiveros began her journey at Colorado State University (CSU) as a student in 1969, where she received her Bachelor of Arts in Psychology, while also serving in the Associated Students of Colorado State University; and

WHEREAS, Mary Ontiveros began her professional career at CSU in 1974, and has served in a variety of roles, some of which include Research Associate, Director of the Chicano Studies Office, Executive Director of Admissions, Director of El Centro, and Vice President for Diversity; and

WHEREAS, in her time at CSU, Mary Ontiveros played a pivotal role in supporting the Student Diversity Programs and Services offices, and is widely credited for being one of the founders of the university’s Principles of Community: Inclusion, Integrity, Respect, Service, Social Justice; and

WHEREAS, Mary Ontiveros has served as a key member of the Community Equity Consortium, giving generously of her time and expertise since the group’s inception and continues to pave the way for marginalized community members to become visible, playing an active role in combating racism; and

WHEREAS, she used knowledge gained through her work to provide important perspectives in how the university and community grew and what that means for all members of our community irrespective of race, ethnicity and socio-economic group; and

WHEREAS, Mary Ontiveros has centered her 45-year career around fighting for equity, justice, and diversity for all within the Fort Collins and CSU and communities, while embodying the CSU Principles of Community, and continues to inspire those who know her.

NOW, THEREFORE, I, Wade Troxell, Mayor of the City of Fort Collins, do hereby proclaim December 31, 2020 as

MARY ONTIVEROS DAY

I commend your exceptional service to the university and community and wish you all the best in your retirement.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 15th day of December, A.D. 2020.

____________________________________
Mayor

ATTEST:

____________________________________
City Clerk
AGENDA ITEM SUMMARY  
December 15, 2020

STAFF
Delynn Coldiron, City Clerk

SUBJECT
Consideration and Approval of the Minutes of the November 4, 2020 and November 17, 2020 Regular Meetings and the November 10, 2020 Adjourned Meeting.

EXECUTIVE SUMMARY
The purpose of this item is to approve the minutes of the November 4, 2020 and November 17, 2020 Regular Meetings and the November 10, 2020 Adjourned Meeting.

ATTACHMENTS
1. November 4, 2020 (PDF)
2. November 10, 2020 (PDF)
3. November 17, 2020 (PDF)
November 4, 2020

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

(Secretary's Note: Due to the COVID-19 crisis and state and local order to remain safer at home and not gather, this meeting has been conducted using a hybrid approach allowing in-person participation with strict protocols and a variety of remote participation options.)

• ROLL CALL

PRESENT: Pignataro, Gorgol, Gutowsky, Summers (6:30 PM), Stephens, Troxell, Cuniff
Staff: Atteberry, Daggett, Coldiron

• AGENDA REVIEW: CITY MANAGER

City Manager Atteberry stated Item No. 10, Ordinance No. 141, 2020, Approving the Administrative Rules, Regulations and Standards for the Riverside Community Solar Program, has been revised to be heard as an ordinance rather than a resolution. Additionally, Item No. 14, Items Relating to Electric and Water Rates, Fees and Charges, includes a revised ordinance.

• PUBLIC COMMENT

Mayor Troxell and City Clerk Coldiron outlined the remote participation options.

Kristin Heightner commented on the importance of increasing community engagement and suggested Council meetings should be advertised on social media as she has found the City's webpage difficult to navigate. She discussed the importance of engaging with City leaders in a meaningful way.

Rich Stave asked if the Zoom platform could advertise when a meeting is changed; however, he commended the return email he received from staff in a timely fashion.

Rory Heath commented on his inquiry regarding updates to the City Ethics Code noting it is not on Council's 6-month calendar.

• PUBLIC COMMENT FOLLOW-UP

Mayor Troxell summarized the citizen comments.

Councilmember Pignataro requested an update on Ethics Code revisions. City Attorney Daggett replied staff is working on information to present to Council and will be looking for a time to schedule a work session discussion in the near future.

Mayor Pro Tem Stephens stated the City is always working to make access to information easier. She believes meetings are always posted on Facebook but any suggestions are always welcome.

• CONSENT CALENDAR

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gutowsky, to adopt and approve all items on the Consent Agenda.
RESULT: CONSENT AGENDA ADOPTED [6 TO 0]
MOVER: Kristin Stephens, District 4
SECONDER: Susan Gutowsky, District 1
AYES: Pignataro, Gorgol, Gutowsky, Stephens, Troxell, Cunniff
AWAY: Summers

1. **Consideration and Approval of the Minutes of the September 15, 2020 Regular Council Meeting.**
   (Adopted)

   The purpose of this item is for consideration and approval of the minutes of the September 15, 2020 Regular Council Meeting.

2. **Second Reading of Ordinance No. 125, 2020, Extending Short-Term Appointments to City Boards and Commissions to December 31, 2021.**
   (Adopted)

   This Ordinance, unanimously adopted on First Reading on October 20, 2020, allows Council to extend the one-year interim appointments to advisory boards and commissions that were adopted under Ordinance No. 153, 2019 and are currently set to expire on December 31, 2020. Due to COVID-19, the Reimagine Boards and Commissions public engagement efforts and Council Work Session were delayed resulting in a later implementation timeline, including potential changes to term lengths. This Ordinance would extend these short-term appointments for one additional year with an expiration date of December 31, 2021. This will reduce the number of appointments that need to be filled this year and will allow staff additional time to create a thorough implementation strategy for potential changes due to the Reimagine Boards and Commissions Priority 2021.

3. **First Reading of Ordinance No. 127, 2020, Adopting the 2021 Budget and Appropriating the Fort Collins Share of the 2021 Fiscal Year Operating and Capital Improvements Funds for the Northern Colorado Regional Airport.**
   (Adopted)

   The purpose of this item is to adopt the 2021 budget for the Northern Colorado Regional Airport and appropriate Fort Collins’ share of the 2021 fiscal year operating and capital funds for the Airport. Under the Amended and Restated Intergovernmental Agreement for the Joint Operation of the Airport between Fort Collins and Loveland (the “IGA”), the Airport is operated as a joint venture with each City owning 50% of the assets and revenues and responsible for 50% of the operating and capital costs. The proposed budget does not include financial contributions from the City’s General Fund as it has in previous years because anticipated Airport revenues will provide sufficient revenues for operations, primarily as a result of the Northern Colorado Law Enforcement Training Center Lease payments by both Cities. Because each City has an ownership interest in 50% of the Airport revenues, each City must appropriate its 50% share of the annual operating and capital budget for the Airport under the IGA.

4. **First Reading of Ordinance No. 128, 2020, Being the Annual Appropriation Ordinance for the Fort Collins Downtown Development Authority relating to the Annual Appropriations for the Fiscal Year 2021 and Fixing Mill Levy for the Downtown Development Authority for Fiscal Year 2021.**
   (Adopted)

   The purpose of this item is to set the Downtown Development Authority (“DDA”) Budget. The following amounts will be appropriated:

   - DDA Public/Private Investments & Programs: $8,067,545
   - DDA Operations & Maintenance: $1,385,349
   - Revolving Line of Credit Draws: $7,000,000
   - DDA Debt Service Fund: $7,431,611
The DDA anticipates receiving in 2021 tax increment revenues of approximately $6,630,081 and approximately $788,897 in revenues from its five-mill property tax for the DDA’s operational and maintenance expenditures. The Ordinance also sets the 2021 Mill Levy for the Fort Collins DDA at five (5) mills, unchanged since tax year 2002. The approved Budget becomes the Downtown Development Authority’s financial plan for 2021.

5. **Items Relating to the 2020 Fee Updates. (Adopted)**

   A. First Reading of Ordinance No. 129, 2020, Amending Chapter 7.5 of the Code of the City of Fort Collins to Revise the Capital Expansion Fees and the Transportation Expansion Fee.

   B. First Reading of Ordinance No. 130, 2020, Amending Chapter 26 of the Code of the City of Fort Collins Regarding Calculation and Collection of Development Fees Imposed for the Construction of New or Modified Electric Service Connections.

   C. First Reading of Ordinance No. 131, 2020, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Sewer Plant Investment Fees.

   D. First Reading of Ordinance No. 132, 2020, Amending Chapter 26 of the Code of the City of Fort Collins to Revise the Stormwater Plant Investment Fees.

   E. First Reading of Ordinance No. 133, 2020, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Water Plant Investment Fees.

   F. First Reading of Ordinance No. 134, 2020, Amending Chapter 26 of the Code of the City of Fort Collins to Revise the Water Supply Requirements Fee.

The purpose of this item is to review inflation updates effective January 1, 2021, associated with Electric Capacity fees, Water Supply Requirement fees, Water, Sewer and Stormwater Plant Investment fees, Capital Expansion fees and Transportation Capital Expansion fees. Inflation updates are 2.7% for Capital Expansion fees, 0.6% for Transportation Capital Expansion fees, and 3% for Utility fees.

Coordination of Council-approved fees began in 2016 to provide a more holistic view of the total cost impact. Previously, fee updates were presented to Council on an individual basis. After the 2020 fee update, fee phasing will be complete with regular two and four-year cadence updates beginning in 2021.

6. **First Reading of Ordinance No. 135, 2020, Making a Supplemental Appropriation for the CanDo Community Telework Program and Authorizing the City Manager to Execute the Grant Agreement on Behalf of the City. (Adopted)**

The purpose of this item is to consider an appropriation of $4,999 in unanticipated revenue received through a grant for the Colorado Department of Transportation (CDOT) CanDo Community Telework Grant program to be managed by the FC Moves Department. The Ordinance also authorizes the City Manager, in consultation with the City Attorney, to execute the Grant agreement/acceptance on behalf of the City.

7. **First Reading of Ordinance No. 136, 2020, Appropriating Unanticipated Philanthropic Revenue Received by City Give from WaterPik, Inc., for Transfer to Social Sustainability in the General Fund for the Equity Indicators Project. (Adopted)**

The purpose of this item is to appropriate $10,000 in philanthropic revenue in the General Fund for transfer to Social Sustainability for the support of the Equity Indicators Project as designated by the donor, WaterPik, Inc. In a commitment to advance equitable outcomes, the City has selected the CUNY Institute for State and Local Governance (ISLG) to lead the Equity Indicators project to establish a framework for measuring and understanding the inequities that exist in Fort Collins.
8. **First Reading of Ordinance No. 137, 2020, Making Certain Amendments to the Codes of the City of Fort Collins to Eliminate Affordable Housing Fee Waivers and Instead Authorize a Discretionary Credit for Certain Affordable Housing Units to be Constructed in the City. (Adopted)**

The purpose of this item is to amend the City Code and Land Use Code to simplify the way affordable housing fee waivers are used to support the development of affordable housing units targeting the city’s lowest wage earners. Instead of calculating precise fee amounts for waivers on a project by project basis, flat amounts of credit will be established and codified for qualifying new construction and adaptive reuse homes targeting households making no more than 30% Area Median Income (AMI). This support will still be subject to Council discretion and appropriation of funding. Not only will this provide greater certainty to the developer and be more efficient to administer by the City, it will also allow all City departments’ fees to be paid in full either by the developer or by the credit that has been appropriated.


The purpose of this item is to consider a Resolution approving the Midtown Business Improvement District 2021 Operating Plan and Budget and making appointments to the District’s board of directors.


The purpose of this item is to approve the Riverside Community Solar Program rules, which define the continuing delivery of credits and other program benefits to participating customers. The Utilities’ Executive Director has approved the Riverside Community Solar Program, as defined by the Program Rules and Continuing Participation Agreement under the authority defined by Code §26-463(a). Council’s approval of the Ordinance, and the Program Rules as attached to it, completes the approval process.

Utilities completed acquisition of the Riverside Community Solar Project on August 28, 2020, assuming all responsibility for program management, customer support, and operations and maintenance. As a result of the transfer, existing customer contracts with Clean Energy Collective for the old program structure terminated. Utilities is re-enrolling participating customers that already own panels in the array of the Program via Continuing Participation Agreements. Current customers who own panels in the solar array (“Customer-owners”) and re-enroll in the Program will continue to receive credits on their bill as they do today, based on the City’s applicable time of day rates as set forth in the City Code.


The purpose of this item is to authorize an intergovernmental agreement (IGA) with the Cities of Greeley and Loveland for judicial services to be used in the event that a conflict of interest or other circumstance prevents the Municipal Judge and assistant judges from hearing a particular Municipal Court case. This agreement is intended to replace an existing 2019 IGA between Fort Collins, Loveland and Greeley. The previous IGA named former Chief Judge Kathleen Lane. This agreement is updated to include all current and eligible judges from each jurisdiction.


The purpose of this item is to authorize the Mayor to enter into an intergovernmental agreement (IGA) with Larimer County to financially support the increased testing, and costs associated with the tests administered on a pro rate contribution.
CONSENT CALENDAR FOLLOW-UP

Regarding Item No. 5, Items Relating to the 2020 Fee Updates, Councilmember Cunniff requested information as to which fees are going to be on the four year update calendar prior to Second Reading.

Councilmember Pignataro commented on Item No. 6, First Reading of Ordinance No. 135, 2020, Making a Supplemental Appropriation for the CanDo Community Telework Program and Authorizing the City Manager to Execute the Grant Agreement on Behalf of the City, as being a good news item.

Mayor Troxell commented on Item No. 7, First Reading of Ordinance No. 136, 2020, Appropriating Unanticipated Philanthropic Revenue Received by City Give from WaterPik, Inc., for Transfer to Social Sustainability in the General Fund for the Equity Indicators Project, as being a good news item that affirms the importance of the City’s mission to advance equity.

Mayor Pro Tem Stephens commended the partnerships with community businesses.

STAFF REPORTS

A. Staff Report: Museum of Discovery: Mind Matters Exhibit (Cheryl Donaldson)

Cheryl Donaldson, Discovery Museum Co-Executive Director, introduced Laura Valdez as the new Co-Executive Director.

Valdez commented on the timeliness of the Mental Health: Mind Matters exhibit.

Donaldson stated the exhibit will run through January 10 and discussed the decision to bring the exhibit to the museum. She indicated the goal of the exhibit is to build conversations and break down stigmas around mental health challenges.

Valdez stated the exhibit is for all ages, is approachable for all learner types, and is presented in English, Spanish, and French. The exhibit has allowed the Museum to bring in stakeholders to help with programming and resource connection. She noted there is a resource center as part of the exhibit and commented on available resources. She thanked the City for helping make the Museum free of charge for the entire run of this exhibit.

Councilmember Gorgol thanked Donaldson and Valdez and commended the exhibit.

Mayor Pro Tem Stephens asked if this exhibit is being advertised through the school district. Donaldson replied school counselors have toured the exhibit and will be communicating out to students. Valdez replied the exhibit and free admission is advertised in school district e-newsletters and utility bill inserts as well.

Councilmember Gutowsky welcomed Valdez and commended the exhibit. She asked about online ticket reservations. Donaldson replied the reservation system keeps appropriate numbers in the building for social distancing reasons. She noted a few tickets are available on a walk-up basis as well.

Councilmember Summers requested additional information on the resource center. Valdez replied the exhibit resource center has been refined with a community advisory group that is comprised of
direct service providers. She also noted resources can be found online for individuals who may not be comfortable going to the Museum in person.

- **COUNCILMEMBER REPORTS**

Mayor Pro Tem Stephens reported on the status of the search for a new fire chief and noted the Poudre Fire Authority Board will be interviewing search firms Friday. She reported on working with the North Front Range Metropolitan Planning Organization to interview candidates for a mobility manager for the One Call, One Click program that helps senior and people with disabilities find reliable transportation.

Councilmember Cunniff reported on the recent Platte River Power Authority Board meeting during which the integrated resource plan was approved. The plan solidifies Platte River’s commitment to close the Rawhide Power Plant by 2030. He also noted the plan does contemplate building gas-fired generators to accomplish that; however, that is only as a technological failsafe.

Councilmember Gorgol reported on a meeting with School Board officials, Commissioner Kefalas, and Tom Gonzales to discuss COVID in schools. She noted the County Health Department is not seeing a great deal of transfer of COVID in schools; however, there is concern about the community’s transmission rates. She encouraged people to limit private gatherings and follow all precautions to make it possible to keep children in school. The City will be having a public forum for the Deputy City Manager candidates on Monday.

Mayor Troxell commented on the Platte River Power Authority integrated resource plan stating it is well-developed. He reported on meeting with two local companies that have made the Inc 5000 list, Turbo Tenant and Canidium. He also reported on the recent super issue Boards and Commissions meeting during which outgoing members were recognized.

- **DISCUSSION ITEMS**

13. **First Reading of Ordinance No. 138, 2020, Being the Annual Appropriation Ordinance Relating to the Annual Appropriations for Fiscal Year 2021; Adopting the Budget for the Fiscal Year beginning January 1, 2021 and Ending December 31, 2021; and Fixing the Mill Levy for Property Taxes Payable in 2021. (Adopted as Amended on First Reading)**

   The purpose of this item is to present the Annual Appropriation Ordinance for First Reading. This Ordinance sets the City Budget for the one-year period (2021) which becomes the City’s financial plan for the next fiscal year. This Ordinance sets the amount of $668,909,564 to be appropriated for fiscal year 2021. However, this appropriated amount does not include what is being appropriated by separate Council/Board of Director actions to adopt the 2021 budget for the General Improvement District (GID) No. 1 of $808,791, the 2021 budget for GID No. 15 (Skyview) of $1,000, the Urban Renewal Authority (URA) 2021 budget of $6,706,744 and the Downtown Development Authority 2021 budget of $23,884,505. This results in City-related total operating appropriations of $700,310,604 in 2021. This Ordinance also sets the 2021 City property tax mill levy at 9.797 mills, unchanged since 1991.

   Travis Storin, Interim Chief Financial Director, stated this item is the First Reading of the 2021 budget. He reviewed the public participation process leading to this point and discussed the leadership model that informs the budgeting for outcomes process with the City’s vision, mission, and values at the center of all decisions. He discussed the City’s five-year Strategic Plan that is updated every two years.
Regarding the 2021 budget, a focus area was to minimize the service impacts that the community experiences on a firsthand basis while addressing Council priorities and redeploying existing resources toward those priorities as a function of identifying the highest and best use of funds. He discussed the priorities of equity advancement and capital investment.

Lawrence Pollack, Budget Director, discussed the public engagement summary noting there have been a number of online forums, two town halls, two Council listening sessions, a Boards and Commissions super issue meeting, and two public hearings before Council, in addition to the first and second readings of the budget ordinance. Additionally, there was a significant online component.

Pollack discussed changes made to the budget since it was first presented to Council, including eliminating reductions in Environmental Health which will lead to no change in service level on two areas. He stated those items were funded with $76,000 of general fund reserves. Additionally, Poudre Fire Authority has contributed $20,000 toward the homelessness coordinator position.

Pollack stated the Downtown Development Authority's budget has now been included in the City's overall budget as there was previously just a placeholder for that item. The final change relates to conservation trust, or lottery funds, and the recommendation that additional conservation trust revenue be shifted to support Parks operations and maintenance at $515,000. During Council conversations, it was determined that $115,000 would go back to trail development; however, that amount will be backfilled with a $15,000 reduction in fertilizer for the Parks Departments and $65,000 from general fund reserves.

Pollack stated the recommended budget included only one utility rate increase for electric at 3%; however, a 2% increase in water rates has been added due solely to the impacts of the Cameron Peak fire. He stated staff will not appropriate those dollars until 2021 once the extent of the needs is determined.

Pollack stated there are three components that comprise the total City appropriations: operating costs, debt, and capital. He noted revenues are coming in stronger than the revised estimate and expenses are coming in under the reduced budget level.

Pollack stated work on the 2022 budget will begin in the spring and staff is actively evaluating methods by which the community's ideas for budget requests, or offers, can be heard. He noted staff will be producing a number of videos and question and answer sessions that will aim to assist residents in reading the budget. He also noted staff is examining ways in which citizen feedback on both the 2022 budget and 2022 strategic plan can be sought simultaneously.

Storin stated this is a balanced budget that maintains critical services around transportation, public safety, transit, and community amenities, makes continuing investments in the City's infrastructure, minimizes service impacts that are outward facing to the community, and continues with the tradition of community sustainability around economic, environmental, and social health.

Kristin Heightner commented on an email she sent regarding the commitment to equity in the 2021 budget. She stated there are some serious gaps in equity specifically related to closing Parks restrooms during winter and clearly and transparently prioritizing installation of Connexion in low-income and mobile home park neighborhoods.
Rich Stave questioned the revenue expectation for next year and how it would be adapted in the case of another COVID-related shut down. He also questioned the role the unexpected revenue increase plays in this overall platform being proposed today.

Councilmember Gorgol asked about the Parks restroom closures mentioned. John Stokes, Community Services Director, replied the restrooms, including port-a lets, will be available and open all winter.

Councilmember Pignataro asked about Mr. Stave's question regarding the role of unexpected revenue increases and lower than expected costs. Storin replied Council can always appropriate funds on a supplemental basis; however, given this is a single-year budget, there is no specific mid-cycle revision as there is in the typical two-year budget. He went on to discuss the legal separation of utility rates and noted the new 2020 revenue outlook is the baseline for 2021 and no growth or contraction assumptions on top of that were made.

Councilmember Cunniff noted there will be another full budget process with at least the same scale of engagement or more for the 2022 budget. City Manager Atteberry concurred.

Councilmember Cunniff commended the conservation trust adjustments and stated he will be requesting Council's support for an amendment to the budget that would contemplate the extra $400,000 being treated as a loan and providing a mechanism for a future Council to repay that loan.

Councilmember Pignataro thanked staff for the equity memo and efforts toward continued work in that area. She commended staff for maintaining climate commitments and the air quality program. She commented on the fact that a new Council will be in place next year and noted this Council's priorities have the potential to be shortchanged given the single-year budget. City Manager Atteberry acknowledged Councilmember Pignataro's concerns noting outgoing Councilmembers usually have an opportunity to leave a legacy with the last one and a half years of budget priorities.

Mayor Troxell asked about the Midtown Business Improvement District and potential matching from City funds. Josh Birks, Economic Health Director, replied there were ongoing conversations, pre-COVID, with the Midtown Business Improvement District about potential partnerships. However, as COVID progressed, it was clear that moving forward with those capital projects probably did not make sense. Over the last few months, the partnership has pivoted more toward a tactical and operational approach and partnership. He stated the capital projects partnership could be picked up in a subsequent budget.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 138, 2020, on First Reading.

Councilmember Cunniff requested Council support for bringing forth the conservation trust question in the next budget cycle. He made a motion, seconded by Councilmember Gutowsky, that the Ordinance be amended to add a new section 5 related to contemplating the replenishment of conservation trust funds in the amount of $400,000 used in 2021 for Parks maintenance.

Mayor Pro Tem Stephens asked if the next Council would ultimately decide whether this would occur. Councilmember Cunniff replied in the affirmative and noted this would not bind a future Council to the decision.
November 4, 2020

Councilmembers discussed their support for the proposed amendment.

The vote on the amendment was as follows: Yeas: Pignataro, Cunniff, Troxell, Stephens, Gutowsky, Summers and Gorgol. Nays: none.

Mayor Pro Tem Stephens commended Councilmember Pignataro's idea to ensure the equity memo received by Council is made available. She thanked staff for their work on the budget stating it reflects equity and addresses emerging social service needs.

Mayor Troxell commended staff work on the budget and thanked community members for their engagement.

RESULT:

ORDINANCE NO. 138, ADOPTED AS AMENDED ON FIRST READING
[UNANIMOUS]

MOVER: Kristin Stephens, District 4
SECONDER: Ross Cunniff, District 5
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff


   A. First Reading of Ordinance No. 139, 2020, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Electric Rates, Fees and Charges.


The purpose of this item is for Council to consider the above-listed electric and water rate ordinances, adjusting monthly charges for both electric and water services in 2021. The revenue requirements to support the 2021 budget require increasing monthly charges for electric service by 3.0%. Additionally, a reduction in pricing is proposed for the voluntary Green Energy program, reducing the charge per kWh from 1.9 cents per kWh to 1.6 cents per kWh in 2021. A 2% increase for water services is proposed to help offset mitigation costs related to the Cameron Peak Fire. Upon adoption, both rates would be effective January 1, 2021.

Lance Smith, Utilities Strategic Finance Director, discussed two proposed Utilities rate increases: a 3% increase for electric services and a 2% increase for water rates in 2021 due to impacts from the Cameron Peak and Troublesome East fires. He stated the total revenue requirements to meet anticipated operations, maintenance, and capital investments is allocated to each rate class through a cost of service study. He noted rate class adjustments are driven by several factors and stated the average customer with all four utilities being provided by the City would see a $3.33 average monthly bill increase. He noted there has been a priority around arranging payment assistance and payment arrangement resources to those for whom utility payments have been a hardship.

Smith outlined proposed rate increases for neighboring communities and other water districts. He also detailed the City's general approach to work with customers on energy and water efficiency through education and retrofits to residences and to ensure customers are aware of the programs available when financial assistance is necessary. He also noted there is about $600,000 of CARES Act funding available for customers who have been affected by COVID.
Rich Stave questioned assumptions made related to the 3% electric rate increase. He asked how much revenue is generated from the residential category as opposed to others and commented on the solar subsidy. He also questioned how the Fed is assuming no inflation, yet the City is asking customers to pay for inflation expenses.

Mayor Troxell requested a staff response to Mr. Stave's questions. Smith replied about 40% of the electric utility operating revenue comes from residential customers. Regarding the solar subsidy, Smith stated the City does recognize it is paying a retail rate for that energy; however, it is trying to promote solar adoption throughout the community. Regarding inflation, Smith stated the City is looking at a ten-year capital investment horizon and a modest 2% or 3% rate of inflation is appropriate as there will not be zero growth over the next decade.

Mayor Troxell asked about the coincident peak electric rate. Smith replied the coincident peak rate involves the single moment when the system peaks in terms of energy demand each month. He noted there is a time of day rate structure for residential and small commercial customers and medium and large commercial and industrial customers have a coincident peak component to their rate structure.

Mayor Pro Tem Stephens asked about utility shut offs and how staff is working with those customers. Smith replied staff is working to resume normal operations, which does involve disconnecting service for non-payment. He stated initial notices will be sent out in mid-November encouraging customers to reach out to set up payment arrangements. These notices would be the third time since the summer these customers have been contacted. He stated there was an increase in the number of customers who fell behind on utility payments during the beginning of the pandemic, but that trended downward until another spike occurred in August after the federal unemployment benefits were discontinued. He stated staff is anticipating being able to provide assistance through CARES dollars or the payment assistance fund.

Mayor Pro Tem Stephens encouraged individuals having difficulty paying their utility bills to reach out to the City as there are assistance options and there is not the intent to disconnect people in a frivolous manner.

Councilmember Gorgol expressed concern about moving forward with utility shut offs as we are going into winter and stated she would bring that up during Other Business. She asked how the electric rate can be looked at being distributed more evenly to lessen the burden on people who are struggling during this time. Smith noted there is a separate rate structure for customers with electric heat. Regarding cost distribution, Smith noted the tiered charge reflects the cost of energy efficiency programs; however, Council could always ask staff to revisit that.

Councilmember Gorgol expressed concern about a blanket 3% rate increase.

Councilmember Pignataro asked what percentage of the homes serviced by Fort Collins Utilities are all electric. Smith replied there are about 2,500-3,000 all electric homes in the community, or about 3%.

Councilmember Pignataro discussed the importance of ensuring those with all electric heat are aware of the alternative rate.

Councilmember Cunniff supported the idea of having a work session to discuss the rate structure. He also noted renters cannot access ways to improve their energy use through capital
improvements. He stated there should be a discussion around the parameters related to a utility shut off moratorium.

Councilmember Gutowsky stated constituents have expressed concern about the time of day rates noting the higher rates from 5:00 to 9:00 PM are particularly hurtful for some customers. She stated some people may not be aware of what the time of day rates actually cost them.

Mayor Troxell noted time of day rates are revenue neutral. He also stated the rates enable homeowners more transparency and ability to affect their bills. He stated the proposed rates are reasonable and asked if there is a particular policy related to increasing water rates due to a wildfire event. Smith replied there is a great deal of uncertainty around what costs are going to be related to the fires and the goal is to keep adjustments gradual, which is part of the consideration around this increase. He stated staff is likely to come forward with an appropriation that is going to exceed the 2% that will be generated in incremental income; therefore, some reserves will need to be drawn down to help pay for mitigation costs. Previously identified rate increases did not include an allotment for fire mitigation efforts.

Councilmember Gutowsky requested staff provide information about the 'My Energy Portal.' Lisa Rosintoski, Utilities Customer Connections, replied the 'My Energy Portal' allows customers to see their electric usage at varying times of day and allows access to energy efficiency programs and suggestions on energy use reduction.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gutowsky, to adopt Ordinance No. 139, 2020, on First Reading.

Councilmember Cunniff stated he would support the motion as the case has been made that these are necessary increases. Additionally, he stated it is important to note that the electric rates being set here do not imply a further discussion cannot be had around the rate structure.

Mayor Pro Tem Stephens concurred and noted these increases are not arbitrary but are related to the cost of doing business. She suggested more information could be provided to ratepayers regarding how they can structure their daily chores to help save on their bills. She agreed a moratorium on shut offs should be considered, particularly if additional need in the community is seen. She stated she would support the motion but would like the conversations to continue.

Councilmember Pignataro suggested a small instructional video related to time of day rates and standard family decisions could be beneficial.

Councilmember Gorgol stated she would support the motion hesitantly but she looks forward to future conversations.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 140, 2020, on First Reading.

Mayor Pro Tem Stephens commented on the importance of promoting xeriscaping and on the use of rate smoothing that ensures palatable rate increases.

Councilmember Gutowsky stated the water rate increase is likely more understandable and supported by the community given the impact of fires.
Councilmember Summers expressed support for this motion noting mitigation expenses will be occurring. He acknowledged this is a needed but unexpected increase and stated there will still be increases in coming years.

Mayor Troxell stated he will support the motion noting the true impacts of the fires on the watershed will not be realized until the spring during runoff.

City Manager Atteberry noted Fort Collins Utilities are not for-profit businesses and rate increases cover increased costs.

RESULT: **ORDINANCE NO. 139, 2020 ADOPTED ON FIRST READING [UNANIMOUS]**
MOVER: Kristin Stephens, District 4
SECONDER: Ross Cunniff, District 5
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

RESULT: **ORDINANCE NO. 140, 2020 ADOPTED ON FIRST READING [UNANIMOUS]**
MOVER: Kristin Stephens, District 4
SECONDER: Ross Cunniff, District 5
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

A. Consideration of a motion to adjourn the City Council meeting to conduct the Board meetings listed below then return to the regular City Council meeting:

- GID No. 1 Meeting
- Skyview South GID No. 15 Meetings

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gutowsky, to adjourn the City Council meeting to conduct the General Improvement District No. 1 Board Meeting and the Skyview South General Improvement District No. 15 Board Meeting and then return to the City Council meeting.

RESULT: **MOTION ADOPTED [UNANIMOUS]**
MOVER: Kristin Stephens, District 4
SECONDER: Susan Gutowsky, District 1
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

• OTHER BUSINESS

Councilmember Gorgol commented on utilities bill pay assistance programs stating even with those programs, utilities should not be shut off. She also noted many people have utilities tied to rent which makes them ineligible for bill pay assistance.

Mayor Troxell commented on additional COVID-related funding that may be available from Platte River Power Authority.

City Manager Atteberry stated Fort Collins exhibits significant restraint when it comes to utility shut offs. He stated the Executive Team will discuss the placement of this topic on a Council agenda.
Councilmember Gorgol asked when notices will be mailed. Lisa Rosintoski, Utilities Customer Connections Manager, replied Utilities will not disconnect customers if they make payment arrangements. Letters will go out mid-November outlining how staff has attempted to contact the customer and how they can make payment arrangements. If necessary, another notice would be sent in December and shut offs would happen approximately two weeks after that, but not during the holidays.

Councilmember Gorgol opposed sending out notices until Council has a broader conversation. City Manager Atteberry noted these will not be the first efforts at communicating with these ratepayers and staff would not recommend postponing sending notices; however, that is the prerogative of Council.

Councilmember Cunniff suggested adjourning to November 10 to gather more information and that date would be in advance of the notices.

Councilmember Pignataro requested staff provide information regarding what steps have been taken to contact residents. She agreed with Councilmember Cunniff’s suggestion.

Mayor Troxell noted the Downtown holiday lights will be lit through Valentine's Day.

• **ADJOURNMENT**

  Consideration of a motion to adjourn to 6:00 p.m., Tuesday, November 10, 2020 to conduct the annual evaluation of the City Manager, City Attorney and Chief Judge and such other business as may come before Council.

  Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gutowsky, that Council adjourn this meeting to 6:00 p.m. on Tuesday, November 10, in order to consider a motion to go into executive session to conduct annual performance reviews of the Council’s direct report employees, and for such other business as may come before the Council.

  Councilmember Cunniff clarified Council will discuss utility shut offs prior to the Executive Session.

  Mayor Troxell congratulated Mayor Pro Tem Stephens on her County Commissioner election win and noted Council will be having discussions regarding preparing for her vacancy.

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The meeting adjourned at 9:42 PM.

______________________________

Mayor

ATTEST:

______________________________

City Clerk
November 10, 2020

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Adjourned Meeting – 6:00 PM

(Secretary's Note: Due to the COVID-19 crisis and state and local orders to remain safer at home and not gather, this meeting has been conducted remotely, via teleconference.)

• CALL MEETING TO ORDER

Mayor Troxell outlined the public participation options.

City Manager Atteberry recommended shifting Other Business prior to Council going into Executive Session.

• ROLL CALL

PRESENT: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff
Staff: Atteberry, Daggett, Coldiron

1. Staff Presentation Regarding Utility Payment Assistance And Shut Offs And Possible Related Council Action.

City Manager Atteberry stated the goal of this item is to have customers who may need assistance begin to have conversations with Utilities staff around options.

Gretchen Stanford, Utilities, stated the City’s goal is not to disconnect electric and water services and staff hopes that when customers receive disconnect notices, they are more likely to pay attention and take action. She noted direct assistance programs are available, including CARES Act funding through the end of the year and making payment arrangements. She stated there are currently 3,700 customers with delinquent accounts, which is about double the usual number, and the average account owed for residential customers is $75 per month. Additionally, she noted less than 1% of delinquent accounts are on the Income Qualified Assistance Program (IQAP) rate that is available for customers. She outlined the various communications Utilities staff have had with delinquent account customers.

Stanford noted over 1,200 customers have been assisted in 2020 with $450,000 in direct assistance. She discussed the ways in which customers can apply for assistance and stated the goal is to provide assistance prior to any disconnect occurring. She noted the Governor suspended statewide utility disconnects through July and the City further extended that deadline for its customers; however, delinquent accounts can have a negative impact on Utilities and potentially other customers. She stated disconnect notices will begin going out November 13 and once a customer receives that notice, they have 7 to 10 days before utilities are actually shut off to make payment arrangements.

Lance Smith, Utilities Strategic Finance Director, discussed how the amount of outstanding accounts receivable has grown over the past six months noting the pandemic has created uncertainty for both customers and the Utility. He stated staff is anticipating ending 2020 with over $2 million in accounts receivable beyond 60 days with another $600,000 between 30 and 60 days, which in total is well above the $426,000 budgeted for bad debt. He stated that it is not yet a financial crisis for the Utility, but is a concern. He noted the focus remains on customers.
Teresa Connor, Interim Utilities Executive Director, noted Utilities staff do not want to disconnect service and reiterated the need for customers to engage with staff to make a payment plan and/or take advantage of CARES Act funding and payment assistance funding.

Mayor Pro Tem Stephens asked if customers are more responsive after receiving shut off notices. Stanford replied in the affirmative and clarified that not all delinquent accounts are related to the pandemic.

Mayor Pro Tem Stephens asked if the amount of assistance is limited or if customers can get enough assistance to fully pay what they owe. Stanford replied there are currently 319 residential customers that have delinquent accounts of over $1,000 and CARES Act funding will provide support of up to $600. Payment arrangements or the use of the payment assistance program can be used for the remainder.

Councilmember Gutowsky noted multiple notices have been sent out to delinquent customers since June and stated another notice seems prudent.

Councilmember Gorgol asked what percentage of eligible residents are enrolled in the IQAP program. Smith replied about 10% of customers are eligible, and maybe only 5% are enrolled.

Councilmember Gorgol suggested the time between the notices and actual shut offs should be increased to 30 days. She asked how that change would impact the spending of CARES Act funding by the end of the year. Stanford replied it could still be used.

Councilmember Gorgol encouraged staff to work with other agencies distributing CARES funding. She also suggested trigger points for a more aggressive approach be determined for the Utility and requested staff return with statistics on how many shut offs occurred and how many customers set up payment plans.

Councilmember Cunniff stated sending another letter may not help certain customers who simply are not opening mail or answering phones; therefore, it either needs to be accepted that people will end up with utilities shut off or more direct door-to-door contact may be needed. He suggested not extending the timeframe for shut offs as people will call once their utilities are shut off and having extra time to allow for CARES Act funding to be put into place would be helpful.

Councilmember Cunniff noted a rate increase is one alternative as is the use of general fund reserves for an assistance program.

Councilmember Pignataro asked if staff could estimate the amount of delinquent accounts that would exist if there hadn't been a hiatus in sending delinquency notices. Connor replied letters indicating delinquency were still being sent; however, disconnect notices were not sent and services were not disconnected. She noted customer service representatives are trained in dealing with disconnected customers and service is restored the same day payment plans are outlined.

Councilmember Pignataro asked how much time goes past before an account is considered delinquent. Smith replied accounts are determined to be delinquent after two months of nonpayment.

Mayor Troxell noted there may be students who have left town and are studying remotely who may be part of this population.
Councilmember Gutowsky asked what would occur that would lead to a crisis mode for Utilities. Smith replied his concern is more the trend rather than the specific dollar amount at this time and a bigger problem would exist if things become more normal with the pandemic but there are still this many delinquent accounts.

Councilmember Cunniff asked if staff needs direction related to shut off dates. City Attorney Daggett replied the dates are set administratively and this item is before Council in order to ensure Council does not want to direct something different.

Connor suggested staff will figure out the date that would best allow for the use of CARES Act funding assistance, and it will likely be 10 to 15 days out from notices.

Councilmember Gorgol requested staff provide a memo of the timeframe and summary of outreach strategies.

Mayor Pro Tem Stephens commended the work of customer service representatives and asked if they have the ability to refer people to other available community resources. Stanford replied in the affirmative.

● OTHER BUSINESS

Councilmember Summers requested an update on the $425,000 budget for hotel rooms for homeless individuals and suggested those funds could be used for some of these other needs. City Manager Atteberry replied staff will provide a memo to Council and noted there will be an update regarding the COVID appropriation dollars at next week's worksession.

A. Consideration of a motion to adjourn into executive session.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Cunniff, that the City Council go into executive session, as permitted under Article Two, Section Eleven, item One, of the City Charter, Section 2-31(a)(1)(a) of the City Code and Colorado Revised Statutes Section 24-6-402(4)(f)(roman numeral one), for the purpose of conducting annual evaluations of the Chief Municipal Judge, City Attorney And City Manager.

RESULT: MOTION ADOPTED [UNANIMOUS]
MOVER: Kristin Stephens, District 4
SECONDER: Ross Cunniff, District 5
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

● ADJOURNMENT

The meeting adjourned at 10:00 p.m.

______________________________
Mayor

______________________________
City Clerk
November 17, 2020

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

(Secretary's Note: Due to the COVID-19 crisis and state and local orders to remain safer at home and not gather, all Councilmembers, staff, and citizens attended the meeting remotely, via teleconference.)

● ROLL CALL

PRESENT: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff
Staff: Atteberry, Daggett, Coldiron

● AGENDA REVIEW: CITY MANAGER

City Manager Atteberry noted there will be no opportunity for in-person public participation at this meeting due to increasing COVID concerns; therefore, Council will need to consider a motion to authorize Item No. 16, Public Hearing and First Reading of Ordinance No. 145, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Timberline Church Rezoning, to proceed remotely without an option for in-person participation if Council wishes to move forward with the item this evening. He noted the applicant has no objection to the change.

City Manager Atteberry stated Item No. 13, Items Relating to a Citizen-Initiated Petition Relating to the Hughes Stadium Property, was changed to reflect information related to a protest that was filed and then withdrawn. Additionally, he noted the remaining Council meetings for 2020 have been shifted to a remote-only format and Council will consider a motion to adjourn to November 24, 2020 in order to accommodate follow-up items for Council's consideration.

Consideration of a motion to authorize Item No. 16, Public Hearing and First Reading of Ordinance No. 145, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Timberline Church Rezoning, to proceed using Remote Technology without the option for in-person participation:

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gutowsky, that City Council find the Timberline Church rezoning, scheduled for consideration on tonight’s agenda as item number 16, is pressing and requires prompt action and further find that virtual technology will provide due process to hear that matter through sufficient public participation and input, and based upon such findings authorize a Quasi-Judicial Hearing using Remote Technology by the City Council to proceed in that matter pursuant to Section 8 of Ordinance No. 079, 2020.

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● PUBLIC COMMENT

Mayor Troxell outlined the public participation options.
Tamara Muir expressed concern about the lack of a sustainable plan for home-like long-term care facilities and stated individuals with COVID need to be immediately removed from those settings to prevent spread. She questioned whether Council has had discussions about a management strategy for opening some type of care facility for those patients.

Rory Heath commented on COVID testing reservations being full and requested Mayor Troxell and Mayor Pro Tem Stephens recuse themselves from the discussion of Item No. 13, Items Relating to a Citizen-Initiated Petition Relating to the Hughes Stadium Property.


PUBLIC COMMENT FOLLOW-UP

Mayor Troxell summarized the citizen comments. He noted the City is working closely with the County and State regarding COVID procedures and requested additional staff input on the topic. Jim Byrne, Emergency Preparedness and Security, replied County Health has a working group specific to residential care facilities and he will provide additional information after doing some research.

Mayor Troxell requested staff address Mr. Stave's questions regarding community solar.

Theresa Connor, Interim Utilities Director, noted Council was provided a memo related to the Energy Board discussion.

John Phelan, Utilities, noted the Energy Board brought up how to manage a potential risk of partial damage to the location. He noted Leeland Keller, Solar Garden Project Manager, met with the City's Risk Management staff to identify a path forward wherein the City can procure a comprehensive insurance option for the customer-owned panels using the project's existing operations and maintenance fund. He noted staff will be doing a detailed assessment of operations and maintenance cost requirements during the next five years of extended warranty.

CONSENT CALENDAR

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Cunniff, to adopt and approve all items on the Consent Agenda.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Kristin Stephens, District 4
SECONDER: Ross Cunniff, District 5
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

1. Consideration and Approval of the Minutes of the October 6, 2020 Regular Council Meeting. (Adopted)

The purpose of this item is for consideration and approval of the minutes of the October 6, 2020 Regular Council Meeting.
2. **Second Reading of Ordinance No. 127, 2020, Adopting the 2021 Budget and Appropriating the Fort Collins Share of the 2021 Fiscal Year Operating and Capital Improvements Funds for the Northern Colorado Regional Airport.** (Adopted)

This Ordinance, unanimously adopted on First Reading on November 4, 2020, appropriates Fort Collins’ share of the 2021 fiscal year operating and capital funds for the Airport. Under the Amended and Restated Intergovernmental Agreement for the Joint Operation of the Airport between Fort Collins and Loveland (the “IGA”), the Airport is operated as a joint venture with each City owning 50% of the assets and revenues and responsible for 50% of the operating and capital costs. The proposed budget does not include financial contributions from the City’s General Fund as it has in previous years because anticipated Airport revenues will provide sufficient revenues for operations, primarily as a result of the Northern Colorado Law Enforcement Training Center Lease payments by both Cities. Because each City has an ownership interest in 50% of the Airport revenues, each City must appropriate its 50% share of the annual operating and capital budget for the Airport under the IGA.

3. **Second Reading of Ordinance No. 128, 2020, Being the Annual Appropriation Ordinance for the Fort Collins Downtown Development Authority relating to the Annual Appropriations for the Fiscal Year 2021 and Fixing Mill Levy for the Downtown Development Authority for Fiscal Year 2021.** (Adopted)

This Ordinance, unanimously adopted on First Reading on November 4, 2020, sets the Downtown Development Authority (“DDA”) Budget. The following amounts will be appropriated:

- **DDA Public/Private Investments & Programs** $8,067,545
- **DDA Operations & Maintenance** $1,385,349
- **Revolving Line of Credit Draws** $7,000,000
- **DDA Debt Service Fund** $7,431,611

The DDA anticipates receiving in 2021 tax increment revenues of approximately $6,630,081 and approximately $788,897 in revenues from its five-mill property tax for the DDA’s operational and maintenance expenditures. The Ordinance also sets the 2021 Mill Levy for the Fort Collins DDA at five (5) mills, unchanged since tax year 2002. The approved Budget becomes the Downtown Development Authority’s financial plan for 2021.

4. **Items Relating to the 2020 Fee Updates.** (Adopted)

   A. Second Reading of Ordinance No. 129, 2020, Amending Chapter 7.5 of the Code of the City of Fort Collins to Revise the Capital Expansion Fees and the Transportation Expansion Fee.

   B. Second Reading of Ordinance No. 130, 2020, Amending Chapter 26 of the Code of the City of Fort Collins Regarding Calculation and Collection of Development Fees Imposed for the Construction of New or Modified Electric Service Connections.


   D. Second Reading of Ordinance No. 132, 2020, Amending Chapter 26 of the Code of the City of Fort Collins to Revise the Stormwater Plant Investment Fees.

   E. Second Reading of Ordinance No. 133, 2020, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Water Plant Investment Fees.
F. Second Reading of Ordinance No. 134, 2020, Amending Chapter 26 of the Code of the City of Fort Collins to Revise the Water Supply Requirements Fee.

These Ordinances, unanimously adopted on First Reading on November 4, 2020, review inflation updates effective January 1, 2021, associated with Electric Capacity fees, Water Supply Requirement fees, Water, Sewer and Stormwater Plant Investment fees, Capital Expansion fees and Transportation Capital Expansion fees. Inflation updates are 2.7% for Capital Expansion fees, 0.6% for Transportation Capital Expansion fees, and 3% for Utility fees.

Coordination of Council-approved fees began in 2016 to provide a more holistic view of the total cost impact. Previously, fee updates were presented to Council on an individual basis. After the 2020 fee update, fee phasing will be complete with regular two and four-year cadence updates beginning in 2021.

5. Second Reading of Ordinance No. 135, 2020, Making a Supplemental Appropriation for the CanDo Community Telework Program and Authorizing the City Manager to Execute the Grant Agreement on Behalf of the City. (Adopted)

This Ordinance, unanimously adopted on First Reading on November 4, 2020, appropriates $4,999 in unanticipated revenue received through a grant for the Colorado Department of Transportation (CDOT) CanDo Community Telework Grant program to be managed by the FC Moves Department. The Ordinance also authorizes the City Manager, in consultation with the City Attorney, to execute the Grant agreement/acceptance on behalf of the City.

6. Second Reading of Ordinance No. 136, 2020, Appropriating Unanticipated Philanthropic Revenue Received by City Give from WaterPik, Inc., for Transfer to Social Sustainability in the General Fund for the Equity Indicators Project. (Adopted)

This Ordinance, unanimously adopted on First Reading on November 4, 2020, appropriates $10,000 in philanthropic revenue in the General Fund for transfer to Social Sustainability for the support of the Equity Indicators Project as designated by the donor, WaterPik, Inc. In a commitment to advance equitable outcomes, the City has selected the CUNY Institute for State and Local Governance (ISLG) to lead the Equity Indicators project to establish a framework for measuring and understanding the inequities that exist in Fort Collins.

7. Second Reading of Ordinance No. 137, 2020, Making Certain Amendments to the Codes of the City of Fort Collins to Eliminate Affordable Housing Fee Waivers and Instead Authorize a Discretionary Credit for Certain Affordable Housing Units to be Constructed in the City. (Adopted)

This Ordinance, unanimously adopted on First Reading on November 4, 2020, amends City Code and Land Use Code to simplify the way affordable housing fee waivers are used to support the development of affordable housing units targeting the city’s lowest wage earners. Instead of calculating precise fee amounts for waivers on a project by project basis, flat amounts of credit will be established and codified for qualifying new construction and adaptive reuse homes targeting households making no more than 30% Area Median Income (AMI). This support will still be subject to Council discretion and appropriation of funding. Not only will this provide greater certainty to the developer and be more efficient to administer by the City, it will also allow all City departments’ fees to be paid in full either by the developer or by the credit that has been appropriated.
8. **Second Reading of Ordinance No. 141, 2020, Approving the Administrative Rules, Regulations and Standards for the Riverside Community Solar Program.** (Adopted)

This Ordinance, unanimously adopted on First Reading on November 4, 2020, approves the Riverside Community Solar Program rules, which define the continuing delivery of credits and other program benefits to participating customers. The Utilities’ Executive Director has approved the Riverside Community Solar Program, as defined by the Program Rules and Continuing Participation Agreement under the authority defined by Code §26-463(a). Council’s approval of the Ordinance, and the Program Rules as attached to it, completes the approval process.

Utilities completed acquisition of the Riverside Community Solar Project on August 28, 2020, assuming all responsibility for program management, customer support, and operations and maintenance. As a result of the transfer, existing customer contracts with Clean Energy Collective for the old program structure terminated. Utilities is re-enrolling participating customers that already own panels in the array of the Program via Continuing Participation Agreements. Current customers who own panels in the solar array (“Customer-owners”) and re-enroll in the Program will continue to receive credits on their bill as they do today, based on the City’s applicable time of day rates as set forth in the City Code.

9. **First Reading of Ordinance No. 142, 2020 Authorizing the Conveyance of a Portion of City Property at Kingfisher Natural Area in Exchange for an Access Easement at 1807 East Mulberry Street.** (Adopted)

The purpose of this item is to seek Council approval of a Quit Claim Deed conveying to DD&B Investment Group, LLC (DDB) a portion of Kingfisher Natural Area historically used for parking and access associated with the businesses occupying 1807 East Mulberry Street, in exchange for a Non-Exclusive Access Easement from DDB to the City for access to Kingfisher Natural Area.

10. **First Reading of Ordinance No. 143, 2020, Transferring Appropriations in the General Fund from the Coronavirus Relief Fund, CARES Act, Title V, to the Water and Wastewater Funds.** (Adopted)

The purpose of this item is to transfer $27,245 and $13,562 of the City’s Coronavirus Relief Fund (CVRF) money from the General Fund to the Wastewater and Water Funds, respectively. The transfer is necessary to recognize the future depreciation of certain expenses in the Wastewater and Water Funds for lab supplies and to support teleworking capabilities. To account for this depreciation correctly and to recognize the depreciation expense in the correct fund, the original expenditures should occur in the Wastewater and Water Funds.

11. **Resolution 2020-103 Determining Fair Value for the Property Interests at 143 East Remington Street to be Exchanged by Entities Affiliated with the Downtown Development Authority and Housing Catalyst in Connection with the 140 East Oak Street Affordable Housing Project.** (Adopted)

The purpose of this item is for Council to determine fair value for a property exchange the Downtown Development Authority (DDA) and Housing Catalyst are proposing regarding the 140 East Oak Street affordable housing project, which would include incorporation of the neighboring property, 143 Remington Street, into the project. This parcel will be combined with the 140 East Oak Street property, for which Council determined fair value via Resolution 2020-061 at the Council meeting held on July 21, 2020.

The project’s 79 units will be a mix of studio, and one- and two-bedroom apartments that serve individuals and households whose earnings range from 30-80% AMI (area median income) with the target of an overall average of 60% AMI. With these combined parcels, the number of parking spaces increases by nine and the building height is reduced from six to five stories, which increases neighborhood compatibility and is in response to community concerns. This work aligns with the Council Priority of Affordable and Achievable Housing Strategies, is a partnership between the DDA and Housing Catalyst, and was approved by the Planning and Zoning Board on September 3, 2020.
12. **Resolution 2020-104 Approving the 2020 Master Plan for the Northern Colorado Regional Airport.** (Adopted)

   The purpose of this item is to adopt the updated Master Plan at the Northern Colorado Regional Airport. The Airport is jointly owned and operated by the Cities of Fort Collins and Loveland, and operational oversight is provided by the Northern Colorado Regional Airport Commission. The Federal Aviation Administration (FAA) recommends that public use airports have and update their master plans approximately every 10-15 years. The Master Plan focuses on the physical development of airport property to meet existing and projected aviation demands. In addition, other factors relating to the Airport and its environs were evaluated, such as surrounding land use, environmental considerations, and infrastructure.

- **STAFF REPORTS**

  A. **Staff Report: CARES Funding Update** (SeonAh Kendall)

   City Manager Atteberry thanked SeonAh Kendall and Blaine Dunn for their leadership.

   Blaine Dunn, Interim Accounting Director, provided a recap of the funding received by the City from the federal CARES Act bill. He stated the City was granted $9 million as part of the Coronavirus Relief Fund and he explained the reimbursement process for related costs.

   SeonAh Kendall, Recovery Manager, discussed the interactive dashboard staff is anticipating making public next week that addresses funds obligated and received via reimbursement as well as other information. She also discussed the Keep NoCo Open campaign and its messaging around ensuring the community businesses can remain open safely.

   Councilmember Pignataro asked how CARES funding is distributed. Dunn replied the CARES Act was the overarching bill passed by the federal government and noted the same formula amounts were used to distribute that funding as are usually used for things like CDBG. There was a formula dictated by the Treasury Department for the Coronavirus Relief Fund and that was distributed by the state.

   Mayor Troxell noted the funding provided to the Northern Colorado Regional Airport was distributed through the FAA.

   Councilmember Gorgol asked how staff has been able to adapt and change what is being funded to respond to community needs. Kendall replied staff works with local service providers and the County to adjust opportunities. She also noted the United States Treasury guidance has changed quite a bit over the past few months as well.

   Councilmember Gorgol asked if anything will change in terms of Poudre School District going back to remote learning. Kendall replied staff has had conversations around providing childcare for vulnerable students and using CARES dollars to fund that.

   Mayor Pro Tem Stephens noted businesses will only be able to remain open if health guidelines are followed. She also encouraged fellow Councilmembers to request additional funds.

   Councilmember Summers discussed possible state fund allocations. He asked about the status of the funding of motel rooms for homeless individuals. Jackie Kozak-Thiel, Chief Sustainability Officer, replied the original projected cost was $420,000 to support a non-congregate shelter for
the most vulnerable homeless individuals and the actual cost will be about $419,000 by the end of
the year.

Councilmember Summers asked if it is correct that 52 unique individuals have been served for
some period of time. Kozak-Thiel replied in the affirmative and noted the program is serving
people who are currently battling cancer and other health issues. She confirmed the program is
also helping individuals get document-ready to ensure a smooth transition to permanent supportive
housing or to ensure health coverage.

City Manager Atteberry commented on the City organization moving its workforce to remote as
much as possible. He stated he has been in regular contact with Tom Gonzales, Larimer County
Public Health Director, regarding restaurants noting the industry has been hit very hard and most
are doing great work; however, there are some not abiding by guidelines and those will be
addressed and cited if appropriate.

● COUNCILMEMBER REPORTS

Mayor Pro Tem Stephens commented on Neighbor to Neighbor being named an Envision Center
by HUD, making it the only entity in the state to be so named, and commended the work of the
organization. She reported on small business visits to Foundation Music School and Young's
Vietnamese Café. She noted this week is the National League of Cities conference and she
mentioned some of the topics to be discussed.

Councilmember Gutowsky reported on a visit to Wolverine Press and noted the Food Bank is
requesting frozen turkeys for Thanksgiving. She also commented on a meeting with Fort Collins'
Friendship City in Portugal and on Colorado Recycle Week and related Fort Collins accolades.

Mayor Troxell reported on two proclamations, one related to shopping locally during this holiday
shopping season. He reported on visits to Dandelions and Rust and Raska Sauce and Restaurant.
He also reported on the Salvation Army Red Kettle kick-off and his participation in meetings
related to the opioid settlement to the state.

● DISCUSSION ITEMS


(Adopted)

1. Consideration of a motion to go into an Executive Session to discuss the Hughes Stadium Property
   Initiative Petition.

"I move that the City Council go into executive session for the purpose of discussing with the City’s
attorneys and appropriate management staff the following matters under:

• City Charter Article Roman Numeral Two, Section 11(2),
• City Code Section 2-31(a)(2) and
• Colorado Revised Statutes Section 24-6-402(4)(b), the following:

A. Specific legal questions related to potential litigation regarding the Hughes Stadium property
   and the manner in which the particular policies, practices or regulations of the City related to the
   acquisition, development or regulation of the or local law, and
November 17, 2020

B. Specific legal questions related to potential litigation regarding the citizen initiative related to the Hughes Stadium property and the manner in which the particular policies, practices or regulations of the City related to that citizen initiative may be affected by existing or proposed provisions of federal, state or local law.”

2. First Reading of Ordinance No. 144, 2020, Adopting a Citizen-Initiated Ordinance Regarding the Rezoning and Acquisition of the Hughes Stadium Annexation Property. (Option 1)

OR

Resolution 2020-105 Submitting to the Electors of the City at the Next Regular Municipal Election on April 6, 2021, a Citizen-initiated Ordinance Relating to the Hughes Stadium Property. (Option 2)

The purpose of this item, pursuant to the requirements of the City Charter when presented with an initiative petition certified as sufficient by the City Clerk, is to either:

- adopt the proposed ordinance without alteration within 30 days; or
- submit the proposed measure to the registered electors of the City.

Mayor Pro Tem Stephens recused herself from the discussion of this item.

Councilmember Gorgol made a motion, seconded by Councilmember Pignataro, that the City Council go into executive session for the purpose of discussing with the City’s attorneys and appropriate management staff the following matters under:

- City Charter Article Roman Numeral Two, Section 11(2),
- City Code Section 2-31(a)(2) and
- Colorado Revised Statutes Section 24-6-402(4)(b), the following:

A. Specific legal questions related to potential litigation regarding the Hughes Stadium property and the manner in which the particular policies, practices or regulations of the City related to the acquisition, development or regulation of the or local law, and

B. Specific legal questions related to potential litigation regarding the citizen initiative related to the Hughes Stadium property and the manner in which the particular policies, practices or regulations of the City related to that citizen initiative may be affected by existing or proposed provisions of federal, state or local law.

Cory (no last name given) opposed the use of an Executive Session and encouraged Council to look at the bigger picture of ensuring Fort Collins residents have the ability to recreate outdoors on this property.

Mayor Troxell noted no decisions will be made in the Executive Session.

Beth Bensheit noted Fort Collins collects over $8 million a year in sales and use taxes for Natural Areas. She noted the property will never be recovered by the residents if it is sold and developed.

Kathryn Dubiel stated she was very involved in the citizen initiative process and expressed concern about the use of an Executive Session to discuss the initiative.

Jason Knebgl thanked Mayor Pro Tem Stephens for acknowledging ongoing ethics concerns regarding her employment at CSU. He requested Mayor Troxell also recuse himself and opposed Council having discussions in Executive Session.
Mary Alice Grant expressed concern about Council going into Executive Session.

Tamara Muir thanked Mayor Pro Tem Stephens for recusing herself and requested Mayor Troxell do the same. She expressed concern the entire process around the Hughes Stadium property has lacked transparency.

Rory Heath echoed concerns that have been mentioned and stated an Executive Session should only be used if absolutely necessary.

Jennifer (no last name given) opposed the use of an Executive Session.

Mayor Troxell noted this item will be discussed following the Executive Session and stated there is no pending conflict of interest issue related to his employment with CSU. He stated his role as a faculty member has nothing to do with the CSU System and land issues; therefore, there is no reason for his recusal.

Councilmember Cunniff stated he would support the motion despite the citizen fears that a decision will be made. He noted the Executive Session will be used to ensure Council understands the landscape with respect to its decision space regarding the citizen initiative.

The vote on the motion was as follows: Yeas: Cunniff, Troxell, Gutowsky, Summers, Gorgol and Pignataro. Nays: none.

THE MOTION CARRIED.

(Mayor Troxell noted the City Charter requires Council to either adopt the proposed ordinance without alteration or to submit a proposed measure to the registered electors of the City when presented with a certified citizen initiative petition.

City Clerk Coldiron discussed the petition process and noted the petition was certified by the City Clerk's Office on November 5. She outlined Council's options: to adopt the proposed citizen-initiated ordinance with no alterations within 30 days, or to submit the proposed measure to the registered electors of the City at the next City municipal election, which is in April. She noted a protest was filed with the City Clerk's Office related to the proposed ballot language, but it was withdrawn after staff worked with the party to revise the language.

Mayor Troxell commented on the adversarial nature of this citizen initiative noting it essentially directs the City Manager to subvert Council and purchase the property. He noted Council has already directed staff to do so using market-based logic and negotiating authority; however, CSU declined the City's offer and has said it plans to develop the property with the stated goal of generating a financial return and delivering workforce housing for its employees. He stated the Council is committed to transparency and to working with partners to respond to the needs of residents for the good of the community.

Tamara (no last name given) stated the ethics complaints brought against Mayor Troxell were not dismissed at the IDEC for lack of conflict but rather for lack of jurisdiction. She stated the fact that over 8,000 signatures were gathered on the petition should speak volumes. She stated the
citizen initiative is the only recourse citizens have to support themselves and she requested Council’s support as being officials elected to act on behalf of constituents.

Tom Farnsworth commented on a saved open space impacting citizens’ lives for generations and stated Council needs to act on purchasing the property with Natural Areas sales tax dollars.

Lacey Gechter supported adopting the ordinance as is.

Nick Frye stated he is excited there are only two options before Council and expressed disappointment in Mayor Troxell stating he is corrupt and fraudulent.

Michela Dunbar discussed the need for a wildlife rehabilitation center in Northern Colorado and urged Council to adopt the ordinance as is.

Martha Zook commented on members of the Maxwell family signing the petition and stated CSU should do the right thing and allow for the will of Fort Collins residents to be heard.

Jason Knebgl commented on the 8,300 signatures collected and requested Council listen to the will of the people it was elected to serve. He stated Mayor Troxell should recuse himself from this decision.

Rebecca Lapole echoed the citizen comments and noted there is a need for a wildlife rehabilitation center which could be located on the property. She agreed Mayor Troxell should recuse himself from this decision.

Barbara Denny commented on the value of the land to citizens as open space and she requested Council listen to the will of the people and adopt the ordinance as is.

Liz Dougherty requested the property be preserved as open space. She commented on the negative effects of developing the parcel, including traffic and pollution.

Mary Alice Grant expressed disappointment in the way the public feedback was framed by Mayor Troxell. She opposed development of the property and stated the City did not negotiate in good faith with CSU.

Lisa McDonald requested Council represent its constituents and stated there is no guarantee of an affordable housing development.

Beth (no last name given) commented on her experience getting petition signatures and noted Fort Collins residents support open space.

Ted Walkup expressed support for public open land at the Hughes site and stated the negative impacts of the proposed development would endanger bikers and pedestrians and create increased air pollution. He stated there are more suitable locations for affordable housing in the community.

Tallon Nightwalker commented on the need for a wildlife rehabilitation center and stated this initiative clearly shows the desire of residents to have open space and a rehabilitation center.

Kathryn Dubiel commented on the community’s overwhelming support for the open space sales tax and stated this item would be overwhelmingly adopted if placed on the ballot.
Paul Patterson requested Council adopt the ordinance as is and stated CSU is misusing the Site Plan Advisory Review (SPAR) process as the proposed development is private, not public.

Tara (no last name given) stated she hopes Council hears how important this land is. She encouraged Council to adopt the ordinance as is and expressed concern about the application of the SPAR process.

Lynn Studheit requested Council prioritize the voices of citizens over that of CSU.

Rory Heath opposed the statements and actions of Mayor Troxell and urged Council to use open space dollars to purchase the property.

Jennifer (no last name given) stated CSU is aiming to create housing for its workforce, a category into which Mayor Troxell falls; therefore, he should recuse himself from this discussion. She discussed the importance of the property as open space.

Addie (no last name given) commented on the community's desire for this property to be open space.

Coleen (no last name given) discussed the community support for the adoption of this ordinance.

Mary (no last name given) commented on the community's desire for this property to remain open space.

Emily Olivo commented on the environment being a top priority for Fort Collins residents and commented on the goals that will be met by ensuring this property remains open space. She also commented on the need for a wildlife rehabilitation center.

Melissa (no last name given) noted affordable housing was not a priority for CSU from the beginning and opposed the use of the SPAR process. She requested Council adopt the ordinance as is.

Elena (no last name given) thanked the volunteers who collected signatures and urged Council to adopt the ordinance as is. She opposed the use of the SPAR process and City Manager Atteberry's participation in any negotiations with CSU.

Jerry Gavaldon commented on the SPAR process and encouraged Council to make the best decision for the community.

Melody Nicholas noted this property is not just another cornfield and stated allowing this development would negatively impact the community.

Councilmember Cunniff requested clarification on administrative matters, such as land purchases, going before voters on a ballot. City Attorney Daggett replied matters such as a land sale have been found to be more administrative than legislative per Colorado law and there are multiple decisions indicating the citizen initiative power does not extend to administrative matters unless so stated in the City Charter, which is not the case in Fort Collins. Therefore, there is an issue with respect to the portions of the initiative that deal with the matter of acquiring the property, as opposed to the zoning aspect of the initiative which would be considered legislative.
Councilmember Cunniff noted Council could adopt the ordinance and circumvent the ballot issue. City Attorney Daggett replied in the affirmative.

Councilmember Cunniff noted the previous offer for the land made by the City did not just utilize Natural Areas tax dollars and if the City were to move forward with the land purchase, it would likely be the same situation.

Councilmember Cunniff stated he does not support purchasing the entire parcel with Natural Areas tax dollars as parts of the land are not natural. He noted there is specific language regarding habitat and restoration that is part of the Natural Areas tax ballot language.

Mayor Troxell questioned the price of the parcel given there may not be a willing seller. He asked about the condition of the property as it relates to Natural Areas standards. City Manager Atteberry replied staff expects the restoration of this property to take several million more dollars beyond the property acquisition cost. He discussed the previous offer made by the City and stated it was a fair market value offer.

Councilmember Pignataro requested input regarding the difference between open space and Natural Areas. John Stokes, Natural Areas, replied there are two funding sources for the Fort Collins Natural Areas program: a City of Fort Collins sales tax and a county sales tax, a portion of which is shared with the City. The revenues must be spent in accordance with the initiatives passed by voters and with the adopted Master Plan. He stated the City uses the term "Natural Areas" to emphasize the mission is oriented to conservation, biological diversity, et cetera.

Councilmember Pignataro asked if the City has a permanent easement on the part of the Hughes property with the sledding hill and frisbee golf course. City Manager Atteberry replied in the affirmative and noted it is for stormwater purposes. City Attorney Daggett replied the City acquired a stormwater easement that was intended to address stormwater flows in perpetuity; however, there are some provisions that would allow for the location of the detention to be relocated. The City's right to have a stormwater facility on the property is permanent.

Councilmember Pignataro asked if there are any third-party entities that could determine fair market value. City Manager Atteberry replied there are appraisers who could provide estimated values; however, the question about a willing seller still remains.

Councilmember Pignataro asked if the estimates would change depending on the zoning. City Manager Atteberry replied in the affirmative.

Councilmember Cunniff noted a wildlife rehabilitation center would be allowed under Public Open Lands zoning.

Councilmember Summers stated citizens have expressed their appreciation for the property as is; therefore, there may not be an immediate need for restoration.

Mayor Troxell asked about the current Natural Areas account balance. Stokes replied it is not the $74 million indicated by some speakers and he noted about $5 million of the approximately $8 million in annual revenues is budgeted for operations and maintenance of the Natural Areas system.
Mayor Troxell noted this property is not a priority for the Natural Areas program to acquire; therefore, its purchase would take away from other prioritized purchases. Stokes noted staff has not recommended this property for acquisition as it already owns a great deal of Natural Area space on the west side of town and Spring Canyon Community Park is also nearby.

Councilmember Cunniff made a motion, seconded by Councilmember Gutowsky, that the Council adopt Ordinance No. 144, 2020, on First Reading.

Councilmember Cunniff noted there is a question related to the administrative nature of this item if it were to be placed on the ballot. He thanked the citizens for their efforts.

Councilmember Summers stated he would like to see the item placed on the ballot before the entire constituency.

Councilmember Gorgol commended the passion of the residents and stated residents may have wanted to place the item on the ballot when they signed the petition. She stated it would be a completion of the democratic process to have the item placed on the ballot.

Councilmember Gutowsky stated she would support the motion as residents from all over the city have expressed their desire to preserve the property.

Mayor Troxell stated he would support placing the item on the ballot.

The vote on the motion was as follows: Yeas: Gutowsky, Cunniff and Pignataro. Nays: Troxell, Summers and Gorgol.

THE MOTION FAILED.

Councilmember Cunniff made a motion, seconded by Councilmember Gorgol, to adopt Resolution 2020-105, as amended to include the language added.

Councilmember Cunniff noted this action effectively refers the entire issue to the ballot; however, a judge will be asked to help sort through the Charter issue related to administrative actions.

City Attorney Daggett noted some additional minor corrections to the Resolution language.

Councilmembers Cunniff and Gorgol accepted the corrections as friendly.

Councilmember Cunniff stated he would support the motion and noted there should be a way to honor the intent of the voters regardless of the judge’s recommendations.

Councilmember Pignataro stated she would support the motion, though she would have preferred to adopt the ordinance outright.

Councilmember Gutowsky stated she would support the motion, though she would have preferred to adopt the ordinance as well.
Motion to Suspend the Rules to Continue the Meeting Past 10:30 PM.

Councilmember Cunniff made a motion, seconded by Councilmember Gorgol, to suspend the rules to continue the meeting past 10:30 PM in order to complete its agenda and consider such other business as may come before Council. Yeas: Cunniff, Gorgol, Pignataro, Stephens, Troxell, Summers and Gutowsky. Nays: none.

Council members discussed whether moving forward with all items on the agenda is appropriate given the lateness of the hour.

City Manager Atteberry noted staff has talked with the applicant for the Timberline Church Rezoning and they are in agreement the item could be moved to another date. He discussed the time requirements for other items on the agenda.

City Attorney Daggett stated Council would need to formally vote to continue the rezoning item to a date certain.

Motion to Postpone the Timberline Church Rezoning.

Councilmember Summers made a motion, seconded by Councilmember Cunniff, to postpone consideration of Public Hearing and First Reading of Ordinance No. 145, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Timberline Church Rezoning, as the first item on the regular meeting agenda of December 1, 2020.

City Manager Atteberry noted staff would likely recommend the meeting begin at 4:30 PM on December 1.

Councilmember Gorgol noted both the November 24 and December 8 meetings are already scheduled to begin at 4:30.

Councilmember Cunniff expressed concern about making it a habit for the meetings to start at 4:30 as citizens are used to them starting at 6:00.

Mayor Pro Tem Stephens noted another option would be to schedule a special meeting.

Mayor Troxell suggested the Leadership Team discuss the schedule.
Brad Florin, Timberline Church, stated he understood the Timberline Church Rezoning item would be delayed by one week, not more, and he requested Council consider the item this evening.

Robert (no last name given) expressed concern Timberline Church has not stated a reason for its zoning change request. He stated the proposed zoning is not compatible with the neighborhood and is not justified. He requested the zoning not be granted until the Church can identify a need.

Councilmember Cunniff suggested amending the motion to postpone consideration of the item to November 24 per the applicant's request. Councilmember Summers concurred.

RESULT:

MOTION ADOPTED [UNANIMOUS]
MOVER: Ken Summers, District 3
SECONDER: Ross Cunniff, District 5
AYES:
Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff


This Ordinance, unanimously adopted on First Reading on November 4, 2020, sets the City Budget for the one-year period (2021) which becomes the City’s financial plan for the next fiscal year. This Ordinance sets the amount of $668,909,564 to be appropriated for fiscal year 2021. However, this appropriated amount does not include what is being appropriated by separate Council/Board of Director actions to adopt the 2021 budget for the General Improvement District (GID) No. 1 of $808,791, the 2021 budget for GID No. 15 (Skyview) of $1,000, the Urban Renewal Authority (URA) 2021 budget of $6,706,744 and the Downtown Development Authority 2021 budget of $23,884,505. This results in City-related total operating appropriations of $700,310,604 in 2021. This Ordinance also sets the 2021 City property tax mill levy at 9.797 mills, unchanged since 1991.

City Manager Atteberry discussed the unique one-year nature of this budget and stated he is proud to recommend its adoption.

Travis Storin, Interim Chief Financial Officer, stated this budget is aimed to align with the City's mission, vision, and values, and with the adopted Strategic Plan. He discussed changes made since the item was first presented in September, including a full restoration of the original budgets for Climate Action and Air Quality programming, balancing the homeless coordinator position, and a scaling back of Conservation Trust Fund funding of parks operations and maintenance. He stated staff believes this budget maintains critical services and continues investment in infrastructure.

Councilmember Cunniff thanked staff for their work on the budget and stated it does what it needs to do to keep citizens well-served.

Mayor Troxell commended the work of staff as well.

Mayor Pro Tem Stephens stated she is grateful no crucial core services were cut and she looks forward to the process for subsequent budgets.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 138, 2020, on Second Reading.
RESULT: ORDINANCE NO. 138, 2020 ADOPTED ON SECOND READING [UNANIMOUS]
MOVER: Kristin Stephens, District 4
SECONDER: Ross Cunniff, District 5
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

15. Items Relating to Electric and Water Rates, Fees and Charges. (Adopted on Second Reading)

   A. Second Reading of Ordinance No. 139, 2020, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Electric Rates, Fees and Charges.


These Ordinances, unanimously adopted on First Reading on November 4, 2020, adjust monthly charges for both electric and water services in 2021. The revenue requirements to support the 2021 budget require increasing monthly charges for electric service by 3.0%. Additionally, a reduction in pricing is proposed for the voluntary Green Energy program, reducing the charge per kWh from 1.9 cents per kWh to 1.6 cents per kWh in 2021. A 2% increase for water services is proposed to help offset mitigation costs related to the Cameron Peak Fire. Upon adoption, both rates would be effective January 1, 2021.

Councilmember Cunniff stated the need for these increases has been shown and he noted none of the Utilities are for-profit entities.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 139, 2020, on Second Reading.

Mayor Pro Tem Stephens commented on the importance of rate smoothing that allows for smaller, more manageable rate increases. She noted there are many options for residents who may be struggling to pay utility bills.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gutowsky, to adopt Ordinance No. 140, 2020, on Second Reading.

RESULT: ORDINANCE NO. 139, 2020, ADOPTED ON SECOND READING [UNANIMOUS]
MOVER: Kristin Stephens, District 4
SECONDER: Susan Gutowsky, District 1
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

RESULT: ORDINANCE No. 140, 2020, ADOPTED ON SECOND READING [UNANIMOUS]
MOVER: Kristin Stephens, District 4
SECONDER: Susan Gutowsky, District 1
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

16. Public Hearing and First Reading of Ordinance No. 145, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Timberline Church Rezoning. (Postponed to Date Certain)

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.
The purpose of this item is to amend the City’s Zoning Map to change the zoning designation for the Timberline Church Campus from Low Density Mixed-Use Neighborhood (LMN) to Medium Density Mixed-Use Neighborhood (MMN). The area proposed to be rezoned is approximately 32.79 acres. The applicant proposes the rezoning to support future infill housing on the site and enable higher density housing than would be allowed with the current LMN zoning. Additional commercial and institutional uses may also be proposed. The church has been in discussions with CSU regarding a potential land swap to construct an attainable housing project. CSU would donate their 4.76 acres on Timberline Road, and the church will swap 8-10 acres for the CSU property.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 6-0 to recommend approval of the request with condition that the residential density be limited to 20 units per gross acre and that an Overall Development Plan (ODP) precede or accompany the Project Development Plan (PDP). The purpose of the condition of approval is to provide a density limit to help achieve a compatible transition with the surrounding neighborhood because the MMN zone district does not have a maximum density requirement. Additionally, the ODP would help identify the general design parameters for the property – including the general location and nature of proposed uses, transportation circulation, open space, buffers, and drainage features. A traffic study is also required. The ODP is required to be reviewed by the Planning and Zoning Board and would require at least one neighborhood meeting.

(Secretary's Note: The Council voted earlier in the meeting to postpone consideration of this item to November 24, 2020.)

RESULT: POSTPONED TO DECEMBER 1, 2020 [UNANIMOUS]
MOVER: Ken Summers, District 3
SECONDER: Ross Cunniff, District 5
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

Consideration of a motion to adjourn the City Council meeting to conduct the Board meetings listed below then return to the regular City Council meeting:

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gutowsky, that Council adjourn to conduct:
A. General Improvement District No. 1 Board Meeting; and
B. Skyview South General Improvement District No. 15 Board Meeting,
and then return to the regular Council meeting.

(Secretary's Note: The Council adjourned from 11:19 PM until 11:26 PM to conduct the aforementioned meetings then reconvened.)

RESULT: MOTION ADOPTED [UNANIMOUS]
MOVER: Kristin Stephens, District 4
SECONDER: Susan Gutowsky, District 1
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

OTHER BUSINESS
A. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.
   (Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)
B. **Consideration of a motion to authorize the appeal from Landmark Preservation Commission denial of eligibility of 724 and 726 College Avenue scheduled for December 1, 2020, to proceed using Remote Technology without the option for in-person participation:**

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Pignataro, that City Council find that the hearing on the appeal from Landmark Preservation Commission denial of eligibility of 724 and 726 College Avenue scheduled for December 1, 2020, is pressing and requires prompt action and further find that virtual technology will provide due process to hear that matter through sufficient public participation and input, and based upon such findings authorize a Quasi-Judicial Hearing using Remote Technology by the City Council to proceed in that matter pursuant to Section 8 of Ordinance No. 079, 2020.

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<tr>
<th>RESULT:</th>
<th>MOTION ADOPTED [UNANIMOUS]</th>
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<tbody>
<tr>
<td>MOVER:</td>
<td>Kristin Stephens, District 4</td>
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<tr>
<td>SECONDER:</td>
<td>Julie Pignataro, District 2</td>
</tr>
<tr>
<td>AYES:</td>
<td>Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff</td>
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**ADJOURNMENT**

A. **Consideration of a motion to adjourn this meeting to 4:30 p.m. on Tuesday, November 24:**

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gutowsky, that Council adjourn this meeting to 4:30 PM on Tuesday, November 24, for consideration of such business as may then come before the Council.

City Attorney Daggett noted Council may want to consider adjourning to 6:00 PM.

Mayor Pro Tem Stephens and Councilmember Gutowsky accepted the amendment as friendly.

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<thead>
<tr>
<th>RESULT:</th>
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<td>MOVER:</td>
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<tr>
<td>SECONDER:</td>
<td>Susan Gutowsky, District 1</td>
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<tr>
<td>AYES:</td>
<td>Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff</td>
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</tbody>
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The meeting adjourned at 11:31 PM.

____________________________
Mayor

ATTEST:

____________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
December 15, 2020

STAFF

Jason Holland, City Planner
Judy Schmidt, Legal

SUBJECT

Second Reading of Ordinance No. 145, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Timberline Church Rezoning.

EXECUTIVE SUMMARY

Adequate notice for second reading of this Ordinance was not published in the Coloradoan. Therefore, Council voted on December 1 to postpone second reading to this December 15, 2020, Council Meeting.

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted First Reading on November 24, 2020, amends the City’s Zoning Map to change the zoning designation for the Timberline Church Campus from Low Density Mixed-Use Neighborhood (LMN) to Medium Density Mixed-Use Neighborhood (MMN). The area proposed to be rezoned is approximately 32.79 acres. The applicant proposes the rezoning to support future infill housing on the site and enable higher density housing than would be allowed with the current LMN zoning. Additional commercial and institutional uses may also be proposed. The church has been in discussions with CSU regarding a potential land swap to construct an attainable housing project. CSU would donate their 4.76 acres on Timberline Road, and the church will swap 8-10 acres for the CSU property.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 6-0 to recommend approval of the request with condition that the residential density be limited to 20 units per gross acre and that an Overall Development Plan (ODP) precede or accompany the Project Development Plan (PDP). The purpose of the condition of approval is to provide a density limit to help achieve a compatible transition with the surrounding neighborhood because the MMN zone district does not have a maximum density requirement. Additionally, the ODP would help identify the general design parameters for the property - including the general location and nature of proposed uses, transportation circulation, open space, buffers, and drainage features. A traffic study is also required. The ODP is required to be reviewed by the Planning and Zoning Board and would require at least one neighborhood meeting.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, November 24, 2020 (w/o attachments) (PDF)
2. Ordinance No. 145, 2020 (PDF)

Item # 2 Page 1
AGENDA ITEM SUMMARY
November 24, 2020

City Council

STAFF

Jason Holland, City Planner
Judy Schmidt, Legal

SUBJECT

Public Hearing and First Reading of Ordinance No. 145, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Timberline Church Rezoning.

EXECUTIVE SUMMARY

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

At the November 17 Regular Meeting, Council voted to continue this item to the Adjourned Meeting on November 24, 2020.

The purpose of this item is to amend the City’s Zoning Map to change the zoning designation for the Timberline Church Campus from Low Density Mixed-Use Neighborhood (LMN) to Medium Density Mixed-Use Neighborhood (MMN). The area proposed to be rezoned is approximately 32.79 acres. The applicant proposes the rezoning to support future infill housing on the site and enable higher density housing than would be allowed with the current LMN zoning. Additional commercial and institutional uses may also be proposed. The church has been in discussions with CSU regarding a potential land swap to construct an attainable housing project. CSU would donate their 4.76 acres on Timberline Road, and the church will swap 8-10 acres for the CSU property.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 6-0 to recommend approval of the request with condition that the residential density be limited to 20 units per gross acre and that an Overall Development Plan (ODP) precede or accompany the Project Development Plan (PDP). The purpose of the condition of approval is to provide a density limit to help achieve a compatible transition with the surrounding neighborhood because the MMN zone district does not have a maximum density requirement. Additionally, the ODP would help identify the general design parameters for the property – including the general location and nature of proposed uses, transportation circulation, open space, buffers, and drainage features. A traffic study is also required. The ODP is required to be reviewed by the Planning and Zoning Board and would require at least one neighborhood meeting.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.
A. Overview of Main Considerations

Five criteria govern the review and findings for proposed amendments to the zoning map. These criteria can be paraphrased as ‘consistent with the comprehensive plan’; ‘warranted by changed conditions’; ‘compatible with surrounding uses’; ‘impacts to the natural environment’; and ‘a logical and orderly development pattern’. These criteria are explained and evaluated in the staff analysis section of this report.

The Timberline Church Campus could be a suitable location for densities that are higher than LMN, while still maintaining compliance with the Structure Plan and meeting City Plan Principles and Policies. The property’s close proximity to the Rigden Farm Neighborhood Center meets the purpose of the MMN zone district, which is intended to locate higher density housing in close proximity and with good multi-modal access to a Neighborhood Center. The Neighborhood Center also provides access to a transit hub. The MMN zone is considered a bridging zone district, concentrating density near services and transit by locating MMN near/adjacent to the Neighborhood Center (NC) zone district, with the MMN zone district providing a transition and link between these areas and surrounding lower density LMN zone district areas.

Compatibility with surrounding land uses may also be a consideration. There are different land use code standards for the LMN and MMN zones which could affect the overall size and scale of multifamily buildings, should these be proposed. The Planning and Zoning Board recommended a condition of approval that the MMN residential density be limited to 20 dwellings per acre.

The main differences between LMN and MMN zoning is that MMN allows higher density and larger multifamily buildings than LMN zoning, as shown in the following table.

<table>
<thead>
<tr>
<th>Code Standard</th>
<th>LMN Requirement</th>
<th>MMN Requirement</th>
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<tbody>
<tr>
<td>Maximum Density (based on gross acres of the residential development)</td>
<td>LMN: 9 units/acre overall, and 12 units maximum per phase; 12 units/acre maximum if affordable housing</td>
<td>MMN: No maximum per code; P&amp;Z condition of approval recommended to limit residential density to 20 dwellings per acre. Minimum average density: 7 units/acre minimum for developments 20 acres or less; 12 units/acre minimum if over 20 acres</td>
</tr>
<tr>
<td>Limit on number of units per building</td>
<td>LMN: Yes - maximum of 12 dwelling units per building</td>
<td>MMN: No maximum</td>
</tr>
<tr>
<td>Maximum Floor Area (of each building)</td>
<td>LMN: The maximum gross floor area (excluding garages) shall be fourteen thousand (14,000) square feet</td>
<td>MMN: No maximum</td>
</tr>
<tr>
<td>Maximum building height of one, two and three-family dwellings</td>
<td>LMN: 2.5 stories</td>
<td>MMN: 3 stories</td>
</tr>
<tr>
<td>Maximum Building Height for Multi-family</td>
<td>LMN: 3 stories</td>
<td>MMN: 3 stories</td>
</tr>
<tr>
<td>Maximum height for each residential story, and maximum building height to roof peak</td>
<td>• 12’ 8” maximum for each story, (which equals 38 feet from the finish floor to ceiling of the 3rd floor) • No maximum, but “Special Review” required if roof peak is over 40 feet</td>
<td></td>
</tr>
</tbody>
</table>
B. Site Context and Development History

The 32-acre Timberline Church Campus PUD was first approved in 1999. The approval included two building phases. The first phase was completed and includes the main church building and related parking on the site. A second building phase and parking expansion was envisioned, but never constructed, along the east and southeast portions of the site. The Foothills Channel is located along the south property boundary.

Surrounding Zoning and Land Uses

<table>
<thead>
<tr>
<th>Zoning</th>
<th>North</th>
<th>South</th>
<th>East</th>
<th>West</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoning</td>
<td>Rigden Farm Neighborhood Center (NC)</td>
<td>Pinecone Apartments PUD (MMN)</td>
<td>The Willow at Rigden Farm (LMN)</td>
<td>Meadows East (RL)</td>
</tr>
<tr>
<td>Land Use</td>
<td>Commercial</td>
<td>Multi-family</td>
<td>Single family attached and detached houses</td>
<td>Single family detached houses</td>
</tr>
</tbody>
</table>

C. Summary of the Review Criteria for Rezoning of Parcels Less Than 640 Acres

Only the Council may, after recommendation of the Planning and Zoning Board, adopt an ordinance amending the Zoning Map in accordance with the provisions of Division 2.9. An amendment to the Zoning Map may be proposed by Council, the Planning and Zoning Board, the Director or the owners of the property to be rezoned.

To approve a proposed rezoning of 640 acres of land or less (quasi-judicial) the decision maker must find that it satisfies the following criteria:

The proposed amendment is:

- Criterion 1: consistent with the City Comprehensive Plan (City Plan); and/or
- Criterion 2: warranted by changed conditions within the neighborhood surrounding and including the subject property.

The Planning and Zoning Board and Council may consider the following additional factors:

- Criterion 3: whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and is the appropriate zone district for the land;
- Criterion 4: whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands and natural functioning of the environment;
- Criterion 5: whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

D. Criterion 1: Consistent with the City’s Comprehensive Plan

1. Compliance with the City Structure Plan Map

   Background:

   The Structure Plan map serves as a blueprint for the desired future development pattern of the community, illustrating how the community will grow and change over time with a focus on the physical form and development pattern of the community. The Structure Plan Map includes place types or land use categories which provide a framework for the ultimate buildout of Fort Collins. These place types provide a policy structure that can apply to several specific zone districts within each place type by outlining a range of desired characteristics. (Attachment 4)
Timberline Church Campus:

The Structure Plan Map includes 13 land use place types, with 5 of the place types considered priority areas where the full infill or redevelopment of these areas has not been realized. The proposed Timberline Campus rezoning is within the Mixed-Neighborhood place type, which is one of the five priority land use areas included in the Structure Plan. The Mixed-Neighborhood place type is the overarching land use designation for both the LMN and MMN zone districts. Because of this, the proposed rezoning from LMN to MMN is consistent with the Structure Plan Map. Should the rezoning be approved, there is no need to amend either the Structure Plan Map or Residential Neighborhood Sign District.

2. Compliance with Structure Plan Mixed-Neighborhood Place Type Characteristics

City Plan (p. 98) describes the characteristics and considerations of the Mixed-Neighborhood place type which applies to both the LMN and MMN zone districts. The intent of the characteristics is to guide infill and redevelopment, outline the intended types of land uses, and describe development intensities to encourage within the Mixed-Neighborhood place type.

City Plan characteristics described for the Mixed-Neighborhood place type include:

a) Place-Type Land Uses:

Principal Land Uses in the Mixed-Neighborhood place type: Single-family detached homes, duplexes, triplexes and townhomes.

Supporting Land Uses in the Mixed-Neighborhood place type: ADUs, small scale multifamily buildings, small-scale retail, restaurants/cafes, community and public facilities, parks and recreational facilities, schools, places of worship.

Both LMN and MMN zones allow similar residential and commercial land uses. Supporting land uses include “small scale multifamily buildings.” There are different land use code standards for the LMN and MMN zones which could affect the overall size and scale of multifamily buildings, if proposed. Based on these standards, staff recommended four conditions of approval to the Planning and Zoning Board to mitigate potential impacts and ensure that all aspects of future development comply with the principles and policies in City Plan. The Planning and Zoning Board recommended approval of the rezoning without the four staff conditions of approval and recommended a different condition of approval to limit the residential density to 20 dwelling per acre. The four staff conditions outlined in the staff report focus on the scale of multifamily buildings and achieving compatibility and appropriate transition within the neighborhood context surrounding the property. (Attachment 9) The discussion from the Planning and Zoning Board was that these factors could be considered upon submittal of a Project Development Plan (PDP), rather than with the rezoning. (Attachment 10)

b) Place-Type Density:

Between five and 20 principal dwelling units per acre, typically equates to an average of 7 to 12 dwelling units per acre.

Overall density within the Mixed-Neighborhood place type around the property is as follows:

<table>
<thead>
<tr>
<th>Projects in the Mixed-Neighborhood Place type:</th>
<th>Total acres:</th>
<th>Density:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pinecone Apartments</td>
<td>15 acres</td>
<td>12.89 units/acre</td>
</tr>
<tr>
<td>Rigden Farm LMN</td>
<td>215 acres</td>
<td>8.9 units/acre</td>
</tr>
<tr>
<td>Rigden Farm MMN</td>
<td>24 acres</td>
<td>21.4 units/acre</td>
</tr>
<tr>
<td>Mixed-Neighborhood Totals:</td>
<td>254</td>
<td>14.4 units/acre</td>
</tr>
</tbody>
</table>
Existing development in the area complies with the Land Use Code standards for the LMN and MMN developments, however some existing development in the area is above the density range and typical average noted in City Plan for the Mixed Neighborhood place type.

c) Place-Type Location:

New development in Mixed-Neighborhood in place type should be located within walking/biking distance of services and amenities, as well as high-frequency transit, with the Neighborhood Center providing these services as the focal point within Mixed-Neighborhoods.

- The property is in close proximity to the Rigden Farm Neighborhood Center to the north.
- Timberline Church Campus could be a suitable location for densities that are higher than LMN, while still maintaining compliance with the Structure Plan and meeting City Plan Principles and Policies. One of the most important considerations for higher density housing is to be located in close proximity and with good multi-modal access to a Neighborhood Center. The proposed Timberline Church housing infill location meets these characteristics, which are described in both City Plan as well as in the purpose statements for the MMN zone district.
- The neighborhood center provides higher frequency bus service routes along Drake and Timberline consistent with the Transportation Master Plan.

Location of larger townhome or multifamily developments into existing single-family neighborhoods should generally be limited to edge or corner parcels that abut and/or are oriented toward arterial streets or an adjacent Neighborhood Mixed-Use District where transit and other services and amenities are available.

- The intent of this guideline is to avoid situations where larger scale multifamily developments are located in the middle of existing single-family neighborhoods and to reinforce the policy to have higher density housing in close proximity to shopping and services. While MMN is proposed for the Timberline Church Campus, the location is somewhat unique. The MMN housing area proposed does not have frontage directly on an arterial street, and it does not directly abut the commercial Neighborhood Center to the north. However, the proposed MMN housing could be integrated with and oriented to the Neighborhood Center with a private street and pedestrian connections.

d) Place-Type Transition:

Utilizing “small scale multifamily buildings” as a supporting land use.

Where townhomes or multifamily buildings are proposed in an existing neighborhood context, a transition in building height, massing and form should be required along the shared property line or street frontage.

- Because higher LMN densities have been constructed abutting the property to the east, and MMN exists to the south and north, a rezoning to MMN could be warranted. A comparison of the Land Use Code requirements for LMN and MMN is provided in Section 5 of the Planning and Zoning Board staff report. The discussion from the Planning and Zoning Board is that building height, massing and form could be considered at the time of development review rather than as part of the rezoning.

3. Compliance with City Plan Principles and Policies

City Plan provides guidance that the Structure Plan is not intended to be used as a stand-alone tool but should be considered in conjunction with City Plan principles, goals and policies as a tool to guide future growth and development.

OUTCOME AREA “LIV” -- NEIGHBORHOOD LIVABILITY AND SOCIAL HEALTH - Managing Growth:
These principles help the City to manage growth by encouraging infill and redevelopment, ensuring this development is compatible with the character of the surrounding neighborhood or area.

PRINCIPLE LIV 2: Promote Infill and Redevelopment:

POLICY LIV 2.1 - REVITALIZATION OF UNDERUTILIZED PROPERTIES
Support the use of creative strategies to revitalize vacant, blighted or otherwise underutilized structures and buildings, including, but not limited to: Infill of existing surface parking lots—particularly in areas that are currently, or will be, served by bus rapid transit (BRT) and/or high-frequency transit in the future.

PRINCIPLE LIV 3: Maintain and enhance our unique character and sense of place as the community grows

POLICY LIV 3.1 - Public Amenities
Design streets and other public spaces with the comfort and enjoyment of pedestrians in mind—such as plazas, pocket parks, patios, children’s play areas, sidewalks, pathways...

POLICY LIV 3.5 - Distinctive Design
...Development should not consist solely of repetitive design that may be found in other communities.

POLICY LIV 3.6 - Context-Sensitive Development
Ensure that all development contributes to the positive character of the surrounding area. Building materials, architectural details, color range, building massing, and relationships to streets and sidewalks should be tailored to the surrounding area.

PRINCIPLE LIV 4 - Enhance neighborhood livability

POLICY LIV 4.2 - Compatibility of Adjacent Development
Ensure that development that occurs in adjacent districts complements and enhances the positive qualities of existing neighborhoods. Developments that share a property line and/or street frontage with an existing neighborhood should promote compatibility by: Continuing established block patterns and streets to improve access to services and amenities from the adjacent neighborhood; Incorporating context-sensitive buildings and site features (e.g., similar size, scale and materials); and Locating parking and service areas where impacts on existing neighborhoods—such as noise and traffic—will be minimized.

Principle LIV 5 - Create more opportunities for housing choices.

POLICY LIV 5.3 - Land for Residential Development
Use density requirements to maximize the use of land for residential development to positively influence housing supply and expand housing choice.

Staff Comments Related to City Plan Principles and Policies:

- Taken together, these descriptions and policies establish an expectation that development of this parcel will factor in neighborhood input and achieve compatibility through project design. As recommended by the Planning and Zoning Board—policies that encourage compatibility by considering the context and surrounding characteristics of the site could be considered at the time of development review.

- City Plan policies could be met with either MMN or LMN zoning. Because higher LMN densities have been constructed abutting the property to the east, and MMN exists to the south and north, a rezoning to MMN could be warranted. The proposed MMN rezoning could meet these policies better by allowing an increase in density at a location near transit and commercial services.

- The MMN zone has long been considered a bridging zone district, concentrating higher density ranges near services and transit by locating MMN near/adjacent to the NC zone, with the MMN zone providing
a transition and link between these areas and surrounding lower density LMN areas. Higher frequency bus routes are currently provided at the Rigden Farm Neighborhood Center. The proposed rezoning could support higher density and better leverage the adjacent Neighborhood Mixed Use/Activity Center Area.

E. Criterion 2: and/or Warranted by changed conditions within the neighborhood surrounding and including the subject property.

The proposed rezoning is supported by several changed conditions in the area since the Timberline Church Campus was originally constructed, all of which support a change in zoning to MMN:

- The Rigden Farm Neighborhood Center has been constructed, which provides a mix of commercial uses that are within walking distance of the Timberline Church Campus.
- Higher density housing has been constructed to the north and east within Rigden Farm -- with higher densities concentrated on the perimeter of the Neighborhood Center.
  - Constructed in 1993, Pinecone Apartments to the south are 12.89 units per acre and are located in the MMN zone district.
  - Approved in 2002, the Willow housing development is located adjacent to the east of the proposed Timberline Church Campus, within the Rigden Farm LMN zone district.
  - Overall density for the Willow is 10.47 dwellings per gross acre.
  - Average housing density in the Rigden Farm MMN area to the north of the property is approximately 21.4 dwellings per gross acre.
- Bus transit routes are provided in the area, with the Neighborhood Center serving as a transit hub.
- The original plan for the Timberline Church Campus, which envisioned a second building phase for a maximum 3,500-person seating capacity, is no longer proposed. This would have required 875 parking spaces on the site. Actual peak seating capacity for the church is currently 1,844 seats, with a peak parking requirement of 461 parking spaces. Currently, the Campus includes vacant land to the east and surplus parking, with a total of 1,293 parking spaces on the property.

The Timberline Church development plan was first approved in 2000 and opened in 2002. Since that time, the majority of the 303-acre Rigden Farm development to the north and east of the Timberline Campus has been developed, with construction beginning in 2000. This includes the 23-acre Neighborhood Center (N-C) zone district to the north, 24-acres in the Medium Density Mixed Use Neighborhood (M-M-N) zone district and 215 acres in the Low Density Mixed-Use Neighborhood (L-M-N) zone district.

Additionally, Rigden Farm is a phased development plan. LMN areas within phased developments allow to concentrated densities within portions of the overall plan, provided that the overall density does not exceed 9 units per gross acre, and provided that no phase is greater than 12 units per gross acre. The Rigden Farm LMN zoning area utilizes this density range by providing lower density phases to the east and higher density phases to the west. Densities in the east portion of Rigden Farm, near Zeigler Road, are in the 4 unit per gross acre range.

F. Criterion 3: Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land.

The proposed MMN zoning could be compatible with existing surrounding land uses. There are different land use code standards for the LMN and MMN zones which could affect the overall size and scale of multifamily buildings, should these be proposed. The discussion from the Planning and Zoning Board was that achieving compatibility and appropriate transition within the neighborhood context surrounding the property could be further considered at the time of development review.
1. Existing Uses North of the Property:

The proposed MMN zoning is compatible with the commercial uses and higher density housing located adjacent to the north. The property is located in close proximity to the existing Neighborhood Center, which is consistent with the intent of MMN zoning.

2. Existing Uses South of the Property:

The existing Meadows East single-family development to the southeast is buffered by the perimeter storm drainage and the Foothills Channel. Existing mature trees are located along the edge of the channel near the rear property lines of the Meadows East homes. Stewart Case Park and Rendezvous Trail are located in this area, which provide an appropriate buffer and transition to the Meadows East neighborhood. The existing buffer, drainage areas and existing trees in this area provide a compatible transition from the proposed MMN zone to these existing uses.

3. Existing Uses East of the Property:

The Willow at Rigden Farm is located adjacent to the property to the east. The Willow development’s overall LMN density is near the highest maximum allowable LMN density at 10.47 units per gross acre. The Willow includes single-family attached buildings, with 12 units per building that are two stories in height. These buildings face west towards the Timberline Church Campus and are in close proximity to the property. Conditions of approval were recommended by staff to provide a transition in this area, discussed in Section 5 of the Planning and Zoning Board staff report.

4. Existing Uses West of the Property:

South Timberline Road is located along the west boundary of the property, which provides an appropriate buffer and transition to the Meadows East single-family neighborhood to the west.

G. Criterion 4: Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.

The proposed rezone to MMN is not anticipated to have significant impacts to the natural environment.

The Foothills Channel represents a significant habitat feature adjacent to the proposed infill housing. This habitat feature requires protection regardless of whether the development is rezoned. Additionally, code requirements for stormwater detention and water quality treatment are not affected by the rezoning.

H. Criterion 5: Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

The proposed MMN infill housing area would represent a logical and orderly development pattern which reflects the unique context of the site.

- The Rigden Farm neighborhood to the east (zoned LMN), provides a range of LMN densities, with higher density LMN development provided adjacent to the Timberline Church Campus, serving as a logical transition to MMN zoning on the subject property. The proposed rezone to MMN provides a more logical development pattern than the current LMN zoning, provided that conditions of approval are put in place to provide a compatible transition per City Plan.

- The Foothills Channel, existing drainage and stormwater detention areas to the east and south provide a buffer transition.

- Because the proposed infill housing area is located within close proximity to the existing Neighborhood Center, and it can be integrated into the surrounding neighborhoods’ street and pedestrian networks,
the proposed infill housing area could achieve a higher density while meeting the purpose of the MMN zone, as described in Division 4.6(A) of the Land Use Code. The MMN district is intended to:

“...be a setting for concentrated housing within easy walking distance of transit and a commercial district.”

“...form a transition and a link between surrounding neighborhoods and the commercial core with a unifying pattern of streets and blocks.”

The MMN zone “is intended to function together with surrounding low density neighborhoods [typically the L-M-N zone district] and a central commercial core [typically an N-C or C-C zone district]. The intent is for the component zone districts to form an integral, town-like pattern of development, and not merely a series of individual development projects in separate zone districts.”

BOARD / COMMISSION RECOMMENDATION

At its September 17, 2020, Planning and Zoning Board meeting, the Board recommended that Council approve the Timberline Church Rezone with a 6-0 vote, with the condition that the residential density be limited to 20 units per gross acre and that an Overall Development Plan (ODP) precede or accompany the Project Development Plan (PDP). (Attachment 10)

PUBLIC OUTREACH

A virtual neighborhood meeting was held on October 22, 2020. Approximately seven residents attended the virtual meeting. Staff has also received several comment letters from residents.

Discussion of the proposed rezoning centers on concerns that higher density housing which could be proposed after the rezoning would have negative impacts on the area. Concerns have been expressed related to increases in traffic, demand on the shopping center, stormwater impacts, and potential compatibility issues with larger buildings on the church site. (Attachments 11 & 12)

ATTACHMENTS

1. Location Map (PDF)
2. Aerial Map (PDF)
3. Perspective Map (PDF)
4. Structure Plan Map (PDF)
5. Existing Zoning Map (PDF)
6. Proposed Zoning Map (PDF)
7. Area Land Use Density Map (PDF)
8. Permitted Use Comparison LMN and MMN (PDF)
9. Planning & Zoning Board Staff Report (PDF)
10. Planning & Zoning Board Hearing Minutes (PDF)
11. Neighborhood Meeting Notes (PDF)
12. Resident Comment Letters (PDF)
13. Timberline Church Rezone Petition (PDF)
14. Petitioner’s Justification Narrative (PDF)
15. Timberline Church Rezone Boundary Map (PDF)
16. Powerpoint Presentation (PDF)
ORDINANCE NO. 145, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS BY CHANGING THE ZONING
CLASSIFICATION FOR THAT CERTAIN PROPERTY KNOWN
AS THE TIMBERLINE CHURCH REZONING

WHEREAS, Division 1.3 of the Fort Collins Land Use Code (the “Land Use Code”) establishes the Zoning Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code establishes procedures and criteria for reviewing the rezoning of land; and

WHEREAS, in accordance with the foregoing, the City Council has conducted a public hearing, considered the Staff Report, the Planning and Zoning Board recommendation and findings, and the evidence from the public hearing and has determined that the property that is the subject of this Ordinance should be rezoned as hereinafter provided; and

WHEREAS, the City Council has further determined that the proposed rezoning is consistent with the City's Comprehensive Plan and is warranted by changed conditions within the neighborhood surrounding and including the subject property as established in Section 2.9.4(H)(2) of the Land Use Code; and

WHEREAS, the purpose of the condition included below is to provide a density limit that will help achieve a compatible transition within the context of the existing surrounding neighborhood since the proposed Medium Density Mixed-Use Neighborhood ("M-M-N") Zone District does not include a maximum density and to require an Overall Development Plan to help identify the general design parameters for the subject property as it proceeds toward development; and

WHEREAS, to the extent applicable, the City Council has also analyzed the proposed rezoning against the considerations as established in Section 2.9.4(H)(3) of the Land Use Code and determined that the proposed MMN zoning: (a) is compatible with existing and proposed uses surrounding the subject property and is an appropriate zone district for the property; (b) is not anticipated to have significant impacts to the natural environment; and (c) represents a logical and orderly development pattern that reflects the unique context of the site; and

WHEREAS, adequate notice for the second reading of this Ordinance was not published in the Coloradoan prior to the December 1, 2020, Council Meeting; therefore, Council voted on December 1 to postpone second reading to this December 15, 2020, Council Meeting.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by changing the zoning classification from Low Density Mixed-Use Neighborhood (“L-M-N”) Zone District, to Medium Density Mixed-Use Neighborhood (“M-M-N”) Zone District, for the following described property in the City known as the Timberline Church Rezoning:

Lots 1-5 and Tract A of the Timberline Church PUD, containing 32.79 acres, more or less.

Section 3. That the following condition is hereby imposed upon the Timberline Church Rezoning as permitted by Section 2.9.4(I) of the Land Use Code:

that the residential density will be limited 20 units per gross acre and that an Overall Development Plan (ODP) will precede or accompany the Project Development Plan (PDP).

Section 4. That the property subject to the Timberline Church rezoning shall continue to be included in the Residential Sign District adopted pursuant to Section 3.8.7.1(M) of the Land Use Code.

Section 5. The City Manager is hereby authorized and directed to amend said Zoning Map in accordance with this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 24th day of November, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

________________________________________
Mayor

ATTEST:

________________________________________
City Clerk
Passed and adopted on final reading on this 15th day of December, A.D. 2020.

__________________________________
Mayor

ATTEST:

_____________________________
City Clerk
STAFF

Travis Storin, Interim Chief Finance Officer
Claire Goodwin, Sr. Mgr, Safety and Risk Management
Zachary Mozer, Finance Analyst
John Duval, Legal

SUBJECT

Second Reading of Ordinance No. 146, 2020 Appropriating Prior Year Reserves in the Self Insurance Fund for Increased Premiums for Property Loss Insurance.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on December 1, 2020, appropriates funds to compensate for increased premiums for the City’s property loss insurance that were paid by the Self Insurance Fund for the 2020/2021 period.

The City’s Self Insurance Fund is currently over budget through October 2020 and is expected to remain over budget through year-end. The primary driver of this increase is the higher insurance premiums that have been realized in 2020. These increases are due to two factors: an industry wide adjustment in coverage due to increased risk exposure in the state of Colorado, and more hail storm damage realized at the City in prior years, most notably in 2018.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments)  (PDF)
2. Ordinance No. 146, 2020  (PDF)
SUBJECT

First Reading of Ordinance No. 146, 2020 Appropriating Prior Year Reserves in the Self Insurance Fund for Increased Premiums for Property Loss Insurance.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate funds to compensate for increased premiums for the City’s property loss insurance that were paid by the Self Insurance Fund for the 2020/2021 period.

The City’s Self Insurance Fund is currently over budget through October 2020 and is expected to remain over budget through year-end. The primary driver of this increase is the higher insurance premiums that have been realized in 2020. These increases are due to two factors: an industry wide adjustment in coverage due to increased risk exposure in the state of Colorado, and more hail storm damage realized at the City in prior years, most notably in 2018.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

From 2017 through 2019, there has been an increase in hail activity that has been experienced in the Western and Midwestern regions of the US causing an increase in property insurance premiums. According to a recent report from the National Insurance Crime Bureau (NICB), the top 10 states in the US contributed 72% of the total number of hail claim losses for this period. Colorado ranks 2nd highest in the nation, trailing only Texas. In May of 2017, a powerful hailstorm caused widespread damage across Colorado, resulting in $3.6 billion of damages, according to the National Oceanic and Atmospheric Administration (NOAA).

Based on the data provided by NICB, Colorado’s hail losses saw a significant increase in 2018. Most specific to Fort Collins was a June 2018 event, in which the City sustained significant damages to buildings and vehicles that are still in the process of being repaired. The total claim amount to date for this one incident is $4.1 million. Further, the information provided in this report shows that four of the top cities in the US that have the highest hail claims for this period are in Colorado.

These increased damage events have resulted in higher premiums which have negatively impacted the Safety and Risk Management (SRM) budget. In March 2018, the upcoming two-year budget (for 2019 and 2020) provided that other service areas could incorporate SRM’s internal service charges into their budgets. At the time the outside vendor insurance quotes were provided, they had not yet incorporated the industry-wide impacts that are noted above. Compounding the situation is the renewal period of the City’s policies in May, which leads

Item # 5 Page 1
to more uncertainty in the budget process. During the 2019 budget year, the SRM budget was short by $200K - this amount was addressed in the annual supplemental appropriation ordinance last fall.

Because of upward pressure on insurance industry corrections, compounded by severe hailstorms in June of 2018, premiums increased from just over $1 million realized in 2018 to $1.9 million in 2020; a 90% increase. This, in addition to the cadence of the two-year budget cycle that solidified the SRM’s budget before the insurance premium adjustments, significantly underfunded what was needed for this expense.

There is some potential for higher inherent variances in estimated vs. actual premiums due to the long lead time between when estimates are quoted versus. when the coverages take effect. When the budget is made, insurance quotes are given 17 months in advance, causing a lower confidence that those premiums will hold steady until the first budgeted renewal period. SRM is currently working to move the renewal period from May to January so that it can be better synchronized with the City fiscal year.

This item was reviewed by the Council Finance Committee on November 16, 2020, and was approved to move forward for Council consideration.

SRM is requesting a supplemental appropriation of $660K because of industry premium corrections and realized losses in 2018.

**CITY FINANCIAL IMPACTS**

This item will appropriates $660,000 from the prior year reserves in the Self Insurance Fund to be pledged to the support the increased insurance premiums that have been realized for the 2020/2021 coverage period.

**ATTACHMENTS**

1. Council Finance Committee Minutes, November 16, 2020 (excerpt) (PDF)
WHEREAS, from 2017 through 2019, Colorado and Fort Collins have experienced increased hailstorm activity resulting in significant property damage that has caused the insurance industry to increase in Colorado their premiums for property loss insurance; and

WHEREAS, this has caused the City’s premiums for property loss insurance to significantly increase this year beyond what had previously been approved by City Council in the City’s 2019-2020 biennial budget and its 2020 annual appropriation ordinance; and

WHEREAS, as a result, there are insufficient appropriated funds in the City’s Self Insurance Fund to pay this increase in premiums thereby requiring this supplemental appropriation; and

WHEREAS, this appropriation benefits the health, safety and welfare of the residents of Fort Collins and serves the public purpose of purchasing property loss insurance for the City’s capital assets; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to appropriate by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Self Insurance Fund and will not cause the total amount appropriated in the Self Insurance Fund to exceed the current estimate of actual and anticipated revenues to be received in that Fund during this fiscal year; and

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from prior year reserves in the Self Insurance Fund the sum of SIX HUNDRED AND SIXTY THOUSAND DOLLARS ($660,000) for increased premiums for property loss insurance.
Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

ATTEST:

_______________________________
Mayor

City Clerk

Passed and adopted on final reading on the 15th day of December, A.D. 2020.

ATTEST:

_______________________________
Mayor

City Clerk
AGENDA ITEM SUMMARY
City Council

December 15, 2020

STAFF
Brian Hergott, Facilities Project Manager
Ken Mannon, Operations Services Director
Ingrid Decker, Legal

SUBJECT
Second Reading of Ordinance No. 147, 2020 Making Supplemental Appropriations for Roof Repairs on City Buildings Due to 2018 Hail Damage.

EXECUTIVE SUMMARY
This Ordinance, unanimously adopted on First Reading on December 1, 2020, appropriates additional insurance proceeds for further scope of work associated with completing roof repair work for a 2018 hail damage claim. These additional proceeds are for recovered depreciation, abatement of asbestos materials, code upgrades and project management.

STAFF RECOMMENDATION
Staff recommends adoption on Second Reading.

ATTACHMENTS
1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments)  (PDF)
2. Ordinance No. 147, 2020  (PDF)
AGENDA ITEM SUMMARY
City Council
December 1, 2020

STAFF

Brian Hergott, Facilities Project Manager
Ken Mannon, Operations Services Director
Ingrid Decker, Legal

SUBJECT

First Reading of Ordinance No. 147, 2020 Making Supplemental Appropriations for Roof Repairs on City Buildings Due to 2018 Hail Damage.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate additional insurance proceeds for further scope of work associated with completing roof repair work for a 2018 hail damage claim. These additional proceeds are for recovered depreciation, abatement of asbestos materials, code upgrades and project management.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance.

BACKGROUND / DISCUSSION

In October 2019, Council appropriated $4,076,143 in anticipated insurance proceeds for the repairs on 36 City buildings with damage from the June 2018 hail storm. The roof projects have since been bid out, contracted for repairs, and 90% of the work is completed. Through the course of contracting, permitting and inspecting the work it has been determined additional scope of work was required above and beyond what was covered in the initial insurance settlement.

Prior Appropriation of 2018 Hail Funds

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance 1st Payment of Funds</td>
<td>$2,713,458</td>
</tr>
<tr>
<td>Anticipated 2nd Payment of Funds</td>
<td>$1,362,686</td>
</tr>
<tr>
<td><strong>Total Prior Appropriations</strong></td>
<td><strong>$4,076,144</strong></td>
</tr>
</tbody>
</table>

Funds to be Appropriated with this Ordinance

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extra proceeds received in 2nd payment above</td>
<td>$51,278</td>
</tr>
<tr>
<td>Anticipated Roof Depreciation Payment</td>
<td>$526,820</td>
</tr>
<tr>
<td>Anticipated Material Abatement Reimbursement</td>
<td>$302,700</td>
</tr>
<tr>
<td>Anticipated Roofing Code Upgrades</td>
<td>$514,166</td>
</tr>
<tr>
<td>Anticipated Project Management Reimbursement</td>
<td>$151,756</td>
</tr>
<tr>
<td>Less City Insurance Deductible</td>
<td>$(50,000)</td>
</tr>
</tbody>
</table>
Total Funds in This Appropriation
1,496,720
Total Anticipated Project Budget
5,622,864

CITY FINANCIAL IMPACTS

This item will appropriate $1,496,720 of additional insurance proceeds to a non-lapsing fund to be used for the remaining work associated with the 2018 hail claim.
ORDINANCE NO. 147, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS
FOR ROOF REPAIRS ON CITY BUILDINGS DUE TO 2018 HAIL DAMAGE

WHEREAS, in June 2018 a hailstorm damaged the roofs of 36 City buildings; and

WHEREAS, on October 15, 2019, the City Council approved Ordinance No. 115, 2019, appropriating $4,076,143 in insurance proceeds to be spent on roof repairs; and

WHEREAS, through the process of contracting, permitting and inspecting the repairs, City staff determined that additional repair work was required beyond what was covered by the initial insurance settlement; and

WHEREAS, the City anticipates receiving $1,496,720 in additional insurance proceeds for roof repairs; and

WHEREAS, the City Council has determined that this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of protecting the public investment in City properties; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriations, in combination with all previous appropriations for that fiscal year, does not exceed the current estimate of actual and anticipated revenues to be received during the fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the General Fund and will not cause the total amount appropriated in the General Fund to exceed the current estimate of actual and anticipated revenues to be received in that Fund during this fiscal year.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from unanticipated revenue in the General Fund the sum of ONE MILLION FOUR HUNDRED NINETY-SIX THOUSAND SEVEN HUNDRED TWENTY DOLLARS ($1,496,720) for expenditure from the General Fund for roof repairs on City buildings due to 2018 hail damage.
Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

__________________________________
Mayor
ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 15th day of December, A.D. 2020.

__________________________________
Mayor
ATTEST:

_______________________________
City Clerk
SUBJECT

EXECUTIVE SUMMARY
This Ordinance, unanimously adopted on First Reading on December 1, 2020, appropriates grant revenue Transfort has been allocated by the Federal Transit Agency (FTA). Transfort was awarded $10,368,067 and will net the amount of $8,719,626 in Coronavirus Aid, Relief and Economic Security (CARES) Act through FTA apportionments to urbanized areas. CARES funding is provided at a 100-percent federal share, with no local match required, and is available to support capital, operating, and other expenses to prepare for and respond to COVID-19. Transfort confirmed this money would be available earlier in the year. At that time, Transfort planned to use the CARES funds to pay for what had previously been allocated from the General Fund for operating assistance, preventative maintenance, and contracted service costs.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS
1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments) (PDF)
2. Ordinance No. 148, 2020 (PDF)
AGENDA ITEM SUMMARY

December 1, 2020

City Council

STAFF

Drew Brooks, Director of Transit
Claire Havelda, Legal

SUBJECT


EXECUTIVE SUMMARY

The purpose of this item is to appropriate grant revenue Transfort has been allocated by the Federal Transit Agency (FTA). Transfort was awarded $10,368,067 and will net the amount of $8,719,626 in Coronavirus Aid, Relief and Economic Security (CARES) Act through FTA apportionments to urbanized areas. CARES funding is provided at a 100-percent federal share, with no local match required, and is available to support capital, operating, and other expenses to prepare for and respond to COVID-19. Transfort confirmed this money would be available earlier in the year. At that time, Transfort planned to use the CARES funds to pay for what had previously been allocated from the General Fund for operating assistance, preventative maintenance, and contracted service costs.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

On Friday, March 27, 2020, President Trump signed the CARES Act into law. The CARES act provided emergency appropriations to support Executive Branch agency operations during the COVID-19 pandemic. The FTA allocated $25 billion to recipients of urbanized area and rural area formula funds, with $22.7 billion to large and small urban areas. Funding is provided at 100-percent federal share with no local match required.

Operating expenses incurred beginning on January 20, 2020, for all rural and urban recipients are eligible, including operating expenses to maintain transit services as well as paying for administrative leave for transit personnel due to reduced operations during an emergency.

CARES funding was disbursed through FTA apportionments to its Urbanized Area (Section 5307) Formula program. Transfort’s apportionment is $10,368,067. Because Transfort is the designated, or primary, recipient for the geographical Transportation Management Area (TMA), Transfort is responsible for allocating dedicated funds to smaller transit agencies and metropolitan planning organizations in the TMA. After Transfort distributes the appropriate allocations to Berthoud Area Transportation System (BATS) in the amount of $174,736, and the North Front Range Metropolitan Planning Organization (NFRMPO) in the amount of $1,473,705, Transfort will receive $8,719,626 for the City.

Through existing FTA-approved agreements with BATS and NFRMPO, the City retains 38% of BATS’ and NFRMPO’s funding allocation to exchange their respective federal share with local funds. This exchange relieves BAT and NFRMPO from federal compliance responsibilities.
Agenda Item 7

Transfort will use these funds to continue provision of fixed route service. The Fort Collins area has seen significant impacts from COVID-19 and has taken measures to ensure social distancing when possible while providing public transportation. Additionally, CARES funds will be used for preventative maintenance activities for rolling stock, facilities, and IT equipment. Regular, scheduled, preventative maintenance will continue to allow Transfort to realize the benefits of a safe, reliable, and well-maintained fleet in support of its services.

CARES funds will also be used to fund Transfort’s complementary ADA paratransit service, Dial A Ride, which is provided by a contractor, satisfying ADA requirements of providing paratransit service for eligible clients. As a result of the COVID-19 pandemic, Transfort temporarily reduced service effective April 18, 2020. In an effort to ensure that citizens can still access essential services, Transfort began offering a taxi service option, performed by a contractor, allowing riders to schedule a trip from a bus stop along a suspended route, to or from another linked bus stop or transit center. CARES funds will also be used to provide this contracted Demand Response Service.

Transfort recognizes that public transit is an essential service and that many transit-dependent members of the community rely on public transit to get to and from work, buy groceries and other essentials, and receive medical care or care for loved ones. Transfort has seen a significant drop in ridership and revenue during the COVID-19 pandemic. The CARES funding received will greatly benefit the safety, quality, and levels of service that Transfort is able to provide during this time.

CITY FINANCIAL IMPACTS

The following is a summary of the project funding using CARES funds. These funds are provided at a 100-percent federal share and no local match is required.

<table>
<thead>
<tr>
<th>Funds Provided by FTA - Intended Use</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY20 CARES Funds - Operations</td>
<td>$7,200,000</td>
</tr>
<tr>
<td>FY20 CARES Funds - Preventative Maintenance</td>
<td>$2,068,067</td>
</tr>
<tr>
<td>FY20 CARES Funds - ADA Paratransit Contracted Service</td>
<td>$500,000</td>
</tr>
<tr>
<td>FY20 CARES Funds - Demand Response Contracted Service</td>
<td>$600,000</td>
</tr>
<tr>
<td><strong>Total Funding Provided</strong></td>
<td><strong>$10,368,067</strong></td>
</tr>
<tr>
<td>Less local dollars pass through to NFRMPO</td>
<td>($1,473,705)</td>
</tr>
<tr>
<td>Less local dollars pass through to BATS</td>
<td>($174,736)</td>
</tr>
<tr>
<td><strong>Net City Financial Impact</strong></td>
<td><strong>$8,719,626</strong></td>
</tr>
</tbody>
</table>

Since sufficient appropriations were already provided during the 2020 Budget process, no additional increase in the Transit Fund expense budget will be needed, rather these funds will cover much of the 2020 Transit costs. Appropriations of these funds are necessary due to City Code Article V, Part I, Section 4.

Note that the funding provided by the FTA takes the place of General Fund and Transportation Fund monies that would have been the basis for Transit spending during the fiscal year.
ORDINANCE NO. 148, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT FUNDING FOR TRANSFORT OPERATING ASSISTANCE, PREVENTATIVE MAINTENANCE, AND CONTRACTED SERVICE COSTS RELATED TO PREPARATION FOR AND RESPONSE TO THE COVID-19 PANDEMIC

WHEREAS, in response to the public health emergency resulting from the spread of the Novel Coronavirus 2019 (“COVID-19”), the City Manager proclaimed a local emergency on March 13, 2020, and City Council extended such proclamation with its adoption of Resolution 2020-030; and

WHEREAS, the City received grant revenue from the Federal Transit Agency (“FTA”) in the form of Coronavirus Aid, Relief and Economic Security (“CARES”) Act appropriations to urbanized areas; and

WHEREAS, the FTA CARES Act funding supports capital, operating, and other transit agency expenses to prepare for, and respond, to COVID-19 without requiring a local match; and

WHEREAS, in the FTA CARES Act funding replaced General Fund and Transit Fund monies that would have been the basis of Transit spending during the current fiscal year; and

WHEREAS, the FTA CARES Act funding was disbursed through apportionments to FTA Urbanized Area Formula programs; Fort Collins’ Transfort Department being designated as a primary recipient for this geographical Transportation Management Area (“TMA”); and

WHEREAS, the City’s Transfort Department received a total of $10,368,067 for the TMA; and

WHEREAS, Transfort is responsible for allocating and dedicating funds to smaller transit agencies in the TMA; and

WHEREAS, $174,736 of the funds will be allocated to the Berthoud Area Transportation System (“BATs”), and $1,473,705 of the funds to the North Front Range Metropolitan Planning Organization (“NFRMPO”); the remaining $8,719,626 is allocated to Fort Collins’ Transfort Department; and

WHEREAS, the City’s Transfort Department will use these CARES Act funds for operating assistance, preventative maintenance, and contracted service costs for 2020 and 2021; and

WHEREAS, this appropriation benefits public health, safety and welfare of the residents of Fort Collins and serves the public purpose of providing critical transportation services and complementary ADA paratransit services to the Fort Collins’ community; and
WHEREAS, Article V, Section 9, of the City Charter permits the City Council, upon recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriations, in combination with all previous appropriations for that fiscal year, does not exceed the current estimate of actual and anticipated revenues to be received during the fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Transit Services Fund and will not cause the total amount appropriated in the Transit Services Fund to exceed the current estimate of actual and anticipated revenues to be received in that fund during this fiscal year.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from grant revenue in the Transit Services Fund the sum of TEN MILLION THREE HUNDRED SIXTY-EIGHT THOUSAND SIXTY-SEVEN DOLLARS ($10,368,067) for expenditure from the Transit Services Fund for operating assistance, preventative maintenance, and contracted service costs related to preparation for and response to the COVID-19 pandemic during the 2020 and 2021 fiscal years.

Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk

Passed and adopted on final reading on the 15th day of December, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
December 15, 2020

STAFF
Kyle Lambrecht, Civil Engineer
Dan Woodward, Civil Engineer I
Dean Klingner, Transfort and Parking Interim General Manager
Claire Havelda, Legal

SUBJECT
Second Reading of Ordinance No. 153, 2020, Adopting the 2021 Larimer County Regional Transportation Capital Expansion Fee Schedule.

EXECUTIVE SUMMARY
This Ordinance, unanimously adopted on First Reading on December 1, 2020, adopts the 2021 Larimer County Regional Transportation Capital Expansion Fee Schedule.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS
1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments) (PDF)
2. Ordinance No. 153, 2020 (PDF)
AGENDA ITEM SUMMARY
City Council

December 1, 2020

STAFF

Kyle Lambrecht, Civil Engineer
Dan Woodward, Civil Engineer I
Dean Klingner, Transfort and Parking Interim General Manager
Claire Havelda, Legal

SUBJECT

First Reading of Ordinance No. 153, 2020, Adopting the 2021 Larimer County Regional Transportation Capital Expansion Fee Schedule.

EXECUTIVE SUMMARY

The purpose of this item is to adopt the 2021 Larimer County Regional Transportation Capital Expansion Fee Schedule.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

In 2000, the City and Larimer County (County) entered into an intergovernmental agreement (IGA) authorizing the City to collect the Larimer County Regional Transportation Capital Expansion Fees (Regional TCEFs) on behalf of the County. The Regional TCEFs generate revenue for capacity related improvements to regionally significant roadways that are necessitated by new development. The Regional TCEFs are only used on improvements that mutually benefit both the City and County. The Regional TCEFs are collected at the issuance of a building permit.

Per the IGA, the County serves as the Regional TCEF administrator and is responsible to develop project recommendations for fee utilization. The County’s recommendations are typically based on the County’s Transportation Master Plan, a document which identifies regionally significant roadways. Once a project has been identified, City and County staff work together to determine Regional TCEF funding allocations. Regional TCEFs are frequently leveraged with other funds to support larger scale capital projects and can fully support small scale capacity related improvements.

The City and County have previously partnered to design and construct several projects along regionally significant roadways using the Regional TCEF, including improvements to Shields Street and the Shields Street/Vine Drive intersection. City and County staff continue to collaborate on expenditure of the Regional TCEF funds and anticipate using the current funds to improve a section of Taft Hill Road between Horsetooth Road and Harmony Road.

The Larimer County Land Use Code specifies that its Regional TCEF must be updated annually to reflect changes in road construction costs during the previous year. In August, the Board of County Commissioners adopted a revised fee schedule which increased the Regional TCEF by 7.7%. The County’s fee adjustment is based on an eight-quarter moving average calculated from the Colorado Construction Cost Index data compiled...
and reported by the Colorado Department of Transportation. A copy of the August 10, 2020, Minutes of the Board of County Commissioners approving the revised fees has been included with this item.

The revised Regional TCEF, along with a comparison to the 2020 fees, are as follows:

<table>
<thead>
<tr>
<th>Development Type</th>
<th>2021 Regional Road Fee</th>
<th>2020 Regional Road Fee</th>
<th>Increase or Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential (per dwelling) by Finished Square Foot of Living Space</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>900 or less</td>
<td>$181</td>
<td>$168</td>
<td>$13</td>
</tr>
<tr>
<td>901 to 1300</td>
<td>$253</td>
<td>$235</td>
<td>$18</td>
</tr>
<tr>
<td>1301 to 1800</td>
<td>$306</td>
<td>$284</td>
<td>$22</td>
</tr>
<tr>
<td>1801 to 2400</td>
<td>$358</td>
<td>$332</td>
<td>$26</td>
</tr>
<tr>
<td>2401 to 3000</td>
<td>$401</td>
<td>$372</td>
<td>$29</td>
</tr>
<tr>
<td>3001 to 3600</td>
<td>$436</td>
<td>$405</td>
<td>$31</td>
</tr>
<tr>
<td>3601 or more</td>
<td>$466</td>
<td>$433</td>
<td>$33</td>
</tr>
<tr>
<td>Non-Residential (per 1000 Square Feet of Floor Area)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial</td>
<td>$468</td>
<td>$435</td>
<td>$33</td>
</tr>
<tr>
<td>Office &amp; Other Services</td>
<td>$276</td>
<td>$256</td>
<td>$20</td>
</tr>
<tr>
<td>Industrial</td>
<td>$111</td>
<td>$103</td>
<td>$8</td>
</tr>
</tbody>
</table>

The revised fees became effective within the County on September 1, 2020. Under the IGA, revisions to the Regional TCEF do not take effect in the City until Council approves a new fee schedule.

**CITY FINANCIAL IMPACTS**

The fees are collected on behalf of Larimer County and the program. Revenues from the fees will pass through City accounts and will not affect City revenue limits under Article X, Section 20. The City does retain a 2% administration fee. Adoption will result in an increase to development fee payers.

**ATTACHMENTS**

1. Board of County Commissioners Minutes, August 10, 2020  (PDF)
ORDINANCE NO. 153, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING THE 2021 LARIMER COUNTY REGIONAL TRANSPORTATION CAPITAL EXPANSION FEE SCHEDULE

WHEREAS, the City and Larimer County (the “County”) previously entered into an intergovernmental agreement, as amended from time to time, whereby the City collects a Regional Transportation Capital Expansion Fee (also known as a “regional road impact” fee) on behalf of Larimer County at the time of issuance of building permits, which fee raises revenue for road improvements on regionally significant roadways that are necessitated by new development (the “IGA”); and

WHEREAS, the City and the County have established a procedure pursuant to City Code Section 7.5-82 for the City Council to consider and approve any County-proposed changes to the Regional Transportation Capital Expansion Fee schedule in order to reflect changes in construction costs, or other relevant factors (the “Regional TCEF Schedule”); and

WHEREAS, the last changes to the Regional TCEF Schedule were formally adopted by the City in 2019, and the County is now proposing a revised fee schedule that increases the Regional TCEF by 7.7%, which reflects changes in road construction costs and is based on an eight-quarter moving average calculated from the Colorado Construction Cost Index data compiled by the Colorado Department of Transportation; and

WHEREAS, under the terms of the IGA, revisions to the Regional TCEF Schedule do not take effect in the City until City Council approves the new fee schedule; and

WHEREAS, the City Council has determined that it is in the best interests of the City that the County’s proposed changes to the Regional TCEF Schedule be adopted in order to further the public interest of adequately funding road improvements that are necessitated by new developments along regionally significant roadways that impact the City.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the 2021 Larimer County Regional Transportation Capital Expansion Fee Schedule attached hereto as Exhibit “A” and incorporated herein by reference is hereby adopted and approved and shall go into effect in Fort Collins upon the effective date of this Ordinance.
Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk

Passed and adopted on final reading on the 15th day of December, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
Transportation Capital Expansion Fee Schedule

### Land Use Type

<table>
<thead>
<tr>
<th>Residential (per Dwelling) by Square Feet of Finished Living Space</th>
<th>County Road TCEF</th>
<th>Regional Road TCEF</th>
<th>Total Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>900 or less (Square Feet)</td>
<td>$2,160</td>
<td>$181</td>
<td>$ 2,341</td>
</tr>
<tr>
<td>901-1300 (Square Feet)</td>
<td>$3,029</td>
<td>$253</td>
<td>$ 3,282</td>
</tr>
<tr>
<td>1301-1800 (Square Feet)</td>
<td>$3,647</td>
<td>$306</td>
<td>$ 3,953</td>
</tr>
<tr>
<td>1801-2400 (Square Feet)</td>
<td>$4,270</td>
<td>$358</td>
<td>$ 4,628</td>
</tr>
<tr>
<td>2401-3000 (Square Feet)</td>
<td>$4,792</td>
<td>$401</td>
<td>$ 5,192</td>
</tr>
<tr>
<td>3001-3600 (Square Feet)</td>
<td>$5,218</td>
<td>$436</td>
<td>$ 5,654</td>
</tr>
<tr>
<td>3601 or more (square Feet)</td>
<td>$5,575</td>
<td>$466</td>
<td>$ 6,041</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nonresidential (per 1,000 Square Feet of Floor Area)</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial</td>
<td>$1,328</td>
<td>$111</td>
<td>$ 1,439</td>
</tr>
<tr>
<td>Commercial</td>
<td>$5,595</td>
<td>$468</td>
<td>$ 6,064</td>
</tr>
<tr>
<td>Office and other Services</td>
<td>$3,292</td>
<td>$276</td>
<td>$ 3,568</td>
</tr>
</tbody>
</table>

- The fee is based on the current Larimer County Transportation Capital Expansion Fee (TCEF) Study. The TCEF Study and TCEF Sections of the Larimer County Land Use Code are at [www.larimer.org/engineering/development-review](http://www.larimer.org/engineering/development-review).
- The "Residential" tiered fee schedule based on square footage applies to building permits for new residential structures with an application date after June 30, 2018. For new residences constructed after this date, the TCEF will also be applied to any new or additional finished living space square footage, including permits for additions and basement finishes. In such cases, the total fee due is the based on the incremental difference between the existing & proposed finished living square footage. Finished living square footage excludes unfinished basements, attics, and garage floor area. The "Residential" tiered fee structure will not be applied to additions or finishes of existing living space IF the original residential building permit was initiated before July 1, 2018.
- The "Nonresidential" fee schedule is based on building use and total square feet. The TCEF applies to new square footage and to changes of use of existing square footage of three general nonresidential categories that are further defined below:
  - "Industrial” includes the processing or production of goods, along warehousing, transportation, communications, and utilities.
  - "Commercial” includes retail development and eating/drinking places, along with entertainment uses often located in a shopping center (e.g. movie theater).
  - ”Office & Other Services” includes offices, health care and personal services, business services (e.g. banks) and lodging. Public and quasi-public buildings that provide educational, social assistance, or religious services are also included in this category.
AGENDA ITEM SUMMARY
City Council

December 15, 2020

STAFF

Mark Sears, Natural Areas Manager
Tawnya Ernst, Real Estate Specialist III
Ingrid Decker, Legal

SUBJECT

Second Reading of Ordinance No. 154, 2020, Declaring Certain City-Owned Property on Arapaho Bend Natural Area as Road Right-of-Way.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on December 1, 2020, dedicates a strip of property owned by the Natural Areas Department (NAD) as road right-of-way (ROW) via the proposed Arapaho Bend Ponds Subdivision plat, and to authorize the City Manager to sign said plat. NAD is platting a 3.099-acre parcel for the construction of a new trailhead parking lot. This project triggers the development review process and the requirement to dedicate additional road right-of-way for Strauss Cabin Road.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments) (PDF)
2. Ordinance No. 154, 2020 (PDF)
AGENDA ITEM SUMMARY
City Council

December 1, 2020

STAFF

Mark Sears, Natural Areas Manager
Tawnya Ernst, Real Estate Specialist III
Ingrid Decker, Legal

SUBJECT

First Reading of Ordinance No. 154, 2020, Declaring Certain City-Owned Property on Arapaho Bend Natural Area as Road Right-of-Way.

EXECUTIVE SUMMARY

The purpose of this item is to dedicate a strip of property owned by the Natural Areas Department (NAD) as road right-of-way (ROW) via the proposed Arapaho Bend Ponds Subdivision plat, and to authorize the City Manager to sign said plat. NAD is platting a 3.099-acre parcel for the construction of a new trailhead parking lot. This project triggers the development review process and the requirement to dedicate additional road right-of-way for Strauss Cabin Road.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

NAD owns the Arapaho Bend Natural Area which was acquired in six transactions between 1994 and 2014. The 545-acre property is a popular destination for wildlife watching, hiking, biking, boating, fishing, and horseback riding. The site has three miles of natural surface trails around five ponds, Rigden Reservoir and along the river, and two miles of the paved Poudre River Trail.

Arapaho Bend is currently served by two formal parking lots: the north lot is at the north end of Strauss Cabin Road and south lot is the Harmony Transit Center lot. (Attachment 1) A third small unofficial lot exists off Strauss Cabin Road. The Strauss Cabin parking lots are at capacity most weekends and most evenings resulting in overflow parking along Strauss Cabin Road. In order to reduce safety issues with the overflow parking, NAD intends to eliminate the unofficial approximately 6-8 space parking lot and construct this third trailhead parking lot within the 3+ acre platted parcel to better accommodate existing and future parking needs. The parking lot will primarily serve the natural area, but it will also provide access to the Poudre River Trail, which will be connected under the I-25 Poudre River Bridge to the existing trail in Timnath in 2022. The new, approximately 33 space parking lot will have a gravel surface, paved ADA parking, a vault toilet and a paved connection trail to the paved Poudre River trail which will provide enhanced ADA access.

Construction of the parking lot triggers the development review process, dedication of the road right of way and the payment of local street improvement fees in lieu of constructing the local street improvements. NAD has platted the area for the parking lot. The plat includes the dedication of a 500’-long, 12’-wide right of way along Strauss Cabin Road. This allows Planning to approve a minor amendment and limits NAD’s costs for local street fees in connection with the development of the parking lot to the 500’ foot parking lot frontage instead of the full mile of the natural area’s frontage along Strauss Cabin Road.
Parks Planning is a partner in this parking lot project by providing the project management for the design and construction, which will be built at the same time as the Poudre Trail connection under I-25 to Timnath in 2021-2022. The combined project will save NAD the cost of project management and will reduce the cost of design and construction.

CITY FINANCIAL IMPACTS

NAD will pay Transportation $114,000 to cover the cost of the local street fees for the 500’ of street frontage adjacent to the new parking lot. Transportation plans to use these funds to help construct sidewalk improvements on the north side of Harmony Road from Lady Moon Drive east to Strauss Cabin Road, which will provide pedestrian/bicycle access to Arapaho Bend from neighborhoods to the south and west.

Environmental impacts are anticipated to be minimal: the vegetation in the area for the proposed parking lot is mostly non-native smooth brome grass.

BOARD / COMMISSION RECOMMENDATION

On September 10, 2020, the Land Conservation and Stewardship Board voted 6-1 to recommend that Council approve an Ordinance dedicating a strip of property owned by the Natural Areas Department (NAD) as road right-of-way (ROW) and to acknowledge a minor subdivision of Arapaho Bend Natural Area to plat a 3.099-acre parcel for the construction of a new trailhead parking lot.

PUBLIC OUTREACH

NAD updated the Management Plan for the Poudre River Natural Areas in 2011 after thorough Public Participation, which included the proposal to construct this new parking lot.

On November 12, 2020, the Land Conservation and Stewardship Board was presented with information justifying the need for and the location of the proposed new middle parking lot (Attachment 2) as requested by the Board at their September and October meetings. After discussion the Board concluded that the parking lot was justified and was being proposed in the appropriate location.

ATTACHMENTS

1. Parking Lot Plat  (PDF)
2. Middle Parking Lot - Conceptual Sketch  (PDF)
3. Land Conservation & Stewardship Board Minutes - September 2020 (Excerpt)  (PDF)
ORDINANCE NO. 154
OF THE COUNCIL OF THE CITY OF FORT COLLINS
DECLARING CERTAIN CITY-OWNED PROPERTY
ON ARAPAHO BEND NATURAL AREA AS ROAD RIGHT-OF-WAY

WHEREAS, the City owns 545 acres of property in southeast Fort Collins known as Arapaho Bend Natural Area (the “City Property”); and

WHEREAS, the Natural Areas Department (NAD) is planning to enlarge and improve one of the parking lots serving the City Property as it is often at capacity, resulting in overflow parking along Strauss Cabin Road and resulting safety issues; and

WHEREAS, the proposed construction project (the “Project”) would provide 33 parking spaces including paved ADA parking, a vault toilet, and a paved connection to the Poudre River trail; and

WHEREAS, the Project triggers the City’s development review process, dedication of road right of way, and the payment of local street improvement fees in lieu of constructing the local street improvements; and

WHEREAS, NAD has platted the three-acre site of the parking lot, which has only 500 feet of frontage along Strauss Cabin Road, and in doing so has limited the local street fees due in connection with development of the parking lot to the 500 feet attributable to the area that will actually be developed instead of the full mile of the City Property’s entire natural area frontage along Strauss Cabin Road; and

WHEREAS, the proposed Arapaho Bend Ponds Subdivision plat, attached hereto as Exhibit “A” and incorporated herein by reference (the “Plat”), includes the dedication of a 500 foot-long, 12 foot-wide right-of-way along Strauss Cabin Road (approximately .14 acres) in the area indicated on Exhibit “A”; and

WHEREAS, NAD will also pay the Transportation Department $114,000 in local street fees for the 500 feet of street frontage adjacent to the new parking lot; and

WHEREAS, Transportation plans to use these funds to help construct sidewalk improvements on the north side of Harmony Road from Lady Moon Drive to Strauss Cabin Road, which will provide pedestrian/bicycle access to the City Property from nearby neighborhoods; and

WHEREAS, converting a piece of property owned by the City in fee simple to right-of-way is tantamount to a conveyance of an interest in the property, as doing so creates certain public rights in the property that would not otherwise exist on City-owned property; and

WHEREAS, Section 23-111 of the City Code authorizes the City Council to sell, convey or otherwise dispose of any interests in real property owned by the City, provided the City Council first finds, by ordinance, that such sale or other disposition is in the best interest of the City; and

-1-
WHEREAS, the City Council determines that converting .14 acres of the City Property to right-of-way to facilitate the Project is in the best interest of the City and serves a Natural Areas purpose by providing improved facilities and access for public use of the City Property; and

WHEREAS, at its regular meeting on September 10, 2020, the Land Conservation and Stewardship Board voted to recommend that the City Council approve the dedication of the right-of-way described herein.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby declares that the real property described as a 12-foot right of way alignment on Exhibit “A” shall constitute right-of-way for Strauss Cabin Road and related improvements, including without limitation public utilities, pedestrian, transit and bicycle access and improvements, landscaping, and such other related purposes as may now or in the future be determined appropriate, and hereby finds that such declaration is in the best interest of the City.

Section 3. That the City Manager is hereby authorized to execute the final plat for the Arapaho Bend Ponds Subdivision, including dedication of the right-of-way as shown on Exhibit “A”, in substantially the form attached as Exhibit “A”, along with such modifications as the City Manager, in consultation with the City Attorney, determines to be necessary or appropriate to protect the interests of the City, so long as such modifications do not substantially increase the portion of the City’s property being dedicated as right-of-way.

Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
Passed and adopted on final reading on the 15th day of December, A.D. 2020.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
AGENDA ITEM SUMMARY
December 15, 2020
City Council

STAFF
Cameron Gloss, Planning Manager
Claire Havelda, Legal

SUBJECT
Second Reading of Ordinance No. 155, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Cottonwood Manufactured Housing Community Rezoning.

EXECUTIVE SUMMARY
This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on First Reading on December 1, 2020, amends the City’s Zoning Map to change the zoning designation for the Cottonwood Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Cottonwood MHC is located at 1336 Laporte Avenue and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (MH) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION
Staff recommends adoption on Second Reading.

ATTACHMENTS
1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments)  (PDF)
2. Ordinance No. 155, 2020  (PDF)
AGENDA ITEM SUMMARY

December 1, 2020

City Council

STAFF

Cameron Gloss, Planning Manager
Claire Havelda, Legal

SUBJECT

Public Hearing and First Reading of Ordinance No. 155, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Cottonwood Manufactured Housing Community Rezoning.

EXECUTIVE SUMMARY

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

The purpose of this item is to amend the City’s Zoning Map to change the zoning designation for the Cottonwood Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Cottonwood MHC is located at 1336 Laporte Avenue and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (MH) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Purpose and Intent

The purpose of this City-initiated rezoning request is to advance City policies and goals to preserve manufactured housing communities and prevent the displacement of residents. City Plan, the City’s comprehensive plan, and the Strategic Plan identify policies and priorities to preserve manufactured housing. This proposed property rezoning supports these policy goals and is part of a series of local and state efforts and legislative changes aimed to address common manufactured housing issues and enhance resident protections.

Manufactured Housing Preservation

Manufactured housing provides an affordable and unique type of housing in Fort Collins, with many lot and unit rents equivalent to or less than some of the most affordable and deed-restricted housing units in Fort Collins. While unique and affordable, manufactured housing is also a limited type of housing, and the number of units has been shrinking as manufactured housing communities close and/or redevelop. Over the past twenty years,
five manufactured housing communities have closed in Fort Collins, primarily due to redevelopment, resulting in the loss of hundreds of units and often displacing residents who have limited options finding similarly priced housing in the region.

While many residents in manufactured housing communities may own their own homes, they lease or rent land from a property owner. This dual-asset ownership can create difficult situations for residents when a manufactured housing community closes. Many manufactured homes are unable to be moved due to age, condition, lack of available manufactured housing lots elsewhere in the community, or the financial cost of moving the structure. Many residents in manufactured housing communities are often forced to abandon their home, one of their largest financial assets.

During the recent update to City Plan in 2018/2019, residents of manufactured housing communities shared comments they fear their parks and communities may close or redevelop and force them to move, losing social connections and being unable to find similarly priced housing elsewhere in the community.

In August 2020, Council adopted a series of Land Use Code changes to create a new Manufactured Housing (M-H) zone district (Attachment 3 and 4) to promote manufactured housing preservation. A key feature of the M-H district is a more limited set of permitted land uses. A change in zoning to the M-H district is designed to promote and encourage the ongoing operation of existing manufactured housing communities by limiting opportunities to redevelop the site.

While a change in zoning to the M-H district does not guarantee a manufactured housing community will not close for reasons other than redevelopment, it provides an important policy and regulatory signal that manufactured housing is valued and supported in Fort Collins and encourages the ongoing operation of these communities.

**Overview of Main Considerations**

Property rezonings and amendments to the zoning map are governed by Division 2.9 of the Land Use Code and include specific criteria for rezonings of land less than 640 acres in size (quasi-judicial rezonings). Quasi-judicial rezoning requests shall be recommended by the Planning and Zoning Board and approved by City Council only if the proposal is

1) Consistent with the City’s comprehensive plan and/or;
2) Warranted by changed conditions within the neighborhood surrounding and including the subject property.

In addition, the Planning and Zoning Board and Council can also consider additional criteria including:

3) Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land;
4) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment;
5) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

While the goal of many rezoning requests is typically to facilitate new development, this rezoning proposal seeks to change zoning designations to encourage the ongoing operation of existing development. An analysis of the rezoning proposal below finds consistent support between the proposed rezoning and policy goals in the comprehensive plan.

While many of the properties proposed for rezoning to the M-H district were once part of the City’s two prior mobile home park zone districts until 1997, the balance between community priorities to protect an important source of affordable housing and property owner rights has been a consistent theme heard during the public
process for both the development of the new M-H district and this proposed rezoning.

Planning Background & Context

Information on the annexation and zoning history for the Cottonwood MHC property, as well as its adjacent development context is summarized below:

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<thead>
<tr>
<th>Manufactured Housing Community: <strong>Cottonwood</strong></th>
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<tbody>
<tr>
<td><strong>Annexation</strong></td>
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<td>Northwest Consolidated Annexation, 1954</td>
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Compliance with Land Use Code Rezoning Criteria

Criterion 1: Consistency of the proposed rezoning with the City’s Comprehensive Plan (City Plan)

City staff has evaluated the proposed changes for consistency with the comprehensive plan based on City Plan policy guidance and land use direction provided by the Structure Plan map.

City Plan Policies

Housing affordability and attainability is a top community issue which was reflected in the recent City Plan update through a number of new policy goals to encourage a greater mix of housing types, protect and develop new types of attainable and affordable housing options, and to prevent the displacement of manufactured housing residents. The preservation of manufactured housing communities, including the development of the new Manufactured Housing zone district and the proposed rezoning of properties containing manufactured housing directly support the following City Plan policies:

* **LIV 5.2 - Supply of Attainable Housing**
Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include ADUs, duplexes, townhomes, mobile homes, manufactured housing and other “missing middle” housing types.

Manufactured housing represents one of the most affordable types of housing in Fort Collins, comparable to subsidized and deed-restricted housing for those earning between 30-60% area median income. As a naturally-occurring source of affordable housing, manufactured housing communities in the City limits and Growth Management Area represent a comparable number of dwelling units to Fort Collins’ entire deed-restricted affordable housing stock. Preserving manufactured housing helps protect and maintain an important supply of affordable housing in Fort Collins.

In addition to its affordability, manufactured housing is a unique and limited type of housing that has been in decline over the past several decades due to community closures and redevelopment. The goal of preservation through rezoning to the M-H district is designed to protect and promote the ongoing operation of this limited housing resource which has proven to be difficult to expand via new manufactured housing development.
**LIV 5.5 - Integrate and Distribute Affordable Housing**

Integrate the distribution of affordable housing as part of individual neighborhoods and the larger community.

Manufactured housing communities can currently be found throughout the City and Growth Management Area, providing options for this type of housing close to jobs, services, and transportation opportunities located throughout the community. Goals to preserve manufactured housing by rezoning to the M-H district support City Plan policies to preserve affordable housing throughout the City. The closure of a few parks, particularly in the southern portion of the community, would concentrate this limited type of housing primarily in the northern half of Fort Collins.

**LIV 6.4 - Permanent Supply of Affordable Housing**

Create and maintain an up-to-date inventory of affordable housing in the community. Pursue policy and regulatory changes that will encourage the rehabilitation and retention of affordable housing in perpetuity.

The preservation of manufactured housing through rezoning represents a similar effect to the regulatory changes envisioned by City Plan for the City’s subsidized and deed-restricted affordable housing. While most units in manufactured housing communities are private and not publicly subsidized, they have consistently provided an important source of housing at similar pricing levels. While rezoning does not guarantee affordability alone, it promotes the long-term operation of these communities and reduces the likelihood of redevelopment and the loss of some of the community’s most affordable housing options.

**LIV 6.9 - Prevent Displacement**

Build the capacity of homeowner groups, affordable housing providers and support organizations to enable the purchase, rehabilitation and long-term management of affordable housing. Particular emphasis should be given to mobile home parks located in infill and redevelopment areas.

Many of the community’s manufactured housing communities are located adjacent to commercial areas, or along corridors with existing or planned transit service which are encouraged to redevelop and at higher intensities. Rezoning properties containing manufactured housing to the M-H district provides an important regulatory and policy signal that manufactured housing is encouraged and its continued operation is desired amongst areas anticipated to experience (re)development changes in the future.

This policy signal may also bolster the efforts of residents, local organizations, and the City to support and reinvest in these communities, including the potential for future acquisition of the underlying property by residents through a resident-owned community (ROC) if a property owner sells a property in the future.

**Structure Plan Land Use Guidance**

The Structure Plan map provides a framework for development in Fort Collins and provides guidance for land-use decisions. As detailed in the Structure Plan in City Plan:

*The Structure Plan Map serves as a blueprint for the desired future development pattern of the community, setting forth a basic framework for future land use and transportation decisions. Upon annexation or a request for rezoning, the Structure Plan map and City Plan principles and policies provide guidance for decision-makers to identify specific zoning boundaries and zone districts during the development review process.*

The Structure Plan is an illustrated map made up of broad categories called ‘place types,’ which provide general characteristics for development patterns that can be used to determine more specific zoning classifications and boundaries. Place types typically describe principal and supporting land uses, density ranges, and the presence of certain types of services. Place types may often correspond to or overlap multiple zone districts.

The Cottonwood MHC is located in the ‘Mixed Neighborhood’ place type on the Structure Plan. (Attachment 5)
Mixed Neighborhood

The Mixed Neighborhood place type is one of the predominant residential place types illustrated on the Structure Plan and is commonly found in areas of the community with a mix of housing types at low to moderate intensity. Its location on the Structure Plan commonly overlaps with the Low-Density Mixed-Use Neighborhood ("LMN") and Medium Density Mixed-Use Neighborhood zone districts.

The Mixed Neighborhood place type indicates a general intensity range of between 5 and 20 units per acre which supports its designation for a wide range of housing types, including different attached and multifamily products. The Structure Plan also makes a distinction within the place type for existing development and new or future neighborhoods planned for vacant and undeveloped land.

The proposed rezoning to the M-H district is consistent with the land use types and density ranges of the Mixed Neighborhood place type. The M-H district is primarily residential and encourages manufactured housing as the primary land use within a density range of 6-to-12 units per acre. Both the types of permitted uses and the density range of the M-H district are within the characteristics described by the Mixed Neighborhood’s place type.

The Mixed Neighborhood also specifically references manufactured housing within existing neighborhoods, indicating, “while reinvestment in existing mobile home parks is encouraged, redevelopment of existing parks is not.” The M-H district is designed to discourage redevelopment and further addresses the Mixed Neighborhood place type description.

City Plan describes place both the generalized nature of place type designations for broad areas of the community and flexibility in the boundaries of place types when considering changes to zoning:

> Future zone changes should generally adhere to the place-type boundaries depicted on the Structure Plan, but flexibility in interpretation of the boundary may be granted provided the proposed change is consistent with the principles, goals and policies contained in this Plan. Density ranges outlined for each place-type category are based on gross acreage and are intended to address overall densities for a particular area rather than for individual parcels.

Summary - City Plan Guidance

The rezoning of properties containing manufactured housing communities helps preserve naturally occurring affordable housing, protects a limited and unique type of housing, and seeks to prevent the displacement of residents, all policy goals supported by City Plan.

This proposed M-H rezoning is also consistent with the Mixed Neighborhood place type designation for this property on the Structure Plan Map. The Mixed Neighborhood place type describes residential land uses, including manufactured housing, of 5-20 units per acre which is consistent with the M-H district. This place type also specifically encourages reinvestment but not redevelopment of manufactured housing communities, which is the primary goal of the M-H district.

Criterion 2: and/or Warranted by changed conditions within the neighborhood surrounding and including the subject property.

Staff is recommending the proposed change in zoning based primarily on consistency with the comprehensive plan, rather than specific changes which have occurred in the neighborhood surrounding this property. The majority of properties containing manufactured housing and proposed for rezoning to the M-H district are located in established neighborhoods that have experienced limited recent neighborhood changes.

Criterion 3: Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land.

Properties containing manufactured housing communities are primarily surrounded by residential development.
Several properties also abut commercial development and retail centers. Most MHCs were constructed between the 1960s and 1980s and existing development patterns have already been established and compatibility is less of a concern given the goals of preserving their existing uses rather than anticipating new (re)development. Given the location of most MHCs, they function in a similar capacity to attached and multifamily housing being located adjacent to single family development or acting as a buffer or transition in intensity to adjacent commercial development. The M-H district also provides similar compatibility measures as surrounding residential development by limiting building height, the size of any non-commercial structures, and matching other residential building setbacks. The Cottonwood MHC is surrounded by similar other residential development, primarily single-family dwellings to the north and west, and higher intensity commercial/retail development to the south and east.

Criterion 4: Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.

M-H rezoning is not anticipated to result in additional negative or positive impacts on the natural environment, as it seeks to preserve existing development. To the extent redevelopment of a property could positively benefit the natural environment through the application of more recent Land Use Code standards (habitat buffers, mitigation measures, etc.) the rezoning may have some long-term impacts from a reduction in their redevelopment potential.

Criterion 5: Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

The proposed rezoning is not anticipated to result in changes to development patterns in its immediate context given the existing development that is already in place. Within the subject property to be rezoned M-H, development predates many of the individual standards of the Land Use Code for orderly development (e.g. street connectivity and spacing requirements); however, the properties fulfill other growth framework and logical development goals, including providing for a variety of housing options and prices in the community that would otherwise result in additional demand for regional commuting and a decrease in the City’s housing opportunities and social connectivity.

BOARD / COMMISSION RECOMMENDATION

At its November 5, 2020 meeting, the Planning and Zoning Board considered all six manufactured housing property rezonings collectively and recommended that Council approve all of the rezonings on a 5-1 vote. Draft minutes from Planning and Zoning Board hearing are still being compiled and will be forwarded to Council in a read-before memo as soon as they are available.

Board member discussion focused on the goals of the proposal to help preserve a limited and affordable type of housing in the community while recognizing some of the tradeoffs of a change to a more restrictive zoning and some of the impacts it may have on properties where site conditions do not meet current development standards. There was also board discussion about impacts to property owners and a rezoning being imposed by the City rather than initiated by a property owner directly.

PUBLIC OUTREACH

Two neighborhood meetings were held to discuss the proposed rezonings on September 2, 2020, and September 12, 2020, as well as a virtual meeting with the Mi Voz residents’ group on September 9, 2020. Due to current pandemic conditions, all meetings were held in a remote format with online and telephone participation. Attendance included City staff, residents, and several property owners. (Attachment 6)

A special OurCity webpage was created with information and resources on the proposed rezonings and the rezoning proposal has been posted on the City’s Development Review webpage. The proposal has also complied with notice requirements in Land Use Code Section, including special development review signs posted on each property, notices sent in English and Spanish to 4,600 nearby residents and property owners, and written notice in the Coloradoan.
Staff has also been in email and phone communication with a majority of owners of property subject to the rezoning this summer and fall regarding the amendments to the Land Use Code creating the Manufactured Housing zone district and this proposed rezonings. Staff has not had any direct communications with the owner of the Cottonwood manufactured housing community using contact information listed with the Larimer County Assessor, Colorado Secretary of State and the Colorado Department of Local Affairs Mobile Home Park Registry. In addition to mailed notices required by the Land Use Code, staff has also sent this property owner a certified letter in September. (Attachment 7)

A number of public letters and comments were received for the proposal prior to the Planning and Zoning Board Hearing. (Attachment 8)

ATTACHMENTS

1. Rezoning Petition (PDF)
2. Vicinity & Zoning Context Map (PDF)
3. Manufactured Housing Zone District Overview (PDF)
4. Manufactured Housing Zone District Land Use Code Ordinance (PDF)
5. Structure Plan Context Map (PDF)
6. Neighborhood Meetings Summary (PDF)
7. Property Owners Outreach (PDF)
8. Planning & Zoning Board Public Comments (PDF)
9. Cottonwood Rezoning Presentation (PDF)
ORDINANCE NO. 155, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS BY CHANGING THE ZONING
CLASSIFICATION FOR THAT CERTAIN PROPERTY KNOWN
AS THE COTTONWOOD MANUFACTURED HOUSING COMMUNITY REZONING

WHEREAS, Division 1.3 of the Fort Collins Land Use Code (the “Land Use Code”) establishes the Zoning Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code establishes procedures and criteria for reviewing the rezoning of land; and

WHEREAS, City Council seeks to preserve and support existing manufactured housing communities in Fort Collins such as the Cottonwood Manufactured Housing Community (“Cottonwood”); and

WHEREAS, in accordance with the foregoing, the City Council has conducted a public hearing, considered the Staff Report, the Planning and Zoning Board recommendation and the findings, and the evidence from the public hearing and has determined that the property that is the subject of this Ordinance should be rezoned as hereinafter provided; and

WHEREAS, the City Council has further determined that the proposed rezoning is consistent with the City's Comprehensive Plan as required by Section 2.9.4(H)(2) of the Land Use Code; and

WHEREAS, to the extent applicable, the City Council has also analyzed the proposed rezoning against the considerations established in Section 2.9.4(H)(3) of the Land Use Code and determined that the proposed M-H zoning (a) is compatible with existing and proposed uses surrounding the subject property and is an appropriate zone district for the property; (b) is not anticipated to significantly impact the natural environment; and (c) represents a logical and orderly development pattern.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by changing the zoning classification from Low Density Mixed Use (“LMN”) Zone District, to the newly created Manufactured Housing Community (“M-H”) Zone District, for the following described property in the City known as Cottonwood.

LOT 2, VASQUEZ MINOR SUB, FTC

Section 3. That the property known as the Cottonwood shall remain included in the Residential Sign District adopted pursuant to Section 3.8.7.1(M) of the Land Use Code.

Section 4. The City Manager is hereby authorized and directed to amend said Zoning Map in accordance with this Ordinance.
Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

ATTEST:

Mayor

City Clerk

Passed and adopted on final reading on this 15th day of December, A.D. 2020.

ATTEST:

Mayor

City Clerk
AGENDA ITEM SUMMARY
December 15, 2020

STAFF
Cameron Gloss, Planning Manager
Claire Havelda, Legal

SUBJECT
Second Reading of Ordinance No. 156, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property known as the Northstar Manufactured Housing Community Rezoning.

EXECUTIVE SUMMARY
This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on First Reading on December 1, 2020, amends the City’s Zoning Map to change the zoning designation for the North Star Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

North Star MHC is located at 1700 Laporte Avenue and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to a combination of the Manufactured Housing (MH) zone district and the Low Density Mixed-Use Neighborhood zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on First Reading.

ATTACHMENTS
1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments) (PDF)
2. Ordinance No. 156, 2020 (PDF)
AGENDA ITEM SUMMARY
City Council

December 1, 2020

STAFF

Cameron Gloss, Planning Manager
Claire Havelda, Legal

SUBJECT

Public Hearing and First Reading of Ordinance No. 156, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property known as the Northstar Manufactured Housing Community Rezoning.

EXECUTIVE SUMMARY

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

The purpose of this item is to amend the City’s Zoning Map to change the zoning designation for the North Star Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

North Star MHC is located at 1700 Laporte Avenue and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to a combination of the Manufactured Housing (MH) zone district and the Low Density Mixed-Use Neighborhood zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Purpose and Intent

The purpose of this City-initiated rezoning request is to advance City policies and goals to preserve manufactured housing communities and prevent the displacement of residents. City Plan, the City’s comprehensive plan, and the Strategic Plan identify policies and priorities to preserve manufactured housing. This proposed property rezoning supports these policy goals and is part of a series of local and state efforts and legislative changes aimed to address common manufactured housing issues and enhance resident protections.
Manufactured Housing Preservation

Manufactured housing provides an affordable and unique type of housing in Fort Collins, with many lot and unit rents equivalent to or less than some of the most affordable and deed-restricted housing units in Fort Collins. While unique and affordable, manufactured housing is also a limited type of housing, and the number of units has been shrinking as manufactured housing communities close and/or redevelop. Over the past twenty years, five manufactured housing communities have closed in Fort Collins, primarily due to redevelopment, resulting in the loss of hundreds of units and often displacing residents who have limited options finding similarly priced housing in the region.

While many residents in manufactured housing communities may own their own homes, they lease or rent land from a property owner. This dual-asset ownership can create difficult situations for residents when a manufactured housing community closes. Many manufactured homes are unable to be moved due to age, condition, lack of available manufactured housing lots elsewhere in the community, or the financial cost of moving the structure. Many residents in manufactured housing communities are often forced to abandon their home, one of their largest financial assets.

During the recent update to City Plan in 2018/2019, residents of manufactured housing communities shared comments they fear their parks and communities may close or redevelop and force them to move, losing social connections and being unable to find similarly priced housing elsewhere in the community.

In August 2020, Council adopted a series of Land Use Code changes to create a new Manufactured Housing (M-H) zone district (Attachment 3 and 4) to promote manufactured housing preservation. A key feature of the M-H district is a more limited set of permitted land uses. A change in zoning to the M-H district is designed to promote and encourage the ongoing operation of existing manufactured housing communities by limiting opportunities to redevelop the site.

While a change in zoning to the M-H district does not guarantee a manufactured housing community will not close for reasons other than redevelopment, it provides an important policy and regulatory signal that manufactured housing is valued and supported in Fort Collins and encourages the ongoing operation of these communities.

Overview of Main Considerations

Property rezonings and amendments to the zoning map are governed by Division 2.9 of the Land Use Code and include specific criteria for rezonings of land less than 640 acres in size (quasi-judicial rezonings). Quasi-judicial rezoning requests shall be recommended by the Planning and Zoning Board and approved by Council only if the proposal is

1) Consistent with the City’s comprehensive plan and/or;
2) Warranted by changed conditions within the neighborhood surrounding and including the subject property.

In addition, the Planning and Zoning Board and Council can also consider additional criteria including:

3) Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land;
4) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment;
5) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

While the goal of many rezoning requests is typically to facilitate new development, this rezoning proposal seeks to change zoning designations to encourage the ongoing operation of existing development. An analysis of the
rezoning proposal below finds consistent support between the proposed rezoning and policy goals in the comprehensive plan; however, it is also important to note a change to the M-H district for these properties impacts each site’s future redevelopment potential.

While many of the properties proposed for rezoning to the M-H district were once part of the City’s two prior mobile home park zone districts up until 1997, the balance between community priorities to protect an important source of affordable housing and property owner rights has been a consistent theme heard during the public process for both the development of the new M-H district and this proposed rezoning.

Planning Background & Context

Information on the annexation and zoning history for the North Star MHC property, as well as its adjacent development context is summarized below:

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<td>Annexation</td>
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<td>Radio City Annexation, 1957</td>
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Compliance with Land Use Code Rezoning Criteria

Criterion 1: Consistency of the proposed rezoning with the City’s Comprehensive Plan (City Plan)

City staff has evaluated the proposed changes for consistency with the comprehensive plan based on City Plan policy guidance and land use direction provided by the Structure Plan map.

City Plan Policies

Housing affordability and attainability is a top community issue which was reflected in the recent City Plan update through a number of new policy goals to encourage a greater mix of housing types, protect and develop new types of attainable and affordable housing options, and to prevent the displacement of manufactured housing residents. The preservation of manufactured housing communities, including the development of the new Manufactured Housing zone district and the proposed rezoning of properties containing manufactured housing directly support the following City Plan policies:

*LIV 5.2 - Supply of Attainable Housing*

Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include ADUs, duplexes, townhomes, mobile homes, manufactured housing and other “missing middle” housing types.

Manufactured housing represents one of the most affordable types of housing in Fort Collins, comparable to subsidized and deed-restricted housing for those earning between 30-60% area median income. As a naturally-occurring source of affordable housing, manufactured housing communities in the City limits and Growth Management Area represent a comparable number of dwelling units to Fort
Collins’ entire deed-restricted affordable housing stock. Preserving manufactured housing helps protect and maintain an important supply of affordable housing in Fort Collins.

In addition to its affordability, manufactured housing is a unique and limited type of housing that has been in decline over the past several decades due to community closures and redevelopment. The goal of preservation through rezoning to the M-H district is designed to protect and promote the ongoing operation of this limited housing resource which has proven to be difficult to expand via new manufactured housing development.

**LIV 5.5 - Integrate and Distribute Affordable Housing**

Integrate the distribution of affordable housing as part of individual neighborhoods and the larger community.

Manufactured housing communities can currently be found throughout the City and Growth Management Area, providing options for this type of housing close to jobs, services, and transportation opportunities located throughout the community. Goals to preserve manufactured housing by rezoning to the M-H district support City Plan policies to preserve affordable housing throughout the City. The closure of a few parks, particularly in the southern portion of the community, would concentrate this limited type of housing primarily in the northern half of Fort Collins.

**LIV 6.4 - Permanent Supply of Affordable Housing**

Create and maintain an up-to-date inventory of affordable housing in the community. Pursue policy and regulatory changes that will encourage the rehabilitation and retention of affordable housing in perpetuity.

The preservation of manufactured housing through rezoning represents a similar effect to the regulatory changes envisioned by City Plan for the City’s subsidized and deed-restricted affordable housing. While most units in manufactured housing communities are private and not publicly subsidized, they have consistently provided an important source of housing at similar pricing levels. While rezoning does not guarantee affordability alone, it promotes the long-term operation of these communities and reduces the likelihood of redevelopment and the loss of some of the community’s most affordable housing options.

**LIV 6.9 - Prevent Displacement**

Build the capacity of homeowner groups, affordable housing providers and support organizations to enable the purchase, rehabilitation and long-term management of affordable housing. Particular emphasis should be given to mobile home parks located in infill and redevelopment areas.

Many of the community’s manufactured housing communities are located adjacent to commercial areas, or along corridors with existing or planned transit service which are encouraged to redevelop and at higher intensities. Rezoning properties containing manufactured housing to the M-H district provides an important regulatory and policy signal that manufactured housing is encouraged and its continued operation is desired amongst areas anticipated to experience (re)development changes in the future.

This policy signal may also bolster the efforts of residents, local organizations, and the City to support and reinvest in these communities, including the potential for future acquisition of the underlying property by residents through a resident-owned community (ROC) if a property owner sells a property in the future.

**Structure Plan Land Use Guidance**

The Structure Plan map provides a framework for development in Fort Collins and provides guidance for land-use decisions. As detailed in the Structure Plan in City Plan:

*The Structure Plan Map serves as a blueprint for the desired future development pattern of the community, setting forth a basic framework for future land use and transportation decisions. Upon annexation or a request for rezoning, the Structure Plan map and City Plan principles and policies*
provide guidance for decision-makers to identify specific zoning boundaries and zone districts during the development review process.

The Structure Plan is an illustrated map made up of broad categories called ‘place types,’ which provide general characteristics for development patterns that can be used to determine more specific zoning classifications and boundaries. Place types typically describe principal and supporting land uses, density ranges, and the presence of certain types of services. Place types may often correspond to or overlap multiple zone districts.

The North Star is located in the ‘Suburban Neighborhood’ place type on the Structure Plan. (Attachment 5)

**Mixed Neighborhood / Suburban Neighborhood**

The Suburban Neighborhood place type commonly overlaps with zone districts that are lower intensity or are more limiting in the types of residential land uses permitted, such as the Low Density Residential or Neighborhood Conservation Low Density zone districts. The Suburban Neighborhood place type is described in City Plan as areas where existing development is comprised primarily of single family detached dwellings at low to moderate density (two to five units per acre).

Staff is recommending the frontage of the North Star property remain as Low Density Mixed-Use Neighborhood Zoning while rezoning the rear portion of the property to the MH district, as depicted in Exhibit A below.
The North Star property is unique from the other proposed rezonings as it contains several existing commercial land uses along Laporte Avenue in front of the manufactured housing community. The property has often functioned as a transition point between more consistent low and moderate residential development to the east, and commercial and mixed-use development to the west. It sits upon the edge of both the Northwest Subarea Plan and the Old Town Neighborhoods plan boundary and has a previous history of both commercial, residential, or split residential/commercial zoning.

While included as part of the Suburban Neighborhood place type on the Structure Plan due to the broader area of lower density single family housing development to the east, the site’s particular development also shares characteristics with the Mixed Neighborhood place type due to its much higher density (approximately 12 dwelling units per acre) and its commercial land uses along Laporte Avenue.

City Plan describes both the generalized nature of place type designations for broad areas of the community and flexibility in the boundaries of place types when considering changes to zoning:

Future zone changes should generally adhere to the place-type boundaries depicted on the Structure Plan, but flexibility in interpretation of the boundary may be granted provided the proposed change is consistent with the principles, goals and policies contained in this Plan. Density ranges outlined for each place-type category are based on gross acreage and are intended to address overall densities for a particular area rather than for individual parcels.

The recommended split zoning designation of the property not only supports City Plan policies and goals to support the preservation of manufactured housing and an important source of naturally occurring affordable housing, but it also supports neighborhood serving commercial uses, another policy goal of City Plan:
LIV 4.3 - Neighborhood Services and Amenities

Encourage the addition of new services, conveniences and/or gathering places in existing neighborhoods that lack such facilities, provided they meet applicable performance and design standards. Consider additional tools such as a conditional-use permit process and expanding home occupation provisions.

In addition to policies, the Suburban Neighborhood place type characteristics describe neighborhood centers serving as focal points for adjacent residential development and providing nearby amenities and services. The split in zoning designation (LMN & MH) helps fulfill these policy objectives to preserve an existing source of naturally occurring affordable housing and promote the viability and potential for change and evolution of neighborhood services along the Laporte Avenue frontage for adjacent residential development. Although the commercial frontage along Laporte predates the concept of a Neighborhood Center under LMN zoning, the City has previously identified and classified it as a neighborhood center because it operates in a similar fashion to a neighborhood center that would be developed under new LMN-style development. (Attachment 6)

Summary - City Plan Guidance

The rezoning of properties containing manufactured housing communities helps preserve naturally occurring affordable housing, protects a limited and unique type of housing, and seeks to prevent the displacement of residents, all policy goals supported by City Plan.

The North Star property is designated as a Suburban Neighborhood place type, which is typically associated with zone districts for low and moderate single family detached housing. While the M-H zone district allows for unit densities generally in excess of the Suburban Neighborhood place types, the M-H zone district does support the general detached single family unit types of the place type with manufactured home units.

Further, the North Star property is a transitional property located between areas of consistent single-family development to the east from which the Suburban Neighborhood designation is derived, and commercial/mixed-use development to the west. The property sits along the boundary of two separate neighborhoods plans and has a history of hosting commercial, residential or mixed zoning. In seeking to preserve both the existing commercial frontage of the property as LMN zoning and the manufactured housing community with MH zoning, the change in zoning designation supports many of the goals and policies found in City Plan.

City Plan and the Structure Plan map allows flexibility in interpretation for decision-makers so long as broader City Plan policy goals are advanced. The North Star property advances both the broader goals of manufactured housing preservation as well as flexibility to continue to support neighborhood-service commercial uses along the Laporte frontage by keeping the existing LMN zoning.

Criterion 2: and/or Warranted by changed conditions within the neighborhood surrounding and including the subject property.

Staff is recommending the proposed change in zoning based primarily on consistency with the comprehensive plan, rather than specific changes which have occurred in the neighborhood surrounding this property. The majority of properties containing manufactured housing and proposed for rezoning to the M-H district are located in established neighborhoods that have experienced limited recent neighborhood changes.

Criterion 3: Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land.

Properties containing manufactured housing communities are primarily surrounded by residential development. Several properties also abut commercial development and retail centers. Most MHCs were constructed between the 1960s and 1980s and existing development patterns have already been established and compatibility is less of a concern given the goals of preserving their existing uses rather than anticipating new (re)development. Given the location of most MHCs, they function in a similar capacity to attached and multifamily housing being located adjacent to single family development or acting as a buffer or transition in intensity to adjacent commercial development. The M-H district also provides similar compatibility measures as surrounding
residential development by limiting building height, the size of any non-commercial structures, and matching other residential building setbacks. The North Star MHC is surrounded by similar other residential development, primarily single-family dwellings to the south and east, and a mix of residential and commercial development to the west.

Criterion 4: Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.

M-H rezoning is not anticipated to result in additional negative or positive impacts on the natural environment, as it seeks to preserve existing development. To the extent redevelopment of a property could positively benefit the natural environment through the application of more recent Land Use Code standards (habitat buffers, mitigation measures, etc.) the rezoning may have some long-term impacts from a reduction in their redevelopment potential.

Criterion 5: Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

The proposed rezoning is not anticipated to result in changes to development patterns in its immediate context given the existing development that is already in place. Within the subject property to be rezoned M-H, development predates many of the individual standards of the Land Use Code for orderly development (e.g. street connectivity and spacing requirements); however, the properties fulfill other growth framework and logical development goals, including providing for a variety of housing options and prices in the community that would otherwise result in additional demand for regional commuting and a decrease in the City’s housing opportunities and social connectivity.

BOARD / COMMISSION RECOMMENDATION

At its November 5, 2020, Planning and Zoning Board meeting, the Board considered all six manufactured housing property rezonings collectively and recommended that Council approve all the rezonings on a 5-1 vote. Draft minutes from Planning and Zoning Board hearing are still being compiled and will be forwarded to Council in a read-before memo as soon as they are available.

Board member discussion focused on the goals of the proposal to help preserve a limited and affordable type of housing in the community while recognizing some of the tradeoffs of a change to a more restrictive zoning and some of the impacts it may have on properties where site conditions do not meet current development standards. There was also board discussion about impacts to property owners and a rezoning being imposed by the City rather than initiated by a property owner directly.

PUBLIC OUTREACH

Two neighborhood meetings were held to discuss the proposed rezonings on September 2, 2020, and September 12, 2020, as well as a virtual meeting with the Mi Voz residents’ group on September 9, 2020. Due to current pandemic conditions, all meetings were held in a remote format with online and telephone participation. Attendance included City staff, residents, and several property owners. (Attachment 7)

A special OurCity webpage was created with information and resources on the proposed rezonings and the rezoning proposal has been posted on the City’s Development Review webpage. The proposal has also complied with notice requirements in Land Use Code Section, including special development review signs posted on each property, notices sent in English and Spanish to 4,600 nearby residents and property owners, and written notice in the Coloradoan.

Staff has also been in direct email and phone communication with a majority of owners of property subject to the rezoning this summer and fall regarding the amendments to the Land Use Code creating the M-H zone district and this proposed rezoning in addition to mailed notices required by the Land Use Code. (Attachment 7)
A number of public letters and comments were received for the proposal prior to the Planning and Zoning Board Hearing. (Attachment 8)

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<th>ATTACHMENTS</th>
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<tr>
<td>1. Rezoning Petition (PDF)</td>
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<td>2. Vicinity &amp; Zoning Context Map (PDF)</td>
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<td>3. Manufactured Housing Zone District Overview (PDF)</td>
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<td>4. Manufactured Housing Zone District Land Use Code Ordinance (PDF)</td>
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<td>5. Structure Plan Context Map (PDF)</td>
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<td>6. Northstar LMN Neighborhood Center Memo (PDF)</td>
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<td>7. Neighborhood Meetings Summary (PDF)</td>
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<td>8. Planning &amp; Zoning Board Public Comments (PDF)</td>
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<td>9. Property Owners Outreach (PDF)</td>
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<td>10. Powerpoint Presentation (PDF)</td>
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ORDINANCE NO. 156, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS BY CHANGING THE ZONING
CLASSIFICATION FOR THAT CERTAIN PROPERTY KNOWN
AS THE NORTH STAR MANUFACTURED HOUSING COMMUNITY REZONING

WHEREAS, Division 1.3 of the Fort Collins Land Use Code (the “Land Use Code”) establishes the Zoning Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code establishes procedures and criteria for reviewing the rezoning of land; and

WHEREAS, City Council seeks to preserve and support existing manufactured housing communities in Fort Collins such as the North Star Manufactured Housing Community (“North Star”); and

WHEREAS, in accordance with the foregoing, the City Council has conducted a public hearing, considered the Staff Report, the Planning and Zoning Board recommendation and the findings, and the evidence from the public hearing and has determined that the property that is the subject of this Ordinance should be rezoned as hereinafter provided; and

WHEREAS, the City Council has further determined that the proposed rezoning is consistent with the City's Comprehensive Plan as required by Section 2.9.4(H)(2) of the Land Use Code; and

WHEREAS, to the extent applicable, the City Council has also analyzed the proposed rezoning against the considerations established in Section 2.9.4(H)(3) of the Land Use Code and determined that the proposed M-H zoning (a) is compatible with existing and proposed uses surrounding the subject property and is an appropriate zone district for the property; (b) is not anticipated to significantly impact the natural environment; and (c) represents a logical and orderly development pattern.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by changing the zoning classification from Low Density Mixed Use (“LMN”) Zone District, to the newly created Manufactured Housing Community (“M-H”) Zone District, for the following described property in the City known as North Star.

LOT 2, VASQUEZ MINOR SUB, FTC, LESS THE SOUTHERLY 110 FEET

Section 3. That the property known as the North Star shall remain included in the Residential Sign District adopted pursuant to Section 3.8.7.1(M) of the Land Use Code.

Section 4. The City Manager is hereby authorized and directed to amend said Zoning Map in accordance with this Ordinance.
Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

________________________________________
Mayor

ATTEST:

________________________________________
City Clerk

Passed and adopted on final reading on this 15th day of December, A.D. 2020.

________________________________________
Mayor

ATTEST:

________________________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
December 15, 2020

STAFF

Cameron Gloss, Planning Manager
Claire Havelda, Legal

SUBJECT

Second Reading of Ordinance No. 157, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Skyline Manufactured Housing Community Rezoning.

EXECUTIVE SUMMARY

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on First Reading on December 1, 2020, amends the City’s Zoning Map to change the zoning designation for the Skyline Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Skyline MHC is located at 2211 West Mulberry Street and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to a combination of the Manufactured Housing (MH) zone district and the Low Density Mixed-Use Neighborhood zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments) (PDF)
2. Ordinance No. 157, 2020 (PDF)
AGENDA ITEM SUMMARY
City Council
December 1, 2020

STAFF

Cameron Gloss, Planning Manager
Claire Havelda, Legal

SUBJECT

Public Hearing and First Reading of Ordinance No. 157, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Skyline Manufactured Housing Community Rezoning.

EXECUTIVE SUMMARY

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

The purpose of this item is to amend the City’s Zoning Map to change the zoning designation for the Skyline Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Skyline MHC is located at 2211 West Mulberry Street and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to a combination of the Manufactured Housing (MH) zone district and the Low Density Mixed-Use Neighborhood zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Purpose and Intent

The purpose of this City-initiated rezoning request is to advance City policies and goals to preserve manufactured housing communities and prevent the displacement of residents. City Plan, the City’s comprehensive plan, and the Strategic Plan identify policies and priorities to preserve manufactured housing. This proposed property rezoning supports these policy goals and is part of a series of local and state efforts and legislative changes aimed to address common manufactured housing issues and enhance resident protections.

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Manufactured housing provides an affordable and unique type of housing in Fort Collins, with many lot and unit rents equivalent to or less than some of the most affordable and deed-restricted housing units in Fort Collins. While unique and affordable, manufactured housing is also a limited type of housing, and the number of units
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While many residents in manufactured housing communities may own their own homes, they lease or rent land from a property owner. This dual-asset ownership can create difficult situations for residents when a manufactured housing community closes. Many manufactured homes are unable to be moved due to age, condition, lack of available manufactured housing lots elsewhere in the community, or the financial cost of moving the structure. Many residents in manufactured housing communities are often forced to abandon their home, one of their largest financial assets.

During the recent update to City Plan in 2018/2019, residents of manufactured housing communities shared comments they fear their parks and communities may close or redevelop and force them to move, losing social connections and being unable to find similarly priced housing elsewhere in the community.

In August 2020, Council adopted a series of Land Use Code changes to create a new Manufactured Housing (M-H) zone district ((Attachments 3 and 4) to promote manufactured housing preservation. A key feature of the M-H district is a more limited set of permitted land uses. A change in zoning to the M-H district is designed to promote and encourage the ongoing operation of existing manufactured housing communities by limiting opportunities to redevelop the site.

While a change in zoning to the M-H district does not guarantee a manufactured housing community will not close for reasons other than redevelopment, it provides an important policy and regulatory signal that manufactured housing is valued and supported in Fort Collins and encourages the ongoing operation of these communities.

Overview of Main Considerations

Property rezonings and amendments to the zoning map are governed by Division 2.9 of the Land Use Code and include specific criteria for rezonings of land less than 640 acres in size (quasi-judicial rezonings). Quasi-judicial rezoning requests shall be recommended by the Planning and Zoning Board and approved by City Council only if the proposal is

1) Consistent with the City’s comprehensive plan and/or;
2) Warranted by changed conditions within the neighborhood surrounding and including the subject property.

In addition, the Planning and Zoning Board and City Council can also consider additional criteria including:

3) Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land;
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While many of the properties proposed for rezoning to the M-H district were once part of the City’s two prior mobile home park zone districts up until 1997, the balance between community priorities to protect an
important source of affordable housing and property owner rights has been a consistent theme heard during the public process for both the development of the new M-H district and this proposed rezoning.

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Criterion 1: Consistency of the proposed rezoning with the City’s Comprehensive Plan (City Plan)

City staff has evaluated the proposed changes for consistency with the comprehensive plan based on City Plan policy guidance and land use direction provided by the Structure Plan map.

City Plan Policies

Housing affordability and attainability is a top community issue which was reflected in the recent City Plan update through a number of new policy goals to encourage a greater mix of housing types, protect and develop new types of attainable and affordable housing options, and to prevent the displacement of manufactured housing residents. The preservation of manufactured housing communities, including the development of the new Manufactured Housing zone district and the proposed rezoning of properties containing manufactured housing directly support the following City Plan policies:

**LIV 5.2 - Supply of Attainable Housing**

*Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include ADUs, duplexes, townhomes, mobile homes, manufactured housing and other “missing middle” housing types.*

Manufactured housing represents one of the most affordable types of housing in Fort Collins, comparable to subsidized and deed-restricted housing for those earning between 30-60% area median income. As a naturally-occurring source of affordable housing, manufactured housing communities in the City limits and Growth Management Area represent a comparable number of dwelling units to Fort Collins’ entire deed-restricted affordable housing stock. Preserving manufactured housing helps protect and maintain an important supply of affordable housing in Fort Collins.

In addition to its affordability, manufactured housing is a unique and limited type of housing that has been in decline over the past several decades due to community closures and redevelopment. The goal of preservation through rezoning to the M-H district is designed to protect and promote the ongoing operation of this limited housing resource which has proven to be difficult to expand via new manufactured housing development.
LIV 5.5 - Integrate and Distribute Affordable Housing
Integrate the distribution of affordable housing as part of individual neighborhoods and the larger community.

Manufactured housing communities can currently be found throughout the City and Growth Management Area, providing options for this type of housing close to jobs, services, and transportation opportunities located throughout the community. Goals to preserve manufactured housing by rezoning to the M-H district support City Plan policies to preserve affordable housing throughout the City. The closure of a few parks, particularly in the southern portion of the community, would concentrate this limited type of housing primarily in the northern half of Fort Collins.

LIV 6.4 - Permanent Supply of Affordable Housing
Create and maintain an up-to-date inventory of affordable housing in the community. Pursue policy and regulatory changes that will encourage the rehabilitation and retention of affordable housing in perpetuity.

The preservation of manufactured housing through rezoning represents a similar effect to the regulatory changes envisioned by City Plan for the City’s subsidized and deed-restricted affordable housing. While most units in manufactured housing communities are private and not publicly subsidized, they have consistently provided an important source of housing at similar pricing levels. While rezoning does not guarantee affordability alone, it promotes the long-term operation of these communities and reduces the likelihood of redevelopment and the loss of some of the community’s most affordable housing options.

LIV 6.9 - Prevent Displacement
Build the capacity of homeowner groups, affordable housing providers and support organizations to enable the purchase, rehabilitation and long-term management of affordable housing. Particular emphasis should be given to mobile home parks located in infill and redevelopment areas.

Many of the community’s manufactured housing communities are located adjacent to commercial areas, or along corridors with existing or planned transit service which are encouraged to redevelop and at higher intensities. Rezoning properties containing manufactured housing to the M-H district provides an important regulatory and policy signal that manufactured housing is encouraged and its continued operation is desired amongst areas anticipated to experience (re)development changes in the future.

This policy signal may also bolster the efforts of residents, local organizations, and the City to support and reinvest in these communities, including the potential for future acquisition of the underlying property by residents through a resident-owned community (ROC) if a property owner sells a property in the future.

Structure Plan Land Use Guidance
The Structure Plan map provides a framework for development in Fort Collins and provides guidance for land-use decisions. As detailed in the Structure Plan in City Plan:

The Structure Plan Map serves as a blueprint for the desired future development pattern of the community, setting forth a basic framework for future land use and transportation decisions. Upon annexation or a request for rezoning, the Structure Plan map and City Plan principles and policies provide guidance for decision-makers to identify specific zoning boundaries and zone districts during the development review process.

The Structure Plan is an illustrated map made up of broad categories called ‘place types,’ which provide general characteristics for development patterns that can be used to determine more specific zoning classifications and boundaries. Place types typically describe principal and supporting land uses, density ranges, and the presence of certain types of services. Place types may often correspond to or overlap multiple zone districts.

The Skyline MHC in the ‘Mixed Neighborhood’ place type on the Structure Plan. (Attachment 5)
Mixed Neighborhood

The Mixed Neighborhood place type is one of the predominant residential place types illustrated on the Structure Plan and is commonly found in areas of the community with a mix of housing types at low to moderate intensity. Its location on the Structure Plan commonly overlaps with the Low-Density Mixed-Use Neighborhood (“LMN”) and Medium Density Mixed-Use Neighborhood zone districts.

The Mixed Neighborhood place type indicates a general intensity range of between 5 and 20 units per acre which supports its designation for a wide range of housing types, including different attached and multifamily products. The Structure Plan also makes a distinction within the place type for existing development and new or future neighborhoods planned for vacant and undeveloped land.

The proposed rezoning to the M-H district is consistent with the land use types and density ranges of the Mixed Neighborhood place type. The M-H district is primarily residential and encourages manufactured housing as the primary land use within a density range of 6-to-12 units per acre. Both the types of permitted uses and the density range of the M-H district are within the characteristics described by the Mixed Neighborhood’s place type.

The Mixed Neighborhood also specifically references manufactured housing within existing neighborhoods, indicating, “while reinvestment in existing mobile home parks is encouraged, redevelopment of existing parks is not.” The M-H district is designed to discourage redevelopment and further addresses the Mixed Neighborhood place type description.

As part of the rezoning of the Skyline property, staff is recommending a small portion of the site remains under the Low Density Mixed-Use Neighborhood zone district designation along portions of the Mulberry Street frontage. This area is approximately 330-ft by 110-ft in dimension as illustrated in Exhibit A below and contains three single-family dwellings and one two-family dwelling rented out separately from the remainder of the manufactured homes. These housing types are not permitted in the MH district and would become nonconforming uses and staff believes it is appropriate to exclude this area of the property from the MH designation as no manufactured housing units would be lost if this portion of the property is redeveloped in the future.

Exhibit A – Skyline Rezoning Map

City Plan describes place both the generalized nature of place type designations for broad areas of the community and flexibility in the boundaries of place types when considering changes to zoning:

Future zone changes should generally adhere to the place-type boundaries depicted on the Structure Plan, but flexibility in interpretation of the boundary may be granted provided the proposed change is consistent with the principles, goals and policies contained in this Plan. Density ranges outlined for each place-type category are based on gross acreage and are intended to address overall densities for a particular area rather than for individual parcels.

Summary - City Plan Guidance

The rezoning of properties containing manufactured housing communities helps preserve naturally occurring affordable housing, protects a limited and unique type of housing, and seeks to prevent the displacement of residents, all policy goals supported by City Plan.
This proposed M-H rezoning is also consistent with the Mixed Neighborhood place type designation for this property on the Structure Plan Map. The Mixed Neighborhood place type describes residential land uses, including manufactured housing, of 5-20 units per acre which is consistent with the M-H district. This place type also specifically encourages reinvestment but not redevelopment of manufactured housing communities, which is the primary goal of the M-H district.

Criterion 2: and/or Warranted by changed conditions within the neighborhood surrounding and including the subject property.

Staff is recommending the proposed change in zoning based primarily on consistency with the comprehensive plan, rather than specific changes which have occurred in the neighborhood surrounding this property. The majority of properties containing manufactured housing and proposed for rezoning to the M-H district are located in established neighborhoods that have experienced limited recent neighborhood changes.

Criterion 3: Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land.

Properties containing manufactured housing communities are primarily surrounded by residential development. Several properties also abut commercial development and retail centers. Most MHCs were constructed between the 1960s and 1980s and existing development patterns have already been established and compatibility is less of a concern given the goals of preserving their existing uses rather than anticipating new (re)development. Given the location of most MHCs, they function in a similar capacity to attached and multifamily housing being located adjacent to single family development or acting as a buffer or transition in intensity to adjacent commercial development. The M-H district also provides similar compatibility measures as surrounding residential development by limiting building height, the size of any non-commercial structures, and matching other residential building setbacks. The Skyline MHC is surrounded by other similar residential development on all sides of the property.

Criterion 4: Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.

M-H rezoning is not anticipated to result in additional negative or positive impacts on the natural environment, as it seeks to preserve existing development. To the extent redevelopment of a property could positively benefit the natural environment through the application of more recent Land Use Code standards (habitat buffers, mitigation measures, etc.) the rezoning may have some long-term impacts from a reduction in their redevelopment potential.

Criterion 5: Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

The proposed rezoning is not anticipated to result in changes to development patterns in its immediate context given the existing development that is already in place. Within the subject property to be rezoned M-H, development predates many of the individual standards of the Land Use Code for orderly development (e.g. street connectivity and spacing requirements); however, the properties fulfill other growth framework and logical development goals, including providing for a variety of housing options and prices in the community that would otherwise result in additional demand for regional commuting and a decrease in the City’s housing opportunities and social connectivity.

BOARD / COMMISSION RECOMMENDATION

At its November 5, 2020 meeting, the Planning and Zoning Board considered all six manufactured housing property rezonings collectively and recommended that Council approve all of the rezonings on a 5-1 vote. Draft minutes from Planning and Zoning Board hearing are still being compiled and will be forwarded to Council in a read-before memo as soon as they are available.

Board member discussion focused on the goals of the proposal to help preserve a limited and affordable type of
housing in the community while recognizing some of the tradeoffs of a change to a more restrictive zoning and some of the impacts it may have on properties where site conditions do not meet current development standards. There was also board discussion about impacts to property owners and a rezoning being imposed by the City rather than initiated by a property owner directly.

**PUBLIC OUTREACH**

Two neighborhood meetings were held to discuss the proposed rezonings on September 2, 2020, and September 12, 2020, as well as a virtual meeting with the Mi Voz residents’ group on September 9, 2020. Due to current pandemic conditions, all meetings were held in a remote format with online and telephone participation. Attendance included City staff, residents, and several property owners. (Attachment 6)

A special OurCity webpage was created with information and resources on the proposed rezonings and the rezoning proposal has been posted on the City’s Development Review webpage. The proposal has also complied with notice requirements in Land Use Code Section, including special development review signs posted on each property, notices sent in English and Spanish to 4,600 nearby residents and property owners, and written notice in the Coloradoan.

Staff has also been in direct email and phone communication with a majority of owners of property subject to the rezoning this summer and fall regarding the amendments to the Land Use Code creating the M-H zone district and this proposed rezoning in addition to mailed notices required by the Land Use Code. (Attachment 7)

A number of public letters and comments were received for the proposal prior to the Planning and Zoning Board Hearing. (Attachment 8)

**ATTACHMENTS**

1. Rezoning Petition  (PDF)
2. Vicinity & Zoning Context Map  (PDF)
3. Light Power 2021 Budget Summary  (PDF)
4. Manufactured Housing Zone District Land Use Code Ordinance  (PDF)
5. Manufactured Housing Zone District Overview  (PDF)
6. Neighborhood Meetings Summary  (PDF)
7. Planning & Zoning Board Public Comments  (PDF)
8. Property Owners Outreach  (PDF)
9. Skyline Rezoning Presentation  (PDF)
ORDINANCE NO. 157, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS BY CHANGING THE ZONING
CLASSIFICATION FOR THAT CERTAIN PROPERTY KNOWN
AS THE SKYLINE MANUFACTURED HOUSING COMMUNITY REZONING

WHEREAS, Division 1.3 of the Fort Collins Land Use Code (the “Land Use Code”) establishes the Zoning Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code establishes procedures and criteria for reviewing the rezoning of land; and

WHEREAS, City Council seeks to preserve and support existing manufactured housing communities in Fort Collins such as Skyline Manufactured Housing Community (“Skyline”); and

WHEREAS, in accordance with the foregoing, the City Council has conducted a public hearing, considered the Staff Report, the Planning and Zoning Board recommendation and the findings, and the evidence from the public hearing and has determined that the property that is the subject of this Ordinance should be rezoned as hereinafter provided; and

WHEREAS, the City Council has further determined that the proposed rezoning is consistent with the City's Comprehensive Plan as required by Section 2.9.4(H)(2) of the Land Use Code; and

WHEREAS, to the extent applicable, the City Council has also analyzed the proposed rezoning against the considerations established in Section 2.9.4(H)(3) of the Land Use Code and determined that the proposed M-H zoning (a) is compatible with existing and proposed uses surrounding the subject property and is an appropriate zone district for the property; (b) is not anticipated to significantly impact the natural environment; and (c) represents a logical and orderly development pattern.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by changing the zoning classification from Low Density Mixed Use (“LMN”) Zone District, to the newly created Manufactured Housing Community (“M-H”) Zone District, for the following described property in the City known as Skyline.

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF THE SKYLINE MOBILE HOME PARK P.U.D LESS AND EXCEPT THE NORTHERLY 160 FEET;

ALSO THE SKYLINE MOBILE HOME PARK SECOND FILING, A ONE LOT SUBDIVISION LESS AND EXCEPT ANY PORTION THEREOF LYING WITHIN THE RIGHT OF WAY OF MULBERRY STREET;

ALSO THE SOUTHERLY 35 FEET OF THE CHESTNUT ADDITION FIRST FILING;

CONTAINING 25.71 ACRES, MORE OR LESS
Section 3. That the property known as the Skyline shall remain included in the Residential Sign District adopted pursuant to Section 3.8.7.1(M) of the Land Use Code.

Section 4. The City Manager is hereby authorized and directed to amend said Zoning Map in accordance with this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

Mayor

ATTEST:

________________________________________
City Clerk

Passed and adopted on final reading on this 15th day of December, A.D. 2020.

Mayor

ATTEST:

________________________________________
City Clerk
Second Reading of Ordinance No. 158, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Harmony Village Mobile Home Park Rezoning.

EXECUTIVE SUMMARY

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on First Reading, amends the City’s Zoning Map to change the zoning designation for the Harmony Village Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Harmony Village MHC is located at 2500 East Harmony Road and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (M-H) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments) (PDF)
2. Ordinance No. 158, 2020 (PDF)
Public Hearing and First Reading of Ordinance No. 158, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Harmony Village Mobile Home Park Rezoning.

EXECUTIVE SUMMARY

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

The purpose of this item is to amend the City’s Zoning Map to change the zoning designation for the Harmony Village Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Harmony Village MHC is located at 2500 East Harmony Road and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (M-H) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Purpose and Intent

The purpose of this City-initiated rezoning request is to advance City policies and goals to preserve manufactured housing communities and prevent the displacement of residents. City Plan, the City’s comprehensive plan, and the Strategic Plan identify policies and priorities to preserve manufactured housing. This proposed property rezoning supports these policy goals and is part of a series of local and state efforts and legislative changes aimed to address common manufactured housing issues and enhance resident protections.

Manufactured Housing Preservation

Manufactured housing provides an affordable and unique type of housing in Fort Collins, with many lot and unit rents equivalent to or less than some of the most affordable and deed-restricted housing units in Fort Collins. While unique and affordable, manufactured housing is also a limited type of housing, and the number of units has been shrinking as manufactured housing communities close and/or redevelop. Over the past twenty years,
five manufactured housing communities have closed in Fort Collins, primarily due to redevelopment, resulting in the loss of hundreds of units and often displacing residents who have limited options finding similarly priced housing in the region.

While many residents in manufactured housing communities may own their own homes, they lease or rent land from a property owner. This dual-asset ownership can create difficult situations for residents when a manufactured housing community closes. Many manufactured homes are unable to be moved due to age, condition, lack of available manufactured housing lots elsewhere in the community, or the financial cost of moving the structure. Many residents in manufactured housing communities are often forced to abandon their home, one of their largest financial assets.

During the recent update to City Plan in 2018/2019, residents of manufactured housing communities shared comments they fear their parks and communities may close or redevelop and force them to move, losing social connections and being unable to find similarly priced housing elsewhere in the community.

In August 2020, Council adopted a series of Land Use Code changes to create a new Manufactured Housing (M-H) zone district (Attachment 3 and 4) to promote manufactured housing preservation. A key feature of the M-H district is a more limited set of permitted land uses. A change in zoning to the M-H district is designed to promote and encourage the ongoing operation of existing manufactured housing communities by limiting opportunities to redevelop the site.

While a change in zoning to the M-H district does not guarantee a manufactured housing community will not close for reasons other than redevelopment, it provides an important policy and regulatory signal that manufactured housing is valued and supported in Fort Collins and encourages the ongoing operation of these communities.

Overview of Main Considerations

Property rezonings and amendments to the zoning map are governed by Division 2.9 of the Land Use Code and include specific criteria for rezonings of land less than 640 acres in size (quasi-judicial rezonings). Quasi-judicial rezoning requests shall be recommended by the Planning and Zoning Board and approved by Council only if the proposal is

1) Consistent with the City’s comprehensive plan and/or;
2) Warranted by changed conditions within the neighborhood surrounding and including the subject property.

In addition, the Planning and Zoning Board and Council can also consider additional criteria including:

3) Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land;
4) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment;
5) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

While the goal of many rezoning requests is typically to facilitate new development, this rezoning proposal seeks to change zoning designations to encourage the ongoing operation of existing development. An analysis of the rezoning proposal below finds consistent support between the proposed rezoning and policy goals in the comprehensive plan.

While many of the properties proposed for rezoning to the M-H district were once part of the City’s two prior mobile home park zone districts up until 1997, the balance between community priorities to protect an
important source of affordable housing and property owner rights has been a consistent theme heard during the public process for both the development of the new M-H district and this proposed rezoning.

**Planning Background & Context**

Information on the annexation and zoning history for the Harmony Village MHC property, as well as its adjacent development context is summarized below:

<table>
<thead>
<tr>
<th>Manufactured Housing Community: Harmony Village</th>
<th>Adjacent Zoning &amp; Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harmony Third Annexation, 1977</td>
<td>• Medium Density Mobile Home</td>
</tr>
<tr>
<td></td>
<td>• Low Density Mixed-Use Neighborhood (current)</td>
</tr>
</tbody>
</table>

**Compliance with Land Use Code Rezoning Criteria**

**Criterion 1: Consistency of the proposed rezoning with the City’s Comprehensive Plan (City Plan)**

City staff has evaluated the proposed changes for consistency with the comprehensive plan based on City Plan policy guidance and land use direction provided by the Structure Plan map.

**City Plan Policies**

Housing affordability and attainability is a top community issue which was reflected in the recent City Plan update through a number of new policy goals to encourage a greater mix of housing types, protect and develop new types of attainable and affordable housing options, and to prevent the displacement of manufactured housing residents. The preservation of manufactured housing communities, including the development of the new Manufactured Housing zone district and the proposed rezoning of properties containing manufactured housing directly support the following City Plan policies:

**LIV 5.2 - Supply of Attainable Housing**

Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include ADUs, duplexes, townhomes, mobile homes, manufactured housing and other “missing middle” housing types.

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In addition to its affordability, manufactured housing is a unique and limited type of housing that has been in decline over the past several decades due to community closures and redevelopment. The goal of preservation through rezoning to the M-H district is designed to protect and promote the ongoing operation of this limited housing resource which has proven to be difficult to expand via new manufactured housing development.

**LIV 5.5 - Integrate and Distribute Affordable Housing**

Integrate the distribution of affordable housing as part of individual neighborhoods and the larger community.
Manufactured housing communities can currently be found throughout the City and Growth Management Area, providing options for this type of housing close to jobs, services, and transportation opportunities located throughout the community. Goals to preserve manufactured housing by rezoning to the M-H district support City Plan policies to preserve affordable housing throughout the City. The closure of a few parks, particularly in the southern portion of the community, would concentrate this limited type of housing primarily in the northern half of Fort Collins.

**LIV 6.4 - Permanent Supply of Affordable Housing**
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The preservation of manufactured housing through rezoning represents a similar effect to the regulatory changes envisioned by City Plan for the City’s subsidized and deed-restricted affordable housing. While most units in manufactured housing communities are private and not publicly subsidized, they have consistently provided an important source of housing at similar pricing levels. While rezoning does not guarantee affordability alone, it promotes the long-term operation of these communities and reduces the likelihood of redevelopment and the loss of some of the community’s most affordable housing options.

**LIV 6.9 - Prevent Displacement**
Build the capacity of homeowner groups, affordable housing providers and support organizations to enable the purchase, rehabilitation and long-term management of affordable housing. Particular emphasis should be given to mobile home parks located in infill and redevelopment areas.

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*The Structure Plan Map serves as a blueprint for the desired future development pattern of the community, setting forth a basic framework for future land use and transportation decisions. Upon annexation or a request for rezoning, the Structure Plan map and City Plan principles and policies provide guidance for decision-makers to identify specific zoning boundaries and zone districts during the development review process.*

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The Harmony Village MHC is located in the ‘Mixed Neighborhood’ place type on the Structure Plan. *(Attachment 5)*
Mixed Neighborhood

The Mixed Neighborhood place type is one of the predominant residential place types illustrated on the Structure Plan and is commonly found in areas of the community with a mix of housing types at low to moderate intensity. Its location on the Structure Plan commonly overlaps with the Low-Density Mixed-Use Neighborhood (“LMN”) and Medium Density Mixed-Use Neighborhood zone districts.

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The proposed rezoning to the M-H district is consistent with the land use types and density ranges of the Mixed Neighborhood place type. The M-H district is primarily residential and encourages manufactured housing as the primary land use within a density range of 6-to-12 units per acre. Both the types of permitted uses and the density range of the M-H district are within the characteristics described by the Mixed Neighborhood’s place type.

The Mixed Neighborhood also specifically references manufactured housing within existing neighborhoods, indicating, “while reinvestment in existing mobile home parks is encouraged, redevelopment of existing parks is not.” The M-H district is designed to discourage redevelopment and further addresses the Mixed Neighborhood place type description.

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**Summary - City Plan Guidance**

The rezoning of properties containing manufactured housing communities helps preserve naturally occurring affordable housing, protects a limited and unique type of housing, and seeks to prevent the displacement of residents, all policy goals supported by City Plan.

This proposed M-H rezoning is also consistent with the Mixed Neighborhood place type designation for this property on the Structure Plan Map. The Mixed Neighborhood place type describes residential land uses, including manufactured housing, of 5-20 units per acre which is consistent with the M-H district. This place type also specifically encourages reinvestment but not redevelopment of manufactured housing communities, which is the primary goal of the M-H district.

Criterion 2: and/or Warranted by changed conditions within the neighborhood surrounding and including the subject property.

Staff is recommending the proposed change in zoning based primarily on consistency with the comprehensive plan, rather than specific changes which have occurred in the neighborhood surrounding this property. The majority of properties containing manufactured housing and proposed for rezoning to the M-H district are located in established neighborhoods that have experienced limited recent neighborhood changes.

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Properties containing manufactured housing communities are primarily surrounded by residential development. Several properties also abut commercial development and retail centers. Most MHCS were constructed between
the 1960s and 1980s and existing development patterns have already been established and compatibility is less of a concern given the goals of preserving their existing uses rather than anticipating new (re)development. Given the location of most MHCs, they function in a similar capacity to attached and multifamily housing being located adjacent to single family development or acting as a buffer or transition in intensity to adjacent commercial development. The M-H district also provides similar compatibility measures as surrounding residential development by limiting building height, the size of any non-commercial structures, and matching other residential building setbacks. The Harmony Village MHC is surrounded by similar other residential development, primarily single-family dwellings to the north and west, and higher intensity commercial/retail development to the south and east.

Criterion 4: Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.

M-H rezoning is not anticipated to result in additional negative or positive impacts on the natural environment, as it seeks to preserve existing development. To the extent redevelopment of a property could positively benefit the natural environment through the application of more recent Land Use Code standards (habitat buffers, mitigation measures, etc.) the rezoning may have some long-term impacts from a reduction in their redevelopment potential.

Criterion 5: Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

The proposed rezoning is not anticipated to result in changes to development patterns in its immediate context given the existing development that is already in place. Within the subject property to be rezoned M-H, development predates many of the individual standards of the Land Use Code for orderly development (e.g. street connectivity and spacing requirements); however, the properties fulfill other growth framework and logical development goals, including providing for a variety of housing options and prices in the community that would otherwise result in additional demand for regional commuting and a decrease in the City’s housing opportunities and social connectivity.

BOARD / COMMISSION RECOMMENDATION

At its November 5, 2020, Planning and Zoning Board meeting, the Board considered all six manufactured housing property rezonings collectively and recommended that Council approve all of the rezonings on a 5-1 vote. Draft minutes from Planning and Zoning Board hearing are still being compiled and will be forwarded to Council in a read-before memo as soon as they are available.

Board member discussion focused on the goals of the proposal to help preserve a limited and affordable type of housing in the community while recognizing some of the tradeoffs of a change to a more restrictive zoning and some of the impacts it may have on properties where site conditions do not meet current development standards. There was also board discussion about impacts to property owners and a rezoning being imposed by the City rather than initiated by a property owner directly.

PUBLIC OUTREACH

Two neighborhood meetings were held to discuss the proposed rezonings on September 2, 2020, and September 12, 2020, as well as a virtual meeting with the Mi Voz residents’ group on September 9, 2020. Due to current pandemic conditions, all meetings were held in a remote format with online and telephone participation. Attendance included City staff, residents, and several property owners. (Attachment 6)

A special OurCity webpage was created with information and resources on the proposed rezonings and the rezoning proposal has been posted on the City’s Development Review webpage. The proposal has also complied with notice requirements in Land Use Code Section, including special development review signs posted on each property, notices sent in English and Spanish to 4,600 nearby residents and property owners, and written notice in the Coloradoan.
Agenda Item 22

Staff has also been in direct email and phone communication with a majority of owners of property subject to the rezoning this summer and fall regarding the amendments to the Land Use Code creating the M-H zone district and this proposed rezoning in addition to mailed notices required by the Land Use Code. (Attachment 7)

A number of public letters and comments were received for the proposal prior to the Planning and Zoning Board Hearing. (Attachment 8)

ATTACHMENTS

1. Rezoning Petition  (PDF)
2. Vicinity & Zoning Context Map  (PDF)
3. Manufactured Housing Zone District Overview  (PDF)
4. Manufactured Housing Zone District Land Use Code Ordinance  (PDF)
5. Structure Plan Context Map (PDF)
6. Neighborhood Meetings Summary  (PDF)
7. Property Owners Outreach  (PDF)
8. Planning & Zoning Board Public Comments  (PDF)
9. Powerpoint Presentation  (PDF)
ORDINANCE NO. 158, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS BY CHANGING THE ZONING
CLASSIFICATION FOR THAT CERTAIN PROPERTY KNOWN
AS THE HARMONY VILLAGE MOBILE HOME PARK REZONING

WHEREAS, Division 1.3 of the Fort Collins Land Use Code (the “Land Use Code”) establishes the Zoning
Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code establishes procedures and criteria for reviewing the
rezoning of land; and

WHEREAS, City Council seeks to preserve and support existing manufactured housing communities in Fort
Collins such as the Harmony Village Mobile Home Park (“Harmony Village”); and

WHEREAS, in accordance with the foregoing, the City Council has conducted a public hearing, considered
the Staff Report, the Planning and Zoning Board recommendation and the findings, and the evidence from the public
hearing and has determined that the property that is the subject of this Ordinance should be rezoned as hereinafter
provided; and

WHEREAS, the City Council has further determined that the proposed rezoning is consistent with the City's
Comprehensive Plan as required by Section 2.9.4(H)(2) of the Land Use Code; and

WHEREAS, to the extent applicable, the City Council has also analyzed the proposed rezoning against the
considerations established in Section 2.9.4(H)(3) of the Land Use Code and determined that the proposed M-H zoning
(a) is compatible with existing and proposed uses surrounding the subject property and is an appropriate zone district
for the property; (b) is not anticipated to significantly impact the natural environment; and (c) represents a logical and
orderly development pattern.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained
in the recitals set forth above.

Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by
changing the zoning classification from Low Density Mixed Use ("LMN") Zone District, to the newly created
Manufactured Housing Community ("M-H") Zone District, for the following described property in the City known as the
Harmony Village:

A TRACT OF LAND LOCATED IN 1/2 OF THE SOUTHWEST QUARTER OF SECTION 32,
TOWNSHIP 7, RANGE 68 WEST CONTAINING 80 ACRES MORE OR LESS; LESS THOSE PARCELS
DESCRIBED IN DOCUMENTS RECORDED AT RECEPTION NOS. 20040123055. 20040121627 and
20070017402

Section 3. That the property known as the Harmony Village shall be included in the Residential Sign
District adopted pursuant to Section 3.8.7.1(M) of the Land Use Code; and Section 3.8.7.1(M) is hereby changed and
amended to include the above-described property.

Section 4. The City Manager is hereby authorized and directed to amend said Zoning Map in
accordance with this Ordinance.
Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

____________________________ 
Mayor

ATTEST:

____________________________ 
City Clerk

Passed and adopted on final reading on this 15th day of December, A.D. 2020.

____________________________ 
Mayor

ATTEST:

____________________________ 
City Clerk
AGENDA ITEM SUMMARY
December 15, 2020

City Council

STAFF
Cameron Gloss, Planning Manager
Claire Havelda, Legal

SUBJECT
Second Reading of Ordinance No. 159, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Hickory Village Mobile Home Park Rezoning.

EXECUTIVE SUMMARY

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on Second Reading on December 1, 2020, amends the City’s Zoning Map to change the zoning designation for the Hickory Village Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Hickory Village MHC is located at 400 Hickory Street and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (M-H) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments) (PDF)
2. Ordinance No. 159, 2020 (PDF)
AGENDA ITEM SUMMARY
City Council
December 1, 2020

STAFF
Cameron Gloss, Planning Manager
Claire Havelda, Legal

SUBJECT
Public Hearing and First Reading of Ordinance No. 159, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Hickory Village Mobile Home Park Rezoning.

EXECUTIVE SUMMARY
This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

The purpose of this item is to amend the City’s Zoning Map to change the zoning designation for the Hickory Village Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Hickory Village MHC is located at 400 Hickory Street and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (M-H) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION
Purpose and Intent
The purpose of this City-initiated rezoning request is to advance City policies and goals to preserve manufactured housing communities and prevent the displacement of residents. City Plan, the City’s comprehensive plan, and the Strategic Plan identify policies and priorities to preserve manufactured housing. The proposed property rezonings support these policy goals and are part of a series of local and state efforts and legislative changes aimed to address common manufactured housing issues and enhance resident protections.

Manufactured Housing Preservation
Manufactured housing provides an affordable and unique type of housing in Fort Collins, with many lot and unit rents equivalent to or less than some of the most affordable and deed-restricted housing units in Fort Collins. While unique and affordable, manufactured housing is also a limited type of housing, and the number of units have been shrinking as manufactured housing communities close and/or redevelop. Over the past twenty years,
five manufactured housing communities have closed in Fort Collins, primarily due to redevelopment, resulting in the loss of hundreds of units and often displacing residents who have limited options finding similarly priced housing in the region.

While many residents in manufactured housing communities may own their own homes, they lease or rent land from a property owner. This dual-asset ownership can create difficult situations for residents when a manufactured housing community closes. Many manufactured homes are unable to be moved due to age, condition, lack of available manufactured housing lots elsewhere in the community, or the financial cost of moving the structure. Many residents in manufactured housing communities are often forced to abandon their home, one of their largest financial assets.

During the recent update to City Plan in 2018/2019, residents of manufactured housing communities shared comments they fear their parks and communities may close or redevelop and force them to move, losing social connections and being unable to find similarly priced housing elsewhere in the community.

In August 2020, Council adopted a series of Land Use Code changes to create a new Manufactured Housing (M-H) zone district (Attachment 3 and 4) to promote manufactured housing preservation. A key feature of the M-H district is a more limited set of permitted land uses. A change in zoning to the M-H district is designed to promote and encourage the ongoing operation of existing manufactured housing communities by limiting opportunities to redevelop the site.

While a change in zoning to the M-H district does not guarantee a manufactured housing community will not close for reasons other than redevelopment, it provides an important policy and regulatory signal that manufactured housing is valued and supported in Fort Collins and encourages the ongoing operation of these communities.

Overview of Main Considerations

Property rezonings and amendments to the zoning map are governed by Division 2.9 of the Land Use Code and include specific criteria for rezonings of land less than 640 acres in size (quasi-judicial rezonings). Quasi-judicial rezoning requests shall be recommended by the Planning and Zoning Board and approved by Council only if the proposal is

1) Consistent with the City’s comprehensive plan and/or;
2) Warranted by changed conditions within the neighborhood surrounding and including the subject property.

In addition, the Planning and Zoning Board and Council can also consider additional criteria including:

3) Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land;
4) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment;
5) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

While the goal of many rezoning requests is typically to facilitate new development, this rezoning proposal seeks to change zoning designations to encourage the ongoing operation of existing development. An analysis of the rezoning proposal below finds consistent support between the proposed rezoning and policy goals in the comprehensive plan.

While many of the properties proposed for rezoning to the M-H district were once part of the City’s two prior mobile home park zone districts up until 1997, the balance between community priorities to protect an
important source of affordable housing and property owner rights has been a consistent theme heard during the public process for both the development of the new MH district and this proposed rezoning.

Planning Background & Context

Information on the annexation and zoning history for the Hickory Village MHC property, as well as its adjacent development context is summarized below:

<table>
<thead>
<tr>
<th>Manufactured Housing Community: Hickory Village</th>
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<tbody>
<tr>
<td>Annexation</td>
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</tbody>
</table>

Compliance with Land Use Code Rezoning Criteria

Criterion 1: Consistency of the proposed rezoning with the City’s Comprehensive Plan (City Plan)

City staff has evaluated the proposed changes for consistency with the comprehensive plan based on City Plan policy guidance and land use direction provided by the Structure Plan map.

City Plan Policies

Housing affordability and attainability is a top community issue which was reflected in the recent City Plan update through a number of new policy goals to encourage a greater mix of housing types, protect and develop new types of attainable and affordable housing options, and to prevent the displacement of manufactured housing residents. The preservation of manufactured housing communities, including the development of the new Manufactured Housing zone district and the proposed rezoning of properties containing manufactured housing directly support the following City Plan policies:

*LIV 5.2 - Supply of Attainable Housing*

Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include ADUs, duplexes, townhomes, mobile homes, manufactured housing and other “missing middle” housing types.

Manufactured housing represents one of the most affordable types of housing in Fort Collins, comparable to subsidized and deed-restricted housing for those earning between 30-60% area median income. As a naturally-occurring source of affordable housing, manufactured housing communities in the City limits and Growth Management Area represent a comparable number of dwelling units to Fort Collins’ entire deed-restricted affordable housing stock. Preserving manufactured housing helps protect and maintain an important supply of affordable housing in Fort Collins.

In addition to its affordability, manufactured housing is a unique and limited type of housing that has been in decline over the past several decades due to community closures and redevelopment. The goal of preservation through rezoning to the MH district is designed to protect and promote the ongoing operation of this limited housing resource which has proven to be difficult to expand via new manufactured housing development.
**LIV 5.5 - Integrate and Distribute Affordable Housing**
Integrate the distribution of affordable housing as part of individual neighborhoods and the larger community.

Manufactured housing communities can currently be found throughout the City and Growth Management Area, providing options for this type of housing close to jobs, services, and transportation opportunities located throughout the community. Goals to preserve manufactured housing by rezoning to the MH district support City Plan policies to preserve affordable housing throughout the City. The closure of a few parks, particularly in the southern portion of the community, would concentrate this limited type of housing primarily in the northern half of Fort Collins.

**LIV 6.4 - Permanent Supply of Affordable Housing**
Create and maintain an up-to-date inventory of affordable housing in the community. Pursue policy and regulatory changes that will encourage the rehabilitation and retention of affordable housing in perpetuity.

The preservation of manufactured housing through rezoning represents a similar effect to the regulatory changes envisioned by City Plan for the City’s subsidized and deed-restricted affordable housing. While most units in manufactured housing communities are private and not publicly subsidized, they have consistently provided an important source of housing at similar pricing levels. While rezoning does not guarantee affordability alone, it promotes the long-term operation of these communities and reduces the likelihood of redevelopment and the loss of some of the community’s most affordable housing options.

**LIV 6.9 - Prevent Displacement**
Build the capacity of homeowner groups, affordable housing providers and support organizations to enable the purchase, rehabilitation and long-term management of affordable housing. Particular emphasis should be given to mobile home parks located in infill and redevelopment areas.

Many of the community’s manufactured housing communities are located adjacent to commercial areas, or along corridors with existing or planned transit service which are encouraged to redevelop and at higher intensities. Rezoning properties containing manufactured housing to the MH district provides an important regulatory and policy signal that manufactured housing is encouraged and its continued operation is desired amongst areas anticipated to experience (re)development changes in the future.

This policy signal may also bolster the efforts of residents, local organizations, and the City to support and reinvest in these communities, including the potential for future acquisition of the underlying property by residents through a resident-owned community (ROC) if a property owner sells a property in the future.

**Structure Plan Land Use Guidance**
The Structure Plan map provides a framework for development in Fort Collins and provides guidance for land-use decisions. As detailed in the Structure Plan in City Plan:

*The Structure Plan Map serves as a blueprint for the desired future development pattern of the community, setting forth a basic framework for future land use and transportation decisions. Upon annexation or a request for rezoning, the Structure Plan map and City Plan principles and policies provide guidance for decision-makers to identify specific zoning boundaries and zone districts during the development review process.*

The Structure Plan is an illustrated map made up of broad categories called ‘place types,’ which provide general characteristics for development patterns that can be used to determine more specific zoning classifications and boundaries. Place types typically describe principal and supporting land uses, density ranges, and the presence of certain types of services. Place types may often correspond or overlap multiple zone districts.

The Hickory Village MHC is located in the ‘Mixed Neighborhood’ place type on the Structure Plan. (Attachment 12.1 Packet Pg. 139 Attachment: First Reading Agenda Item Summary, December 1, 2020 (w/o attachments) (9791 : SR 159 rezone - Hickory)
5) Mixed Neighborhood

The Mixed Neighborhood place type is one of the predominant residential place types illustrated on the Structure Plan and is commonly found in areas of the community with a mix of housing types at low to moderate intensity. Its location on the Structure Plan commonly overlaps with the Low-Density Mixed-Use Neighborhood ("LMN") and Medium Density Mixed-Use Neighborhood zone districts.

The Mixed Neighborhood place type indicates a general intensity range of between 5 and 20 units per acre which supports its designation for a wide range of housing types, including different attached and multifamily products. The Structure Plan also makes a distinction within the place type for existing development and new or future neighborhoods planned for vacant and undeveloped land.

The proposed rezoning to the M-H district is consistent with the land use types and density ranges of the Mixed Neighborhood place type. The M-H district is primarily residential and encourages manufactured housing as the primary land use within a density range of 6-to-12 units per acre. Both the types of permitted uses and the density range of the MH district are within the characteristics described by the Mixed Neighborhood’s place type.

The Mixed Neighborhood also specifically references manufactured housing within existing neighborhoods, indicating, “while reinvestment in existing mobile home parks is encouraged, redevelopment of existing parks is not.” The M-H district is designed to discourage redevelopment and further addresses the Mixed Neighborhood place type description.

City Plan describes place both the generalized nature of place type designations for broad areas of the community and flexibility in the boundaries of place types when considering changes to zoning:

Future zone changes should generally adhere to the place-type boundaries depicted on the Structure Plan, but flexibility in interpretation of the boundary may be granted provided the proposed change is consistent with the principles, goals and policies contained in this Plan. Density ranges outlined for each place-type category are based on gross acreage and are intended to address overall densities for a particular area rather than for individual parcels.

Summary - City Plan Guidance

The rezoning of properties containing manufactured housing communities helps preserve naturally occurring affordable housing, protects a limited and unique type of housing, and seeks to prevent the displacement of residents, all policy goals supported by City Plan.

This proposed M-H rezoning is also consistent with the Mixed Neighborhood place type designation for this property on the Structure Plan Map. The Mixed Neighborhood place type describes residential land uses, including manufactured housing, of 5-20 units per acre which is consistent with the MH district. This place type also specifically encourages reinvestment but not redevelopment of manufactured housing communities, which is the primary goal of the MH district.

Criterion 2: and/or Warranted by changed conditions within the neighborhood surrounding and including the subject property.

Staff is recommending the proposed change in zoning based primarily on consistency with the comprehensive plan, rather than specific changes which have occurred in the neighborhood surrounding this property. The majority of properties containing manufactured housing and proposed for rezoning to the M-H district are located in established neighborhoods that have experienced limited recent neighborhood changes.

Criterion 3: Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land.
Properties containing manufactured housing communities are primarily surrounded by residential development. Several properties also abut commercial development and retail centers. Most MHCs were constructed between the 1960s and 1980s and existing development patterns have already been established and compatibility is less of a concern given the goals of preserving their existing uses rather than anticipating new (re)development. Given the location of most MHCs, they function in a similar capacity to attached and multifamily housing being located adjacent to single family development or acting as a buffer or transition in intensity to adjacent commercial development. The MH district also provides similar compatibility measures as surrounding residential development by limiting building height, the size of any non-commercial structures, and matching other residential building setbacks. The Hickory Village MHC is surrounded by similar other residential development, primarily single-family dwellings to the north and west, and higher intensity commercial/retail development to the south and east.

Criterion 4: Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.

MH rezoning is not anticipated to result in additional negative or positive impacts on the natural environment, as it seeks to preserve existing development. To the extent redevelopment of a property could positively benefit the natural environment through the application of more recent Land Use Code standards (habitat buffers, mitigation measures, etc.) the rezoning may have some long-term impacts from a reduction in their redevelopment potential.

Criterion 5: Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

The proposed rezoning is not anticipated to result in changes to development patterns in their immediate context given the existing development that is already in place. Within the subject properties of the manufactured housing rezonings, development predates many of the individual standards of the Land Use Code for orderly development (e.g. street connectivity and spacing requirements); however, the properties fulfill other growth framework and logical development goals, including providing for a variety of housing options and prices in the community that would otherwise result in additional demand for regional commuting and a decrease in the City’s housing opportunities and social connectivity.

BOARD / COMMISSION RECOMMENDATION

At its November 5, 2020, Planning and Zoning Board meeting, the Board considered all six manufactured housing property rezonings collectively and recommended that Council approve the rezonings on a 5-1 vote. Draft minutes from Planning and Zoning Board hearing are still being compiled and will be forwarded to Council in a read-before memo as soon as they are available.

Board member discussion focused on the goals of the proposal to help preserve a limited and affordable type of housing in the community while recognizing some of the tradeoffs of a change to a more restrictive zoning and some of the impacts it may have on properties where site conditions do not meet current development standards. There was also board discussion about impacts to property owners and a rezoning being imposed by the City rather than initiated by a property owner directly.

PUBLIC OUTREACH

Two neighborhood meetings were held to discuss the proposed rezonings on September 2, 2020, and September 12, 2020, as well as a virtual meeting with the Mi Voz residents’ group on September 9, 2020. Due to current pandemic conditions, all meetings were held in a remote format with online and telephone participation. Attendance included City staff, residents, and several property owners. (Attachment 6)

A special OurCity webpage was created with information and resources on the proposed rezonings and the rezoning proposal has been posted on the City’s Development Review webpage. The proposal has also complied with noticing requirements in Land Use Code Section, including special development review signs posted on each property, notices sent in English and Spanish to 4,600 nearby residents and property owners,
and written notice in the Coloradoan.

Staff has also been in direct email and phone communication with a majority of owners of property subject to the rezoning this summer and fall regarding the amendments to the Land Use Code creating the Manufactured Housing zone district and this proposed rezonings in addition to mailed notices required by the Land Use Code. (Attachment 7)

A number of public letters and comments were received for the proposal prior to the Planning and Zoning Board Hearing. (Attachment 8)

ATTACHMENTS

1. Rezoning Petition (PDF)
2. Vicinity & Zoning Context Map (PDF)
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9. Powerpoint Presentation (PDF)
ORDINANCE NO. 159, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS BY CHANGING THE ZONING
CLASSIFICATION FOR THAT CERTAIN PROPERTY KNOWN
AS THE HICKORY VILLAGE MOBILE HOME PARK REZONING

WHEREAS, Division 1.3 of the Fort Collins Land Use Code (the “Land Use Code”) establishes the Zoning
Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code establishes procedures and criteria for reviewing the
rezoning of land; and

WHEREAS, City Council seeks to preserve and support existing manufactured housing communities in Fort
Collins such as the Hickory Village Mobile Home Park (“Hickory Village”); and

WHEREAS, in accordance with the foregoing, the City Council has conducted a public hearing, considered
the Staff Report, the Planning and Zoning Board recommendation and the findings, and the evidence from the public
hearing and has determined that the property that is the subject of this Ordinance should be rezoned as hereinafter
provided; and

WHEREAS, the City Council has further determined that the proposed rezoning is consistent with the City's
Comprehensive Plan as required by Section 2.9.4(H)(2) of the Land Use Code; and

WHEREAS, to the extent applicable, the City Council has also analyzed the proposed rezoning against the
considerations established in Section 2.9.4(H)(3) of the Land Use Code and determined that the proposed M-H zoning
(a) is compatible with existing and proposed uses surrounding the subject property and is an appropriate zone district
for the property; (b) is not anticipated to significantly impact the natural environment; and (c) represents a logical and
orderly development pattern.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained
in the recitals set forth above.

Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by
changing the zoning classification from Low Density Mixed Use ("LMN") Zone District, to the newly created
Manufactured Housing Community ("M-H") Zone District, for the following described property in the City known as
the Hickory Village:

ALL HICKORY VILLAGE, FTC

Section 3. That the property known as the Hickory Village shall remain included in the Residential
Sign District adopted pursuant to Section 3.8.7.1(M) of the Land Use Code.

Section 4. The City Manager is hereby authorized and directed to amend said Zoning Map in
accordance with this Ordinance.
Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

Mayor

ATTEST:

_____________________________
City Clerk

Passed and adopted on final reading on this 15th day of December, A.D. 2020.

Mayor

ATTEST:

_____________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
December 15, 2020

STAFF
Cameron Gloss, Planning Manager
Claire Havelda, Legal

SUBJECT
Second Reading of Ordinance No. 160, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Pleasant Grove Manufactured Housing Community Rezoning.

EXECUTIVE SUMMARY
This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

This Ordinance, unanimously adopted on First Reading on December 1, 2020, amends the City’s Zoning Map to change the zoning designation for the Pleasant Grove Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Pleasant Grove MHC is located at 517 East Trilby Road and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (M-H) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS
1. First Reading Agenda Item Summary, December 1, 2020 (w/o attachments)  (PDF)
2. Ordinance No. 160, 2020  (PDF)
AGENDA ITEM SUMMARY
City Council
December 1, 2020

STAFF
Cameron Gloss, Planning Manager
Claire Havelda, Legal

SUBJECT
Public Hearing and First Reading of Ordinance No. 160, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the Pleasant Grove Manufactured Housing Community Rezoning.

EXECUTIVE SUMMARY
This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 1(f) of the Council’s Rules of Meeting Procedures adopted in Resolution 2019-064.

The purpose of this item is to amend the City’s Zoning Map to change the zoning designation for the Pleasant Grove Manufactured Housing Community (MHC), one of six properties containing manufactured housing communities proposed to be rezoned to the Manufactured Housing (M-H) zone district to support manufactured housing preservation. This rezoning request has been initiated by the City of Fort Collins.

The Pleasant Grove MHC is located at 517 East Trilby Road and the zoning is proposed to change from the Low Density Mixed-Use Neighborhood (LMN) zone district to the Manufactured Housing (M-H) zone district.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 5-1 at their November 5, 2020 hearing to recommend approval.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION
Purpose and Intent
The purpose of this City-initiated rezoning request is to advance City policies and goals to preserve manufactured housing communities and prevent the displacement of residents. City Plan, the City’s comprehensive plan, and the Strategic Plan identify policies and priorities to preserve manufactured housing. This proposed property rezoning supports these policy goals and is part of a series of local and state efforts and legislative changes aimed to address common manufactured housing issues and enhance resident protections.

Manufactured Housing Preservation
Manufactured housing provides an affordable and unique type of housing in Fort Collins, with many lot and unit rents equivalent to or less than some of the most affordable and deed-restricted housing units in Fort Collins. While unique and affordable, manufactured housing is also a limited type of housing, and the number of units has been shrinking as manufactured housing communities close and/or redevelop. Over the past twenty years,
five manufactured housing communities have closed in Fort Collins, primarily due to redevelopment, resulting in the loss of hundreds of units and often displacing residents who have limited options finding similarly priced housing in the region.

While many residents in manufactured housing communities may own their own homes, they lease or rent land from a property owner. This dual-asset ownership can create difficult situations for residents when a manufactured housing community closes. Many manufactured homes are unable to be moved due to age, condition, lack of available manufactured housing lots elsewhere in the community, or the financial cost of moving the structure. Many residents in manufactured housing communities are often forced to abandon their home, one of their largest financial assets.

During the recent update to City Plan in 2018/2019, residents of manufactured housing communities shared comments they fear their parks and communities may close or redevelop and force them to move, losing social connections and being unable to find similarly priced housing elsewhere in the community.

In August 2020, Council adopted a series of Land Use Code changes to create a new Manufactured Housing (M-H) zone district (Attachment 3 and 4) to promote manufactured housing preservation. A key feature of the M-H district is a more limited set of permitted land uses. A change in zoning to the M-H district is designed to promote and encourage the ongoing operation of existing manufactured housing communities by limiting opportunities to redevelop the site.

While a change in zoning to the M-H district does not guarantee a manufactured housing community will not close for reasons other than redevelopment, it provides an important policy and regulatory signal that manufactured housing is valued and supported in Fort Collins and encourages the ongoing operation of these communities.

Overview of Main Considerations

Property rezonings and amendments to the zoning map are governed by Division 2.9 of the Land Use Code and include specific criteria for rezonings of land less than 640 acres in size (quasi-judicial rezonings). Quasi-judicial rezoning requests shall be recommended by the Planning and Zoning Board and approved by City Council only if the proposal is

1) Consistent with the City’s comprehensive plan and/or;
2) Warranted by changed conditions within the neighborhood surrounding and including the subject property.

In addition, the Planning and Zoning Board and Council can also consider additional criteria including:

3) Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land;
4) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment;
5) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

While the goal of many rezoning requests is typically to facilitate new development, this rezoning proposal seeks to change zoning designations to encourage the ongoing operation of existing development. An analysis of the rezoning proposal below finds consistent support between the proposed rezoning and policy goals in the comprehensive plan.

While many of the properties proposed for rezoning to the M-H district were once part of the City’s two prior mobile home park zone districts up until 1997, the balance between community priorities to protect an important source of affordable housing and property owner rights has been a consistent theme heard during the public
process for both the development of the new M-H district and this proposed rezoning.

Planning Background & Context

Information on the annexation and zoning history for the Pleasant Grove MHC property, as well as its adjacent development context is summarized below:

<table>
<thead>
<tr>
<th>Manufactured Housing Community: Pleasant Grove</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annexation</td>
</tr>
<tr>
<td>Southwest Enclave Annexation Phase Three, 2010</td>
</tr>
</tbody>
</table>

Compliance with Land Use Code Rezoning Criteria

Criterion 1: Consistency of the proposed rezoning with the City’s Comprehensive Plan (City Plan)

City staff has evaluated the proposed changes for consistency with the comprehensive plan based on City Plan policy guidance and land use direction provided by the Structure Plan map.

City Plan Policies

Housing affordability and attainability is a top community issue which was reflected in the recent City Plan update through a number of new policy goals to encourage a greater mix of housing types, protect and develop new types of attainable and affordable housing options, and to prevent the displacement of manufactured housing residents. The preservation of manufactured housing communities, including the development of the new Manufactured Housing zone district and the proposed rezoning of properties containing manufactured housing directly support the following City Plan policies:

LIV 5.2 - Supply of Attainable Housing
Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include ADUs, duplexes, townhomes, mobile homes, manufactured housing and other “missing middle” housing types.

Manufactured housing represents one of the most affordable types of housing in Fort Collins, comparable to subsidized and deed-restricted housing for those earning between 30-60% area median income. As a naturally-occurring source of affordable housing, manufactured housing communities in the City limits and Growth Management Area represent a comparable number of dwelling units to Fort Collins’ entire deed-restricted affordable housing stock. Preserving manufactured housing helps protect and maintain an important supply of affordable housing in Fort Collins.

In addition to its affordability, manufactured housing is a unique and limited type of housing that has been in decline over the past several decades due to community closures and redevelopment. The goal of preservation through rezoning to the M-H district is designed to protect and promote the ongoing operation of this limited housing resource which has proven to be difficult to expand via new manufactured housing development.

LIV 5.5 - Integrate and Distribute Affordable Housing
Integrate the distribution of affordable housing as part of individual neighborhoods and the larger community.

Manufactured housing communities can currently be found throughout the City and Growth Management Area, providing options for this type of housing close to jobs, services, and transportation opportunities located throughout the community. Goals to preserve manufactured housing by rezoning to the M-H district support City Plan policies to preserve affordable housing throughout the City. The closure of a
few parks, particularly in the southern portion of the community, would concentrate this limited type of housing primarily in the northern half of Fort Collins.

LIV 6.4 - Permanent Supply of Affordable Housing
Create and maintain an up-to-date inventory of affordable housing in the community. Pursue policy and regulatory changes that will encourage the rehabilitation and retention of affordable housing in perpetuity.

The preservation of manufactured housing through rezoning represents a similar effect to the regulatory changes envisioned by City Plan for the City’s subsidized and deed-restricted affordable housing. While most units in manufactured housing communities are private and not publicly subsidized, they have consistently provided an important source of housing at similar pricing levels. While rezoning does not guarantee affordability alone, it promotes the long-term operation of these communities and reduces the likelihood of redevelopment and the loss of some of the community’s most affordable housing options.

LIV 6.9 - Prevent Displacement
Build the capacity of homeowner groups, affordable housing providers and support organizations to enable the purchase, rehabilitation and long-term management of affordable housing. Particular emphasis should be given to mobile home parks located in infill and redevelopment areas.

Many of the community’s manufactured housing communities are located adjacent to commercial areas, or along corridors with existing or planned transit service which are encouraged to redevelop and at higher intensities. Rezoning properties containing manufactured housing to the M-H district provides an important regulatory and policy signal that manufactured housing is encouraged and its continued operation is desired amongst areas anticipated to experience (re)development changes in the future.

This policy signal may also bolster the efforts of residents, local organizations, and the City to support and reinvest in these communities, including the potential for future acquisition of the underlying property by residents through a resident-owned community (ROC) if a property owner sells a property in the future.

Structure Plan Land Use Guidance

The Structure Plan map provides a framework for development in Fort Collins and provides guidance for land-use decisions. As detailed in the Structure Plan in City Plan:

The Structure Plan Map serves as a blueprint for the desired future development pattern of the community, setting forth a basic framework for future land use and transportation decisions. Upon annexation or a request for rezoning, the Structure Plan map and City Plan principles and policies provide guidance for decision-makers to identify specific zoning boundaries and zone districts during the development review process.

The Structure Plan is an illustrated map made up of broad categories called ‘place types,’ which provide general characteristics for development patterns that can be used to determine more specific zoning classifications and boundaries. Place types typically describe principal and supporting land uses, density ranges, and the presence of certain types of services. Place types may often correspond to or overlap multiple zone districts.

The Pleasant Grove MHC is located in the ‘Mixed Neighborhood’ place type on the Structure Plan. (Attachment 5)

Mixed Neighborhood

The Mixed Neighborhood place type is one of the predominant residential place types illustrated on the Structure Plan and is commonly found in areas of the community with a mix of housing types at low to moderate intensity. Its location on the Structure Plan commonly overlaps with the Low-Density Mixed-Use Neighborhood ("LMN") and Medium Density Mixed-Use Neighborhood zone districts.
The Mixed Neighborhood place type indicates a general intensity range of between 5 and 20 units per acre which supports its designation for a wide range of housing types, including different attached and multifamily products. The Structure Plan also makes a distinction within the place type for existing development and new or future neighborhoods planned for vacant and undeveloped land.

The proposed rezoning to the M-H district is consistent with the land use types and density ranges of the Mixed Neighborhood place type. The M-H district is primarily residential and encourages manufactured housing as the primary land use within a density range of 6-to-12 units per acre. Both the types of permitted uses and the density range of the M-H district are within the characteristics described by the Mixed Neighborhood’s place type.

The Mixed Neighborhood also specifically references manufactured housing within existing neighborhoods, indicating, “while reinvestment in existing mobile home parks is encouraged, redevelopment of existing parks is not.” The M-H district is designed to discourage redevelopment and further addresses the Mixed Neighborhood place type description.

City Plan describes place both the generalized nature of place type designations for broad areas of the community and flexibility in the boundaries of place types when considering changes to zoning:

*Future zone changes should generally adhere to the place-type boundaries depicted on the Structure Plan, but flexibility in interpretation of the boundary may be granted provided the proposed change is consistent with the principles, goals and policies contained in this Plan. Density ranges outlined for each place-type category are based on gross acreage and are intended to address overall densities for a particular area rather than for individual parcels.*

**Summary - City Plan Guidance**

The rezoning of properties containing manufactured housing communities helps preserve naturally occurring affordable housing, protects a limited and unique type of housing, and seeks to prevent the displacement of residents, all policy goals supported by City Plan.

This proposed M-H rezoning is also consistent with the Mixed Neighborhood place type designation for this property on the Structure Plan Map. The Mixed Neighborhood place type describes residential land uses, including manufactured housing, of 5-20 units per acre which is consistent with the M-H district. This place type also specifically encourages reinvestment but not redevelopment of manufactured housing communities, which is the primary goal of the M-H district.

**Criterion 2:** and/or Warranted by changed conditions within the neighborhood surrounding and including the subject property.

Staff is recommending the proposed change in zoning based primarily on consistency with the comprehensive plan, rather than specific changes which have occurred in the neighborhood surrounding this property. The majority of properties containing manufactured housing and proposed for rezoning to the M-H district are located in established neighborhoods that have experienced limited recent neighborhood changes.

**Criterion 3:** Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land.

Properties containing manufactured housing communities are primarily surrounded by residential development. Several properties also abut commercial development and retail centers. Most MHCs were constructed between the 1960s and 1980s and existing development patterns have already been established and compatibility is less of a concern given the goals of preserving their existing uses rather than anticipating new (re)development. Given the location of most MHCs, they function in a similar capacity to attached and multifamily housing being located adjacent to single family development or acting as a buffer or transition in intensity to adjacent commercial development. The M-H district also provides similar compatibility measures as surrounding residential development by limiting building height, the size of any non-commercial structures, and matching...
other residential building setbacks. The Pleasant Grove MHC is surrounded by other residential development, primarily single-family dwellings, to the north and west, and undeveloped land to the south and east.

Criterion 4: Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.

M-H rezoning is not anticipated to result in additional negative or positive impacts on the natural environment, as it seeks to preserve existing development. To the extent redevelopment of a property could positively benefit the natural environment through the application of more recent Land Use Code standards (habitat buffers, mitigation measures, etc.) the rezoning may have some long-term impacts from a reduction in their redevelopment potential.

Criterion 5: Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

The proposed rezoning is not anticipated to result in changes to development patterns in its immediate context given the existing development that is already in place. Within the subject property to be rezoned M-H, development predates many of the individual standards of the Land Use Code for orderly development (e.g. street connectivity and spacing requirements); however, the properties fulfill other growth framework and logical development goals, including providing for a variety of housing options and prices in the community that would otherwise result in additional demand for regional commuting and a decrease in the City’s housing opportunities and social connectivity.

BOARD / COMMISSION RECOMMENDATION

At its November 5, 2020, Planning and Zoning Board meeting, the Board considered all six manufactured housing property rezonings collectively and recommended that Council approve all of the rezonings on a 5-1 vote. Draft minutes from Planning and Zoning Board hearing are still being compiled and will be forwarded to Council in a read-before memo as soon as they are available.

Board member discussion focused on the goals of the proposal to help preserve a limited and affordable type of housing in the community while recognizing some of the tradeoffs of a change to a more restrictive zoning and some of the impacts it may have on properties where site conditions do not meet current development standards. There was also board discussion about impacts to property owners and a rezoning being imposed by the City rather than initiated by a property owner directly.

PUBLIC OUTREACH

Two neighborhood meetings were held to discuss the proposed rezonings on September 2, 2020, and September 12, 2020, as well as a virtual meeting with the Mi Voz residents’ group on September 9, 2020. Due to current pandemic conditions, all meetings were held in a remote format with online and telephone participation. Attendance included City staff, residents, and several property owners. (Attachment 6)

A special OurCity webpage was created with information and resources on the proposed rezonings and the rezoning proposal has been posted on the City’s Development Review webpage. The proposal has also complied with notice requirements in Land Use Code Section, including special development review signs posted on each property, notices sent in English and Spanish to 4,600 nearby residents and property owners, and written notice in the Coloradoan.

Staff has also been in direct email and phone communication with a majority of owners of property subject to the rezoning this summer and fall regarding the amendments to the Land Use Code creating the M-H zone district and this proposed rezoning in addition to mailed notices required by the Land Use Code. (Attachment 7)

A number of public letters and comments were received for the proposal prior to the Planning and Zoning Board Hearing. (Attachment 8)
ATTACHMENTS

1. Rezoning Petition (PDF)
2. Vicinity & Zoning Context Map (PDF)
3. Manufactured Housing Zone District Overview (PDF)
4. Manufactured Housing Zone District Land Use Code Ordinance (PDF)
5. Structure Plan Context Map (PDF)
6. Neighborhood Meetings Summary (PDF)
7. Property Owners Outreach (PDF)
8. Planning & Zoning Board Public Comments (PDF)
9. Powerpoint Presentation (PDF)
ORDINANCE NO. 160, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS BY CHANGING THE ZONING
CLASSIFICATION FOR THAT CERTAIN PROPERTY KNOWN
AS THE PLEASANT GROVE MANUFACTURED HOUSING COMMUNITY REZONING

WHEREAS, Division 1.3 of the Fort Collins Land Use Code (the “Land Use Code”) establishes the Zoning Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code establishes procedures and criteria for reviewing the rezoning of land; and

WHEREAS, City Council seeks to preserve and support existing manufactured housing communities in Fort Collins such as the Pleasant Grove Manufactured Housing Community (“Pleasant Grove”); and

WHEREAS, in accordance with the foregoing, the City Council has conducted a public hearing, considered the Staff Report, the Planning and Zoning Board recommendation and the findings, and the evidence from the public hearing and has determined that the property that is the subject of this Ordinance should be rezoned as hereinafter provided; and

WHEREAS, the City Council has further determined that the proposed rezoning is consistent with the City's Comprehensive Plan as required by Section 2.9.4(H)(2) of the Land Use Code; and

WHEREAS, to the extent applicable, the City Council has also analyzed the proposed rezoning against the considerations established in Section 2.9.4(H)(3) of the Land Use Code and determined that the proposed M-H zoning (a) is compatible with existing and proposed uses surrounding the subject property and is an appropriate zone district for the property; (b) is not anticipated to significantly impact the natural environment; and (c) represents a logical and orderly development pattern.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by changing the zoning classification from Low Density Mixed Use (“LMN”) Zone District, to the newly created Manufactured Housing Community (“M-H”) Zone District, for the following described property in the City known as Pleasant Grove.

TR IN NW 1/4 13-6-69 COM AT N 1/4 COR, TH ALG E LN NW 1/4 S 0 16' 8" E 40 FT TPOB, S 0 16' 8" E 316.5 FT, N 89 46' 40" W 423.82 FT, S 0 16' 8" E 120 FT, N 89 46' 40" W 488.73 FT, N 0 16' 8" W 120 FT, N 89 46' 40" W 633.1

Section 3. That the property known as the Pleasant Grove shall remain included in the Residential Sign District adopted pursuant to Section 3.8.7.1(M) of the Land Use Code.

Section 4. The City Manager is hereby authorized and directed to amend said Zoning Map in accordance with this Ordinance.
Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.

Mayor

ATTEST:

_____________________________
City Clerk

Passed and adopted on final reading on this 15th day of December, A.D. 2020.

Mayor

ATTEST:

_____________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
December 15, 2020

STAFF
Noah Beals, Senior City Planner/Zoning
Brad Yatabe, Legal

SUBJECT
First Reading of Ordinance No. 161, 2020, Making Various Amendments to the City of Fort Collins Land Use Code.

EXECUTIVE SUMMARY
The purpose of this item is to make amendments to the Land Use Code ("LUC"). There are proposed revisions, clarifications and additions to the LUC that address specific subject areas that have arisen since the last update was initiated in the Fall of 2019.

STAFF RECOMMENDATION
Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION
The LUC was first adopted in March 1997. Subsequent revisions have been recommended on a regular basis to make changes, additions, deletions and clarifications. The proposed changes are offered to resolve implementation issues and to continuously improve both the overall quality and user friendliness of the LUC. Additional details regarding the changes are contained in the attachments to this Agenda Item Summary.

The list of updates is summarized into 25 topics (see attached summary). These include changes to the following areas:

- Article 1 Section 1.4.9
- Article 2 Sections: 2.1.1
- Article 3 Sections: 3.2.1, 3.2.2, 3.3.2, 3.4.1, 3.5.2, 3.5.4, 3.6.2, 3.8.3, 3.8.7.1, 3.8.7.2, 3.8.16, 3.8.17 and 3.8.28
- Article 4 Sections: 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.16, 4.18, 4.19, 4.21, 4.22, 4.23, 4.24, 4.27, 4.28 and 4.29
- Article Section 5.1.2

BOARD / COMMISSION RECOMMENDATION
At the November 5, 2020 regular hearing, the Planning and Zoning Board unanimously recommended that Council adopt the proposed LUC revisions.

PUBLIC OUTREACH
In preparation for the Planning and Zoning Board public hearing, these revisions were discussed at the July, August, September and October work sessions of the Planning and Zoning Board. These revisions were posted on a City webpage dedicated to LUC updates. This webpage allows a reader to view the updates and...
Agenda Item 14

provide feedback on any of the changes. This webpage was advertised on the "This Week in Development Review" webpage, and in a weekly online newsletter that is sent to approximately 435 subscribers.

ATTACHMENTS

1. Annual Update Summary (PDF)
## Annual Land Use Code Update 2020 Summary

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Topic</th>
<th>LUC Sections</th>
<th>Problem Statement</th>
<th>Proposed Solution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Delegation of authority by the Director</td>
<td>1.4.9(E)</td>
<td>The change to the Land Use Code of defining Director as the CDNS Director instead of the PDT Director has brought up the concern of duties that the PDT Director has delegated authority to staff outside of CDNS (such as the City Engineer) is now problematic as the CDNS Director can only delegate to sub-ordinate staff under this code section.</td>
<td>The proposed solution provides the CDNS Director the authority to delegate outside of CDNS.</td>
</tr>
<tr>
<td>2</td>
<td>Director clarification - Obsolete references</td>
<td>2.1.1</td>
<td>The current title of “Community Planning and Environmental Services Director” no longer exists within the City organization and needs to be updated.</td>
<td>The proposed solution is to delete the obsolete Director title.</td>
</tr>
<tr>
<td>3</td>
<td>Landscaping - Artificial Turf</td>
<td>3.2.1(E)(2)</td>
<td>Staff has had inquiries and proposals about using artificial turf. One recent example was The Exchange, which has a central plaza space that was originally a lawn area. The Land Use Code does not recognize special use outdoor areas where artificial turf would be appropriate.</td>
<td>Edit Section 3.2.1(E)(2) with minor wordsmithing to recognize such special use outdoor areas, without any change to the intent of the landscaping section.</td>
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<tr>
<td></td>
<td>Landscape-Foundation Planting</td>
<td>3.2.1(E)(2)(d)</td>
<td>A numerical standard requires foundation planting strips along building walls: Exposed sections of building walls that are in high-use or high-visibility areas of the building exterior shall have planting beds at least five (5) feet wide placed directly along at least fifty (50) percent of such walls. Often, this is not the most appropriate treatment around commercial buildings, where walkways or plazas abutting the building are more appropriate. - Where space is limited between buildings and parking lots, it is often a better solution for walkway paving extend to the building, and use any landscape space for trees and any other landscaping in walkway cutouts to define the walkway as shaded pedestrian space alongside the building separate from the vehicle use area, rather than having the walkway framed by car bumpers on one side and shrubs on the other. As an example of this point, much of Downtown is characterized by this arrangement.</td>
<td>Acknowledge commercial walkway situations where a walkway abutting the building is a more a appropriate relationship.</td>
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<td>5</td>
<td>Landscape Alternative Compliance</td>
<td>3.2.1(N)</td>
<td>Alternative compliance is an important part of Section 3.2.1 - Landscaping and Tree Protection. The criteria listed for a decision maker to consider are not the most important criteria that should be considered and are not pertinent in many situations where alternative compliance is appropriate. More important criteria are available in other subsections of 3.2.1.</td>
<td>Update the alternative compliance criteria with more applicable and important criteria, by referencing language in pertinent subsections.</td>
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<td></td>
<td>Parking Lot Surfacing and Trail connections parking</td>
<td>3.2.2(D)(3)(c)</td>
<td>The LUC Parking Standards requires that parking lots be surfaced with asphalt, concrete or other material in conformance with city specifications. This requirement can be unnecessary for park and trail connection parking lots where a crushed gravel or similar surfacing material would be more than sufficient for the use and capacity of the parking area.</td>
<td>Add specific language specifying that city-owned or other off-street parking lots which are use for parks or trail connections points may be paved with</td>
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<td>7</td>
<td>Garage door setback from alley/private street based on additional visitor parking being provided (if no street parking available)</td>
<td>3.2.2(K)(1)(a)</td>
<td>Residential developments that front onto open space instead of a street, do not provide near-by on-street parking. Excessive parking then occurs in the private alleys, which are usually emergency access easements.</td>
<td>Indicate the number of required parking spaces that can be in garages, when the project does not front onto a public street.</td>
</tr>
<tr>
<td>8</td>
<td>Archival format of approved plans</td>
<td>3.3.2(A)(2)</td>
<td>This Section requires reproducible prints be provided to the City in physical (Mylar) format. The City is transitioning to these drawings being provided for approval in electronic format only.</td>
<td>The proposed solution removes the words “Mylar” and “prints” to not explicitly require a physical reproducible copy.</td>
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<tr>
<td>9</td>
<td>Wetlands</td>
<td>3.4.1(D)(2)</td>
<td>LUC Section 3.4.D.2 regarding Wetland Boundary Delineation references four different sets of standards and guidelines that may be used to establish wetland boundaries. However, the section goes on to state that all wetland boundary delineations shall be established in accordance with the U.S. Fish and Wildlife Service wetland classification system while The U.S. Army Corps of Engineers standards and guidelines shall be used to identify the boundaries of any &quot;jurisdictional wetland.&quot; Clarity is needed for both developers and plan reviewers regarding which set of standards should be used for any and all projects in the future.</td>
<td>Removal of references to uncommonly used standard and guidelines and a consolidation of the language related to processes which would utilize the U.S. Army Corps of Engineers’ standard and guidelines.</td>
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<td></td>
<td>Connecting Walkways for Carriage House Access</td>
<td>3.5.2(D)(1)(a)</td>
<td>Connecting walkways are required for all developments except detached single-family dwellings. This has allowed carriage houses to be built that are difficult to find and has created limited access to the public sidewalk for residents. Additionally, this is a concern for first responders, delivery personnel and other visitors.</td>
<td>Amend the exception for only one single-family detached dwellings and require addresses to be visible from the public right of way.</td>
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<td>10</td>
<td>Setbacks for Alley Accessed garages</td>
<td>3.5.2(E)(3)</td>
<td>Residential developments that front onto open space instead of a street, do not provide near-by on-street parking. Excessive parking then occurs in the private alleys, which are usually emergency access easements.</td>
<td>Clarify that the rear setback applies for developments that do front on a public street.</td>
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<tr>
<td>11</td>
<td>Large Retail Establishments</td>
<td>3.5.4</td>
<td>A plan graphic in this Section predates the vision and standards for incorporating large retail establishments into a more walkable town pattern, which have been developed since the original big box retail study and standards in 1995. A later plan graphic better illustrates the intended integration into a street and block pattern as opposed to a self-contained shopping center surrounded by large parking lots.</td>
<td>Replace the graphic.</td>
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<td></td>
<td>Delete lot depth dimension in Section 3.6.2 - Streets, Streetscapes, Alleys and Easements</td>
<td>Section 3.6.2 is an engineering-oriented section with requirements for street facilities. However it contains one standard requiring lots abutting arterial streets to be at least 150 feet in depth. This Section is an obscure location for a lot dimension standard. It is inconsistent with other standards that allow residential buildings to be as close as 15 feet from arterials. It could create complications and confusion with other building and site planning standards that address plan layouts, lot sizes, densities, and setbacks (e.g. residential building standards; supplementary regulations for setbacks and multi-family and single-family attached development; some zoning districts.) It could invite a subdivider to create a tract, presumably of any size, separating lots from the arterial right-of-way. Finally, it would intuitively involve single family residential lots with rear yards along arterials, but does not state that. It appears to be a vestige of past zoning codes.</td>
<td>Delete 3.6.2(G).</td>
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| 14 | **Update the term "Street Like Private Drive" to Private Streets** | The code contains two terms for private streets serve the purpose of forming building sites. The distinction between the two terms is not useful and can lead to misunderstanding or create confusion.  
- The term ‘Private Streets’ is a longstanding term with standards in Section 3.6.2(M). It refers to streets built to City standards for public streets but retained in private ownership. It has been used extremely rarely, and appears virtually irrelevant and unlikely to be used going forward because it entails all of the cost of public streets without the benefit of City maintenance.  
- The term ‘Street-Like Private Drives’ is a more recent term with standards in subsection 3.6.2(N)(1)(c). It refers to street facilities that serve the public purposes of streets but with more flexibility to tailor design to the urban design context of development. This provision is used fairly often and is highly relevant in the City’s development process. |
| 15 | **Home Occupations, signage** | The Home Occupation is prohibited exterior advertising, with the exception of the identification of the home occupation. The recent sign code update deleted the term Home Occupation identification sign and replaced it with residential sign. It has left the Home Occupation section of the code unclear as to what type of sign is allowed. |

Refer to all private streets as such -- eliminate the term ‘Street-Like Private Drives’ and incorporate those provisions under the term ‘Private Streets’. This would be consistent with the whole intent for these facilities, which is to serve as streets for purposes of building orientation, multi-modal connectivity, and all other purposes of streets.
<table>
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<tr>
<th></th>
<th>Obsolete Sign reference</th>
<th>3.8.7.1(G)(2)(f)</th>
<th>In the prohibited signs and elements of the sign section, it includes an exception to certain type of sign. This type of sign was referenced by the code section. The sign type was not approved and the code section is not necessary.</th>
<th>Delete reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Sign Code, Applied Wall-Still 75% Width of Tenant (max sign width)</td>
<td>3.8.7.2(B) Table (B)</td>
<td>In the sign section there are different types of signs that may attach to a building. Most of these sign types do not have a maximum width. In the Applied or Painted Wall sign table there is a maximum width. This restriction was left in place in error, as it was found that the maximum width for most signs was not necessary. The width of the sign is usually self-regulated based on other standards such as the allowed sign square footage and design of the building facade.</td>
<td>Delete the maximum sign width for the Applied or Painted Wall sign</td>
</tr>
<tr>
<td>Page</td>
<td>Sign Section, Clarity on Primary and Secondary Freestanding Signs</td>
<td>3.8.7.2(G) Table (G)(1)</td>
<td>In the residential sign district there are two different types of freestanding permanent signs. The first type is a Primary that is allowed to be 32sf in size and 5ft in height. The other type is a Secondary and the code states it be 32sf in size and 6ft in height. The purpose of most sign standards is to reduce sign clutter. In this case it was recognized that a second freestanding sign was necessary. However, the intent of a primary and secondary sign was to have one be subordinate to the other. In error the secondary sign dimensions were equal size and greater in height. Additional clean up to the table is necessary to bring the freestanding signs in alignment with the lighting type in the Residential Neighborhood Sign district. The proximity of this district to residential uses would direct lighting sources to be less impactful, the current code allowed any lighting type.</td>
<td>Amend the Land Use standards to indicate that the secondary sign is smaller in both size and height to the primary sign and change the allowable lighting type in the residential sign district</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>19</td>
<td>Measuring Building Height.</td>
<td>3.8.17</td>
<td>The measurement of building height for purposes of height limits has involved some confusion, interpretation, and the need to refer to Article 5 Definitions for information that would be appropriate in this Section.</td>
<td>Add more-detailed information on determining height in stories and feet.</td>
</tr>
<tr>
<td>20</td>
<td>Extra Occupancy&quot;Rental House&quot; clarification</td>
<td>3.8.28</td>
<td>The Extra Occupancy Rental House regulations do not specify that the dwelling has to be used as a rental. The Land Use Code also does not define “house” and that term is not applicable to the use. The Extra Occupancy Rental House uses tenant and owner language in multiple sections of the code. However, we do not regulate whether it is occupied by owners or renters. The LMN zone district also has a contradiction as to what level of review four occupants would go through.</td>
<td>Remove “Rental” and “House” from the title of the Land Use Code designation and replace all “tenant” and “owner” language with “occupant”. A definition of occupant has also been proposed to be added to align the with existing definition of occupancy</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Possibly R-L review of single family detached</td>
<td>4.4(B)(1)(a)1 4.4(B)(2)(a)1</td>
<td>Currently, there is confusion regarding what type of review is required when constructing Single-family detached dwellings in the Residential Low zone district. This is due to the fact that the use is included in the approved use list under both basic development review and administrative (Type 1) review processes. Provide language under LUC 4.4. (B) (1) (a) which clarifies under what circumstances a basic development review is required Single-family detached dwellings. The proposed language more accurately reflects the instances under which basic development review would be necessary in the zone district (i.e. creation of a new lot that was not part of the originally approved site-specific development plan).</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>RL Accessory Building height</td>
<td>4.4(D)(2)(e)</td>
<td>LUC 4.4 (D) (e) states the following regarding maximum permitted building height in the Low Density Residential Zone District: “Maximum building height shall be twenty-eight (28) feet for a single-family dwelling, accessory building, group home or child care center and three (3) stories for all other uses.” Currently, this means that accessory building structures can either match the height, or in some cases, exceed the height of the primary building structure on the lot. This current allowance for height is in conflict with the definition for accessory buildings which states that is shall mean “a building detached from a principal building and customarily used with, and clearly incidental and subordinate to, the principal building or use, and ordinarily located on the same lot with such principal building.” Indicate accessory buildings are not to be significantly taller than the primary building.</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Carriage Houses and Accessory Building in the NCL, NCM, and NCB Zone District</td>
<td>4.7, 4.8, and 4.9</td>
<td>These Old Town Neighborhood zoning districts have detailed size limit standards for new construction of additional buildings in rear yards. Redundant language confuses the simple intent for this construction to be limited to 1½ stories (with any upper floor area underneath a sloping roof). The overall purpose is for neighborhood change and evolution to reflect historic neighborhood scale in careful balance with contemporary requirements and desires. The original zoning district standards have had revisions and additions over the years since they were first drafted in a special planning process in 1997, and it has become evident in recent projects that the resulting state of organization is very difficult to use and interpret.</td>
<td>The proposed solution consolidates reduntant standards.</td>
</tr>
<tr>
<td>24</td>
<td>Marijuana - Adding R&amp;D use back into the Downtown Zone district</td>
<td>4.16(F)(2)(1)</td>
<td>Within a recent code change, the Downtown Zone district was expanded. This expansion created additional sub-districts. Some of these sub-districts were existing zone districts that included their own list of permitted uses. One of these new sub-districts is Innovation. Previous to the Innovation zone district this area included Medical Marijuana Research and Development. However, this use was left out inadvertently creating a nonconforming use.</td>
<td>Restore the Medical Marijuana Research and Development to the Downtown Innovation zone district</td>
</tr>
<tr>
<td>25</td>
<td>Clarifications to the PUD regulations</td>
<td>4.29</td>
<td>Council adopted the Land Use Code PUD regulations in 2018 and the PUD regulations have been utilized to approve one PUD, the Montava PUD, in 2020. During the extensive review process for the Montava PUD, several desired clarifications to the PUD regulations were noted.</td>
<td>At this time, minor edits correcting a title, grammar and punctuation</td>
</tr>
</tbody>
</table>
ORDINANCE NO. 161, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING VARIOUS AMENDMENTS TO THE
CITY OF FORT COLLINS LAND USE CODE

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the “Land Use Code”); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, City staff and the Planning and Zoning Board have reviewed the Land Use Code and identified and explored various issues related to the Land Use Code; and

WHEREAS, at its November 5, 2020, hearing, the Planning and Zoning Board recommended that Council adopt the Land Use Code amendments set forth in this Ordinance; and

WHEREAS, the City Council has determined that the recommended Land Use Code amendments are in the best interests of the City and its citizens.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 1.4.9(E) of the Land Use Code is hereby amended to read as follows:

1.4.9 Rules of Construction for Text

. . .

(E) Delegation of Authority. Whenever a provision appears requiring the Director or some other City officer or employee to do some act or perform some duty, such provision shall be construed as authorizing the Director or other officer or employee to designate, delegate and authorize professional-level subordinates or another City employee to perform the required act or duty unless the terms of the provision specify otherwise. With respect to the review of development applications eligible for Type 1 review, in addition to or in substitution for delegation to subordinates or another City employee as above authorized, the Director may engage the services of an attorney with experience in land use matters.
Section 3. That Section 2.1.1 of the Land Use Code is hereby amended to read as follows:

2.1.1 Decision Maker and Administrative Bodies

The City Council, Planning and Zoning Board, Zoning Board of Appeals and Community Planning and Environmental Services Director (the "Director") are frequently referenced in this Land Use Code. Reference should be made to Chapter 2 of the City Code for descriptions of these and other decision makers and administrative bodies, and their powers, duties, membership qualifications and related matters.

Section 4. That Section 3.2.1 of the Land Use Code is hereby amended to read as follows:

3.2.1 Landscaping and Tree Protection

(E) Landscape Standards. All development applications shall include landscape plans that meet the following minimum standards:

(2) Landscape Area Treatment. Landscape areas shall include all areas on the site that are not covered by buildings, structures, paving or impervious surface, or other outdoor areas including play areas, plaza spaces, patios, and the like. Landscape areas shall consist only of landscaping. The selection and location of turf, ground cover (including shrubs, grasses, perennials, flowerbeds and slope retention), and pedestrian paving and other landscaping elements shall be used to prevent erosion and meet the functional and visual purposes such as defining spaces, accommodating and directing circulation patterns, managing visibility, attracting attention to building entrances and other focal points, and visually integrating buildings with the landscape area and with each other.

(d) Foundation Plantings. Exposed sections of building walls that are in high-use or high-visibility areas of the building exterior shall have planting beds at least five (5) feet wide placed directly along at least fifty (50) percent of such walls, except where pedestrian paving abuts a commercial building with trees and/or other landscaping in cutouts or planting beds along the outer portion of the pedestrian space away from the building.
(N) **Alternative Compliance.** Upon request by an applicant, the decision maker may approve an alternative landscape and tree protection plan that may be substituted in whole or in part for a landscape plan meeting the standards of this Section.

In reviewing the proposed alternative plan for purposes of determining whether it accomplishes the purposes of this Section as required above, the decision maker shall take into account whether the alternative preserves and incorporates existing vegetation in excess of minimum standards, protects natural areas and features, maximizes tree canopy cover, enhances neighborhood continuity and connectivity, fosters nonvehicular access of accomplishes the functions listed in Subsection (C) (1) through (7) and Subsection (H) of this Section 3.2.1 and demonstrates innovative design and use of plant materials and other landscape elements.

Section 5. That Sections 3.2.2(C), (D) and (K) of the Land Use Code are hereby amended to read as follows:

**3.2.2 Access, Circulation and Parking**

... 

(C) **Development Standards** All developments shall meet the following standards:

... 

(4) **Bicycle Facilities.** Commercial, industrial, civic, employment and multi-family residential uses shall provide bicycle facilities to meet the following standards:

... 

(b) Bicycle Parking Space Requirements. The minimum bicycle parking requirements are set forth in the table below. For uses that are not specifically listed in the table, the number of bicycle parking spaces required shall be the number required for the most similar use listed. Enclosed bicycle parking spaces may not be located on balconies.

<table>
<thead>
<tr>
<th>Use Categories</th>
<th>Bicycle Parking Space Minimums</th>
<th>% Enclosed Bicycle Parking/ % Fixed Bicycle Racks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential and Institutional Parking Requirements</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>
Access and Parking Lot Requirements. All vehicular use areas in any proposed development shall be designed to be safe, efficient, convenient and attractive, considering use by all modes of transportation that will use the system, (including, without limitation, cars, trucks, buses, bicycles and emergency vehicles).

Location. Only off-street parking areas provided to serve uses permitted in a zone district predominated by residential uses will be allowed in such district.

Pavement. All open off-street parking and vehicular use areas shall be surfaced with asphalt, concrete or other material in conformance with city specifications with the exception of off-street parking and vehicular use areas for a park or trail connection point that may be surfaced with gravel or another similar inorganic material.

Parking Lots - Required Number of Off-Street Spaces for Type of Use.*

Residential and Institutional Parking Requirements. Residential and institutional uses shall provide a minimum number of parking spaces as defined by the standards below.

Attached Dwellings: For each two-family and multi-family dwelling there shall be parking spaces provided as indicated by the following table:

<table>
<thead>
<tr>
<th>Number of Bedrooms/Dwelling Unit</th>
<th>Parking Spaces Per Dwelling Unit * **</th>
</tr>
</thead>
<tbody>
<tr>
<td>One or less</td>
<td>1.5</td>
</tr>
<tr>
<td>Two</td>
<td>1.75</td>
</tr>
<tr>
<td>Three</td>
<td>2.0</td>
</tr>
<tr>
<td>Four and above</td>
<td>3.0</td>
</tr>
</tbody>
</table>

* Spaces that are located in detached residential garages (but not including parking structures) or in attached residential garages, which attached garages do not provide direct entry into an individual dwelling unit, may be credited toward the minimum requirements contained herein only if such spaces are made available to dwelling unit occupants at no additional rental or purchase cost (beyond the dwelling unit rental rate or purchase price).
** When public streets abutting the perimeter of the development site do not provide on-street parking then the percentage of garage parking spaces provided for the development site shall not exceed eighty (80) percent of the parking total.

... Extra Occupancy Rental Houses: For each extra occupancy rental house, there shall be 0.75 (¾) parking space per tenant occupant, rounded up to the nearest whole parking space, plus one (1) additional parking space if the extra occupancy rental house is owner occupied. If the lot upon which such parking spaces are to be situated has more than sixty-five (65) feet of street frontage length on any one (1) street or abuts an alley, then each such parking space shall have direct access to the abutting street or alley and shall be unobstructed by any other parking space. If such lot has less than sixty-five (65) feet of street frontage length on any one (1) street and does not abut an alley, then one (1) of the required parking spaces may be aligned in a manner that does not provide direct access to the abutting street.

... Section 6. That Section 3.3.2 of the Land Use Code is hereby amended to read as follows:

3.3.2 Development Improvements

(A) Approval of City Engineer.

... (2) No improvements shall be made until all required plans, profiles and specifications, including reproducible plans Mylar prints for the same, have been submitted to and approved by the City Engineer.

... Section 7. That Section 3.4.1(D)(2) of the Land Use Code is hereby amended to read as follows:

3.4.1 Natural Habitats and Features

... (D) Ecological Characterization and Natural Habitat or Feature Boundary Definition. The boundary of any natural habitat or feature shown on the Natural Habitats and Features Inventory Map is only approximate. The actual boundary of any area to be shown on a project development shall be proposed by the applicant and established by the Director.
through site evaluations and reconnaissance, and shall be based on the ecological characterization of the natural habitat or feature in conjunction with the map.

(2) **Wetland Boundary Delineation.** In establishing the boundaries of a wetland, the applicant and the Director shall use soil samples, ecological characterization and hydrological evidence, to the extent that such are in existence or are requested of and provided by the applicant. The Director may also utilize the standards and guidelines and/or the professional recommendations of Wetland boundary delineations of both a non-jurisdictional wetland and “jurisdictional wetland” shall be established in accordance with the U.S. Army Corps of Engineers, 1987 Westland Delineation Manual and the appropriate Regional Supplement, and classified according to the U.S. Fish and Wildlife Service–wetland classification system. In establishing the boundaries of a wetland, the applicant and the Director shall use soil samples, vegetation analysis and hydrological evidence, the Colorado Natural Heritage Program, and/or the Colorado Division of Wildlife in establishing such boundaries. If at least one of the required criteria for wetland delineation, hydric soil, hydrophytic vegetation, or hydrology, is present on the development site, the applicant shall communicate the criterion or criteria to the Director for consideration. Wetland boundary delineations shall be established in accordance with the U.S. Fish and Wildlife Service wetland classification system and shall be identified. The Director may also utilize the standards and guidelines and/or the professional recommendations of the U.S. Army Corps of Engineers or other organization, individual, or governmental entity in reviewing such boundaries. These shall be identified in the submittal documents for the review of the project development plan (if applicable, or if not applicable, the most similar development review) and prior to commencement of any construction activities. The U.S. Army Corps of Engineers standards and guidelines shall be used to identify the boundaries of any “jurisdictional wetland.”

Section 8. That Section 3.5.2 of the Land Use Code is hereby amended to read as follows:

3.5.2 **Residential Building Standards**

(D) **Relationship of Dwellings to Streets and Parking.**

(1) **Orientation to a Connecting Walkway.** Every front facade with a primary entrance to a dwelling unit shall face the adjacent street to the extent reasonably feasible. Every front facade with a primary entrance to a dwelling unit shall face a connecting walkway with no primary entrance more than two hundred (200) feet from a street sidewalk and the address shall be posted to be visible from the
intersection of the connecting walkway and public right of way. The following exceptions to this standard are permitted:

(a) Up to one (1) two (2) single-family detached dwellings on an individual lot that has frontage on either a public or private street.

(E) Residential Building Setbacks, Lot Width and Size.

(3) Side and Rear Yard Setbacks. The minimum side yard setback for all residential buildings and for all detached accessory buildings that are incidental to the residential building shall be five (5) feet from the property line, except for alley-accessed garages accessed from alleys or private drives where the associated dwelling faces on-site walkways rather than street sidewalks, for which the minimum setback from an alley or private drive shall be eight (8) feet. If a zero-lot-line development plan is proposed, a single six-foot minimum side yard is required. Rear yard setbacks in residential areas shall be a minimum of eight (8) feet from the rear property line, except for garages and storage sheds not exceeding eight (8) feet in height, where the minimum setback shall be zero (0) feet.

Section 9. That Figure 14 in Section 3.5.4(D)(3)(a) of the Land Use Code is hereby replaced in its entirety with the following figure:

Figure 14
Building Entrances
Section 10. That Sections 3.6.2(G), (M) and (N) of the Land Use Code are hereby amended to read as follows:

3.6.2 Streets, Streetscapes, Alleys And Easements

(G) Repealed and held in reserve Lots having a front or rear lot line that abuts an arterial street shall have a minimum depth of one hundred fifty (150) feet.

(1) Alternative Compliance. Upon request by the applicant, the decision maker may approve an alternative lot plan that does not meet the standard of this subsection if the alternative lot plan includes additional buffering or screening that will, in the judgment of the decision maker, protect such lots from the noise, light and other potential negative impacts of the arterial street as well as, or better than, a plan which complies with the standard of this subsection.

(2) Procedure. Alternative lot plans shall be prepared and submitted in accordance with the submittal requirements for streets, streetscapes, alleys and easements as set forth in this Section and landscape plans as set forth in Section 3.2.1. The alternative lot plan shall clearly identify and discuss the modifications and alternatives proposed and the ways in which the plan will equally well or better accomplish the purpose of this subsection than would a plan which complies with the standards of this subsection.

(3) Review Criteria. To approve an alternative lot plan, the decision maker must first find that the proposed alternative plan accomplishes the purpose
of this subsection as well as, or better than, a lot plan which complies with the standard of this subsection. In reviewing the proposed alternative plan, the decision maker shall take into account whether the lot plan provides screening and protection of the lots adjacent to the arterial street from noise, light and other negative impacts of the arterial street equally well or better than a plan which complies with the standard of this subsection.

\[\text{(M) Private Streets. Private streets shall be controlled by the following requirements:} \]

\[\text{(1) When Allowed. Private streets shall be allowed in a development, provided that their function will only be primarily to provide access to property within the development. Private streets shall not be permitted if (by plan or circumstance) such streets would, in the judgment of the City Engineer, attract "through traffic" in such volumes as to render such public streets necessary as connections between developments, neighborhoods or other origins and destinations outside of the development plan.} \]

\[\text{(2) Design Requirements. Designs for private streets shall meet all standards for public streets in accordance with the Larimer County Urban Area Street Standards, as adopted by the City Council by ordinance or resolution. Optional treatments beyond the minimum city standards, such as landscaped medians or other decorative features, will not be approved unless the City determines that such treatments present no safety risk to the public and that the City's utilities will not incur maintenance or replacement costs for their utilities above normal costs associated with the City's standard design. As with public streets, the design of private streets must be completed by or under the charge of a professional engineer licensed by the State of Colorado. The design for all private streets shall be included in the utility plans for the development. Designs for public streets shall be permitted if either:} \]

\[\text{(a) The designs meet all standards for public streets in accordance with the Larimer County Urban Area Street Standards, as adopted by the City Council by ordinance or resolution; or} \]

\[\text{(b) The designs have customized treatments and features including travel lanes; parallel or diagonal street parking; tree-lined sidewalks with the sidewalks either detached or attached with trees in cutouts; and crosswalks. Other features such as bikeways, landscaped medians, corner plazas, custom lighting, bike racks, and identity signs may be provided to afford an appropriate alternative to a standard City street in the context of the development plan. Head-in parking may only be used in isolated parking situations where the effect on the character of the street is negligible. Customized treatments and features will not be approved unless the City determines that such treatments and features present no safety risk to the public and that the City's} \]
utilities will not incur maintenance or replacement costs for their utilities above normal costs associated with the City's standard design.

... (N) Private Drives and Street-Like Private Drives.

(1) When Allowed.

... (c) Street-Like Private Drives. A street-like private drive shall be allowed as primary access to facing buildings or to parcels internal to a larger, cohesive development plan, or for the purposes of meeting other requirements for streets. Street-like private drives shall be designed to include travel lanes, on-street parking, tree-lined border(s), detached sidewalk(s) and crosswalks. Other features such as bikeways, landscaped medians, corner plazas and pedestrian lighting may be provided to afford an appropriate alternative to a street in the context of the development plan.

On-street parking for abutting buildings may be parallel or angled. Head in parking may only be used in isolated parking situations.

Such street-like private drives must be similar to public or private streets in overall function and buildings shall front on and offer primary orientation to the street-like private drive.

Street-like private drives may be used in conjunction with other standards, such as block configuration, orientation to connecting walkways, build to lines, or street pattern and connectivity.

(d) Neither a private drive nor a street-like private drive shall not be permitted if it prevents or diminishes compliance with any other provisions of this Code.

... Section 11. That Section 3.8.3 of the Land Use Code is hereby amended to read as follows:

3.8.3 Home Occupations

A home occupation shall be allowed as a permitted accessory use, provided that all of the following conditions are met:

... (4) There shall be no exterior advertising other than identification of the home occupation, the residential sign allowed in Section 3.8.7.1(D)(5)(a) of this Code.
Section 12. That Section 3.8.7.1(G)(2) of the Land Use Code is hereby amended to read as follows:

3.8.7.1 Generally.

...  

(G) *Prohibited signs and sign elements.*

...  

(2) *Prohibited Signs.* The following signs are not allowed, whether temporary or permanent:

...  

(f) Permanent off-premises signs, except as provided in Section 3.8.7.6;

...

Section 13. That Sections 3.8.7.2(B) and (G) of the Land Use Code are hereby amended to read as follows:

3.8.7.2 Permanent Signs

... 

(B) *Wall Signs.* Wall signs are allowed according to the standards in Table (B), Wall Signs.

| Type of Sign Standards | Sign District |  |  |  |  |  |  |
|---|---|---|---|---|---|---|
|  | Outside of Residential Neighborhood Sign District ¹ | Downtown | Commercial/Industrial | Mixed-Use | Multifamily | Single-Family | Within Residential Neighborhood Sign District ¹ |
| Applied or Painted Wall Signs | Max. Sign Width | N/A | N/A | N/A | N/A | N/A |  |
| Tenant space 45,000 sf. or less; lesser of 40 Packet Pg. 177 |
(G) **Freestanding Permanent Signs.** Detached permanent signs are allowed according to the standards in Table (G)(1), Freestanding Permanent Signs.

<table>
<thead>
<tr>
<th>Type of Sign Standards</th>
<th>Sign District Outside of Residential Neighborhood Sign District</th>
<th>1</th>
<th>Within Residential Neighborhood Sign District</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Downtown</td>
<td>Commercial/Industrial</td>
<td>Mixed-Use</td>
</tr>
<tr>
<td>Primary Detached Signs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allowed Lighting</td>
<td>Any</td>
<td>Any</td>
<td>Any</td>
</tr>
<tr>
<td>Max. Sign Area</td>
<td>16 sf.</td>
<td>16 sf.</td>
<td>16 sf.</td>
</tr>
<tr>
<td>Max. Sign Height</td>
<td>4 ft.</td>
<td>4 ft.</td>
<td>4 ft.</td>
</tr>
<tr>
<td>Allowed</td>
<td>Any</td>
<td>Any</td>
<td>Any</td>
</tr>
</tbody>
</table>
Section 14. That Sections 3.8.16(D) and (E) of the Land Use Code are hereby amended to read as follows:

3.8.16 Occupancy Limits; Increasing the Number of Persons Allowed

(D) Definitions. The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them below:

(4) Occupant shall mean a person who occupies a dwelling unit or any portion thereof for living and sleeping purposes.

(E) Increasing the Occupancy Limit.

(1) With respect to single-family and two-family dwellings, the number of persons allowed under this Section may be increased by the issuance of a certificate of occupancy allowing for use as an extra occupancy rental house in zones allowing such use.

(2) With respect to multiple-family and single family attached dwellings, the decision maker (depending on the type of review, Type 1 or Type 2) may, upon receipt of a written request from the applicant and upon a finding that all applicable criteria of this Code have been satisfied, increase the number of unrelated persons who may reside in individual dwelling units. The decision maker shall not increase said number unless satisfied that the applicant has provided sufficient additional amenities, either public or private, to sustain the activities associated with multi-family residential development, to adequately serve the occupants of the development and to protect the adjacent neighborhood. Such amenities may include, without limitation, passive open space, buffer yards, on-site management, recreational areas, plazas, courtyards, outdoor cafes, neighborhood centers, limited mixed-use restaurants, parking areas, sidewalks, bikeways, bus shelters, shuttle services or other facilities and services.

Section 15. That Section 3.8.17(A)(2) of the Land Use Code is hereby amended to read as follows:

3.8.17 Building Height
(A)  **Measuring Building Height.**

...  

(2)  **Building Height Measured in Stories.** In measuring the height of a building in stories the following measurement rules shall apply:

(a)  A balcony or mezzanine shall be counted as a full story when its floor area is in excess of one-third \((\frac{1}{3})\) of the total area of the nearest full floor directly below it.

(b)  Half \((1/2)\) story shall mean a space under a sloping roof which has the line of intersection of the roof and wall face not more than three (3) feet above the floor level, and in which space the possible floor area with head room of five (5) feet or less occupies at least forty (40) percent of the total floor area of the story directly beneath.

(bc)  No story of a commercial or industrial building shall have more than twenty-five (25) feet from average ground level at the center of all walls to the eave/wall intersection or wall plate height if there is no eave, or from floor to floor, or from floor to eave/wall intersection or wall plate height as applicable.

(ed)  A maximum vertical height of twelve (12) feet eight (8) inches shall be permitted for each residential story measured from average ground level at the center of all walls to the eave/wall intersection or wall plate height if there is no eave, or from floor to floor, or from floor to eave/wall intersection or wall plate height as applicable. This maximum vertical height shall apply only in the following zone districts: U-E; R-F; R-L; L-M-N; M-M-N; N-C-L; N-C-M; N-C-B; R-C; C-C-N; N-C; H-C; and M-H.

...  

Section 16.  That Section 3.8.28 of the Land Use Code is hereby amended to read as follows:

**3.8.28 Extra Occupancy Rental House Regulations**

(A)  Extra occupancy rental houses, not including multiple family and single family attached dwellings which shall be governed by Section 3.8.16(E)(2), shall conform to the occupancy limits and separation requirements specified in the following table:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Maximum number of permissible residents, excluding occupant family</th>
<th>Maximum percentage of parcels per block face that may be used for extra occupancy houses</th>
</tr>
</thead>
<tbody>
<tr>
<td>L-M-N</td>
<td>One (1) tenant occupant per three hundred fifty (350) square feet of habitable floor space, in addition to a minimum of four hundred (400) square feet of habitable floor space if owner-occupied</td>
<td>No more than twenty-five (25) percent of parcels on a block face may be approved for extra occupancy rental house use.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>M-M-N, H-M-N, N-C-B</td>
<td>One (1) tenant occupant per three hundred fifty (350) square feet of habitable floor space, in addition to a minimum of four hundred (400) square feet of habitable floor space if owner-occupied.</td>
<td>No limit.</td>
</tr>
<tr>
<td>D, R-D-R, C-C, C-C-N, C-C-R, C-G, C-N, N-C, C-L-E, I</td>
<td>One (1) tenant occupant per three hundred fifty (350) square feet of habitable floor space, in addition to a minimum of four hundred (400) square feet of habitable floor space if owner-occupied.</td>
<td>No limit.</td>
</tr>
</tbody>
</table>

(B) In all zone districts allowing extra occupancy rental houses except L-M-N, an application for extra occupancy rental house use for five (5) or fewer tenants occupants shall be subject to basic development review.

(C) In all zone districts allowing extra occupancy rental houses except L-M-N, an application for extra occupancy rental house use for more than five (5) tenants occupants shall be subject to Type 1 administrative review.

(D) In the L-M-N zone district, an application for extra occupancy rental house use for more than four (4) tenants occupants shall be subject to Type 1 administrative review.

Section 17. That Sections 4.4(B) and (D) of the Land Use Code are hereby amended to read as follows:

Division 4.4 Low Density Residential District (R-L)

...  

(B) **Permitted Uses.**

(1) The following uses are permitted in the R-L District, subject to basic development review, provided that such uses are located on lots that are part of an approved site specific development plan:

(a) **Residential Uses:**
1. Single-family detached dwellings on lots created through the Minor Subdivision process pursuant to Section 2.18.2.

... 

(D) Land Use Standards.

... 

(2) Dimensional Standards.

... 

(e) Maximum building height shall be twenty-eight (28) feet for a single-family dwelling, accessory building, group home, or child care center and three (3) stories for all other uses.

(f) Accessory buildings and structures may exceed the height of any existing or proposed principal building on the lot by no more than two (2) feet except when the height of an existing or proposed principal structure is twenty-six (26) feet or greater in which case, the accessory building or structure shall not exceed twenty-eight (28) feet.

... 

Section 18. That Section 4.5(B)(2)(a)8 of the Land Use Code is hereby amended to read as follows:

Division 4.5 Low Density Mixed-Use Neighborhood District (L-M-N)

... 

(B) Permitted Uses.

... 

(2) The following uses are permitted in the L-M-N District, subject to administrative review:

(a) Residential Uses:

... 

8. Extra occupancy rental houses with four (4) or more tenants.

...
Section 19. That Sections 4.6(B)(1)(e)1 and (B)(2)(a)8 of the Land Use Code are hereby amended to read as follows:

**Division 4.6 Medium Density Mixed-Use Neighborhood District (M-M-N)**

... 

(B) **Permitted Uses.**

(1) The following uses are permitted in the M-M-N District, subject to basic development review, provided that such uses are located on lots that are part of an approved site-specific development plan:

... 

(e) **Residential Uses:**

1. Extra occupancy rental houses with five (5) or fewer tenants. 

... 

(2) The following uses are permitted in the M-M-N District, subject to administrative review:

(a) **Residential Uses:**

... 

8. Extra occupancy rental houses with more than five (5) tenants. 

... 

Section 20. That Sections 4.7(E) and (F) of the Land Use Code are hereby amended to read as follows:

**Division 4.7 Neighborhood Conservation, Low Density District (N-C-L)**

(E) **Dimensional Standards.**

... 

(5) **Building Height.** Maximum building height shall be two (2) stories, except in the case of a detached dwelling unit at the rear of the lot and accessory buildings.

(a) Maximum building height shall be two (2) stories, except in the case of a detached dwelling unit at the rear of the lot and accessory buildings, which shall be limited to one and one-half (1 ½) stories.

(b) Front porches shall be limited to one (1) story.
(c) The height of a carriage house or an accessory building containing habitable space shall not exceed twenty-four (24) feet.

(d) The height of an accessory building containing no habitable space shall not exceed twenty (20) feet.

(6) Eave Height.

(a) The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space. An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

(b) The exterior eave height of an eave along a side lot line shall not exceed ten (10) feet from grade for an accessory building containing no habitable space. An eave of a dormer or similar architectural feature may exceed ten (10) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

(c) If a second story has an exterior wall that is set back from the lower story's exterior wall, the eave height shall be the point of an imaginary line at which the upper story's roofline (if extended downward) would intersect with the lower story's exterior wall (if extended upward).
Development Standards.

(1) Building Design.

... 

(e) Front porches shall be limited to one (1) story, and the front facades of all
one- and two-family dwellings shall be no higher than two (2) stories, except in
the case of carriage houses and accessory buildings containing habitable space,
which shall be a maximum of one and one-half (1½) stories.

(g) In the event that a new dwelling is proposed to be constructed on the rear
portion of a lot which has frontage on two (2) streets and an alley, the front of
such new dwelling shall face the street.

(f) The minimum pitch of the roof of any building shall be 2:12 and the
maximum pitch of the roof of any building shall be 12:12, except that new,
detached accessory buildings and additions to existing dwelling units may be
constructed with a pitch that matches any roof pitch of the existing dwelling unit.
Additionally, the roof pitch of a dormer, turret or similar architectural feature may
not exceed 24:12 and the roof pitch of a covered porch may be flat whenever the
roof of such a porch is also considered to be the floor of a second-story deck.

(h) Front Facade Character. When building construction results in:

... 

(h) Side Façade Character. When building construction results in:

... 

(2) Bulk and Massing

(a) Building Height.

1. Maximum building height shall be two (2) stories, except in the
case of a detached dwelling unit at the rear of the lot and accessory
buildings.

2. The height of a detached dwelling unit at the rear of the lot or an
accessory building containing habitable space shall not exceed twenty-four (24) feet.

3. The height of an accessory building containing no habitable space
shall not exceed twenty (20) feet.

(b) Eave Height.
1. The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space. An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

2. The exterior eave height of an eave along a side lot line shall not exceed ten (10) feet from grade for an accessory building containing no habitable space. An eave of a dormer or similar architectural feature may exceed ten (10) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

3. The maximum eave height is measured at the minimum setback from an interior side-yard lot line and can be increased at a ratio of six (6) inches of additional building height for each one (1) foot of setback from the interior side property line.

4. If a second story has an exterior wall that is set back from the lower story's exterior wall, the eave height shall be the point of an imaginary line at which the upper story's roofline (if extended horizontally) would intersect with the lower story's exterior wall (if extended vertically).

Illustration of Carriage House Roofline and Eave Heights

Carriage Houses and Habitable Accessory Buildings.
Section 21. That Sections 4.8(E) and (F) of the Land Use Code are hereby amended to read as follows:

Division 4.8 Neighborhood Conservation, Medium Density District

... (E) Dimensional Standards.

... (5) Building Height. Maximum building height shall be two (2) stories, except in the case of a detached dwelling unit at the rear of the lot and accessory buildings

(a) Maximum building height shall be two (2) stories, except in the case of a detached dwelling unit at the rear of the lot and accessory buildings, which shall be limited to one and one-half (1 ½) stories.

(b) Front porches shall be limited to one (1) story.

(c) The height of a carriage house or an accessory building containing habitable space shall not exceed twenty-four (24) feet.

(d) The height of an accessory building containing no habitable space shall not exceed twenty (20) feet.

(6) Eave Height.

(a) The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space. An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

(b) The exterior eave height of an eave along a side lot line shall not exceed ten (10) feet from grade for an accessory building containing no habitable space. An eave of a dormer or similar architectural feature may exceed ten (10) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

(c) If a second story has an exterior wall that is set back from the lower story's exterior wall, the eave height shall be the point of an imaginary line at which the upper story's roofline (if extended downward) would intersect with the lower story's exterior wall (if extended upward).

Figure 17.5-1

Illustration of Carriage House Roofline and Eave Heights
(F) **Development Standards.**

(1) **Building Design.**

... 

(e) Front porches shall be limited to one (1) story, and the front facades of all one- and two-family dwellings shall be no higher than two (2) stories, except for carriage houses and accessory buildings containing habitable space, which shall be limited to one and one-half (1½) stories.

(f) In the event that a new dwelling is proposed to be constructed on the rear portion of a lot which has frontage on two (2) streets and an alley, the front of such new dwelling shall face the street.

(g) The minimum pitch of the roof of any building shall be 2:12 and the maximum pitch of the roof of any building shall be 12:12, except that new, detached accessory buildings and additions to existing dwelling units may be constructed with a pitch that matches any roof pitch of the existing dwelling unit. Additionally, the roof pitch of a dormer, turret or similar architectural feature may not exceed 24:12 and the covered porch may be flat whenever the roof of such porch is also considered to be the floor of a second-story deck.

(h) **Front Facade Character.** When building construction results in:
1. a two (2)-story house where a one (1)-story house previously existed and where there is an abutting house on either side that is one (1) story, or

... 

(iii) *Side Façade Character.* When building construction results in:

... 

(2) **Bulk and Massing.**

(a) **Building Height.**

1. Maximum building height shall be two (2) stories, except in the case of a detached dwelling unit at the rear of the lot and accessory buildings.

2. The height of a detached dwelling unit at the rear of the lot or an accessory building containing habitable space shall not exceed twenty-four (24) feet.

3. The height of an accessory building containing no habitable space shall not exceed twenty (20) feet.

(b) **Eave Height.**

1. The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space. An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

2. The exterior eave height of an eave along a side lot line shall not exceed ten (10) feet from grade for an accessory building containing no habitable space. An eave of a dormer or similar architectural feature may exceed ten (10) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

3. The maximum eave height is measured at the minimum setback from an interior side-yard lot line and can be increased at a ratio of six (6) inches of additional building height for each one (1) foot of setback from the interior side property line.

4. If a second story has an exterior wall that is set back from the lower story’s exterior wall, the eave height shall be the point of an imaginary line at which the upper story’s roofline (if extended horizontally) would intersect with the lower story’s exterior wall (if extended vertically).

(See illustration contained in Division 4.7.)
Section 22. That Sections 4.9(B)(1)(a)4 and 4.9(B)(2)(a)7 of the Land Use Code are hereby amended to read as follows:

Division 4.9  Neighborhood Conservation, Buffer District (N-C-B)

(B)  Permitted Uses.

(1)  The following uses are permitted in the N-C-B District, subject to basic development review, provided that such uses are located on lots that are part of an approved site specific development plan:

(a)  Residential Uses:

   4.  Extra occupancy rental houses with five (5) or fewer tenants.

(2)  The following uses are permitted in the N-C-B District, subject to administrative review:

(a)  Residential Uses:

   7.  Extra occupancy rental houses with more than five (5) tenants.

Section 23. That Section 4.9(E)(1)(b) of the Land Use Code is hereby amended to read as follows:

Division 4.9  Neighborhood Conservation, Buffer District (N-C-B)

(E)  Development Standards.

(1)  Single-Family Dwellings.
(b) Bulk and Massing.

1. Building Height.

1. Maximum building height shall be three (3) stories, except in the case of a detached dwelling unit at the rear of the lot and accessory buildings, which shall be limited to one and one-half (1 ½) stories.

b. The height of a detached dwelling unit at the rear of the lot or an accessory building containing habitable space shall not exceed twenty-four (24) feet.

e. The height of an accessory building containing no habitable space shall not exceed twenty (20) feet.

2. Eave Height.

2-a. The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space. An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

2-b. The exterior eave height of an eave along a side lot line shall not exceed ten (10) feet from grade for an accessory building containing no habitable space. An eave of a dormer or similar architectural feature may exceed ten (10) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.

2-c. The maximum eave height is measured at the minimum setback from an interior side-yard lot line and can be increased at a ratio of six (6) inches of additional building height for each one (1) foot of setback from the interior side property line.

2-d. If a second story has an exterior wall that is set back from the lower story's exterior wall, the eave height shall be the point of an imaginary line at which the upper story's roofline (if extended horizontally) would intersect with the lower story's exterior wall (if extended vertically).

Section 24. That Sections 4.10(B)(1)(e)1 and (B)(2)(a)4 of the Land Use Code are hereby amended to read as follows:
Division 4.10  High Density Mixed-Use Neighborhood District (H-M-N)

...  

(B)  Permitted Uses.

(1)  The following uses are permitted in the H-M-N District, subject to basic development review, provided that such uses are located on lots that are part of an approved site-specific development plan:

...  

(e)  Residential Uses:

1.  Extra occupancy rental houses with five (5) or fewer occupants.

...  

(2)  The following uses are permitted in the H-M-N District, subject to administrative review:

(a)  Residential Uses:

...  

4.  Extra occupancy rental houses with more than five (5) occupants.

...  

Section 25.  That the table contained in Section 4.16(F)(2) of the Land Use Code is hereby amended to read as follows:

4.16  Downtown District (D)

...  

(F)  Permitted Uses.

...  

(2)  The following uses are permitted in the subdistricts of the Downtown District, subject to Basic Development Review (BDR), Minor Amendment (MA), Administrative (Type 1) Review or Planning and Zoning Board (Type 2) Review as specifically identified on the chart below:

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Historic Core</th>
<th>Canyon Avenue/Civic/North Mason</th>
<th>Innovation/River</th>
<th>River Corridor</th>
<th>Campus North</th>
<th>Entryway Corridor</th>
</tr>
</thead>
<tbody>
<tr>
<td>EOR Houses &lt; 5 tenants occupants</td>
<td>BDR/MA</td>
<td>BDR/MA</td>
<td>BDR/MA</td>
<td>Not Permitted</td>
<td>BDR/MA</td>
<td>BDR/MA</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>--------</td>
<td>--------</td>
<td>--------</td>
<td>---------------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>EOR Houses &gt; 5 tenants occupants</td>
<td>Type 1</td>
<td>Type 1</td>
<td>Type 1</td>
<td>Not Permitted</td>
<td>Type 1</td>
<td>Type 1</td>
</tr>
<tr>
<td>Medical Marijuana Research and Development</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
<td>BDR/MA</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
</tr>
</tbody>
</table>

Section 26. That Sections 4.18(B)(1)(e)1 and B(2)(a)5 of the Land Use Code are hereby amended to read as follows:

**Division 4.18 Community Commercial District (C-C)**

(B) **Permitted Uses.**

(1) The following uses are permitted in the C-C District, subject to basic development review provided that such uses are located on lots that are part of an approved site-specific development plan, except that a stationary vendor use must be approved as a minor amendment:

(e) **Residential Uses:**

1. Extra occupancy rental houses with five (5) or fewer tenants occupants.

(2) The following uses are permitted in the C-C District, subject to administrative review:

(a) **Residential Uses:**

5. Extra occupancy rental houses with more than five (5) tenants occupants.

Section 27. That Sections 4.19(B)(1)(e)1 and (B)(2)(a)6 of the Land Use Code are hereby amended to read as follows:

**Division 4.19 Community Commercial - North College District (C-C-N)**
(B) **Permitted Uses.**

1. The following uses are permitted in the C-C-N District, subject to basic development review provided that such uses are located on lots that are part of an approved site-specific development plan, except that a stationary vendor use must be approved as a minor amendment:

2. The following uses are permitted in the C-C-N District, subject to administrative review:

(a) **Residential Uses:**

   6. Extra occupancy rental houses with more than five (5) tenants.

Section 28. That the table contained in Section 4.21(B)(2) of the Land Use Code is hereby amended to read as follows:

**Division 4.21 General Commercial District (C-G)**

(B) **Permitted Uses.**

(2) The following uses are permitted in subdistricts of the C-G District, subject to Basic Development Review (BDR), Minor Amendment (MA), Administrative (Type 1) Review or Planning and Zoning Board (Type 2) Review as specifically identified on the chart below:

<table>
<thead>
<tr>
<th>Land Use</th>
<th>I-25/SH 392 (CAC)</th>
<th>General Commercial District (C-G)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. RESIDENTIAL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extra occupancy rental houses</td>
<td>Not permitted</td>
<td>BDR</td>
</tr>
<tr>
<td>with 5 or fewer tenants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>occupants</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

...
Section 29. That Sections 4.22(B)(1)(e)1 and (B)(2)(a)6 of the Land Use Code are hereby amended to read as follows:

Division 4.22 Service Commercial District (C-S)

(B) Permitted Uses.

(1) The following uses are permitted in the C-S District, subject to basic development review provided that such uses are located on lots that are part of an approved site-specific development plan, except that a stationary vendor use must be approved as a minor amendment:

(e) Residential Uses:

1. Extra occupancy rental houses with five (5) or fewer tenants occupants.*

(2) The following uses are permitted in the C-S District, subject to administrative review:

(a) Residential Uses:

6. Extra occupancy rental houses with more than five (5) tenants occupants.*

Section 30. That Sections 4.23(B)(1)(e)1 and (B)(2)(a)5 of the Land Use Code are hereby amended to read as follows:

Division 4.23 Neighborhood Commercial District (N-C)

(B) Permitted Uses.

(1) The following uses are permitted in the N-C District, subject to basic development review provided that such uses are located on lots that are part of an approved site-specific development plan, except that a stationary vendor use must be approved as a minor amendment:
(e) **Residential Uses:**

1. Extra occupancy rental houses with five (5) or fewer tenants occupants.

(2) The following uses are permitted in the N-C District, subject to administrative review:

(a) **Residential Uses:**

   ...

5. Extra occupancy rental houses with more than (5) tenants occupants.

   ...

Section 31. That the table contained in Section 4.24(B) of the Land Use Code is hereby amended to read as follows:

**Division 4.24 Limited Commercial District (C-L)**

   ...

(B) **Permitted Uses.**

   ...

(2) The following uses are permitted in subdistricts of the C-L District, subject to Basic Development Review (BDR), Minor Amendment (MA), Administrative (Type 1) Review or Planning and Zoning Board (Type 2) Review as specifically identified on the chart below:

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Riverside Area</th>
<th>All Other Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. RESIDENTIAL</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extra occupancy rental houses</td>
<td>BDR</td>
<td>BDR</td>
</tr>
<tr>
<td>with five (5) or fewer tenants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>occupants</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. INSTITUTIONAL/CIVIC/PUBLIC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extra occupancy rental houses</td>
<td>Type 1</td>
<td>Type 1</td>
</tr>
<tr>
<td>with more than five (5) tenants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>occupants</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Section 32. That Sections 4.27(B)(1)(e)1 and (B)(2)(a)2 of the Land Use Code are hereby amended to read as follows:

**Division 4.27 Employment District (E)**

   ...
(B) **Permitted Uses.**

(1) The following uses are permitted in the E District, subject to basic development review provided that such uses are located on lots that are part of an approved site-specific development plan, except that a stationary vendor use must be approved as a minor amendment:

...  

e) **Residential Uses:**  
1. Extra occupancy rental houses with five (5) or fewer occupants.

...  

(2) The following uses are permitted in the E District, subject to administrative review:

(a) **Residential Uses:**  
...  

2. Extra occupancy rental houses with more than five (5) tenants.

...  

Section 33. That Sections 4.28 (B)(1)(e)1 and (B)(2)(a)2 of the Land Use Code are hereby amended to read as follows:

**Division 4.28 Industrial District (I)**

...  

(B) **Permitted Uses.**

(1) The following uses are permitted in the I District, subject to basic development review provided that such uses are located on lots that are part of an approved site-specific development plan, except that a stationary vendor use must be approved as a minor amendment:

...  

e) **Residential Uses:**  
1. Extra occupancy rental houses with five (5) or fewer tenants.
(2) The following uses are permitted in the I District, subject to administrative review:

(a) **Residential Uses:**

... 

2. Extra occupancy rental houses with more than five (5) tenants.

... 

Section 34. That Section 4.29 of the Land Use Code is hereby amended to read as follows:

**DIVISION 4.29 PLANNED UNIT DEVELOPMENT (PUD) OVERLAY**

... (D) **PUD Master Plan Review Procedure.**

... (2) In order to approve a proposed PUD Master Plan, the decision maker must find that the PUD Master Plan satisfies the following criteria:

... (e) The PUD Master Plan is consistent with all applicable Land Use Code General Development Standards (Article 3) except to the extent such development standards have been modified pursuant to below Subsection (G) or are inconsistent with the PUD Master Plan.

(E) **Permitted Uses.**

... (2) Additional uses not permitted in the underlying zone district may be requested for inclusion in a PUD Master Plan along with the type of review for such use, whether Type I, Type II, or Basic Development Review. The application must enumerate the additional use being requested, the proposed type of review, and how the use satisfies below criteria (a) through (d). The decision maker shall approve an additional use if it satisfies criteria (a) through (d). For each approved additional use, the decision maker shall determine the applicable type of review and may grant a requested type of review if it would not be contrary to the public good.
(b) The use complies with applicable Land Use Code provisions regarding the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands and the natural functioning of the environment;

(c) The use is compatible with the other proposed uses within the requested PUD Overlay and with the uses permitted in the zone district or districts adjacent to the proposed PUD Overlay; and;

(d) The use is appropriate for the property or properties within the PUD Overlay.

... 

(G) **Modification of Densities and Development Standards.**

... 

(3) In order to approve requested density or development standard modifications, the decision maker must find that the density or development standard as modified satisfies the following criteria:

(a) The modified density or development standard is consistent with the applicable purposes, and advances the applicable objectives of, the PUD Overlay as described in Sections 4.29 (A) and (B);

... 

(H) **PUD Master Plan Non-Expiration.** PUD Master Plans do not expire but are subject to the amendment and termination provisions of Sections 4.29 (I) and (J).

... 

Section 35. That the definition “Dwelling unit” contained in Section 5.1.2 of the Land Use Code is hereby amended to read as follows:

_Dwelling unit_ shall mean one (1) or more rooms and a single kitchen, or including a second kitchen pursuant to Section 3.5.2(H), and at least one (1) bathroom, designed, occupied or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multi-family dwelling or mixed-use building.

Section 36. That the definition “Extra occupancy rental house” contained in Section 5.1.2 of the Land Use Code is hereby amended to read as follows:

_Extra occupancy rental house_ shall mean the use of a building or portion of a building which is used by a number of occupants that exceeds the occupancy limits set forth in Section 3.8.16 to accommodate, for compensation, four (4) or more tenants, boarders or
roomers, not including members of the occupant's immediate family who might be occupying such building. The word *compensation* shall include compensation in money, services or other things of value.

Section 37. That Section 5.1.2 of the Land Use Code is hereby amended by the addition of a new definition “Occupant” which reads in its entirety as follows:

*Occupant*, as the term is used only in Section 3.8.28 and in relation to extra occupancy in other parts of this Code, shall mean a person who occupies a dwelling unit or any portion thereof for living and sleeping purposes.

Section 38. That the definition “Story” contained in Section 5.1.2 of the Land Use Code is hereby amended to read as follows:

*Story, half* shall mean a space under a sloping roof which has the line of intersection of the roof and wall face not more than three (3) feet above the floor level, and in which space the possible floor area with head room of five (5) feet or less occupies at least forty (40) percent of the total floor area of the story directly beneath.

Introduced, considered favorably on first reading, and ordered published this 15th day of December, A.D. 2020, and to be presented for final passage on the 5th day of January, A.D. 2021.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on this 5th day of January, A.D. 2021.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
December 15, 2020

STAFF
Keith Hanson, Real Estate Manager
Claire Havelda, Legal

SUBJECT
First Reading of Ordinance No. 162, 2020, Conveying a Replacement Telecommunications Easement to Qwest Corporation d/b/a CenturyLink QCon at the City’s Foothills Activity Center.

EXECUTIVE SUMMARY

The purpose of this item is to convey a replacement telecommunications easement to Qwest Corporation d/b/a CenturyLink QCon (CenturyLink) at the City-owned Foothills Activity Center (“FAC”) as a result of an obligation associated with the replatting of the Foothills Mall and to replace a “blanket” easement granted in 1975. The easement accurately depicts CenturyLink’s existing telecommunication line on the FAC parcel.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

CenturyLink had been granted a blanket telecommunication easement at the Foothills Mall by the prior owner of the mall property, and CenturyLink therefore installed multiple telecommunication service lines at the mall prior to its redevelopment in 2016. As part of the redevelopment, the mall owner and CenturyLink agreed to vacate this blanket easement (the “Original Easement”) in exchange for specific replacement easements (the “Replacement Easement”) for any existing and new telecommunication service lines to the businesses on the Mall property.

Before the Replacement Easement was filed, the redevelopment of the Foothills Mall occurred. This redevelopment included the construction of the City’s Foothills Activity Center and the conveyance of the land on which it is situated (Lot 20) to the City.

It was discovered that a small portion of another building in the development encroached upon Lot 20. To resolve the encroachment, a replat of the mall property was initiated, resulting in slightly moved property boundaries of Lot 20 over an existing CenturyLink telecommunication service line. The replat has now been completed, and the City accepted the FAC property subject to the agreement to grant the 123-square-foot Replacement Easement to CenturyLink for this existing telecommunication service line on Lot 20.

The proposed ordinance conveys the Replacement Easement to CenturyLink.

CITY FINANCIAL IMPACTS

The City took title to Lot 20, as it was modified by the replatting subject to the agreement to provide a Replacement Easement so no additional consideration is warranted.
ATTACHMENTS

1. Vicinity Map (PDF)
2. Easement Graphic (PDF)
POINT OF COMMENCEMENT
EASTERLY CORNER LOT 1
AND THE MOST SOUTHERLY
CORNER OF LOT 20

POINT OF BEGINNING
NORTHEASTERLY LINE LOT 20

LOT 2 LOT 1 EASEMENT
FOOTHILLS MALL REDEVELOPMENT
SUBDIVISION FILING NO. 3
REC. NO. *INSERT-1*

34°31'23"E 12.35'
N44°34'03"W 10.00'
S44°34'03"W 10.00'
S45°31'23"W 12.35'
N45°31'23"E 10.00'

LOT 20 AIRSPAC

TRACT J
FOOTHILLS MALL REDEVELOPMENT
SUBDIVISION FILING NO. 3
REC. NO. *INSERT-1*

10'

123 SF, 0.003 AC±

EASEMENT

NOTE:
THIS EXHIBIT DRAWING IS NOT INTENDED TO REPRESENT A LAND SURVEY PLAT, IMPROVEMENT SURVEY PLAT OR IMPROVEMENT LOCATION CERTIFICATE AND IS INTENDED TO GRAPHICALLY DEPICT THE ATTACHED DESCRIPTION.
ORDINANCE NO. 162, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
CONVEYING A REPLACEMENT TELECOMMUNICATIONS EASEMENT TO QWEST CORPORATION d/b/a CENTURYLINK QCON AT THE CITY’S FOOTHILLS ACTIVITY CENTER

WHEREAS, Qwest Corporation d/b/a Century Link QC (“CenturyLink”) had a blanket telecommunications easement (“Original Easement”) over property that is known today as the Foothills Mall (the “Mall”); and

WHEREAS, CenturyLink’s Original Easement was recorded on May 9, 1975 under Reception Number 116055, in Official Records Book 1644, Page 0597, in the Recorder’s Office in Larimer County, Colorado; and

WHEREAS, on May 30, 2014, the owner of the Mall, Walton Foothills Holdings VI, LLC, (“Walton”) and CenturyLink entered into a recorded Memorandum of Agreement (the “Agreement”) in which CenturyLink agreed to vacate its Original Easement in exchange for a future site specific easement (“Replacement Easement”) being filed once the Mall was developed and exact parameters of the easement could be identified; and

WHEREAS, just prior to the recording of the Agreement, on May 14, 2014, CenturyLink filed a Termination and Vacation of the Original Easement, Reception Number 20140028730; and

WHEREAS, subsequently, as part of the redevelopment of the Mall, Walton and the City agreed that Walton would construct and then convey to the City the Foothills Activity Center (“FAC”); and

WHEREAS, as the FAC was being constructed, it was discovered that a small portion of another building in the development encroached upon the FAC building lot; and the FAC was built to accommodate this encroachment; and

WHEREAS, during the FAC construction, additional encroachments were identified; thus, due to these legal inexactitudes, Council gave approval for the Mall to be replatted to correct the boundaries of such parcels in Ordinance No. 137, 2019; and

WHEREAS, part of the replatting included the approval and exchange of bargain and sale deeds for property between the City and Walton, transferring ownership to match the modified lot boundaries (the “Exchange”) (Ordinance No. 137, 2019); and

WHEREAS, as part of the replat, the City also accepted updated utility and drainage easements from Walton reflecting the “as built” locations of previously granted easements; and

WHEREAS, a portion of the property the City received in the Exchange contained CenturyLink’s Original Easement and was subject to the Agreement to provide the Replacement Easement; and
WHEREAS, the Replacement Easement detailing the exact location of the easement was not executed prior to the Exchange; and

WHEREAS, the City acknowledges that it took title to Lot 20, as it was modified by the replatting and the Exchange, subject to the Agreement to provide the Replacement Easement for the existing CenturyLink telecommunications service line (which ran with the land) and thus no additional consideration is warranted; and

WHEREAS, the purpose of the Replacement Easement is to identify the exact location of the currently existing CenturyLink Easement; and

WHEREAS, Council wishes to authorize the City Manager to sign the Replacement Easement as authorized in Section 23-111 of the City Code.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. The City Manager is hereby authorized to sign and record the Replacement Easement attached hereto as Exhibit “A” and incorporated herein by this reference, which accurately reflects the location of the CenturyLink telecommunication easement on City property.

Introduced, considered favorably on first reading, and ordered published this 15th day of December, A.D. 2020, and to be presented for final passage on the 5th day of January, A.D. 2021.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 5th day of January, A.D. 2021.

__________________________________
Mayor

ATTEST:

_______________________________
City Clerk
CITY OF FORT COLLINS, COLORADO, a municipal corporation of the State of Colorado “Grantor”), whose mailing address for purposes of this easement is P.O. Box 580, Fort Collins, CO 80522, for and in consideration of $10.00 (Ten Dollars) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant and convey unto QWEST CORPORATION d/b/a CENTURYLINK QC, a Colorado corporation (“Grantee”), whose address is 100 CenturyLink Drive, Monroe, LA 71203, and its successors, assigns, affiliates, lessees, licensees, and agents, a perpetual non-exclusive easement to construct, modify, add to, maintain, and remove such telecommunications facilities as may be necessary to provide such services within that certain shopping center known as the Foothills Mall (the “Shopping Center”) or property contiguous thereto, from time to time upon, over, under and across the following described property situated in the County of Larimer, State of Colorado, which Grantor owns or in which Grantor has an interest (“Easement Area”), to wit:

SEE EXHIBIT A ATTACHED HERETO

The work of installing and maintaining said underground lines shall be done with care, and the surface along the Easement Area shall be restored substantially to its original level and condition.

Grantor further conveys to Grantee the right of ingress and egress to and from the Easement Area during all periods of construction, maintenance, installation, reinforcement, repair and removal over and across those Grantor’s lands that are legally described on the attached Exhibit B (the “Grantor’s Property”). Grantee will provide at least ten (10) days’ notice to Grantor at the address set forth above (or such other address requested by Grantor in writing delivered to Grantee at the address set forth above), prior to undertaking any work with respect to Grantee’s facilities, except in an emergency where prior notice is impractical or impossible. Grantee will confer with Grantor concerning the staging plan and work schedule prior to commencement of work. Grantee agrees to use reasonable efforts to minimize disturbances to ongoing business operations and construction activities on the Grantor Property and the Shopping Center, and to minimize the duration of any such work. Except in an emergency, at Grantor’s request or with Grantor’s permission, Grantee will not perform any work on its lines or appurtenances from November 15 to January 1 during any year. During any work on its lines or appurtenances, Grantee will keep the Grantor’s Property reasonably clean and free of debris.

Grantee shall indemnify, and save harmless the Grantor from any and all claims, suits, losses, damages, costs, or expenses on account of injury or damage to any person or property (collectively, “Claims”), to the extent such Claims are caused or occasioned by the Grantee’s negligence in construction, reconstruction, excavation, operation, or maintenance of the facilities. Grantee shall have no responsibility for environmental contamination that is not caused by Grantee, or is pre-existing and not exacerbated by Grantee.

Grantor reserves the right to occupy, use and cultivate the Easement Area for all purposes not inconsistent with the rights herein granted, including by way of example and not of limitation the right to
place concrete curbs, retaining walls, traffic islands, street lights, screen walls, trash enclosures and landscaping in the Easement Area. Specifically, Grantee acknowledges and agrees that in certain portions of the Easement Area, the telecommunications facilities may be located in a joint trench with other utility lines, and such use of the Easement Area and the granting of easements over, under and across the Easement Area to other utility companies to construct, modify, add to, maintain, and remove such utilities shall not be deemed inconsistent with the rights herein granted.

The rights, conditions and provisions of this Agreement shall run with the land and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective successors and assigns.

This Agreement shall be governed by, and enforced in accordance with the laws of the State of Colorado. In the event litigation is required by either party to enforce the terms of this Agreement, the prevailing party of such action or proceeding shall, in addition to all other relief granted or awarded by the court, recover its reasonable attorneys’ fees incurred by reason of such action or proceeding and all costs of suit and those costs incurred in preparation therefor at both the trial and appellate levels.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached and reattached to physically form one document. All exhibits to this Agreement are fully incorporated herein as though set forth at length.

[INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW]
"Grantor"

CITY OF FORT COLLINS, COLORADO
a municipal corporation of the State of Colorado

By: __________________________
Name: Darin A. Atteberry
Title: City Manager

STATE OF COLORADO )
) ss.
COUNTY OF ________________ )

The foregoing instrument Deed was acknowledged before me this ___ day of
_______, 2020, by Darin A. Atteberry, the City Manager of the City of Fort Collins,
Colorado, a municipal corporation of the State of Colorado.

Witness my hand and official seal.

My commission expires:_____________________

_____________________
Notary

(Signature Page to CenturyLink Easement)
"Grantee"

QWEST CORPORATION,
dba CenturyLink QC, a Colorado corporation

By: Allan A. Jojola
Manager ROW Agent

STATE OF COLORADO )
COUNTY OF DENVER ) ss.

The foregoing instrument was acknowledged before me this 17th day of September, 2019, by Allan A. Jojola, as authorized signatory of Qwest Corporation, a Colorado corporation.

Witness my hand and official seal.

My commission expires: 4/16/2020

NOTARY PUBLIC

SUSAN B. GRIFFIN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19874163520
MY COMMISSION EXPIRES APRIL 16, 2020

R/W# CO20190905 Job # N/A
Exchange Larimer County Larimer
1/4 Section SW Section 25 Township 7N Range 69W
Exhibit A

(Easement Descriptions and Depictions Attached)
Easement Description

That part of Lot 20, Foothills Mall Redevelopment Subdivision Filing No. 3, recorded at the Larimer County, Colorado Clerk and Recorder's Office on October 12, 2020 at Reception Number 20200083502, located in the Southwest Quarter of Section 25, Township 7 North, Range 69 West of the 6th Principal Meridian, City of Fort Collins, Larimer County, Colorado, described as follows:

COMMENCING at the most Easterly corner of Lot 1, said Foothills Mall Redevelopment Subdivision Filing No. 3 also being the Southerly corner of said Lot 20; Thence N44°34'03"E on theSoutheasterly line of said Lot 20, 34.28 feet to the POINT OF BEGINNING;

Thence N45°31'23"W, 12.35 feet;

Thence N44°34'03"E, 10.00 feet;

Thence S45°31'23"E, 12.35 feet to said Southeasterly line of said Lot 20;

Thence S44°34'03"W on said Southeasterly line, 10.00 feet to the POINT OF BEGINNING;

Contains 123 square feet, (0.003 acres), more or less.

The above described easement is subject to vertical height limitations in Lot 20 as noted and set forth on said Foothills Mall Redevelopment Subdivision Filing No. 3 plat and being approximately 16 feet in height from ground level to bottom of existing structure.

Basis of Bearing: The West line of the Southwest Quarter of Section 25, Township 7 North, Range 69 West of the 6th P.M., Larimer County, Colorado bears N00°08'49"E between the Southwest corner of the Southwest Quarter of said Section 25 monumented with a 2" aluminum cap in range box stamped LS 28668, 2017 and the Northwest corner of the Southwest Quarter of said Section 25 monumented with a 3" aluminum cap in range box stamped LS 20123 with all other bearings relative thereto, as shown on said Foothills Mall Redevelopment Subdivision Filing No. 3 plat.

Christopher Brooks, Colorado PLS 38063
For and on behalf of Farnsworth Group, Inc.

General Note:
This description does not represent a monumented survey. It is intended only to describe the attached exhibit.
LOT 1
FOOTHILLS MALL REDEVELOPMENT SUBDIVISION FILING NO. 3
REC. NO. 20200083502

LOT 20
FOOTHILLS MALL REDEVELOPMENT SUBDIVISION FILING NO. 3
REC. NO. 20200083502

POINT OF BEGINNING
N44°34'03"E
10.00'
N45°31'23"W
12.35'
S44°34'03"W
10.00'
S45°31'23"E
12.35'

EASEMENT:
123 SF,
0.003 AC±

NOTE:
THIS EXHIBIT DRAWING IS NOT INTENDED TO REPRESENT A LAND SURVEY PLAT, IMPROVEMENT SURVEY PLAT OR IMPROVEMENT LOCATION CERTIFICATE AND IS INTENDED TO GRAPHICALLY DEPICT THE ATTACHED DESCRIPTION.

Farnsworth Group
5613 DTC PARKWAY, SUITE 1100
GREENWOOD VILLAGE, COLORADO 80111
(303) 692-8838 / info@f-w.com

LOT 20 - CENTURYLINK EASEMENT
FOOTHILLS MALL REDEVELOPMENT SUBDIVISION FILING NO. 3
SW 1/4 SECTION 25, T7N, R69W OF THE 6TH PM,
CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO

Attachment: Exhibit A (9756 : Foothills Mall Easement ORD)
Exhibit B
(Grantor’s Property)

LOT 20, FOOTHILLS MALL REDEVELOPMENT SUBDIVISION FILING NO. 3 RECORDED OCTOBER 12, 2020 AT RECEPTION NO. 20200083502, COUNTY OF LARIMER, STATE OF COLORADO.
AGENDA ITEM SUMMARY
City Council

December 15, 2020

STAFF

Jason Licon, Airport Director
Judy Schmidt, Legal

SUBJECT

First Reading of Ordinance No. 163, 2020, Approving the First Amendment to Ground Lease Agreement Between the Cities of Loveland and Fort Collins and Discovery Air, LLC, for Property at the Northern Colorado Regional Airport.

EXECUTIVE SUMMARY

The purpose of this item is to approve an amendment to the long-term aviation land lease agreement between the Cities of Fort Collins and Loveland (Cities) and Discovery Air, LLC signed in January of 2019. The lease terms included a (50) year lease for a large-scale aviation development project. The project has progressed since the execution of the original lease, and Discovery Air has obtained the necessary development approvals to continue pursuit of their development. Discovery Air has since determined it necessary to pursue a phased approach to its development and accordingly has requested that the Cities amend the original Lease. Due to the complexity and unique provisions of the original lease and this proposed amendment, the Northern Colorado Regional Airport Commission does not have the authority to approve and sign the Lease Amendment. The two Cities must each approve in accordance with their respective Municipal Codes and Charters. The Northern Colorado Regional Airport Commission reviewed the lease agreement amendment at its November 12, 2020, meeting, and unanimously recommended approval by the Councils.

The proposed Airport development includes the construction of corporate aircraft hangar facilities and associated office space, a potential aircraft support center, a restaurant, and all infrastructure to support these facilities. This lease amendment will allow success of the public-private partnership.

The Airport has approximately 200 acres of space available for aeronautical development. This proposal will use approximately 10% of the available land for what is considered to be the highest and best use of the property, which is in accordance with the Council adopted Airport Master Plan and Airport Commission Adopted Strategic Plan. The Airport will create revenues through lease payments from the property in addition to other revenues from the operations of the campus. The new buildings will create jobs and enhance the regional economic impact of the Airport.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The Northern Colorado Regional Airport is a jointly owned and operated public facility shared by the Cities of Fort Collins and Loveland. In 2015 the Cities entered into an intergovernmental agreement (IGA) forming the Northern Colorado Regional Airport Commission, which is delegated certain powers and authority to operate and maintain the Airport. The IGA provides that the Airport Commission enter into Airport property lease agreements on behalf of the Cities if such agreements are in a form that is generally approved by the Cities.

Item # 16 Page 1
Agenda Item 16

The Airport, through the Airport Commission and the Cities, grants long-term land leases to private sector investors or builders to construct aviation support facilities. This is a standard procedure for all publicly-owned airports and is in accordance with FAA regulatory standards. The generally approved standard lease term for land for the construction of aeronautical use facilities is forty years, consisting of an initial twenty-five year lease with three five-year extension options. At the end of the standard lease term, the lessee has the ability to renegotiate the lease agreement, or the improvements revert to the ownership of the Cities. The standard lease agreements also typically require investment by the Cities for the infrastructure required for each construction project. Pre-development costs have historically been funded using City bonding resources or through federal and state grant funding combined with local match dollars for the construction of access roads, utility extensions, and aircraft taxiways.

The lease agreement negotiated with Discovery Air, LLC does not qualify as a standard lease in a form generally approved by the Cities that the Northern Colorado Regional Airport Commission has the authority to approve. This is due to the key differences with the standard lease format including the extended term of fifty years and the reduced rate to compensate for the developer’s investment in infrastructure. The developer will be assuming all risk and upfront investment for this project, therefore staff recommended and obtained previous Council approval for a lower lease rate and extended lease term than what is standard.

The following are details on the original lease terms and rates:

- Lease area: 564,096 square feet
- Term: Initial two-year option period that will roll into a fifty (50) year total land lease
- Annual rate:
  - Two year option: $0.05 per square foot
  - Years 3-10 after option period: $0.15 per square foot
  - Years 11-50 = $0.25 per square foot plus inflation adjustments
- Value of the lease = $10.2 million at 2.5% estimated inflation

The amendment provides for phasing of the project and takes into consideration a new site development plan. The result will be more efficient use and leasing of space and will reduce lease rates in the beginning of the lease term and increase it toward the end, resulting in greater revenues for the Airport over time. Additionally, the new provisions will provide for inflationary protections into the lease rates that are put into effect much earlier in the lease terms.

Following are the amended lease terms:

- Lease area: 675,548 square feet (increase of 111,452 square feet)
- Term: Initial two-year option period that will roll into a fifty (50) year total land lease (Same)
- Annual rate:
  - Two year option: $0.05 per square foot (Same)
  - Years 3-10 after option period: $0.15 per square foot (Phased and adjusted to CPI)
  - Years 11-50 = $0.25 per square foot plus inflation adjustments (Phasing impacts)
- Value of the lease = $13.4 million at 2.5% estimated inflation ($3.1 million increase)

Considered a public-private partnership, the proposal is a catalyst for high quality development and end users and provides the financial resources to enhance the Airport’s future financial sustainability. The list of benefits include:

- No upfront cost to the Cities.
- Fuel flowage from larger aircraft for which this development is designed, could have an additional positive impact to the Airport’s self-generated revenue and future financial sustainability.
- The area would take 25 years to fully build out at the current airport development rate.
- Potential to be a catalyst to attract additional development and businesses.
- The project will enhance the Airport’s regional economic impact.
• Centennial Airport and other successful airports use similar models for large scale aeronautical land leasing.
• Rates are comparable to current larger scale leases.
• The lease terms conform with FAA regulatory standards and grant assurances.
• Performance measures remain included in the Lease agreement.
  o Have accomplished site development planning and associated approvals completed prior to the end of the 24-month entitlement period.
  o Requires horizontal infrastructure started within three years.
  o Requires vertical infrastructure started within five years.

BOARD / COMMISSION RECOMMENDATION

The Northern Colorado Regional Airport Commission during its regularly scheduled meeting on November 1, 2020 (Attachment 1) recommended the Cities approve the Amendment to the Discovery Air LLC Land Lease Agreement. The City Council of Loveland will also consider this recommendation concurrently at their meeting scheduled December 15, 2020.

PUBLIC OUTREACH

The proposal is in line with the adopted and approved Airport Master Plan, for which considerable outreach and public input was conducted. It additionally conforms with the Airport’s adopted Strategic Plan, which involved considerable outreach and public involvement. Finally, a public hearing was held by the Airport Commission and will be held by each City Council in connection with consideration of the First Amendment.

The City of Loveland has approved the site development plan from the developer and any and all requirements of the facilities planned have been met. The lease agreement includes performance measures that will need to be met by the lessee in addition to the adherence to all City of Loveland building code requirements.

ATTACHMENTS

1. Airport Commission Resolution R-10-2020 (PDF)
2. Discovery Air Lease First Amendment (PDF)
3. Original Ground Lease Agreement (PDF)
4. Powerpoint Presentation (PDF)
RESOLUTION #R-10-2020

A RESOLUTION RECOMMENDING APPROVAL OF A FIRST AMENDMENT TO GROUND LEASE BETWEEN THE CITIES OF LOVELAND AND FORT COLLINS AND DISCOVERY AIR, LLC FOR PROPERTY LOCATED AT THE NORTHERN COLORADO REGIONAL AIRPORT

WHEREAS, the Cities of Loveland and Fort Collins (collectively the “Cities,” and “Loveland” or “Fort Collins” respectively) jointly own and operate the public airport known as the Northern Colorado Regional Airport (the “Airport”); and

WHEREAS, the Cities entered into an Amended and Restated Intergovernmental Agreement for the Joint Operation of the Airport on January 22, 2015 (the “IGA”), whereby the Cities formed a commission and delegated certain duties and responsibilities to such commission (the “Commission”); and

WHEREAS, in late 2018, the Commission reviewed a fifty year ground lease of Airport property (the “Lease”) by Discovery Air, LLC (“Lessee”) and recommended approval of the Lease by the Cities. Lessee’s planned development on the Airport property was proposed to include airplane hangars, a fixed-base operation, associated office space, and a restaurant, as well as other potential improvements such as a new access road which would create a new entrance to the Airport and expanded tarmac. The Lease was made contingent on Lessee obtaining certain approvals for such proposed development and its financing, and provides the parties with opportunities to terminate the Lease if the proposed development is not feasible; and

WHEREAS, the Lease currently provides for a rent escalation from $0.05 per square foot to $0.15 per square foot beginning after the first two years of the Lease, and another rent increase at year ten to $0.25 per square foot. The Lessee is current on all rent payments; and

WHEREAS, the Lessee’s development project has progressed since execution of the Lease in early 2019, and Lessee has obtained the necessary development approvals to continue the Lease. The Lessee has since determined to pursue a phased approach to its development, and accordingly has requested that the Cities amend the Lease also phase the Lease rent; and

WHEREAS, the Lessee anticipates constructing its development in four phases. Airport staff and the Lessee have discussed and negotiated an amended rent structure to correspond with the four phases, each phase having two rent escalation points, and with rent in each year subject to Consumer Price Index increases. Airport staff supports the negotiated phased rent structure set forth in the First Amendment to Ground Lease (the “First Amendment”) hereto as “Exhibit A” and incorporated herein; and
WHEREAS, in addition to the proposed amended rent structure, the Lessee proposes to amend the Lease to update the site plan exhibit to match the approved site plan, to add a legal description of the Leased Premises, and to make some other minor amendments; and

WHEREAS, the Commission desires to recommend approval by the two Cities of the First Amendment.

NOW THEREFORE BE IT RESOLVED BY THE NORTHERN COLORADO REGIONAL AIRPORT COMMISSION AS FOLLOWS:

Section 1. That the Commission recommends approval by the two Cities, by their authorized signatories, of the First Amendment to Northern Colorado Regional Airport Ground Lease Agreement.

Section 2. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this 12th day of November, 2020.

Wade Troxell, Chair of the
Northern Colorado Regional Airport Commission

ATTEST:

Secretary

APPROVED AS TO FORM:

Assistant City Attorney
RESOLUTION # R-8-2020

A RESOLUTION RECOMMENDING THAT THE CITIES OF FORT COLLINS AND LOVELAND AUTHORIZE AND EXECUTE AN AGREEMENT FOR NON-EXCLUSIVE DRAINAGE EASEMENT

WHEREAS, the Cities of Loveland and Fort Collins (the “Cities”) jointly own and operate the public airport known as the Northern Colorado Regional Airport (the “Airport”) pursuant to that Amended and Restated IGA dated January 22, 2015 (the “IGA”). The property on which the Airport is located is within the jurisdictional boundaries of Loveland (“Airport Property”); and

WHEREAS, Byrd Drive Development, LLC (“Developer”) is developing a project for the construction of a Veteran’s Affairs clinic on property adjacent to the Airport Property (“Developer’s Property”). Naturally occurring stormwater and surface drainage has historically run from Developer’s Property over and across certain portions of the Airport, giving rise to a claim of historic flow rights for the benefit of Developer’s Property in an undeveloped state, although no documentation of a drainage easement exists; and

WHEREAS, Developer’s project will impact the historical drainage of stormwater onto the Airport property by metering stormwater from on-site detention and directing such stormwater into an improved drainage swale on the Airport property. Therefore, in order to document such modified storm drainage from Developer’s Property over and across the Airport Property, the parties wish to enter into an Agreement for Non-Exclusive Drainage Easement whereby the Cities shall grant an express drainage easement to the Developer in exchange for the Developer’s relinquishment of historical drainage rights. Such Agreement is attached hereto as “Exhibit A” and incorporated herein; and

WHEREAS, only the City Councils of the Cities have the authority to grant such an easement as a permanent property right in the Airport Property, and therefore, the Commission desires to recommend approval of the Agreement to the Cities as being in the best interests of the Cities and the Airport.

NOW THEREFORE BE IT RESOLVED BY THE NORTHERN COLORADO REGIONAL AIRPORT COMMISSION AS FOLLOWS:

Section 1. That the Commission supports the execution of the Agreement for Non-Exclusive Drainage Easement (the “Agreement”), attached hereto as “Exhibit A” and incorporated herein.
Section 2. That the Commission recommends that the City Councils of the City of Fort Collins and City of Loveland approve the Agreement.

Section 3. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this 12th day of November, 2020.

Wade Troxell, Chair of the
Northern Colorado Regional Airport Commission

ATTEST:

___________________________
Secretary

APPROVED AS TO FORM:

___________________________
Assistant City Attorney
FIRST AMENDMENT TO NORTHERN COLORADO REGIONAL AIRPORT GROUND LEASE AGREEMENT

This FIRST AMENDMENT TO NORTHERN COLORADO REGIONAL AIRPORT GROUND LEASE AGREEMENT ("Amendment") is entered into on this ______ day of ________, 2020 (the "Effective Date"), by and between CITIES OF FORT COLLINS AND LOVELAND, COLORADO (collectively, the "Cities"), and DISCOVERY AIR, LLC, a Colorado limited liability company ("Lessee").

RECITALS

A. The Cities and Lessee entered into that certain Northern Colorado Regional Airport Ground Lease Agreement dated January 16, 2019 (the "Lease"), for the lease of certain premises (the "Leased Premises"), located within the Northern Colorado Regional Airport (the "Airport"), Larimer County, Colorado;

B. Since execution of the Lease, the Lessee has developed its plans for the Leased Premises at the Airport such that it anticipates constructing its facilities and improvements in phases. As a result, Lessee has requested, and the Cities have agreed to also phase the rent due for the Leased Premises. The parties therefore desire to amend the Lease to phase the rent, to amend the rentable and non-rentable areas of the Leased Premises, and to clarify other items stated in the Lease.

C. The parties therefore desire to amend the Lease to phase the rent, to amend the rentable and non-rentable areas of the Leased Premises, and to clarify other items stated in the Lease as more particularly set forth and described herein below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions. All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Lease.

2. Amended Paragraph 1.4. The Cities and Lessee agree that Paragraph 1.4 of the Lease is deleted in its entirety and is hereby replaced with the following:

"1.4 In addition, Lessee shall have twenty four (24) months after the Effective Date (the "Inspection and Entitlement Period") (i) to obtain, at its sole cost and expense, any and all platting, master planned, subdivision, PUD, land use or other approvals, including approval of a site development plan ("Entitlements") which are required to enable Lessee to operate and develop the Leased Premises in accordance with the site plan depicted in Exhibit "B"; (ii) omitted; (iii) to inspect, test, examine, survey or conduct any studies of the Leased Premises as Lessee may deem necessary; (iv) to ascertain the availability of utilities and other services and to finalize any development agreements related thereto; and (v) to otherwise investigate the desirability and feasibility of the Leased Premises for Lessee’s use. Lessee further agrees to provide the Commission with Lessee’s final site development plan for review prior to Lessee’s submittal of such final site plan."
development plan to Loveland in order for the Commission to provide input to Loveland regarding the plan. Lessee shall be entitled to terminate this Agreement upon notice in writing to the Cities at any time prior to the end of the Inspection and Entitlement Period if (i) Lessee is unable, in its business judgment, to assure itself that it will be able to obtain the necessary Entitlements, or finalize any development agreements related to utilities and other necessary infrastructure or (ii) Lessee otherwise determines, in its business judgment, that the condition of the Leased Premises is unsatisfactory for Lessee’s intended use, or that any necessary utilities, services, or approvals are unavailable. If Lessee so terminates this Agreement, all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement. If Lessee does not notify the Cities prior to the end of the Inspection and Entitlement Period of Lessee’s election to terminate this Agreement for any of the foregoing reasons, then this termination clause shall be inoperative and void, and this Agreement shall remain in full force and effect. If Lessee has not obtained approval of a site development plan for Lessee’s development of the Leased Premises in substantially similar form to the plan depicted on Exhibit B, the Cities may terminate this Agreement by providing Lessee notice of intent to terminate this Agreement within thirty (30) days. If Lessee fails to obtain approval of such site development plan by the end of the thirty (30) days, this Agreement shall automatically terminate as of the thirty-first (31st) day and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement."

3. **Amended Paragraph 1.5.** The Cities and Lessee agree that Paragraph 1.5 of the Lease is deleted in its entirety and is hereby replaced with the following:

   "1.5 In the event Lessee has not commenced construction of any horizontal improvements to the Leased Premises for example, grading work or installation of utilities, within three (3) years after the Effective Date of this Agreement, subject to extension mutually agreed upon in writing by the parties, this Lease shall automatically and immediately terminate. In addition, in the event Lessee has not commenced construction of any of the vertical improvements comprising Phase I (as hereinafter defined), subject to extension mutually agreed upon by the parties, this Agreement shall automatically and immediately terminate. Nothing contained herein shall prohibit or operate to prohibit Lessee from applying for or seeking reimbursement for any of the Improvements from any local government, state or federal entity."

4. **Leased Premises.** The Cities and Lessee agree that Paragraph 2.1 is deleted in its entirety and is hereby replaced with the following:

   "2.1 The Leased Premises consist of the parcel of land described in Exhibit “A”, which is attached hereto and by this reference made a part hereof."

5. **Amended Rent.** The Cities and Lessee agree that Paragraph 4.2 of the Lease is deleted in its entirety and is hereby replaced with the following:

   {00600273}
4.2 (a) Phase I. Commencing on the earlier of (i) January 1, 2021 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase I Rental Area (as hereinafter defined) (the “Phase I Rent Commencement Date”), Lessee agrees to pay to the Cities for the first (1st) year following the Phase I Rent Commencement Date an annual rent of $0.15 per square foot for the Phase I Rental Area, for a total of $18,044.10 per year, subject to adjustment pursuant to Section 4.2(f). Commencing on the 8th anniversary of the Phase I Rent Commencement Date (the “Phase I Rent Escalation Date”), Lessee shall pay to the Cities an annual rent of 167% of the previous year’s annual rent for the Phase I Rental Area, subject to adjustment pursuant to Section 4.2(f). “Phase I Rental Area” as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on Exhibit “C” which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase I Rental Area contains 120,294 square feet. The Phase I Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.

The parties acknowledge and agree that the annual rent for the remaining Rental Area (as hereinafter defined) other than the Phase I Rental Area shall remain as set forth in Paragraph 4.1 of the Lease until a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred. The term “Additional Phase Rent Commencement Date” shall mean any of the following: the Phase II Rent Commencement Date (as hereinafter defined), Phase III Rent Commencement Date (as hereinafter defined), or Phase IV Rent Commencement Date (as hereinafter defined), as the case may be.

The parties acknowledge and agree that Lessee intends to develop and construct the remaining Leased Premises in phases comprising currently undetermined portions of the Leased Premises at times reasonably determined by Lessee.

(b) Phase II. Commencing on the earlier of (i) January 1, 2026 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase II Rental Area (as hereinafter defined) (the “Phase II Rent Commencement Date”), Lessee agrees to pay to the Cities for the first (1st) year following the Phase II Rent Commencement Date an annual rent of 300% of the prior year’s annual rent for the Phase II Rental Area, subject to adjustment pursuant to Section 4.2(f). Commencing on the 8th anniversary of the Phase II Rent Commencement Date (the “Phase II Rent Escalation Date”), Lessee shall pay to the Cities an annual rent of 167% of the prior year’s annual rent for the Phase II Rental Area, subject to adjustment pursuant to Section 4.2(f). “Phase II Rental Area” as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on Exhibit “C” which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase II Rental Area contains 242,626 square feet. The Phase II Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.
The parties acknowledge and agree that the annual rent for the remaining Rental Area (as hereinafter defined) other than the Phase I Rental Area and Phase II Rental Area shall remain as set forth in Paragraph 4.1 of the Lease until a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred.

(c) **Phase III.** Commencing on the earlier of (i) January 1, 2029 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase III Rental Area (as hereinafter defined) (the “**Phase III Rent Commencement Date**”), Lessee agrees to pay to the Cities for the first (1st) year following the Phase III Rent Commencement Date an annual rent of 300% of the prior year’s annual rent for the Phase III Rental Area subject to adjustment pursuant to Section 4.2(f). Commencing on the 8th anniversary of the Phase III Rent Commencement Date (the “**Phase III Rent Escalation Date**”), Lessee shall pay to the Cities an annual rent of 167% of the prior year’s annual rent for the Phase III Rental Area, subject to adjustment pursuant to Section 4.2(f). “**Phase III Rental Area**” as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on **Exhibit “C”** which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase III Rental Area contains 150,622 square feet. The Phase III Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards. The parties acknowledge and agree that the annual rent for the remaining Rental Area (as hereinafter defined) other than the Phase I Rental Area, Phase II Rental Area, and Phase III Rental Area shall remain as set forth in Paragraph 4.1 of the Lease until a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred.

(d) **Phase IV.** Commencing on the earlier of (i) January 1, 2030 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase IV Rental Area (as hereinafter defined) (the “**Phase IV Rent Commencement Date**”), Lessee agrees to pay to the Cities for the first (1st) year following the Phase IV Rent Commencement Date an annual rent of 300% of the prior year’s annual rent for the Phase IV Rental Area, subject to adjustment pursuant to Section 4.2(f). Commencing on the eighth anniversary of the Phase IV Rent Commencement Date (the “**Phase IV Rent Escalation Date**”), Lessee shall pay to the Cities an annual rent of 167% of the prior year’s annual rent for the Phase IV Rental Area, subject to adjustment pursuant to Section 4.2(f). “**Phase IV Rental Area**” as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on **Exhibit “C”** which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase IV Rental Area contains 162,006 square feet. The Phase IV Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.

“**Rental Area**” as used herein shall mean area comprising a portion but not
all of the Leased Premises upon which the parties hereto have agreed to calculate annual rental for the Leased Premises, the total Rental Area contains 675,548 square feet as depicted in Exhibit “C” which is attached hereto and by this reference made a part hereof. The Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.

The escalation of Rent described herein above is generally described in Exhibit “D” attached hereto, such Exhibit is for demonstration purposes and is not intended to control the Rent Commencement Date or Rent Escalation Date for any Phase (as defined for each Phase above), such Dates to be established as set forth herein above.

(e) **Contingent Phase V.** The Lessee shall not owe to the Cities any rent for the remaining portion of the Leased Premises not included as a Phase Rental Area (“Remainder Area”) until such time as the Lessee commences any development of the Remainder Area. For purposes of this Lease, “development” shall mean any of the following: (i) use of land; (ii) construction; and/or (iii) clearing, grading, re-grading, or cutting in anticipation of the construction of infrastructure, structures, or buildings, except that “development” shall not include solely landscaping or other activities or use of the Remainder Area that are not intended for the production of revenue for the Lessee. Commencing on the first day of the month following the date that the Lessee begins development of the Remainder Area, Lessee shall pay rent to the Cities as follows: (i) If the Lessee develops the Remainder Area for aeronautical uses, the Lessee shall pay rent at the same rate as Lessee has paid for each Phase listed above starting at the commencement rate ($0.15 per square foot adjusted for CPI for the term the Lease has been in effect since the Phase I Commencement Date) for a period of eight (8) years and increasing to the escalation rate of 167% of the previous year’s annual rent; or (ii) If the Lessee develops the Remainder Area for non-aeronautical uses, Lessee shall pay rent to the Cities at the Airport’s improved property rental rate in effect at the time or fair market value, whichever is required by the FAA. Lessee acknowledges and agrees that if the Remainder Area is developed for non-aeronautical uses, such use may require release of the Remainder Area by the FAA, which release shall be in the sole discretion of the FAA.

(f) Commencing on May 1st, 2022, and on May 1st in each year thereafter during the remainder of the Term, the annual rent shall be adjusted by multiplying the annual rent payable in the next preceding year by a fraction, the numerator of which shall be the C.P.I., as hereinafter defined, published for the previous month of December and the denominator of which shall be the C.P.I. published for the month of December which preceded the month used as the numerator. In no event shall the annual rent be reduced from that payable in a previous year. If this Agreement is executed after January 1st, such C.P.I. increase for the calendar year in which this Agreement is executed shall be prorated. The term "C.P.I." as used herein shall mean the Consumer Price Index for all Urban Consumers, all items, Selected Large Cities, for the Denver/Boulder Area as published by the Bureau of Labor Statistics of the United States.
Department of Labor, 1982-84 base = 100. In the event the base year is changed, the C.P.I. shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of Labor Statistics ceases to use the C.P.I., or this index, an equivalent or comparable economic index will be used.

6. **Deletion of Paragraph 4.3.** The Cities and Lessee agree that Paragraph 4.3 of the Lease is hereby deleted in its entirety.

7. **Amended Exhibit “A” and Exhibit “B”**. The Cities and Lessee agree that Exhibit “A” and Exhibit “B” to the Lease are deleted in their entirety and are hereby replaced with the attached Exhibit “A1” and Exhibit “B1” respectively. Furthermore, the Cities and Lessee agree that any all references to Exhibit “A” in the Lease are hereby amended to reference Exhibit “A1” and all references to Exhibit “B” in the Lease are hereby amended to reference Exhibit “B1”.

8. **Ratification of Lease.** Except as expressly set forth in this Amendment, the Lease otherwise is unmodified, remains in full force and effect and is incorporated and restated herein as if fully set forth at length. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.

9. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which will be deemed an original, which together will constitute one in the same agreement. A facsimile or other electronic signature shall have the same force and effect as an original signature; provided, however, subsequent to any execution of this Amendment by electronic means, the parties hereto agree to exchange original signatures upon the written request of either party.

10. **Modifications.** This Amendment may be modified only in writing signed by both the Cities and Lessee.

11. **Capitalized Terms.** All capitalized terms used herein shall have the meaning as set forth in the Lease, unless otherwise defined herein.

12. **Nature of Amendment.** The Lease as amended by this Amendment shall remain in full force and effect in accordance with all of its terms and provisions. This Amendment shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, personal representatives, successors and assigns. No additions or modifications of any term or provision of this Amendment shall be effective unless set forth in writing, signed by the party against whom enforcement of such addition or modification is sought. This Amendment contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements, negotiations or understandings between them concerning the subject matter contained herein.
IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment to Shopping Center Lease by their duly authorized officers, effective as of the Effective Date.

THE CITIES:

CITY OF LOVELAND, COLORADO

_________________________________
Stephen C. Adams, City Manager

ATTEST:

_______________________________
Clerk

APPROVED AS TO FORM:

_______________________________
Assistant City Attorney

CITY OF FORT COLLINS, COLORADO

___________________________________
Darin A. Atteberry, City Manager

ATTEST:

_______________________________
City Clerk

APPROVED AS TO FORM:

_______________________________
Assistant City Attorney

LESSEE:

Discovery Air, LLC, a Colorado limited liability company,

ATTEST:

_______________________________

By: ____________________________
Name: __________________________
Title: __________________________

{00600273}  7
Discovery Air Lease Area
Approx. 1,301,774 SF

Boundary and area are approximate and subject to professional survey upon commencement of Phase I construction.
# Exhibit “D”

## Rent Phasing Example

### Rental SF

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### Preliminary Rate: Option Period

- $0.05

### Starting Rate: 8 years following start year negotiated

- 300% of prelim rate

### Final Rate: YR 11 + CPI Escalation

- 167% of starting rate

### CPI Escalation Rate Starting Year 3 for all

- 2.0%

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This example assumes a constant 2% annual CPI

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### Proposed Draft Lease Schedule

#### Phase I

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### Attachment: Discovery Air Lease First Amendment (9769 : Airport - Discovery Air Lease Amendment)
NORTHERN COLORADO REGIONAL AIRPORT GROUND LEASE AGREEMENT

CITIES OF LOVELAND AND FORT COLLINS, COLORADO,

AND

DISCOVERY AIR, LLC, A COLORADO LIMITED LIABILITY COMPANY
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LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT, made and entered into this 16th 
day of January, 2019 (the “Effective Date”), is by and between the Cities of Fort Collins and Loveland, Colorado (the “Cities”) and 
Discovery Air, LLC, a Colorado limited liability company, hereinafter called “Lessee.”

WITNESSETH:

WHEREAS, the Cities own and operate an airport known as the Northern Colorado Regional Airport located in Larimer County, Colorado, including the real property upon which the same is located, (hereinafter, the “Airport”) pursuant to an Amended and Restated Intergovernmental Agreement for the Joint Operation of the Airport on January 22, 2015 (the “IGA”), whereby the Cities formed a commission known as the Northern Colorado Regional Airport Commission and delegated certain duties and responsibilities to such commission (the “Commission”). The IGA was amended on June 7, 2016; and

WHEREAS, the Cities and Lessee are mutually desirous of entering into this Lease Agreement (“Agreement”) for the use and occupancy of certain areas at the Airport for aeronautical activities; and

WHEREAS, the Cities desire to accommodate, promote and enhance general aviation at the Airport and Lessee desires to be assured of the Airport’s continued availability as a base for aircraft; and

WHEREAS, the Cities and Lessee have reached an understanding in principle, which envisions Lessee’s construction of a fixed-based operation (“FBO”) facility, hangar and office buildings, a restaurant, an overhead transportation system (commonly referred to as a gondola), an expanded tarmac, parking facilities, and various infrastructure related thereto, including such pavement and ramp areas as required by the Airport Minimum Standards for the Provision of Commercial Aeronautical Activities at the Airport, dated September 26, 2008, (the “Minimum Standards”), as they may be amended from time to time by the Cities (collectively, “Improvements”), the general layout of which is intended to be located within the preliminary site plan which is attached hereto as Exhibit “B”, which by this reference is made a part hereof. The Improvements referenced in this Agreement do not include any infrastructure required for Lessee’s proposed development that is dedicated to the City of Loveland or another entity; and

WHEREAS, the Lessee understands and acknowledges that Lessee’s planned Improvements are subject to approval by the City of Loveland through its development review process and to applicable provisions of the Loveland Municipal Code.

NOW, THEREFORE, in consideration of the premises and of the rents, covenants and conditions herein contained, the Cities do hereby lease to Lessee the area(s) of the Airport described in Article 2 hereof (the “Leased Premises”) on the terms and conditions hereinafter set forth.

ARTICLE 1: TERM; NEW LEASE; CONTINGENCIES

1.1 The term of this Agreement shall commence at 12:01 a.m. on the Effective Date and expire at 11:59 p.m. on the last day of the calendar month in which occurs the day immediately preceding the fiftieth (50th) anniversary of the Effective Date (hereinafter the “Term”), unless sooner terminated in accordance with the provisions hereof.

1.2 If Lessee desires to continue occupying the Leased Premises after the expiration of the Term, Lessee may request that the Cities grant a new lease agreement of no more than fifty (50) years. Such a request shall be made by Lessee in writing and delivered to the Cities not more than eighteen (18) months nor less than six (6) months prior to the expiration of the Term. In consideration of Lessee’s substantial capital investment
in the Improvements and value created in the form of long-term lease arrangements for same, the Cities agree to negotiate in good faith with Lessee a new lease for the Leased Premises on the terms set forth in this Section 1.2 upon the expiration of the Term. If: (i) Lessee is not then in default under any provision of this Agreement beyond any and all applicable notice and cure periods; (ii) the Cities determine that the Improvements still have sufficient value to the Cities; and (iii) such a new lease would be consistent with the Airport’s master plan then in effect and any and all federal rules, regulations, directives, guidelines or other obligations with respect to the Airport, including but not limited to the “grant assurances” to the FAA, then the Cities may, in their sole discretion, offer Lessee a new lease of no more than fifty (50) years of the Leased Premises under such terms and conditions, including rental rates and on the then-current lease form being offered by the Cities.

1.3 This Agreement is specifically conditioned upon Lessee having obtained from the applicable government authorities any and all building permits, special use or conditional use permits, licenses and approvals (collectively, the “Permits”) required for the construction of the Improvements as contemplated herein, as well as any required off-site improvements related thereto. Lessee covenants that it shall use commercially reasonable efforts and due diligence to obtain the Permits and deliver copies of the same to the Cities on or before the date which shall be twenty four (24) months after the Effective Date (the “Permit Review Date”). Any and all fees, charges or expenses incurred by the Cities in so cooperating shall be borne by Lessee and shall be reimbursed to the Cities within thirty (30) days of receipt of an invoice for the same. This Agreement is also specifically conditioned upon Lessee having obtained the Cities’ as applicable, approval (not to be unreasonably withheld, conditioned or delayed) of site plans, conceptual drawings, and preliminary and final plans and specifications for the Improvements (collectively, “Plans and Specifications”). In preparing the Plans and Specifications, Lessee shall ensure that all proposed Improvements to be constructed in City of Loveland will be in full compliance with the then current Development Policy and Application Procedures for Development at Northern Colorado Regional Airport, if any (“Development Procedures”). In addition, Lessee shall also ensure that all Plans and Specifications submitted for approval comply with the Airport’s design standards, if any, as well as all applicable building, use and zoning regulations. If Lessee is unable, in its business judgment, to assure itself of the availability of the Permits or the Cities’ approval of the Plans and Specifications on or before the Permit Review Date, then Lessee shall have the option to terminate this Agreement by written notice delivered to the Cities within thirty (30) days following the Permit Review Date, and if within such time period Lessee shall not have obtained the Permits or the Cities’ approval of the Plans and Specifications, then this Agreement shall terminate as of the end of such thirty (30) day period and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement. The failure to deliver the termination notice in a timely manner shall render this termination clause inoperative and void. If Lessee has not delivered copies of the Permits to the Cities by the Permit Review Date, the Cities may terminate this Agreement by providing Lessee notice of intent to terminate this Agreement within thirty (30) days. If Lessee fails to deliver the Permits to the Cities by the end of the thirty (30) days, this Agreement shall automatically terminate as of the thirty-first (31st) day and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement.

1.4 In addition, Lessee shall have twenty four (24) months after the Effective Date (the “Inspection and Entitlement Period”) (i) to obtain, at its sole cost and expense, any and all platting, master planned, subdivision, PUD, land use or other approvals, including approval of a site development plan (“Entitlements”) which are required to enable Lessee to operate and develop the Leased Premises in accordance with the preliminary site plan depicted in Exhibit “B;” (ii) to form or modify a special/metropolitan district to recover costs associated with developing various utilities and infrastructure, as well as costs incurred in making various improvements to Rocky Mountain Avenue or elsewhere serving the Leased Premises, which district service area Lessee agrees shall not encumber the real property owned by the Cities but only the improvements thereon unless Lessee obtains the express written consent of the Cities; (iii) to inspect, test, examine, survey or conduct any studies of the Leased Premises as Lessee may deem necessary; (iv) to ascertain the availability of utilities and other services and to finalize any development agreements related thereto; and (v) to otherwise investigate the desirability and feasibility of the Leased Premises for Lessee’s use. Lessee acknowledges that the Cities may enter into an intergovernmental agreement requiring the approval of both
Cities, as co-owners of the Airport, in connection with any service plan or amendment to service plan for Lessee’s proposed metropolitan district presented to the City of Loveland for approval. Lessee further agrees to provide the Commission with Lessee’s final site development plan for review prior to Lessee’s submittal of such final site development plan to Loveland in order for the Commission to provide input to Loveland regarding the plan. Lessee shall be entitled to terminate this Agreement upon notice in writing to the Cities at any time prior to the end of the Inspection and Entitlement Period if (i) Lessee is unable, in its business judgment, to assure itself that it will be able to obtain the necessary Entitlements, form or modify the special/metropolitan district, or finalize any development agreements related to utilities and other necessary infrastructure or (ii) Lessee otherwise determines, in its business judgment, that the condition of the Leased Premises is unsatisfactory for Lessee’s intended use, or that any necessary utilities, services, or approvals are unavailable. If Lessee so terminates this Agreement, all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement. If Lessee does not notify the Cities prior to the end of the Inspection and Entitlement Period of Lessee’s election to terminate this Agreement for any of the foregoing reasons, then this termination clause shall be inoperative and void, and this Agreement shall remain in full force and effect. If Lessee has not obtained approval of a site development plan for Lessee’s development of the Leased Premises in substantially similar form to the plan depicted on Exhibit B, the Cities may terminate this Agreement by providing Lessee notice of intent to terminate this Agreement within thirty (30) days. If Lessee fails to obtain approval of such site development plan by the end of the thirty (30) days, this Agreement shall automatically terminate as of the thirty-first (31st) day and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement.

1.5 In the event Lessee has not commenced construction of any horizontal improvements to the Leased Premises for example, grading work or installation of utilities, within three (3) years after the Effective Date of this Agreement, subject to extension mutually agreed upon in writing by the parties, this Lease shall automatically and immediately terminate. In addition, in the event Lessee has not commenced construction of any of the vertical improvements for the hangar and office buildings and/or FBO facility, it being expressly understood and agreed that Lessee will be developing the Leased Premises in phases, on or before five (5) years after the Effective Date of this Agreement, subject to extension mutually agreed upon by the parties, this Agreement shall automatically and immediately terminate. Nothing contained herein shall prohibit or operate to prohibit Lessee from applying for or seeking reimbursement for any of the Improvements from any local government, state or federal entity.

ARTICLE 2: LEASED PREMISES

2.1 The Leased Premises consist of the parcel of land described in Exhibit “A”, which is attached hereto and by this reference made a part hereof. The Parties acknowledge that the exact legal description is subject to adjustment and will be more accurately described with the development of the site development plan for the Leased Premises.

2.2 The Parties further acknowledge that a public use taxiway exists on the west portion of the Leased Premises that connects current extended taxiway Delta with current taxiway Alpha (hereinafter the “Existing Tarmac”). The Existing Tarmac is identified on Exhibit B, attached hereto. Use, access, maintenance and repair of such Existing Tarmac shall be subject to the terms and conditions set forth in this Agreement. Without limiting the foregoing, the Cities acknowledge that the Improvements, except for the Existing Tarmac and Additional Taxiway as described in Section 5.9.2 below, to be constructed upon the Leased Premises shall, during the term of this Agreement, be and remain the property of Lessee or any successor in interest.

2.3 Lessee acknowledges that a portion of the Leased Premises may be subject to an existing intergovernmental lease agreement between the Cities and the State of Colorado, Department of Public Safety, Division of Fire Prevention and Control (the “Division”) for its SEAT base. To the extent that the leased premises for the SEAT base overlaps with the Leased Premises of this Lease, it shall be Lessee’s obligation to obtain the agreement of the Division to relocate its SEAT base to another location on the Airport property,
which relocation shall be accomplished at Lessee’s sole cost and expense. The Cities agree to cooperate in executing a lease amendment or new lease with the Division as necessary to accomplish the relocation.

2.4 The Cities hereby represent and warrant that they have full right and authority to enter into this Lease and that no other interest exists in the Lease Premises that would materially adversely affect Lessee’s use and enjoyment of the Lease Premises as contemplated herein and that if during the Inspection and Entitlement Period any condition is found to exist that in Lessee’s sole reasonable discretion materially adversely may affect Lessee’s use and enjoyment of the Lease Premises, Lessor shall remove, remediate or otherwise mitigate such condition to Lessee’s reasonable satisfaction at Lessor’s sole cost and expense.

ARTICLE 3: USE OF LEASED PREMISES

3.1 Lessee agrees for itself and its sublessees that it is permitted only to use the Lease Premises for aeronautical activities. The term “Aeronautical Activities” shall mean any activity or service that involves, makes possible, facilitates, is related to, assists in, or is required for the operation of aircraft, or which contributes to or is required for the safety of aircraft operations. Lessee and its sublessees may use, occupy and sublease the Lease Premises for the following aeronautical purposes and for no other purpose whatsoever unless approved in writing by the Cities:

3.1.1 For the construction, installation, maintenance, and operation of the Improvements including an FBO facility, a restaurant, an overhead transportation system, expanded tarmac area, parking facilities, office and retail space, and hangar space be used for the parking, storage, servicing, repair, maintenance, modification, and construction of aircraft. Lessee further agrees that the parking facilities shall not exceed the number of parking spaces ultimately approved in the site plan to be dedicated to customers of the FBO facility, restaurant, office and retail space. Operation of the FBO facility and the provision of FBO Services (as hereinafter defined) are referred to herein as the “FBO Operation”. Lessee shall conduct the FBO Operation (or cause same to be conducted) in compliance with the Minimum Standards. In addition to compliance with the Minimum Standards, all uses on the Lease Premises shall also comply with the City of Loveland, Colorado, building, use and zoning codes, regulations and requirements applicable to the Lease Premises. The Lease Premises shall not be used for residential purposes.

3.1.2 “FBO Services” as used herein shall mean all essential and specialized aircraft services necessary to ensure that the basic needs of aircraft owners, pilots, and passengers are provided for at the Airport at a minimum level or above, as more fully set forth in the Minimum Standards. Should Lessee desire the FBO to provide aircraft fueling services, the parties shall execute an amendment to this Lease to include the appropriate terms and conditions for such fueling operations in compliance with the Minimum Standards. Such amendment shall require approval by the City Managers for the Cities to the extent permitted by the Cities’ charters and Municipal Codes or by the City Managers’ duly authorized designees.

3.1.3 Nothing contained in this Agreement shall be construed as granting an exclusive license, permit, franchise or other right to provide FBO Services or any other services. Lessee understands and agrees that the Cities may lease other property at the Airport to other tenants who provide or will cause to be provided the same or similar services.

3.1.4 The Cities make no representations, guarantees, or warranties that the Lease Premises may be lawfully used for the purposes set forth in this Section 3.1. Lessee shall have the sole responsibility of obtaining all applicable permits or other governmental approvals necessary to construct and use the Lease Premises as intended herein, including all permits and/or approvals required by the City of Loveland.
ARTICLE 4: RENT

4.1 Commencing on the Effective Date and continuing until the Rent Commencement Date (hereinafter defined), Lessee shall pay to the Cities an annual rent of $0.05 per square foot for the Rental Area (as hereinafter defined), for a total of $28,204.80 per year.

4.2 Commencing on the earlier of (i) twenty four months (24) months after the Effective Date and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements (the "Rent Commencement Date"), Lessee agrees to pay to the Cities for the first ten (10) years following the Rent Commencement Date during the Term an annual rent of $0.15 per square foot for the Rental Area (as hereinafter defined), for a total of $84,614.40 per year. Commencing on the eleventh (11th) year of the Term, Lessee shall pay to the Cities an annual rent of $0.25 per square foot for the Rental Area, for a total of $141,024.00, which rental shall thereafter during the Term be subject to adjustment pursuant to Section 4.3. "Rental Area" as used herein shall mean area comprising a portion but not all of the Leased Premises upon which the parties hereto have agreed to calculate the annual rent for the Leased Premises, which Rental Area contains 564,096 square feet as depicted in Exhibit "A" which is attached hereto and by this reference made a part hereof. The Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.

4.3 Commencing on the first day of the month following the eleventh (11th) anniversary of the Rent Commencement Date, and each year thereafter during the remainder of the Term, the annual rent shall be adjusted by multiplying the annual rent payable in the next preceding year by a fraction, the numerator of which shall be the C.P.I., as hereinafter defined, published for the previous month of December and the denominator of which shall be the C.P.I. published for the month of December which preceded the year used as the numerator. In no event shall the annual rent be reduced from that payable in a previous year.

4.3.1 The term "C.P.I." as used herein shall mean the Consumer Price Index for all Urban Consumers (CPI-U), All Items, for Denver-Boulder-Greeley, CO as published by the Bureau of Labor Statistics of the United States Department of Labor, 1982-84 base = 100. In the event the base year is changed, the C.P.I. shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of Labor Statistics ceases to publish the C.P.I., or this index, an equivalent or comparable economic index will be used.

4.4 The annual rent payable hereunder may be paid in advance in annual installment, or shall be paid in equal monthly installments on the first day of each month in advance at the office of the Airport Manager or at such other office as may be directed in writing by the Cities. Payments due to the Cities under this Agreement shall be made in legal tender of the United States and paid without offset. In addition to any other remedies provided in this Agreement, in the event that any rental, fee or charge set forth in this Agreement is not paid to the Cities within ten (10) days of the date due, Lessee agrees to pay a late charge of $50.00 for each such late payment, and default interest shall accrue on such payment from the date the payment was due, at a rate of twelve percent (12%) per annum.

With respect to the hangars Lessee proposes to construct as part of the Improvements depicted on Exhibit B, Lessee agrees that the the hangars shall, collectively, be at least a total square footage reasonably consistent with Exhibit B to be finally determined during the Inspection and Entitlement Period as part of site plan development approval process and shall have a concrete or asphalt floor, with each Hangar to have at least one aircraft access door sized to accommodate an average private aircraft. Lessee shall use commercially reasonable and diligent efforts to complete construction of the Hangars within 3 years from the completion of horizontal infrastructure needed to serve the same.

4.5 Lessee, as additional rent, shall construct and maintain a paved aircraft ramp area on the Leased Premises (the "Ramp"). The Ramp must be designed and built to size and specifications in compliance with
the Minimum Standards, and for a minimum weight bearing capacity, established by the Cities, built to the full width of the Leased Premises, and to connect with adjacent taxiway, ramp and/or auto parking areas, in order that a continuous and safe pavement section results. If access to the Leased Premises is not available on existing taxiways and/or roadways, then Lessee may also be requested to construct the same during the **Inspection and Entitlement Period** as part of site plan development approval process. It is the responsibility of Lessee to maintain the entire Ramp area, and all other pavement areas on the Leased Premises, in a manner, which is safe and clean of debris so as not to cause danger or unsafe conditions for taxing aircraft and Airport users. Notwithstanding the foregoing, the Cities shall be responsible for snow removal on the aircraft Ramp area excluding any parking and side lots and excluding any area within three feet (3') of any Hangar, provided, however, that priority of snow removal shall be in accordance with the Cities’ Snow Removal Plan as it now exists or as it may be amended in the Cities’ sole discretion. Lessee grants to users of the Airport the right to use aircraft Ramp areas on the Leased Premises for passage of aircraft at all times on and near the adjacent taxiway. The construction time and default provisions of subsection 4.4 shall be applicable to the Ramp described in this subsection.

4.6 The Cities understand that Lessee intends to sublease portions of the Leased Premises and/or the Improvements located thereon and, in such instances, the Cities agree to accept payments of any rents or fees required hereunder directly from such sublessees; provided, however, that the obligations of such a sublessee to make any payment required hereunder directly to the Cities shall not relieve Lessee of its liability or obligations for such payment.

4.7 Fees due under the Minimum Standards or to obtain any permit or license required by the Minimum Standards for commercial activities conducted in whole or part on the Leased Premises shall be paid by Lessee to the Cities as additional rent under this Agreement.

**ARTICLE 5: ACCEPTANCE, CONSTRUCTION, CARE, MAINTENANCE, AND REPAIR**

5.1 Subject to the provisions of Sections 1.3 and 1.4 hereof, Lessee accepts possession of the Leased Premises “as is” in its present condition, and, subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration (“FAA”), the Airport Rules and Regulations (as hereinafter defined), and by ordinances of the Cities. The Cities represent to Lessee that, to their knowledge, the Leased Premises are free of any adverse environmental conditions and no part of the Leased Premises lies in a flood hazard area or constitutes a fresh water wetland, nor is any part of the Leased Premises within one hundred feet (100’) feet of a fresh water wetland. Except as may otherwise be provided for herein, the Cities shall not be required to maintain nor to make any improvements, repairs or restoration upon or to the Leased Premises or to any of the improvements presently located thereon or placed thereon by Lessee.

5.2 Lessee may construct the Improvements on the Leased Premises for the uses specified in Article 3 hereof and shall not be required to obtain any approvals from the Cities in connection therewith so long as the construction of the Improvements is substantially consistent with the previously approved Plans and Specifications. Prior to the commencement of any construction of the Improvements, Lessee shall have the Leased Premises staked by a certified surveying company to ensure all Improvements are placed accurately on the Leased Premises. Within ninety (90) days of any certificate of occupancy being received, Lessee shall submit to the Airport Manager a full set of as-built record drawings of the completed Improvements, which among other things, depicts exact locations of the completed Improvements, including utilities, made on and/or off of the Leased Premises.

5.3 All improvements, alterations, additions, removal and relocation of structures and construction projects constructed on the Leased Premises shall in all respects be accomplished in a good and workmanlike manner; in accordance with previously approved Plans and Specifications and the applicable building code; pursuant to a valid building permit, when applicable, issued by the applicable authority; according to the terms and conditions of such building permit; and in a manner consistent with state and federal requirements.
5.4 Lessee shall include in all construction contracts entered into by it in connection with any construction of the Improvements, a provision requiring the contractor to indemnify, release, and save harmless the Cities, their commissioners, officers, representatives, agents and employees from any and all loss of or damage to property, or injuries to, or death of, any person or persons and from any and all damages, suits, causes of action, and judgments, including workman’s compensation claims, in any way resulting from, or arising out of, directly or indirectly, such contractor’s operations in connection herewith, and the contractor’s use or occupancy of the Leased Premises, and of any portion of the Airport, and including acts and omissions of officers, employees, representatives, agents, servants, subcontractors, assigns, and suppliers of the contractor as well as all other persons doing business with contractor; provided, however, that the Cities shall give the contractor prompt and timely notice of any claim made against the Cities which may result in a judgment against the Cities because of such injuries or damages, and shall deliver to the contractor all papers, notices, documents, summons and other legal process served upon the Cities or its agents; provided further, that the contractor and its insurer, or either of them, shall have the right to compromise and defend all claims, actions, suits and proceedings to the extent of the contractor’s interests therein; and, provided further, contractor need not indemnify, release and save harmless the Cities against loss of property, or injury to or death of persons, caused by the negligence or willful misconduct of the Cities, their commissioners, agents or employees. Lessee shall require the contractor to furnish liability insurance in such amounts as may be reasonably required by the Cities. Lessee shall also include in any construction contract such provisions as may be reasonably required by the Cities relating to the operations of the contractor on the Airport. Lessee shall provide to the Cities a copy of all construction contracts entered into in connection with the Leased Premises.

5.5 When construction work involving structural components or structural modification has been completed, Lessee shall deliver to the Cities a certificate of an architect or structural engineer licensed to practice in the State of Colorado, not in regular employ of either party hereto and familiar with the construction of said improvements, certifying that the improvements have been constructed substantially in accordance with the approved Plans and Specifications and in compliance with all laws, ordinances, and governmental rules and regulations and orders and certifying that in the engineer’s or architect’s opinion such improvements have an expected useful life of a duration which is customary for such improvements under similar conditions and circumstances.

5.6 Except as otherwise expressly provided herein, Lessee shall, throughout the term of this Agreement, assume the entire responsibility, cost and expense for all repair and maintenance whatsoever on the Leased Premises and all Improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, Lessee, without limiting the generality hereof, shall, except as otherwise expressly provided herein:

5.6.1 Keep at all times, in a clean and orderly condition and appearance, the Leased Premises, all Improvements thereon and all of Lessee’s fixtures, equipment and personal property which are located on any part of the Leased Premises. Lessee shall not park or leave, or allow to be parked, aircraft on the taxiways, ramps or pavement adjacent to any building in a manner which unduly interferes with or obstructs access to other buildings or movement on adjacent taxiways.

5.6.2 Provide and maintain on the Leased Premises all obstruction lights and similar devices, and safety equipment required by law.

5.6.3 Take measures to prevent erosion, including but not limited to, the planting and replanting of grasses with respect to all portions of the Leased Premises not paved or built upon, if any, and in particular shall plant, maintain and replant any landscaped areas.

5.6.4 Be responsible for the maintenance and repair of all utility services lines placed on the Leased Premises and used by Lessee exclusively, including, but not limited to, water lines, gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers.
5.6.5 Maintain (or cause to be maintained) all paved areas of the Leased Premises, excluding the Additional Taxiway (hereinafter defined), in a manner that is safe and clear of debris so as not to cause danger or unsafe conditions for taxiing aircraft and Airport users.

5.7 Lessee shall conduct an initial Phase I environmental study (“Phase I”) for the Leased Premises within six (6) months of the Effective Date. Such Phase I shall serve as a baseline for the provisions of this Paragraph 5.7 and 5.8 below. If such Phase I identifies conditions that need to be remediated, Lessor shall forthwith do so at its sole cost and expense, if Lessee so elects. Lessee shall notify the Cities of its decision to remediate within thirty (30) days of completion of the Phase I. If Lessee does not elect to remediate, the Lease shall terminate on the thirty-first (31st) day after completion of the Phase I. Thereafter, Lessee shall not cause or permit any Hazardous Material as said term is hereinafter defined, to be brought upon, kept or used in or about the Leased Premises by Lessee, its agents, employees, contractors, or sublessees without the prior written consent of the Cities, which consent the Cities shall not unreasonably withhold, condition or delay as long as Lessee demonstrates to the Cities’ reasonable satisfaction that such Hazardous Material is necessary, desirable or useful to Lessee’s business or operations on the Leased Premises and will be used, kept and stored in compliance with all laws regulating such Hazardous Material (“Hazardous Material Regulations”). Notwithstanding the foregoing, aircraft fuel, lubricating oil, antifreeze and biodegradable cleaning solvents used in the course of aircraft maintenance may be brought upon and used on the Leased Premises in the ordinary course of Lessee’s or its sublessees’ operations as long as any such materials are used, kept, stored, transported and disposed of in compliance with all applicable Hazardous Material Regulations, including, without limitation, the Storm Water Management Plan adopted by the Cities. If (i) Lessee breaches the obligations stated in the preceding sentence, or (ii) if the presence of Hazardous Material on the Leased Premises if caused by or voluntarily permitted by Lessee results in contamination of the Leased Premises, then Lessee shall indemnify, defend and hold the Cities harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the lease term as the result of such contamination. This indemnification of the Cities by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Leased Premises that occurred during the term of this Agreement as a result of Lessee’s or its sublessees’ acts. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Premises caused or permitted by Lessee results in any contamination of the Leased Premises, Lessee shall promptly take all actions, at its sole expense, as are necessary to return the Leased Premises to the condition existing prior to the introduction of any such Hazardous Material to the Leased Premises.

5.8 “Hazardous Material” means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Colorado, or the United States Government and includes, without limitation, any material or substance that is (i) defined as a “hazardous substance” under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Act (33 U.S.C. §1321); (v) defined as “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6903); (vi) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Compensation and Liability Act (42 U.S.C. §9601); or (vii) defined as a “regulated substance” pursuant to Subchapter IX Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. §6991).

5.9 As shown on the site plan attached hereto as Exhibit “B”, Lessee may, as part of the Improvements, construct an expanded tarmac area and other paved areas outside the Rental Area but within the boundaries of the Leased Premises (such expanded tarmac and other paved areas being hereinafter referred to as “Additional Paved Areas”). Lessee shall construct the Additional Paved Areas in compliance with FAA standards for airport design in effect at the time of construction. The Additional Paved Areas are depicted on Exhibit “A” comprising a portion but not all of the Leased Premises. It is agreed that future parking areas to serve a restaurant and related facilities will NOT be subject to FAA standards and will not be eligible for FAA reimbursement contemplated below for expanded tarmac areas.
5.9.1 The parties hereto acknowledge and agree that portions of the Additional Paved Areas that may be designated as expanded tarmac and other paved areas subject to airport ground control may be eligible for reimbursement from the FAA discretionary grant resources. Accordingly, though Lessee shall be responsible for the initial construction of such Additional Paved Areas, the Cities agree to timely apply for FAA discretionary grant resources for purposes of reimbursing Lessee for the cost of constructing same only to the extent that such grant request does not disproportionately impact Airport projects; provided, however, Lessee acknowledges that the granting of such funding shall be in the FAA’s sole discretion. If the FAA approves grant funding for the construction of any portion of the Additional Paved Areas, the Cities shall so notify Lessee (which notification shall include details on any and all FAA requirements for such funding) and shall reimburse Lessee for the cost of constructing same (such reimbursement not to exceed the amount granted by the FAA) within ninety (90) days after the Cities have received both such FAA funding and Lessee’s written request for reimbursement, which written request shall include a final lien waiver from Lessee’s general contractor and invoices and other reasonable documentation showing the cost of constructing such portions of the Additional Paved Areas together with any other documentation that may be required by the FAA. If Lessee so elects to construct such portions of the Additional Paved Areas, same shall be built in accordance with all state and federal regulations, including those of the FAA and the Transportation Security Administration (“TSA”), and Lessee shall warrant that the same shall be free of defects in materials and workmanship for a period of two (2) years after substantial completion and acceptance by the Cities of same.

5.9.2 Upon completion of any of the Additional Paved Areas, Lessee shall be deemed to have granted to the Cities and Airport users the right to use same from time to time for passage of aircraft and other vehicles. If Lessee is reimbursed for its costs in constructing portions of the Additional Paved Areas, Lessee shall pay the Cities as additional rent the Airport’s current improved land lease rate for the square footage of the Additional Paved Areas except for those areas defined as transitional surface for passage of aircraft that will not be solely utilized by the Improvements on the Leased Premises (the “Additional Taxiway”). The Additional Taxiway, once determined, will be marked and striped as a taxiway, and will be designed to replace the Existing Taxiway Delta and Alpha One and will conform to FAA design standards for a Group I aircraft as defined in FAA Advisory Circular 150/5300-13A. At all times, the Existing Taxiway shall remain open and accessible for the passage of aircraft until such time as the Additional Taxiway is complete and acceptable for the passage of aircraft in the sole discretion of the Airport Manager. The Additional Taxiway will connect current taxiway Delta with current taxiway Alpha Throughout the term of this Agreement, the Cities shall be responsible for the maintenance and repair of the Existing Taxiway and Additional Taxiway (the “Airport Maintained Paved Areas”). Lessee shall have the right to charge reasonable and customary tie down fees for temporary occupancy by aircraft of the Additional Paved Areas (other than transit or de minimus occupancy). Notwithstanding anything contained in this Agreement to the contrary, it is expressly agreed and understood that Lessee has no obligation to monitor or police vehicles (except those allowed on the Airport by Lessee or its sublessees) on the Airport Maintained Paved Areas to determine if they are legally upon the Airport or to determine if they are operating in a safe condition or in a safe manner. Lessee shall be responsible (at its cost and expense) for maintaining the Additional Paved Areas outside of the Additional Taxiway in a manner that is safe and clear of debris so as not to cause danger or unsafe conditions for taxing aircraft and Airport users. The Cities shall be solely responsible (at their cost and expense) for maintaining only the Additional Taxiway.

5.10 Subject to the provisions of Article 10, Lessee shall keep the Leased Premises, and the Improvements constructed by Lessee or its sublessees on the Leased Premises free and clear of any liens and encumbrances, except as contemplated by Article 10, or unless expressly approved in writing by the Cities, and shall indemnify, hold harmless and defend the Cities from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Lessee or its sublessees. In the event any lien is filed, Lessee shall do all acts necessary to discharge any lien within ten (10) days of filing, or if Lessee desires to contest any lien, then Lessee shall deposit with the Cities such security as the Cities shall reasonably demand to insure the payment of the lien claim. In the event Lessee fails to pay any lien claim when due or fails to
deposit the security with the Cities, then the Cities shall have the right to expend all sums necessary to discharge the lien claim, and Lessee shall pay the Cities, as additional rental when the next rental payment is due, all sums expended by the Cities in discharging any lien, including reasonable attorneys’ fees and costs.

**ARTICLE 6: ADDITIONAL OBLIGATIONS OF LESSEE**

6.1 Lessee shall conduct its operations and cause each of its sublessees to conduct their operations hereunder in an orderly and proper manner, considering the nature of such operations, so as not to unreasonably annoy, disturb, endanger or be offensive to others.

6.2 Further, Lessee shall take all reasonable measures:

6.2.1 To reduce to a practicable minimum vibrations tending to damage any equipment, structure, buildings or portions of buildings.

6.2.2 Not to produce or allow to be produced on the Airport through the operation of machinery or equipment any electrical, electronic or other disturbances that interfere with the operation by the Cities or the FAA of air navigational, communication or flight equipment on the Airport or on aircraft using the Airport, or with ground transportation communications.

6.3 Lessee shall comply and shall require all of its sublessees to comply with all federal, state and municipal laws, ordinances, rules, regulations and requirements, the Minimum Standards, Airport security rules and regulations, and other Airport rules and regulations, as they now exist or may hereafter be amended or promulgated, and the terms of this Agreement, applicable to the Leased Premises and the Improvements thereon and its operations and activities at the Airport hereunder.

6.4 Lessee and its sublessees shall commit no nuisance, waste or injury on the Leased Premises, and shall not do, or permit to be done, anything that may result in the creation, commission or maintenance of such nuisance, waste or injury on the Leased Premises.

6.5 Lessee shall take measures and shall require its sublessees to take measures to ensure security in compliance with FAA and TSA regulations and the Airport Security Plan, as they now exist or may hereafter be amended or promulgated.

6.6 Lessee and its sublessees shall not do, nor permit to be done, any act or thing which will invalidate or conflict with any fire insurance policies or regulations applicable to the Leased Premises or any part thereof; or other contiguous premises at the Airport.

6.7 Lessee and its sublessees shall be responsible for complying with all laws and regulations related to the the installation, maintenance or operation of any restaurant, kitchen, stand or other establishment of any type for the sale of food or of any vending machines or device designed to dispense or sell merchandise or services of any kind to the general public.

6.8 Except for uses permitted under Article 3 hereof, Lessee shall not provide or allow to be provided, any services of any sort on the Leased Premises for commercial purposes without all required development approvals, and a license from the Cities if and as required by the Minimum Standards then in effect.

6.9 Lessee will conduct its operations and require its sublessees to conduct their operations in such a manner as to keep the noise produced by aircraft engines and component parts thereof, and any other noise, to a minimum, by such methods as are practicable, considering the extent and type of the operations of Lessee and/or its sublessees and the limitations of federal law. Lessee and its sublessees agree that all aircraft based on the Leased Premises shall comply with the noise standards established under Part 36 of Title 14 of the Code
of Federal Regulations ("FAR 36") as amended from time to time. In addition, Lessee and its sublessees will
employ the maximum amount of noise arresting and noise reducing devices that are available and economically
practicable, considering the extent of their operations, but in no event less than those devices required by
federal, state or local law. In its use of the Leased Premises, Lessee and its sublessees shall take all possible
care, exercise caution and use commercially reasonable efforts to minimize prop or jet blast interference and
prevent jet blast damage to aircraft operating on taxiways and to buildings, structures and roadways, now
located on or which in the future may be located on areas adjacent to the Leased Premises. In the event the
Cities determine that Lessee and/or its sublessees has not curbed the prop or jet blast interference and/or
damage, Lessee hereby covenants and agrees to erect and maintain at its own expense such structure or
structures as may be necessary to prevent prop or jet blast interference, subject, however, to the prior written
approval of the Cities as to type, manner and method of construction.

6.9   Lessee shall not store nor permit the storage of disabled aircraft or any equipment or materials
outside of the Improvements on the Leased Premises for any period in excess of thirty (30) consecutive days
without the prior written approval of the Cities.

6.10  On forms and at the frequency prescribed by the Airport Manager at least annually, and with
respect to each aircraft regularly stored on the Leased Premises, Lessee shall provide the Cities with the (a)
make and model (b) N-number and (c) identity and address of the registered owner. This requirement shall
apply to aircraft whether owned by Lessee or another party, and regardless of whether its storage is subject to
the Minimum Standards.

ARTICLE 7: INGRESS AND EGRESS

7.1    Lessee and its sublessees shall have the right of ingress and egress between the Leased
Premises and the public landing areas at the Airport by means of connecting taxiways; and between the Leased
Premises and the entrance(s) to the Airport by means of connecting paved roads. In addition, Lessee and its
sublessees shall have the right to use the public runways and public aviation aids at all times during which they
are open to the public. Such rights of ingress, egress and use shall be in common with others having rights of
use and passage thereon.

7.1.1  Lessee shall be responsible for the construction of any taxiways and/or roadways
needed for access to the Leased Premises at its sole cost and expense. Upon completion of construction,
those portions of any such taxiways or roadways located off the Leased Premises shall be conveyed
and dedicated to the Cities or City of Loveland, as determined in a development agreement to be
considering during the Inspection and Entitlement Period as part of site plan development approval
process that shall address maintenance, conveyance and dedication, warranty, and warranty surety.

7.2    The use of any roadways or taxiways on the Airport shall be subject to the Rules and
Regulations of the Airport, which are now in effect or which may hereafter be promulgated, and subject to
temporary closure, provided, however, that any closure shall be only for reasonably necessary or unique
circumstances, and provided that fourteen (14) days’ prior written notice will be given to Lessee relevant to
any closure, unless such closure is necessary due to emergency. Lessee, for itself and its authorized sublessees,
hereby releases and discharges the Cities, the Commission, their officers, employees and agents, and all their
respective successors and assigns, of and from any and all claims, demands, or causes of action which Lessee
or its authorized sublessees may now or at any time hereafter have against any of the foregoing, arising or
alleged to arise out of the closing of any street, roadway or other area, provided that other reasonable means of
access to the Leased Premises remain available to Lessee without cost to Lessee, unless otherwise mandated
by emergency safety considerations or lawful exercise of the police power. Lessee shall not do or permit
anything to be done which will interfere with the free access and passage of others to space adjacent to the
Leased Premises or in any streets or roadways on the Airport.
7.3 Lessee understands and agrees that the public taxilanes on the Leased Premises may be used by all airplanes legally upon the Airport. Lessee shall assure that the public taxilanes are left open and unobstructed. Notwithstanding anything contained in this Agreement to the contrary, it is expressly agreed and understood that Lessee has no obligation to monitor or police vehicles (except those allowed on the Airport by Lessee) on the public taxilanes to determine if they are legally upon the Airport or to determine if they are operating in a safe condition or in a safe manner.

ARTICLE 8: INSURANCE, DAMAGE OR DESTRUCTION

8.1 Lessee, at its sole cost and expense, shall procure and maintain throughout the term of this Agreement insurance protection for all risk coverage on the Improvements which are part of the Leased Premises to the extent of one hundred percent (100%) of the actual replacement cost thereof. All policies of insurance required herein shall be taken out with insurance companies qualified to do insurance business in the State of Colorado and having a Bests’ Insurance Guide rating of at least A-, and all such policies shall be renewed at least ten (10) days before their expiration date.

8.1.1 The above stated property insurance shall be for the benefit and to safeguard the interests of the Cities and Lessee.

8.1.2 Lessee shall settle all losses with the insurance carrier. Lessee shall consult with the Cities and use its best efforts to obtain a settlement that covers the cost of repairing or rebuilding the Improvements.

8.1.3 Lessee shall provide certificates of insurance, in a form acceptable to the Cities and marked “premium paid” evidencing existence of all insurance required to be maintained prior to occupancy of the Improvements. Upon the failure of Lessee to maintain such insurance as above provided, the Cities, at their option, may take out such insurance and charge the cost thereof to Lessee, which shall be payable on demand, or may give notice of default pursuant to Article 18.

8.2 In the event the Improvements and any subsequent improvements, insurable or uninsurable, on the Leased Premises are damaged or destroyed to the extent that they are unusable by Lessee for the purposes for which they were used prior to such damage, or same are destroyed, Lessee shall promptly repair and reconstruct the Improvements substantially as they were immediately prior to such casualty or in a new or modified design, subject to the provisions of Article 5 hereof and applicable building codes and Airport design standards, if any, existing at the time of repairing or rebuilding. If the aforesaid damage or destruction occurs in the last five (5) years of the Term, Lessee may elect not to repair and reconstruct the Improvements, subject to the following terms and conditions:

8.2.1 Lessee shall give the Cities written notice of its election not to repair and reconstruct the Improvements within ninety (90) days of the date upon which the Improvements were damaged or destroyed. Is such case, and Cities shall have the option of either:

8.2.1.1 Requiring Lessee to clear the site, remove all debris and paving, stub up all utilities, and restore the site to its original cleared condition prior to commencement of construction; in which case Lessee shall retain all insurance proceeds above those necessary to fund such site restoration; or

8.2.1.2 Taking title to the damaged Improvements, as is, in which case Lessee shall assign to and the Cities shall retain all insurance coverage and proceeds.

8.2.2 Upon Lessee’s notice under Section 8.2.1 hereof and Lessee’s compliance with the provisions of Sections 8.2.1.1 or 8.2.1.2 hereof, the Cities shall terminate this Agreement and relieve Lessee of all future rental obligations hereunder.
8.3 All policies of insurance required herein shall name the Cities as additional insureds.

8.4 Whenever in this Agreement, provision is made for the carrying of any insurance, it shall be deemed that such provision is complied with if such insurance otherwise complying with such provision is carried under a blanket policy or policies covering the Leased Premises as well as other properties.

8.5 Lessee shall not violate, nor permit to be violated, any of the conditions of any of the said policies; and shall perform and satisfy, or cause to be satisfied, the requirements of the companies writing such policies.

ARTICLE 9: LIABILITIES AND INDEMNITIES

9.1 The Cities shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever as a result of any operations, works, acts or omissions performed on the Leased Premises, or the Airport, by Lessee, its agents, servants, employees or authorized sublessees, or their guests or invitees. Lessee, and each of its sublessees, shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever as a result of any operations, works, acts or omissions performed on the Leased Premises, or the Airport, solely by the Cities or the Commission, their agents, servants, employees or authorized tenants, or their guests or invitees.

9.2 Lessee agrees (and shall cause its sublessees to agree) to indemnify, save and hold harmless, the Cities and the Commission, their officers, agents, servants and employees (collectively, "Indemnified Parties"), of and from any and all costs, liability, damage and expense, including costs of suit and reasonable expenses of legal services, claimed or recovered, justly or unjustly, falsely, fraudulently or frivolously, by any person, firm or corporation by reason of injury to, or death of, any person or persons, including Cities’ personnel, and damage to, destruction or loss of use of any property, including Cities’ property, to the extent arising from, or resulting from, any operations, works, acts or omissions of Lessee, its agents, servants, employees, contractors, or authorized sublessees; provided, however, the foregoing indemnity shall not apply to the extent any such cost, liability, damage or expense arises from the negligence or willful misconduct of any Indemnified Parties. Upon the filing with the Cities by anyone of a claim for damages arising out of incidents for which Lessee herein agrees to indemnify and hold the Indemnified Parties harmless, the Cities shall notify Lessee of such claim and in the event that Lessee does not settle or compromise such claim, then Lessee shall undertake the legal defense of such claim on behalf of Lessee and the Indemnified Parties. It is specifically agreed, however, that the Cities at their own cost and expense, may participate in the legal defense of any such claim. Any final judgment rendered against the Indemnified Parties for any cause for which Lessee is liable shall be conclusive against Lessee as to liability and amount upon the expiration of the time for appeal.

9.3 Lessee shall procure and keep in force during the term of this Agreement a policy of commercial general liability insurance insuring Lessee and the Cities against any liability for personal injury, bodily injury, death, or property damage arising out of the subject of this Agreement with a combined single limit of at least Five Million dollars ($5,000,000.00). Lessee shall also procure and keep in force during the term of this Agreement policies or endorsements providing coverage for aircraft liability, hangar keepers’ liability, products liability, motor vehicle liability and insured contracts coverage with the same combined single limit. Finally, Lessee shall maintain workers’ compensation insurance in accordance with Colorado law. The policies shall be for the mutual and joint benefit and protection of Lessee and the Cities and such policies shall contain a provision that the Cities, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents, citizens, and employees by reason of Lessee’s negligence. Lessee shall provide certificates of insurance, in a form reasonably acceptable to the Cities and marked “premium paid” evidencing existence of all insurance required to be maintained by Lessee prior to the Commencement Date. In addition to the insurance requirements of this Section 9.3, Lessee shall procure (or cause the operator of the FBO facility to procure), prior to the opening and operation of the FBO
facility, all insurance for an FBO and for any additional specialized services offered by Lessee (or the FBO operator) as required by the Minimum Standards; provided that in the event of any conflict between the insurance provisions of this Agreement and the terms of the Minimum Standards, the most stringent insurance requirements shall apply.

9.4 Lessee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in any way connected with this Agreement. Lessee agrees to save and hold the Cities, their officers, employees, agents and representatives free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Lessee under or in any way connected with this Agreement.

ARTICLE 10: LEASEHOLD MORTGAGES

10.1 Subject to the Cities' prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Lessee may, at any time, or from time to time, hypothecate, pledge, encumber or mortgage its interest in this Agreement, the leasehold estate in the Leased Premises created hereby, or any part or parts thereof or interest therein. No mortgage or other encumbrance of the leasehold that is granted by Lessee may encumber the fee or reversionary interest of the Cities in the Leased Premises. So long as Lessee is in compliance with all terms, conditions, and provisions of the Lease, the right of Lessee to mortgage its leasehold estate shall be a continuing right and shall not be deemed to be exhausted by its exercise on one or more occasions. However, it shall be a further condition of Lessee's right to mortgage its leasehold estate that the mortgagee agree notwithstanding the terms of any mortgage that all insurance proceeds available to Lessee will be applied to repair and restore any damaged building(s) or other improvements located on the Leased Premises. If Lessee shall execute a Leasehold Mortgage of its leasehold estate, and if the holder of such Leasehold Mortgage shall provide the Cities through the Commission or Airport Manager with notice in the manner described in Article 23 with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee (as hereinafter defined), then following receipt of such notice by the Cities, the provisions of this Article 10 shall apply in respect to such Leasehold Mortgage.

10.2 The term "Leasehold Mortgage" as used in this Agreement shall include, but not be limited to, a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation in connection with the construction contemplated by Article 5, above. The term "Leasehold Mortgagee" as used in this Agreement shall refer to the holder of any Leasehold Mortgage upon the leasehold estate created by this Agreement and/or in Lessee's interest and estate in any Improvements.

10.3 The Cities, upon providing Lessee any notice of default under this Agreement or termination of this Agreement, shall at the same time provide a copy of such notice to the Leasehold Mortgagee by first class U.S. mail at the address specified in the notice given pursuant to Section 10.1, above. Such Leasehold Mortgagee shall have the additional periods of time specified in Sections 10.4 hereof to remedy, commence remedying, or cause to be remedied the default or acts or omissions which are specified in any such notice. The Cities shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee.

10.4 Anything contained in this Agreement to the contrary notwithstanding, if any default shall occur which entitles the Cities to terminate this Agreement, the Cities shall have no right to terminate this Agreement unless, following the expiration of the period of time given Lessee to cure such default or the act or omission which gave rise to such default, the Leasehold Mortgagee is given an additional period of sixty (60) days to:
10.4.1 Notify the Cities of such Leasehold Mortgagee’s desire to defeat such termination notice; and

10.4.2 Pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the termination notice to such Leasehold Mortgagee and which may become due during such sixty (60) day period; and

10.4.3 Comply with due diligence and continuity, or in good faith commence to and with diligence continue to pursue compliance with all non-monetary requirements of this Agreement then in default.

10.5 The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Agreement or of the leasehold estate hereby created, nor shall the Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions of this Agreement. Any Leasehold Mortgagee who acquires Lessee’s interest in this Agreement by foreclosure, assignment in lieu of foreclosure or otherwise shall be deemed to be a permitted assignee or transferee, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Lessee to be performed hereunder from and after the date of such purchase or assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate. If the Leasehold Mortgagee or its designee shall become holder of the leasehold estate and if the Improvements on the Leased Premises shall have been or become materially damaged on, before or after the date of such purchase or assignment, the Leasehold Mortgagee or its designee shall, subject to Section 8.2 hereof, be obligated to repair, replace or reconstruct the damaged Improvements.

ARTICLE 11: RULES AND REGULATIONS

Lessee acknowledges that the Cities have proposed or adopted rules and regulations with respect to the occupancy and use of the Airport (“Rules and Regulations”), and such Rules and Regulations may be amended, supplemented or re-enacted from time to time by the Cities, provided that such Rules and Regulations apply generally to all similar occupants and users on the Airport and same do not unreasonably impede, impair or restrain general aviation usage at the Airport. Lessee and its sublessees agree to observe and obey any and all such Rules and Regulations and all other federal, state and municipal rules, regulations and laws and to require its officers, agents, employees, sublessees, contractors, and suppliers to observe and obey the same. In the event of a conflict between the provisions of the Rules and Regulations and this Agreement, the more stringent provisions shall control. This provision will include compliance with the Airport’s Noise Abatement Plan as it now exists and as it may hereafter be amended or supplemented. The Cities reserve the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with the Rules and Regulations or any other applicable rules, regulations or laws. Nothing in this Article 11 shall be construed to limit the rights of Lessee to file any action challenging the lawfulness of any such amendment, supplement or reenactment of any such Rules and Regulations, or to challenge the application of the same to Lessee.

ARTICLE 12: SIGNS

Lessee shall have the right to install and maintain one or more signs on the Leased Premises identifying Lessee, its sublessees and their operations and identifying permitted business tenants in the FBO facility; provided, however, the subject matter, type, design, number, location and elevation of such signs, and whether lighted or unlighted, shall be subject to and in accordance with the City of Loveland Sign Code and Airport design standards, if any. No sign will be allowed that may be confusing to aircraft pilots or automobile drivers or other traffic.
ARTICLE 13: ASSIGNMENT AND SUBLEASE

13.1 The prior written consent of the Cities shall be required for any sale, transfer, assignment or sublease of this Agreement and of the leasehold estate hereby created. Consent may be withheld by the Cities in the event (a) Lessee is in default of any of the terms or conditions of this Agreement beyond any applicable notice and cure period; (b) the transferee, assignee or sublessee does not deliver to the Cities its written agreement to be bound by all of the provisions of this Agreement in a form reasonably satisfactory to the Cities; (c) the transferee, assignee or sublessee does not submit proof of insurance as required at Sections 8 and 9, herein; or (d) the transferee, assignee or sublessee has not met the licensing requirements set forth in the Minimum Standards. In reviewing a request for consent to assignment or sublease of this Agreement, the Cities may inquire into the legal, technical and financial qualifications of the proposed transferee, assignee or sublessee, and Lessee shall provide such information and assistance as may be reasonably requested in doing so. The Cities may condition their consent to or deny consent for any transfer, assignment or sublease upon terms and conditions reasonably related to the legal, technical, and financial qualifications of the proposed transferee, assignee or sublessee. Consent shall not otherwise be unreasonably withheld, conditioned or delayed. Upon the granting of written consent by the Cities and actual transfer or assignment, Lessee shall be released by the Cities from its obligations under this Agreement. Other than in the manner set forth in Article 29 below, Lessee shall not subdivide or fractionalize either its ownership of the Improvements or leasehold interest in the Leased Premises.

13.2 Notwithstanding the provisions of Section 13.1, Lessee shall have the right to engage in the following activities through sublease, license or concession agreements, which shall be subject and subordinate to this Agreement and include the same insurance and indemnity provisions in favor of the Cities, without the prior written consent of the Cities:

13.2.1 “Aeronautical activities” as defined in Section 3.1 above; and

13.2.2 Subletting of hangar space, retail and restaurant space, office space and the FBO facility, renting of tie-down space, and other activities included in services provided by an FBO under the Minimum Standards, as amended from time to time.

13.3 Notwithstanding anything to the contrary contained herein, Lessee shall be permitted to assign this Agreement (without the need for Cities’ approval) to any corporation with which Lessee may merge or consolidate, or to which Lessee may sell or assign all or substantially all of its corporate assets, or to a wholly owned subsidiary or affiliate, so long as such corporation or entity taking assignment is controlled by Martin Lind.

13.4 Any attempt to transfer any interest in violation of the provisions of this Article 13 shall be void unless otherwise provided by Colorado law.

ARTICLE 14: CONDEMNATION

In the event that all or any portion of the Leased Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of appropriation, condemnation or eminent domain (or pursuant to a sale to such power or authority under the threat of condemnation or eminent domain), all rents payable with respect to that portion of the Leased Premises taken shall no longer be payable, and the proceeds, if any, from such taking or sale shall be allocated between the Cities and Lessee in accordance with the applicable condemnation law, with Lessee being entitled to compensation for the fair market value of the leasehold interest, Improvements and personal property taken. If a portion of the Leased Premises is so taken or sold, and as a result thereof, the remaining part cannot reasonably be used to continue the authorized uses set forth in Article 3, as determined by Lessee in its sole discretion, then this Agreement shall terminate at Lessee’s election, and Lessee’s obligation to pay rent and perform the other conditions of this Agreement shall be deemed to have ceased as of the date of such taking or sale. In the event Lessee elects not to terminate this
Agreement, effective as of the date of such taking, the rental payable hereunder shall be wholly abated during any time Lessee or its sublessees are unable to carry on their operations, and upon restoration and resumption of Lessee’s and its sublessees’ operations, the rental payable hereunder shall be reduced by the same proportion which that portion of the Leased Premises so taken bears to the entire area of the Leased Premises prior to such taking. Nothing in this subparagraph shall be construed to limit the Cities’ rights to condemn Lessee’s leasehold rights and interests in the Leased Premises pursuant to state law.

**ARTICLE 15: NON-DISCRIMINATION**

15.1 Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises, for a purpose for which a United States government program or activity is extended, Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

15.2 Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

15.2.1 No person on the grounds of race, color, national origin, creed, religion, sex, disability, or age and without regard to the exercise of rights guaranteed by state or federal law shall be excluded from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises;

15.2.2 In the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of of race, color, national origin, creed, religion, sex, disability or age shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

15.2.3 That Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

15.3 In this connection, the Cities reserve the right to take whatever action they might be entitled by law to take in order to enforce this provision following sixty (60) days’ prior written notice to Lessee of any alleged violation. This Article 15 is to be considered as a covenant on the part of Lessee, a breach of which, continuing after notice by the Cities to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this Agreement and will entitle the Cities, at their option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.

15.4 To the extent legally required and applicable, Lessee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, disability or sex, be excluded from participation in any employment activities covered in 14 CFR Part 152 Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered sub organizations provide assurances to Lessee that they similarly will undertake an affirmative action program and that they will require assurances from their sub organizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.
15.5 Lessee shall include the foregoing provisions (Sections 15.1 through 15.4) in every agreement or concession pursuant to which any person or persons, other than Lessee, operates any facility at the Leased Premises providing service to the public and shall include a provision granting the Cities a right to take such action as the United States may direct to enforce such covenant.

ARTICLE 16: GOVERNMENTAL REQUIREMENTS

16.1 Lessee shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over Lessee’s operations at the Leased Premises which may be necessary for Lessee’s operations on the Airport.

16.2 Lessee shall pay all taxes, license, certification, permits and examination fees and excise taxes which may be assessed, levied, exacted or imposed on the Leased Premises or operation hereunder or on the gross receipts or gross income to Lessee therefrom, and shall make all applications, reports and returns required in connection therewith.

16.3 Lessee shall pay all water, sewer, utility and other applicable use taxes and fees, arising from its occupancy and use of the Leased Premises and/or the Improvements.

16.4 Lessee agrees that the Cities are governmental entities; therefore, all direct and indirect financial obligations of each City under this Agreement shall be subject to annual appropriations pursuant to Article X, Section 20 of the Colorado Constitution, the Cities’ respective charters and ordinances, and applicable law. This Agreement and the obligations of the Cities hereunder do not constitute a multi-year fiscal obligation and are expressly contingent upon the Cities’ respective governing bodies budgeting and appropriating the funds necessary to fulfill the Cities’ respective obligations.

ARTICLE 17: RIGHTS OF ENTRY RESERVED

17.1 The Cities, by their officers, employees, agents, representatives and contractors, shall have the right at all reasonable times to enter upon the Leased Premises and enter the Improvements for any and all purposes not inconsistent with this Agreement, including, without limitation, inspection, environmental testing, and repair and maintenance of the Additional Taxiway, if it exists, provided such action by the Cities, their officers, employees, agents, representatives and contractors does not unreasonably interfere with Lessee’s (or its sublessees’) use, occupancy or security requirements of the Leased Premises. Except when necessary for reasons of public safety or law enforcement, or for the protection of property, as reasonably determined by the Cities, the Cities shall provide seventy-two (72) hours’ written notice of its intent to inspect.

17.2 Without limiting the generality of the foregoing, the Cities, by their officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right, at their own cost and expense, whether for their own benefit, or for the benefit of others than Lessee at the Airport, to maintain existing and future Airport mechanical, electrical and other utility systems and to enter upon the easements in the Leased Premises to make such repairs, replacements or alterations thereto, as may, in the opinion of the Cities, be deemed necessary or advisable, and from time to time to construct or install over, in or under existing easements within the Leased Premises such systems or parts thereof and in connection with such maintenance use the Leased Premises’ existing easements for access to other parts of the Airport otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration or new construction, the Cities shall not install a utility under or through any building on the Leased Premises or unreasonably interfere with the actual use and occupancy of the Leased Premises by Lessee (or its sublessees). It is specifically understood and agreed that the reservation of the aforesaid right by the Cities shall not impose or be construed to impose upon the Cities any obligation to repair, replace or alter any utility service lines now or hereafter located on the Leased Premises for the purpose of providing utility services only to the Leased Premises; provided, however, that if the Cities repair, replace or alter any utility service lines now
or hereafter located on the Leased Premises for the purpose of providing utility services to others, the Cities will restore the Leased Premises to their preexisting condition in a timely manner. Lessee will provide for the installation, maintenance and repair, at its own expense, of all service lines of utilities providing services only to the Leased Premises. Cities will repair, replace and maintain all other utility lines, at the Cities’ expense.

17.3 In the event that any personal property of Lessee or any sublessee shall obstruct the access of the Cities, their officers, employees, agents or contractors, or the utility company furnishing utility service over, along and across the existing easements to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system pursuant to Section 17.2, Lessee shall move such property, as directed by the Cities or said utility company, upon reasonable notice by the Cities, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If Lessee or any sublessee shall fail to so move such property after direction from the Cities or said utility company to do so, the Cities or the utility company may move it, and Lessee on behalf of itself and its sublessees hereby waives any claim against the Cities for damages as a result therefrom, except for claims for damages arising from the Cities’ negligence or willful misconduct.

17.4 The Cities reserve the right to access the Leased Premises at all times and without notice to Lessee for the operation of emergency vehicles and fire trucks as necessary or appropriate to the safe operation of the Airport.

ARTICLE 18: TERMINATION

18.1 In the event of a default on the part of Lessee in the payment of rents, the Cities shall give written notice to Lessee and each holder of a Leasehold Mortgage, if any, of which they have been give notice under Section 10.1, of such default, and demand the cancellation of this Agreement, or the correction thereof. If, within sixty (60) days after the date the Cities give such notice, Lessee has not corrected said default and paid the delinquent amount in full, then subject to Article 10 above, the Cities may, by written notice to Lessee and the holder of a Leasehold Mortgage, terminate this Agreement.

18.2 Subject to the provisions of Section 18.1 and Article 10 above, this Agreement, together with all rights and privileges granted in and to the Leased Premises, shall terminate at the option of the Cities with prompt written notice to Lessee and the holder of a Leasehold Mortgage upon the happening of any one or more of the following events:

18.2.1 The filing by Lessee of a voluntary petition in bankruptcy, or any assignment for benefit of creditors of all or any part of Lessee’s assets; or

18.2.2 Any institution of proceedings in bankruptcy against Lessee; provided, however, that Lessee may defeat such termination if the petition is dismissed within one hundred twenty (120) days after the institution thereof; or

18.2.3 The filing of a petition requesting a court to take jurisdiction of Lessee or its assets under the provision of any Federal reorganization act which, if it is an involuntary petition is not dismissed within one hundred twenty (120) days after its being filed; or

18.2.4 The filing of a request for the appointment of a receiver or trustee of all, or substantially all, of Lessee’s assets by a court of competent jurisdiction, which if the request if not made by Lessee is not rejected within one hundred twenty (120) days after being made, or the request for the appointment of a receiver or trustee of all, or substantially all, of Lessee’s assets by a voluntary agreement with Lessee’s creditors.

18.3 Subject to Article 10, upon the default by Lessee in the performance of any covenant or condition required to be performed by Lessee other than the payment of rent, and the failure of Lessee to remedy
such default for a period of sixty (60) days after mailing by the Cities of written notice to remedy the same, unless more extensive notice is otherwise provided for in this Agreement, the Cities may, by written notice of cancellation to Lessee, and each holder of a Leasehold Mortgage, terminate this Agreement and all rights and privileges granted hereby in and to the Leased Premises.

18.4 Upon the default by Lessee, and the giving of notice of the default and cancellation by the Cities as provided for elsewhere herein, the notice of cancellation shall become final.

18.5 Subject to the provisions of Section 18.1 and Article 10, upon the cancellation or termination of this Agreement for any reason, all rights of Lessee, authorized tenants and any other person in possession of the Leased Premises shall terminate, including all rights or alleged rights of Leasehold Mortgagees, sublessees, creditors, trustees, assigns, and all others similarly so situated as to the Leased Premises. Except as may be expressly provided to the contrary elsewhere herein, upon said cancellation or termination of this Agreement for any reason, the Leased Premises and all Improvements located thereon, except for Lessee’s (and its sublessees’) equipment, fixtures and other personal property which may be removed from said Leased Premises without damage thereto as provided elsewhere herein, shall be and become the property of the Cities, free and clear of all encumbrances and all claims of Lessee, its sublessees (if any), Leasehold Mortgagees, creditors, trustees, assigns and all others, and the Cities shall have immediate right of possession of the Leased Premises and such Improvements. Lessee agrees to execute any documents, if any, necessary to transfer title of such Improvements to the Cities.

18.6 Failure by the Cities or Lessee to take any authorized action upon default by Lessee of any of the terms, covenants or conditions required to be performed, kept and observed by Lessee shall not be construed to be, nor act as, a waiver of said default nor of any subsequent default of any of the terms, covenants and conditions contained herein to be performed, kept and observed by Lessee. Acceptance of rentals by the Cities from Lessee, or performance by the Cities under the terms hereof, for any period or periods after a default by Lessee of any of the terms, covenants and conditions herein required to be performed, kept and observed by Lessee shall not be deemed a waiver or estoppel of any right on the part of the Cities to cancel this Agreement for any subsequent failure by Lessee to so perform, keep or observe any of said terms, covenants or conditions.

18.7 This Lease will terminate at the option of Lessee:

18.7.1 Upon the permanent closure of the Airport, the term “permanent closure” to mean for the purposes of this Agreement, the closure of the Airport for ninety (90) or more consecutive days;

18.7.2 The loss of the ability of Lessee, its sublessees or their customers due to no significant fault of Lessee to fly in or out of the Airport for reasons other than inclement weather, casualty or disaster, for a period of ninety (90) consecutive days; and

18.7.3 The default by Cities in the performance of any covenant or condition required to be performed by the Cities, and the failure of the Cities to remedy such default for a period of sixty (60) days after receipt from Lessee of written notice to remedy the same, or default in the timely payment of any money due Lessee and failure to cure such default within sixty (60) days after notice to the Cities. Notice of exercise of the option to terminate by Lessee shall be given in the manner specified in Article 23 (Notices).

18.8 If, after the FBO facility is operational, Lessee ceases to conduct or cause to be conducted its authorized Aeronautical Activities on the Leased Premises for a period of twelve (12) consecutive months, the Cities may terminate this Agreement by written notice to Lessee given at any time while such cessation continues, unless Lessee resumes or causes to be resumed such activities within sixty (60) days following receipt of written notice from the Cities of such intent to terminate this Agreement.
18.9 Upon termination of this Agreement prior to the expiration of the Term, the Cities may, but are not required to, relet the Leased Premises, or any part thereof, for the whole or any part of the remainder of the Term, or for a longer period of time. Subject to Section 21.3, any rents received by the Cities as a result of such reletting shall remain the property of the Cities and shall not be credited to or otherwise become the property of Lessee.

**ARTICLE 19: OWNERSHIP OF IMPROVEMENTS, SURRENDER**

19.1 Title to the Improvements during the Term shall be in Lessee, but notwithstanding such title, the terms and conditions of this Agreement shall govern the construction, use, maintenance and operation of the Improvements and the exercise of Lessee’s rights with respect thereto; and Lessee’s right, title, interest, and estate in and to the Improvements shall not be separable from the leasehold estate granted Lessee hereunder. Lessee shall be entitled to claim all depreciation and other tax attributes applicable to the use and ownership of the Improvements during the Term. Upon the expiration or earlier termination of this Agreement, title to the Improvements shall vest in and become the full and absolute property of the Cities without need of any further action being taken by Lessee or the Cities, and Lessee shall immediately surrender possession of the Improvements upon such termination or expiration as provided in Section 19.2 below. Lessee shall execute any and all documents, if any, necessary to transfer title to the Cities. Except as otherwise expressly set forth herein, the value or cost of the Improvements constructed by Lessee shall not in any way constitute a substitute for or a credit against any obligation of Lessee under this Agreement to pay rent as required pursuant to Article 4.

19.2 Subject to Section 8.2 above, upon the expiration, cancellation or earlier termination of this Agreement pursuant to any terms hereof, Lessee shall peaceably quit and surrender the Leased Premises and Improvements, and any and all machinery and equipment constructed, installed or placed by Lessee thereon which is necessary to the operation of the Improvements to the Cities in good order and condition, ordinary wear and tear and obsolescence in spite of repair excepted. Lessee shall have the right, but not the obligation, within sixty (60) days after expiration or earlier termination of this Agreement to remove from the Leased Premises all personal property, fixtures and trade equipment other than fixtures, machinery and equipment necessary to the operation of the Improvements. Lessee shall repair, at its sole cost and expense, any damage to the Leased Premises or to the Improvements caused by such removal.

19.3 Upon such expiration, cancellation or termination, the Cities may re-enter and repossess the Leased Premises together with all Improvements and additions thereto, or pursue any remedy permitted by law for the enforcement of any of the provisions of this Agreement, at the Cities’ election. In the event that Lessee remains in possession of the Leased Premises after the expiration, cancellation or termination of this Agreement without written agreement with respect thereto, then Lessee shall be deemed to be occupying the Leased Premises as a tenant at-will, subject to all of the conditions, provisions and obligations of this Agreement, but without any rights to extend the term of this Agreement. The Cities’ acceptance of rent from Lessee in such event shall not alter the status of Lessee as a tenant at-will whose occupancy of the Leased Premises may be terminated by the Cities at any time upon thirty (30) days’ prior written notice.

**ARTICLE 20: SERVICES TO LESSEE**

20.1 The Cities covenant and agree that during the term of this Agreement, and subject to Airport priorities then in effect, they will use reasonable efforts to (a) operate the Airport as such for the use and benefit of the public; provided, however, that the Cities may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe and/or efficient operation of the Airport or necessary to serve the civil aviation needs of the public, (b) maintain the runways, taxiways and Additional Taxiway, if it exists, in good repair, including the removal of snow, and (c) keep in good repair hard-surfaced public roads on the Airport for access to the Leased Premises and remove snow.

20.1.1 Except as otherwise expressly set forth herein, said obligations of the Cities relevant to the maintenance of public roads and taxiways shall extend to the point where in such roads, streets
and taxiways reach the property line of the Leased Premises, or the Ramp area constructed by Lessee under Article 4.5.

20.1.2 Except as otherwise expressly set forth herein, said obligations of the Cities relevant to the snow removal from public roads and taxiways shall extend to the point where in such roads, streets and taxiways reach the property line of the Leased Premises, and shall additionally include the Ramp area constructed by Lessee under Article 4.5 subject to the snow removal limitations set forth under Article 4.5, above.

20.2 Except in cases of emergency, in which case no notice shall be required, the Cities will give not less than fourteen (14) days’ prior written notice to Lessee of any anticipated temporary Airport closure, for maintenance, expansion or otherwise. Rent due for the Leased Premises under Article 4 shall abate on the twenty first (21st) consecutive day of any voluntary temporary Airport closure by the Cities and such abatement shall continue until the Airport reopens, provided that no abatement shall exceed a total of sixty (60) consecutive days’ rent. Notwithstanding the above, the Cities shall not be deemed to be in breach of any provision of this Article 20 in the event of a permanent closure of the Airport; provided, however, that if such permanent closure is in connection with the construction of a new airport by the Cities, Lessee shall have the option to enter into a substitute ground lease agreement with the Cities for the use of a portion of such new airport not smaller than the Leased Premises under financial terms which are no less favorable than those set forth herein.

ARTICLE 21: SURVIVAL OF THE OBLIGATIONS OF LESSEE

21.1 In the event that this Agreement shall have been terminated due to default by Lessee in accordance with notice of termination as provided in Article 18, all of the obligations of Lessee under this Agreement shall survive such termination, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the Cities to the same extent, at the same time or times, and in the same manner as if no termination, re-entry, regaining or resumption of possession had taken place. The Cities may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency for the entire unexpired term of this Agreement discounted to present value.

21.2 The amount of damages for the period of time subsequent to termination (or re-entry, regaining or resumption of possession) on account of Lessee’s rental obligations shall be the sum of the following:

21.2.1 The amount of the total of all installments of rents, less the installments thereof payable prior to the effective date of termination; and

21.2.2 An amount equal to all expenses incurred by the Cities and not reimbursed in connection with regaining possession, restoring the Leased Premises required by Article 19, above, acquiring a new lease for the Leased Premises, legal expenses (including, but not limited to, reasonable attorneys’ fees) and putting the Leased Premises in order.

21.3 There shall be credited to the account of Lessee against its survived obligations hereunder, the amount actually received from any lessee, licensee, permittee, or other occupier in connection with the use of the Leased Premises or Improvements or portions thereof during the balance of the term of this Agreement, and the market value of the occupancy of such portions of the Leased Premises (including the Improvements) as the Cities may themselves during such period actually use and occupy. No such use and occupancy shall be, or be construed to be, an acceptance of a surrender of the Leased Premises, nor shall such use and occupancy constitute a waiver of any rights of the Cities. The Cities will use their best efforts to minimize damages to Lessee under this Article.
21.4 The provisions of this Article 21 shall not be applicable to termination of this Agreement if expressly provided to the contrary elsewhere in this Agreement.

ARTICLE 22: USE SUBSEQUENT TO CANCELLATION OR TERMINATION

The Cities shall, upon termination or cancellation, or upon re-entry, regaining or resumption of possession, have the right to repair and to make structural or other changes to the Leased Premises and Improvements, including changes which alter their character and the suitability thereof for the purposes of Lessee under this Agreement, without affecting, altering or diminishing the obligations of Lessee hereunder, provided that any structural changes shall not be at Lessee’s expense.

ARTICLE 23: NOTICES

23.1 Any notice, consent, approval or other communication given by either party to the other relating to this Agreement shall be in writing, and shall be delivered in person, sent by certified U.S. mail postage prepaid, sent by reputable overnight courier, or sent by electronic means (with evidence of such transmission received) to such other party at the respective addresses set forth below (or at such other address as may be designated from time to time by written notice given in the manner provided herein). Such notice shall, if hand delivered or personally served, be effective immediately upon receipt. If sent by US mail postage prepaid, such notice shall be deemed given on the third (3rd) business day following deposit in the United States mail, postage prepaid and properly addressed; if delivered by overnight courier, notice shall be deemed effective on the first (1st) business day following deposit with such courier; and if delivered by electronic means, notice shall be deemed effective when received.

23.2 The notice addresses of the parties are as follows:

To the Cities: Northern Colorado Regional Airport Commission
Attn: Airport Manager
4900 Earhart Drive
Loveland, CO 80538

Facsimile: (970) 962-2855
Email address: airport@cityofloveland.org

With a copy to: Loveland City Attorney’s Office
500 E. Third Street
Loveland, CO 80537

Fort Collins City Attorney’s Office
City Hall West
300 LaPorte Ave.
Fort Collins, CO 80521


and

To Lessee: Attn: Martin Lind
Attn: Gary White, Esq.
Company Name: Discovery Air, LLC
c/o Water Valley Land Company
Address: 1625 Pelican Lakes Pointe, Suite 201
City, State and Zip Code: Windsor, CO 80550
ARTICLE 24: INVALID PROVISIONS

The invalidity of any provisions, articles, paragraphs, portions or clauses of this Agreement shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable agreement. Furthermore, in lieu of such invalid provisions, articles, paragraphs, portions or clauses, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such invalid provision as may be possible and be legal, valid and enforceable.

ARTICLE 25: MISCELLANEOUS PROVISIONS

25.1 Remedies to be Non-exclusive. All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the Cities, or Lessee, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy, provided that the Cities’ remedies in the event of default shall not exceed those set forth in this Agreement.

25.2 Non-liability of Individuals. No director, officer, agent or employee of the Cities shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same. Except to the extent otherwise expressly provided for herein, no officer, manager, member, agent or employee of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same.

25.3 Estoppel Certificate. At the request of Lessee in connection with (i) its obtaining a Leasehold Mortgage or (ii) an assignment of its interest in this Agreement, the Cities shall execute and deliver a written statement identifying them as the lessors under this Agreement and certifying:

25.3.1 The documents that then comprise this Agreement,

25.3.2 That this Agreement is in full force and effect,

25.3.3 The then current annual amount of rent and the date through which it has been paid,

25.3.4 The expiration date of this Agreement,

25.3.5 That no amounts are then owed by Lessee to the Cities (or, if amounts are owed, specifying the same)

25.3.6 To the knowledge of the Cities, there are not defaults by Lessee under this Agreement or any facts which but for the passage of time, the giving of notice or both would constitute such a default, and

25.3.7 Remaining rights to renew the term of this Agreement to the extent not theretofore exercised.

The Leasehold Mortgagee or party acquiring Lessee’s interest in this Agreement shall be entitled to rely conclusively upon such written statement.
25.4 **Recording of Memorandum of Agreement.** A memorandum of this Agreement shall be recorded by the Cities, and the costs of such recordation, and any closing costs associated with this Agreement, its execution and recordation, shall be billed to and paid by Lessee as additional rent.

25.5 **General Provisions.**

25.5.1 This Agreement shall be construed in accordance with the laws of the State of Colorado and venue shall be in Larimer County, Colorado.

25.5.2 This Agreement is made for the sole and exclusive benefit of the Cities and Lessee, their successors and assigns, and is not made for the benefit of any third party.

25.5.3 In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

25.5.4 All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.

25.5.5 The titles of the several articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

25.5.6 Nothing herein contained shall create, or be construed to create, a partnership, joint venture, agency or any other relationship between the Cities and Lessee, other than that of landlord and tenant. The Cities and Lessee each expressly disclaim the existence of any such other relationship between them.

25.5.7 Cities have and may allow certain portions of the Airport to be used by other tenants at any time and Lessee shall not interfere in any manner with said other tenants or with the facilities granted to such tenants. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the Cities reserved the right to grant to others the privilege and right of conducting any one or all of the activities specified herein, or any other activities of an aeronautical nature.

25.5.8 In the event any action or proceeding is brought to recover payments due under this Agreement or take possession of the Leased Premises and/or the improvements thereon, or to enforce compliance with this Agreement for failure to observe any of its covenants, the prevailing party shall be awarded reasonable attorneys’ fees and costs as set by the court.

25.5.9 The time within which either party hereto shall be required to perform any act under this Agreement, other than the payment of money, shall be extended by a period equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of or similar regulation or order of any governmental or regulatory body, war, enemy action, acts of terrorism, civil disturbance, fire, unavoidable casualties, or any similar occurrence.

25.5.10 The Cities designate the Airport Manager as their representatives who shall make, within the scope of their authority, all necessary and proper decisions with reference to this Agreement.

25.5.11 Lessee agrees that that the Cities are governmental entities subject to the Colorado Open Records Act ("CORA"), C.R.S. § 24-72-201 to 205.5, which provides that all public records shall be open for inspection by any person at reasonable times, except as provided in CORA or as otherwise specifically provided by law. Lessee may mark any documents provided to the Cities as "trade secrets".
“privileged information”, or “confidential commercial, financial, or other data.” Unless such documents are marked appropriately and in accordance with CORA, the Cities may be required to release relevant information related to this Agreement and the Leased Premises.

25.6 **Availability of Government Facilities.** In the event the existence, maintenance or operation of air navigation aids or other facilities supplied or operated by the United States or the State of Colorado at or in conjunction with the Airport are discontinued, the Cities shall have no obligation to furnish such facilities.

25.7 **Aviation Easement.** There is hereby reserved to the Cities, their successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on the Airport. Lessee agrees to execute any and all documents, if any, necessary to establish such avigation easement.

25.8 **Part 77.** Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations or any amendments thereto in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

**ARTICLE 26: SUBORDINATION CLAUSES**

26.1 This Agreement is subject and subordinate to the following:

26.1.1 The Cities reserve the right to develop and improve the Airport in any manner approved by the City Councils, provided Lessee is not deprived of (i) the use of or access to the Leased Premises by motor vehicles and/or aircraft owned or operated by Lessee or Lessee’s assigns, sublessees, renters, agents, employees or invitees or (ii) any of Lessee’s rights under this Agreement.

26.1.2 The Cities reserve the right to take any action they consider necessary to protect the aerial approaches to the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport or constitute a hazard to aircraft.

26.1.3 This Agreement is and shall be subordinate to the provisions of existing and future agreements between the Cities and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the obtaining or expenditure of federal funds for the benefit of the Airport. This Agreement shall also be subordinate to any FAA and TSA regulations as they exist or as they may be amended from time to time in the future.

26.1.4 During time of war or national emergency, the Cities shall have the right to lease all or any part of the landing area of the Airport to the United States for military use, and if any such lease is executed, the provisions of this Agreement insofar as they may be inconsistent with the provisions of such lease to the government, shall be suspended, but such suspension shall not extend the term of this Agreement. Abatement of rentals shall be reasonably determined by the Cities and Lessee in proportion to the degree of interference with Lessee’s use of the Leased Premises.

26.1.5 Except to the extent required for the performance of any obligations of Lessee hereunder, nothing contained in this Agreement shall grant to Lessee any rights whatsoever in the airspace above the Leased Premises other than those reasonably necessary to Lessee’s enjoyment of the Leased Premises and Cities’ Airport facilities and which are consistent with FAA rules, regulations and orders currently or subsequently effective. Further, Lessee’s rights in airspace above the Leased
Premises and the Airport and the Airport facilities shall be not less than the rights therein by other users of the Airport and Airport facilities.

ARTICLE 27: QUIET ENJOYMENT

Cities hereby covenant and warrant that they are the owners of the Leased Premises and that Lessee upon payment of rentals herein provided for and performance of provisions on its part to be performed shall and may peacefully possess and enjoy the Leased Premises during the term hereof and any extensions hereof without any interruption or disturbance.

ARTICLE 28: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties hereto and may be changed, modified, discharged or extended by written instrument duly executed by the Cities and Lessee. The parties agree that no representations or warranties shall be binding upon the Cities or Lessee unless expressed in writing.

ARTICLE 29: REQUIREMENTS FOR CONDOMINIUMIZATION

This Agreement does not authorize Lessee to create either a common interest community or hangar condominiums on the Leased Premises. If Lessee desires to create a common interest community or hangar condominiums on the Leased Premises, a written amendment to this Agreement shall be required, containing such additional terms as the Cities may reasonably require, including but not necessarily limited to terms necessary for compliance with the Colorado state law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

[Signatures on the following page]
CITY OF LOVELAND, COLORADO

Stephen C. Adams, City Manager

ATTEST:

Clerk

APPROVED AS TO FORM:

Assistant City Attorney

CITY OF FORT COLLINS, COLORADO

Darin A. Atteberry, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

Discovery Air, LLC, a Colorado limited liability company,

By:______________________________
Name:____________________________
Title:____________________________

Packet Pg. 262
Exhibit "A"

Description of Leased Premises

[ATTACHED]
Exhibit “B”

Preliminary Site Plan

[ATTACHED]
Certificate of Liability Insurance

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.

Important: If the certificate holder is an additional insured, the policy(ies) must have additional insured provisions or be endorsed. If subrogation is waived, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Producer:
CCIG
6660 Greenwood Plaza Blvd.
Suite 500
Greenwood Village, CO 80111

Contact:
Michelle Devore
(720) 212-2056
Fax: (303) 799-0166
Email: MichelleD@thinkccig.com

Insure:
Trolco, Inc.; Discovery Air, LLC
1625 Pelican Lakes Point, #201
Windsor, CO 80550

Coverages:

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Description of operations/locations/vehicles (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

As required by written contract or written agreement, the Certificate Holder is included as Additional Insured under Automobile Liability and for ongoing operations under General Liability. Umbrella coverage is follow form to General Liability and Automobile Liability.

Certificate Holder:
Northern Colorado Regional Airport Commission
Attn: Airport Manager
4900 Eardhart Drive
Loveland, CO 80538

Cancellation:

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Authorized Representative:

ACORD 25 (2016/03) © 1988-2015 ACORD CORPORATION. All rights reserved.

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Attachment: Original Ground Lease Agreement (9769 : Airport - Discovery Air Lease Amendment)
Background

• Discovery Air land lease was executed in January of 2019
• Site development plan (SDP) and building design were preliminary and conceptual when lease was executed.
• Lease included a 24-month “Inspection and Entitlement Period” for due diligence and planning.
• Changes to the site development plan and lease were anticipated.
• Airport and staff from the Cities have worked closely with the Discovery Air team throughout planning and design.
• September 2020 – New SDP was approved by the Airport Commission.
• November 2020 – Airport Commission unanimously adopted resolution recommending approval of negotiated lease amendment by the Cities.
Lease Change Summary

- Rent schedule has been broken into phases to align with planned phasing of the project.
- The rental area will increase by 111,452 square feet.
- CPI escalation will begin in year 4 instead of year 12.
- Assuming 2% annual CPI, the lessee will pay approximately 18% less in rent over the first 15 years of the lease.
- Assuming 2% annual CPI, the Airport will generate approximately 28% more in rent revenue over the entire term of the lease.
- Lease amendment defines an area of 253,595 sq. ft. on the east side of the leased premises that will generate additional revenue for the Airport if/when it is developed by the lessee.
## Lease Phasing Changes

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* or date of certificate of occupancy for buildings in phase if earlier
** or 8 years after 300% escalation if earlier
Updated Site Development Plan
Development Phasing
Summary

• This project is an important partnership between Discovery Air, the Airport, and the Cities.
• This lease amendment was expected.
• The negotiated lease amendment benefits both sides in different ways, but also includes concessions by both sides.
• The Airport Commission unanimously recommends approval of the lease amendment.
Questions?
AGENDA ITEM SUMMARY
December 15, 2020

STAFF

Pete Wray, Senior City Planner
Brad Yatabe, Legal

SUBJECT


EXECUTIVE SUMMARY

The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Springer-Fisher Annexation No. 1. The applicant has submitted a written petition requesting two sequential annexations. Springer-Fisher Annexation No. 1 is the first of two sequential annexations located northwest of the East Mulberry Street and Greenfields Court intersection. Annexation No. 1 is 71.34 acres in size and establishes the required 1/6 perimeter boundary contiguity with the existing City boundary to the north.

The requested zoning for this annexation is General Commercial (C-G), Neighborhood Commercial (N-C), Employment (E), Low Density Mixed-Use Neighborhood (L-M-N), and Medium Density Mixed-Use Neighborhood (M-M-N) in compliance with the City of Fort Collins Structure Plan and the East Mulberry Corridor Plan. Portions of the property located in the M-M-N and L-M-N zone districts would be placed within the Residential Neighborhood Sign District while portions of the property located in the E, N-C, and C-G zone districts would not be placed in the Residential Sign District. Notice to parcels abutting platted streets was provided pursuant to §31-12-105, C.R.S. No project development plan proposal was submitted in conjunction with the annexation application.

This annexation request is in conformance with the Colorado Revised Statute as it relates to annexations, the City of Fort Collins Comprehensive Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

The proposed Resolution makes a finding that the petition substantially complies with the Municipal Annexation Act, determines that a hearing should be established regarding the annexation, and directs that notice be given of the hearing. The hearing will be held at the time of First Reading of the annexation and zoning ordinances. The proposed zoning of a property to be annexed is not a requirement under § 31-12-107, C.R.S., and discussion of zoning issues should be reserved for the zoning review that will occur concurrent to the first reading for the annexation. Not less than thirty days of prior notice is required by state law.

The property is located within the Fort Collins Growth Management Area. According to policies and agreements between the City of Fort Collins and Larimer County contained in the Intergovernmental Agreement for the Fort Collins Growth Management Area, the City agrees to consider annexation of property in the GMA when the property is eligible for annexation according to State law.
The 71.34-acre Springer-Fisher Annexation No. 1 has a total contiguous perimeter (1,323.29 feet) of 17%, which satisfies the one-sixth (1/6) area required. Contiguity is gained from the 1995 Fisher-Lemay Avenue, Third Annexation.

CITY FINANCIAL IMPACTS

The annexation and zoning will not result in any initial direct significant financial/economic impacts. Electric service will be transferred from Poudre Valley REA to Fort Collins Light and Power. Future development will also trigger the transition of law enforcement from Larimer County Sheriff to Fort Collins Police Services. Water utility services will continue to be provided by the East Larimer County (ELCO) Water District and wastewater utility service by the Boxelder Sanitation District.

BOARD / COMMISSION RECOMMENDATION

The Planning and Zoning Board will conduct a public hearing on the annexation and zoning request on December 17, 2020. The Board’s recommendation will be forwarded to Council as part of the First Reading of the annexation and zoning ordinances on January 19, 2021.

PUBLIC OUTREACH

There was no public outreach for this initiating Resolution, as this Resolution simply accepts the Annexation Petition and provides a schedule for upcoming Council hearings, with a schedule and notification requirements that comply with State Statutes. A neighborhood meeting was held on August 19, 2020, for the annexation and zoning for the Springer-Fisher property.

ATTACHMENTS

1. Annexation Petition (PDF)
2. Annexation Map (PDF)
3. Vicinity Map (PDF)
4. Sequence Map 1 (PDF)
5. Sequence Map 2 (PDF)
6. Structure Plan (PDF)
7. East Mulberry Corridor Plan Map (PDF)
8. Zoning Map (PDF)
PETITION FOR ANNEXATION

THE UNDERSIGNED (hereinafter referred to as the "Petitioners") hereby petition the Council of the City of Fort Collins, Colorado for the annexation of an area, to be referred to as the Springer-Fisher Annexation to the City of Fort Collins. Said area, consisting of approximate 76.806 acres, is more particularly described on Attachment "A," attached hereto.

The Petitioners allege:

1. That it is desirable and necessary that such area be annexed to the City of Fort Collins.
2. That the requirements of Sections 31-12-104 and 31-12-105, C.R.S., exist or have been met.
3. That not less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the boundaries of the City of Fort Collins.
4. That a community of interest exists between the area proposed to be annexed and the City of Fort Collins.
5. That the area to be annexed is urban or will be urbanized in the near future.
6. That the area proposed to be annexed is integrated with or capable of being integrated with the City of Fort Collins.
7. That the Petitioners herein comprise more than fifty percent (50%) of the landowners in the area and own more than fifty percent (50%) of the area to be annexed, excluding public streets, alleys and lands owned by the City of Fort Collins.
8. That the City of Fort Collins shall not be required to assume any obligations respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the property proposed to be annexed except as may be provided by the ordinance of the City of Fort Collins.

Further, as an express condition of annexation, Petitioners consent to the inclusion into the Municipal Subdistrict, Northern Colorado Water Conservancy District (the "Subdistrict") pursuant to §37- 45-136(3.6) C.R.S., Petitioners acknowledge that, upon inclusion into the Subdistrict, Petitioners' property will be subject to the same mill levies and special assessments as are levied or will be levied on other similarly situated property in the Subdistrict at the time of inclusion of Petitioners' lands. Petitioners agree to waive any right to an election which may exist pursuant to Article X, §20 of the Colorado Constitution before the Subdistrict can impose such mill levies and special assessments as it has the authority to impose. Petitioners also agree to waive, upon inclusion, any right which may exist to a refund pursuant to Article X, §20 of the Colorado Constitution.
WHEREFORE, said Petitioners request that the Council of the City of Fort Collins approve the annexation of the area described on Attachment "A." Furthermore, the Petitioners request that said area be placed in the LMN, MMN, E, NC & CG Zone Districts pursuant to the Land Use Code of the City of Fort Collins.

□ (Check box if applicable). The Petitioners reserve the right to withdraw this petition and their signatures therefrom at any time prior to the commencement of the roll call of the City Council for the vote upon the second reading of the annexation ordinance.

Individual Petitioners signing this Petition represent that they own the portion(s) of the area described on Attachment "A" as more particularly described below:

See Legal Description on Attachment "A"

IN WITNESS WHEROF, I/we have executed this Petition for Annexation this day of October 2020.

Sprinnger-Fisher Inc.

J. B. Allen President

Petitioner's/Owner's Signature

P.O. Box 86

Address

Timnath, CO 80550

City State Zip

Petitioner's/Owner's Signature

Address

City State Zip

Springer-Fisher: Annexation Petition
ATTACHMENT “A”
LEGAL DESCRIPTION OF THE ANNEXATION

LEGAL DESCRIPTION
SPRINGER-FISHER ANNEXATION 1

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 7 NORTH,
RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE WEST 1/16TH CORNER, COMMON TO SECTION 9 AND 16, MONUMENTED WITH
NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED “PLS 23503, 2007”;

THENCE NORTH 00°13’30” EAST FOR 37.00 FEET ON THE EAST LINE OF SAID WEST HALF OF THE
SOUTHWEST QUARTER OF SECTION 9 TO THE NORTH RIGHT OF WAY LINE OF THE STATE HIGHWAY
NO. 14 AS RECORDED IN THE COLORADO STATE HIGHWAY DEPARTMENT AT FEDERAL AID PROJECT
NO. F 44 (8) STATE HIGHWAY NO. 14 AND THE POINT OF BEGINNING;

THENCE N89°12’17”W, A DISTANCE OF 640.46 FEET ON SAID NORTH RIGHT OF WAY LINE TO THE
EAST LINE OF THAT PARCEL RECORDED AT BOOK 2300, PAGE 1701 IN THE LARIMER COUNTY CLERK
AND RECORDER OFFICE;

THENCE ON SAID EAST LINE FOR THE FOLLOWING 6 COURSES;

1. THENCE N13°44’09”W, A DISTANCE OF 211.80 FEET;
2. THENCE N15°22’09”W, A DISTANCE OF 112.04 FEET;
3. THENCE N57°53’09”W, A DISTANCE OF 181.02 FEET;
4. THENCE N49°41’09”W, A DISTANCE OF 146.77 FEET;
5. THENCE N43°21’09”W, A DISTANCE OF 362.79 FEET;
6. THENCE N60°03’09”W, A DISTANCE OF 100.57 FEET TO THE WEST LINE OF SOUTHWEST
QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 9;

THENCE N00°17’21”E, A DISTANCE OF 477.22 FEET ON SAID WEST LINE TO THE SOUTH 1/16TH
CORNER COMMON TO SECTION 9 AND 8 MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM
CAP STAMPED “LS 7839, 2000”;

THENCE N00°17’04”E, A DISTANCE OF 1323.84 FEET ON THE WEST LINE OF NORTHWEST QUARTER
OF THE SOUTHWEST QUARTER OF SAID SECTION 9 TO THE WEST QUARTER OF SAID SECTION 9
MONUMENTED WITH NO. 6 REBAR WITH 3-1/4" ALUMINUM CAP STAMPED “LS 34995, 2016”;

THENCE S88°56’09”E, A DISTANCE OF 1323.29 FEET ON THE NORTH LINE OF SAID WEST HALF OF
THE SOUTHWEST QUARTER OF SECTION 9 TO THE CENTER-WEST 1/16TH CORNER THEREOF
MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED “PLS 23503, 2007”;

THENCE S00°13’30”W, A DISTANCE OF 2604.35 FEET ON THE EAST LINE OF SAID WEST HALF OF THE
SOUTHWEST QUARTER OF SECTION 9 TO THE POINT OF BEGINNING.

PARCEL CONTAINS 3,107,842 SQUARE FEET OR 71.346 ACRES.

BASIS OF BEARING: THE SOUTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF
SECTION 9, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO,
IS ASSUMED TO BEAR NORTH 89°12'17" WEST FOR 1326.07 FEET BETWEEN THE WEST 1/16TH CORNER, COMMON TO SECTION 9 AND 16, MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED "PLS 23503, 2007" AND SOUTHWEST CORNER, SECTION 9, MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP IN A MONUMENT BOX, STAMPED "LS 34174, 2015", WITH ALL OTHER BEARINGS REFERENCED THERETO
ATTACHMENT "A"
LEGAL DESCRIPTION OF THE ANNEXATION (Cont.)

LEGAL DESCRIPTION
SPRINGER-FISHER ANNEXATION 2

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 7 NORTH,
RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHWEST CORNER OF SECTION 9, MONUMENTED WITH NO. 6 REBAR WITH
2-1/2" ALUMINUM CAP STAMPED "LS 34174, 2015";

THENCE N00°17'21"E, A DISTANCE OF 37.00 FEET ON THE WEST LINE OF SAID WEST HALF OF THE
SOUTHWEST QUARTER OF SECTION 9 TO THE NORTH RIGHT OF WAY LINE OF THE COLORADO
STATE HIGHWAY NO. 14 AS RECORDED IN THE COLORADO STATE HIGHWAY DEPARTMENT FEDERAL
AID PROJECT NO. F 44 (8) STATE HIGHWAY NO. 14 AND THE POINT OF BEGINNING;

THENCE N00°17'21"E, A DISTANCE OF 728.91 FEET ON THE WEST LINE OF THAT PARCEL RECORDED
AT BOOK 2300, PAGE 1701 IN THE LARIMER COUNTY CLERK AND RECORDERS OFFICE;

THENCE ON THE SOUTHWEST LINE OF THE AFORE REFERENCED BOOK 2300, PAGE 1701 FOR THE
FOLLOWING 4 COURSES;

1. THENCE S60°03'09"E, A DISTANCE OF 50.43 FEET;
2. THENCE S43°21'09"E, A DISTANCE OF 356.39 FEET;
3. THENCE S49°41'09"E, A DISTANCE OF 155.67 FEET;
4. THENCE S57°53'09"E, A DISTANCE OF 61.41 FEET TO THE WEST LINE OF A PARCEL
   RECORDED AT BOOK 1290, PAGE 520 IN THE LARIMER COUNTY CLERK AND RECORDERS
   OFFICE;

THENCE S00°40'52"W, A DISTANCE OF 317.61 FEET ON SAID WEST LINE TO THE NORTH RIGHT OF
WAY LINE OF SAID COLORADO STATE HIGHWAY NO. 14;

THENCE N89°12'17"W, A DISTANCE OF 459.01 FEET ON SAID NORTH RIGHT OF WAY LINE TO THE
POINT OF BEGINNING.

PARCEL CONTAINS 237,828 SQUARE FEET OR 5.460 ACRES.

BASIS OF BEARING: THE SOUTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF
SECTION 9, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO,
IS ASSUMED TO BEAR NORTH 89°12'17" WEST FOR 1326.07 FEET BETWEEN THE WEST 1/16TH
CORNER, COMMON TO SECTION 9 AND 16, MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM
CAP STAMPED "PLS 23503, 2007" AND SOUTHWEST CORNER, SECTION 9, MONUMENTED WITH NO. 6
REBAR WITH 2-1/2" ALUMINUM CAP IN A MONUMENT BOX, STAMPED "LS 34174, 2015", WITH ALL
OTHER BEARINGS REFERENCED THERETO.
ATTACHMENT "B"

STATE OF COLORADO
COUNTY OF Larimer

The undersigned, being first duly sworn upon his oath states:

That he was the circulator of the attached Petition for Annexation and that each signature therein is the signature of the person whose name it purports to be.

[Signature]
Circulator's Signature

Subscribed and sworn to before me this 20th day of October, 2020, by Hunter Donaldson.

WITNESS my hand and official seal.

[Signature]
Commission Expiration

[Signature]
Notary Public

BELINDA HARRINGTON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124033030
MY COMMISSION EXPIRES AUGUST 6, 2024
ATTACHMENT "C"
ATTORNEY CERTIFICATION

I, C Brent Loar, an attorney licensed to practice in the State of Colorado, hereby certify that, as of the date of this certificate, the signers of this Annexation Petition for the area referred to as the Springer-Fisher Annexation to the City of Fort Collins are the owners of real property in the area proposed for annexation. Furthermore, I certify that said owners constitute more than 50% of the landowners in the area proposed for annexation, as said area is described on Attachment "A" of said Annexation Petition, exclusive of highways, streets and alleys, and own more than 50% of the land in said area, exclusive of streets and alleys.

Date: 10-20-2020

Signature

Attorney Reg. No.: 27592

Springer-Fisher: Annexation Petition
SPRINGER FISHER ANNEXATION 1
TO THE CITY OF FORT COLLINS, COLORADO
PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9,
TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M.
COUNTY OF LARimer, STATE OF COLORADO

SCALE: 1"=100'

SPRINGER  FISHER
ANNEXATION 1

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M.
COUNTY OF LARimer, STATE OF COLORADO

SHEET 1 OF 1
TO THE CITY OF FORT COLLINS, COLORADO

FAK  AN
HFH000008.10
ATTACHMENT 2
17.2
Packet Pg. 285
Attachment: Annexation Map (9763 : Springer-Fisher Annexation No. 1)
Springer-Fisher Annexation Vicinity Map
Annexation Area 1

Springer-Fisher Annexation Area No. 1 Map
Springer-Fisher Annexation Area No. 2 Map

These map products and all underlying data are developed for use by the City of Fort Collins for its internal purposes only, and were not designed or intended for general use by members of the public. The City makes no representation or warranty as to its accuracy, timeliness, or completeness, and in particular its accuracy in labeling or displaying dimensions, contours, property boundaries, or placement of location of any map features therein. THE CITY OF FORT COLLINS MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTY FOR FITNESS OR USE FOR PARTICULAR PURPOSE, EXPRESSLY OR IMPLIED, WITH RESPECT TO THESE MAP PRODUCTS OR THE UNDERLYING DATA. Any user of these map products, map applications, or data, accepts same "AS IS" WITH ALL FAULTS, and assumes all responsibility of the use thereof, and further covenants and agrees to hold the City harmless from and against all damage, loss, or liability arising from any use of this map product, in consideration of the City's having made this information available. Independent verification of all data contained herein should be obtained by any user of these products, or underlying data. The City disclaims, and shall not be held liable for any and all damage, loss, or liability, whether direct, indirect, or consequential, which arises or may arise from these map products or the use thereof by any person or entity.
Springer-Fisher Annexation Structure Plan Map

These map products and all underlying data are developed for use by the City of Fort Collins for its internal purposes only, and were not designed or intended for general use by members of the public. The City makes no representation or warranty as to its accuracy, timeliness, or completeness, and in particular its accuracy in labeling or displaying dimensions, contours, property boundaries, or placement of location of any map features therein. The City of Fort Collins makes no warranty of merchantability or warranty for fitness of use for particular purpose, expressed or implied, with respect to these map products or the underlying data. Any use of these map products, map applications, or data, accepts them as is, with all faults, and assumes all responsibility of the use thereof, and further covenants and agrees to hold the City harmless from and against all damage, loss, or liability arising from any use of the map product or the information contained herein. Independent verification of all data contained herein should be obtained by any users of these products, or underlying data. The City disclaims, and shall not be held liable for any and all damage, loss, or liability, whether direct, indirect, or consequential, which arises or may arise from these map products or the use thereof by any person or entity.
Springer-Fisher Annexation
East Mulberry Corridor Plan Map
Springer-Fisher Annexation
Zoning Map

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Printed: November 25, 2020

Packet Pg. 291
RESOLUTION 2020-114
OF THE COUNCIL OF THE CITY OF FORT COLLINS
FINDING SUBSTANTIAL COMPLIANCE AND
INITIATING ANNEXATION PROCEEDINGS FOR THE
SPRINGER-FISHER ANNEXATION NO. 1

WHEREAS, a written petition, together with four (4) prints of an annexation map, has been filed with the City Clerk requesting the annexation of certain property to be known as the Springer-Fisher Annexation No. 1, as more particularly described below; and

WHEREAS, the City Council desires to initiate annexation proceedings for the Springer-Fisher Annexation No. 1 in accordance with the Municipal Annexation Act, Section 31-12-101, et seq., Colorado Revised Statutes.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby accepts the annexation petition for the Springer-Fisher Annexation No. 1, more particularly described as situate in the County of Larimer, State of Colorado, to wit:

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST 1/16TH CORNER, COMMON TO SECTION 9 AND 16, MONUMENTED WITH NO. 6 REBAR WITH 2-1/2” ALUMINUM CAP STAMPED “PLS 23503, 2007”;

THENCE NORTH 00°13’30” EAST FOR 37.00 FEET ON THE EAST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9 TO THE NORTH RIGHT OF WAY LINE OF THE STATE HIGHWAY NO. 14 AS RECORDED IN THE COLORADO STATE HIGHWAY DEPARTMENT AT FEDERAL AID PROJECT NO. F 44 (8) STATE HIGHWAY NO. 14 AND THE POINT OF BEGINNING;

THENCE N89°12’17”W, A DISTANCE OF 640.46 FEET ON SAID NORTH RIGHT OF WAY LINE TO THE EAST LINE OF THAT PARCEL RECORDED AT BOOK 2300, PAGE 1701 IN THE LARIMER COUNTY CLERK AND RECORDERS OFFICE;

THENCE ON SAID EAST LINE FOR THE FOLLOWING 6 COURSES;

1. THENCE N13°44’09”W, A DISTANCE OF 211.80 FEET;
2. THENCE N15°22’09”W, A DISTANCE OF 112.04 FEET;

-1-
3. THENCE N57°53'09"W, A DISTANCE OF 181.02 FEET;
4. THENCE N49°41'09"W, A DISTANCE OF 146.77 FEET;
5. THENCE N43°21'09"W, A DISTANCE OF 362.79 FEET;
6. THENCE N60°03'09"W, A DISTANCE OF 100.57 FEET TO THE WEST LINE OF SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 9;

THENCE N00°17'21"E, A DISTANCE OF 477.22 FEET ON SAID WEST LINE TO THE SOUTH 1/16TH CORNER COMMON TO SECTION 9 AND 8 MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED “LS 7839, 2000”;

THENCE N00°17'04"E, A DISTANCE OF 1323.84 FEET ON THE WEST LINE OF NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 9 TO THE WEST QUARTER OF SAID SECTION 9 MONUMENTED WITH NO. 6 REBAR WITH 3-1/4" ALUMINUM CAP STAMPED “LS 34995, 2016”;

THENCE S88°56'09"E, A DISTANCE OF 1323.29 FEET ON THE NORTH LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9 TO THE CENTER-WEST 1/16TH CORNER THEREOF MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED “PLS 23503, 2007”;

THENCE S00°13'30"W, A DISTANCE OF 2604.35 FEET ON THE EAST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9 TO THE POINT OF BEGINNING.

PARCEL CONTAINS 3,107,842 SQUARE FEET OR 71.346 ACRES.

Section 3. That the City Council hereby finds and determines that the annexation petition for the Springer-Fisher Annexation No. 1 is in substantial compliance with the Municipal Annexation Act in that the annexation petition contains the following:

(1) An allegation that it is desirable and necessary that such area be annexed to the municipality;

(2) An allegation that the requirements of Colorado Revised Statutes sections 31-12-104 and 31-12-105 exist or have been met;

(3) An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality;

(4) The signatures of such landowners;

(5) A request that the annexing municipality approve the annexation of the area proposed to be annexed;
(6) The mailing address of each such signer;

(7) The legal description of the land owned by such signer;

(8) The date of signing of each signature; and

(9) The affidavit of the circulator of such petition that each signature therein is the signature of the person whose name it purports to be.

Section 4. That the City Council hereby finds and determines that the annexation map, four copies total, accompanying the annexation petition for the Springer-Fisher Annexation No. 1 is in substantial compliance with the Municipal Annexation Act in that the map contains the following:

(1) A written legal description of the boundaries of the area proposed to be annexed;

(2) A map showing the boundary of the area proposed to be annexed;

(3) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and

(4) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

Section 5. That the Notice attached hereto as Exhibit “A” is hereby adopted as a part of this Resolution. Said Notice establishes the date, time and place when a public hearing will be held regarding the passage of annexation and zoning ordinances pertaining to the above described property. The City Clerk is directed to publish a copy of this Resolution and said Notice as provided in the Municipal Annexation Act.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins held this 15th day of December, A.D. 2020.

___________________________
Mayor

ATTEST:

___________________________
City Clerk
NOTICE

TO ALL PERSONS INTERESTED:

PLEASE TAKE NOTICE that the City Council of the City of Fort Collins has adopted Resolution 2020-114 initiating annexation proceedings for the Springer-Fisher Annexation No. 1, consisting of approximately 71.34 acres and generally located northwest of the intersection of East Mulberry Street and Greenfields Court, said Annexation being more particularly described in Resolution 2020-114, a copy of which is available from the City Clerk’s Office.

That, on January 19, 2021, at the hour of 6:00 p.m., or as soon thereafter as the matter may come on for hearing in the Council Chambers in the City Hall, 300 LaPorte Avenue, Fort Collins, Colorado, the Fort Collins City Council will hold a public hearing upon the annexation petition and zoning request for the purpose of finding and determining whether the property proposed to be annexed meets the applicable requirements of Colorado law and is considered eligible for annexation and for the purpose of determining the appropriate zoning for the property included in the Annexation. At such hearing, any persons may appear and present such evidence as they may desire.

The Petitioner has requested that the Property included in the Annexation be placed in the Low Density Mixed Use Neighborhood (“L-M-N”) Zone District, Medium Density Mixed-Use Neighborhood (“M-M-N”) Zone District; Neighborhood Commercial (“N-C”) Zone District, General Commercial (“G-C”) Zone District, and Employment (“E”) Zone District.

The City of Fort Collins will make reasonable accommodations for access to City services, programs and activities and will make special communication arrangements for persons with disabilities. Please call 221-6515 (V/TDD: Dial 711 for Relay Colorado) for assistance.

Dated this _____ day of December, A.D. 2020.

_______________________________
City Clerk
STAFF

Pete Wray, Senior City Planner
Brad Yatabe, Legal

SUBJECT


EXECUTIVE SUMMARY

The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Springer-Fisher Annexation No. 2. The Applicant has submitted a written petition requesting two sequential annexations. Springer-Fisher Annexation No. 2 is the second of two sequential annexations located northwest of the East Mulberry Street and Greenfields Court intersection. Annexation No. 2 is 5.46 acres in size and establishes the required 1/6 perimeter boundary contiguity with the extension of the municipal boundary created by the Springer-Fisher Annexation No. 1.

The requested zoning for this annexation is General Commercial (C-G) in compliance with the City of Fort Collins Structure Plan and the East Mulberry Corridor Plan and the property would not be included in the Residential Sign District. Notice to parcels abutting platted streets was provided pursuant to §31-12-105, C.R.S. No project development plan proposal was submitted in conjunction with the annexation application.

This annexation request is in conformance with the Colorado Revised Statute as it relates to annexations, the City of Fort Collins Comprehensive Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

The proposed Resolution makes a finding that the petition substantially complies with the Municipal Annexation Act, determines that a hearing should be established regarding the annexation, and directs that notice be given of the hearing. The hearing will be held at the time of First Reading of the annexation and zoning ordinances. The proposed zoning of a property to be annexed is not a requirement under § 31-12-107, C.R.S., and discussion of zoning issues should be reserved for the zoning review that will occur concurrent to the first reading for the annexation. Not less than thirty days of prior notice is required by state law.

The property is located within the Fort Collins Growth Management Area. According to policies and agreements between the City of Fort Collins and Larimer County contained in the Intergovernmental Agreement for the Fort Collins Growth Management Area, the City agrees to consider annexation of property in the GMA when the property is eligible for annexation according to State law.
The 5.46-acre Springer-Fisher Annexation No. 2 has a total contiguous perimeter (626.67 feet) of 29%, which satisfies the one-sixth (1/6) area required. Contiguity is gained from the municipal boundary created through the Springer-Fisher Annexation No. 1.

CITY FINANCIAL IMPACTS

The annexation and zoning will not result in any initial direct significant financial/economic impacts. Electric service will be transferred from Poudre Valley REA to Fort Collins Light and Power. Future development will also trigger the transition of law enforcement from Larimer County Sheriff to Fort Collins Police Services. Water utility services will continue to be provided by the East Larimer County (ELCO) Water District and wastewater utility service by the Boxelder Sanitation District.

BOARD / COMMISSION RECOMMENDATION

The Planning and Zoning Board will conduct a public hearing on the annexation and zoning request on December 17, 2020. The Board's recommendation will be forwarded to City Council as part of the First Reading of the annexation and zoning ordinances on January 19, 2021.

PUBLIC OUTREACH

There was no public outreach for this initiating Resolution, as this Resolution simply accepts the Annexation Petition and provides a schedule for upcoming Council hearings, with a schedule and notification requirements that comply with State Statutes. A neighborhood meeting was held on August 19, 2020, for the annexation and zoning for the Springer-Fisher property.

ATTACHMENTS

1. Annexation Petition (PDF)
2. Annexation Map (PDF)
3. Vicinity Map (PDF)
4. Sequence Map 1 (PDF)
5. Sequence Map 2 (PDF)
6. Structure Plan (PDF)
7. East Mulberry Corridor Plan Map (PDF)
8. Zoning Map (PDF)
PETITION FOR ANNEXATION

THE UNDERSIGNED (hereinafter referred to as the "Petitioners") hereby petition the Council of the City of Fort Collins, Colorado for the annexation of an area, to be referred to as the Springer-Fisher Annexation to the City of Fort Collins. Said area, consisting of approximate 76.806 acres, is more particularly described on Attachment "A," attached hereto.

The Petitioners allege:

1. That it is desirable and necessary that such area be annexed to the City of Fort Collins.

2. That the requirements of Sections 31-12-104 and 31-12-105, C.R.S., exist or have been met.

3. That not less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the boundaries of the City of Fort Collins.

4. That a community of interest exists between the area proposed to be annexed and the City of Fort Collins.

5. That the area to be annexed is urban or will be urbanized in the near future.

6. That the area proposed to be annexed is integrated with or capable of being integrated with the City of Fort Collins.

7. That the Petitioners herein comprise more than fifty percent (50%) of the landowners in the area and own more than fifty percent (50%) of the area to be annexed, excluding public streets, alleys and lands owned by the City of Fort Collins.

8. That the City of Fort Collins shall not be required to assume any obligations respecting the construction of water mains, sewer lines, gas mains, electric service lines, streets or any other services or utilities in connection with the property proposed to be annexed except as may be provided by the ordinance of the City of Fort Collins.

Further, as an express condition of annexation, Petitioners consent to the inclusion into the Municipal Subdistrict, Northern Colorado Water Conservancy District (the "Subdistrict") pursuant to §37- 45-136(3.6) C.R.S., Petitioners acknowledge that, upon inclusion into the Subdistrict, Petitioners' property will be subject to the same mill levies and special assessments as are levied or will be levied on other similarly situated property in the Subdistrict at the time of inclusion of Petitioners' lands. Petitioners agree to waive any right to an election which may exist pursuant to Article X, §20 of the Colorado Constitution before the Subdistrict can impose such mill levies and special assessments as it has the authority to impose. Petitioners also agree to waive, upon inclusion, any right which may exist to a refund pursuant to Article X, §20 of the Colorado Constitution.
WHEREFORE, said Petitioners request that the Council of the City of Fort Collins approve the annexation of the area described on Attachment "A." Furthermore, the Petitioners request that said area be placed in the LMN, MMN, E, NC & CG Zone Districts pursuant to the Land Use Code of the City of Fort Collins.

☐ (Check box if applicable). The Petitioners reserve the right to withdraw this petition and their signatures therefrom at any time prior to the commencement of the roll call of the City Council for the vote upon the second reading of the annexation ordinance.

Individual Petitioners signing this Petition represent that they own the portion(s) of the area described on Attachment "A" as more particularly described below:

See Legal Description on Attachment "A"

IN WITNESS WHEROF, I/we have executed this Petition for Annexation this day of October 2020.

Springer-Fisher Inc.

Petitioner's/Owner's Signature

P.O. Box 86

Address

Timnath, CO 80557

City State Zip

Petitioner's/Owner's Signature

Address

City State Zip
ATTACHMENT "A"
LEGAL DESCRIPTION OF THE ANNEXATION

LEGAL DESCRIPTION
SPRINGER-FISHER ANNEXATION 1

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE WEST 1/16TH CORNER, COMMON TO SECTION 9 AND 16, MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED "PLS 23503, 2007";

THENCE NORTH 00°13'30" EAST FOR 37.00 FEET ON THE EAST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9 TO THE NORTH RIGHT OF WAY LINE OF THE STATE HIGHWAY NO. 14 AS RECORDED IN THE COLORADO STATE HIGHWAY DEPARTMENT AT FEDERAL AID PROJECT NO. F 44 (8) STATE HIGHWAY NO. 14 AND THE POINT OF BEGINNING;

THENCE N89°12'17"W, A DISTANCE OF 640.46 FEET ON SAID NORTH RIGHT OF WAY LINE TO THE EAST LINE OF THAT PARCEL RECORDED AT BOOK 2300, PAGE 1701 IN THE LARIMER COUNTY CLERK AND RECORDERS OFFICE;

THENCE ON SAID EAST LINE FOR THE FOLLOWING 6 COURSES;

1. THENCE N13°44'09"W, A DISTANCE OF 211.80 FEET;
2. THENCE N15°22'09"W, A DISTANCE OF 112.04 FEET;
3. THENCE N57°53'09"W, A DISTANCE OF 181.02 FEET;
4. THENCE N49°41'09"W, A DISTANCE OF 146.77 FEET;
5. THENCE N43°21'09"W, A DISTANCE OF 362.79 FEET;
6. THENCE N60°03'09"W, A DISTANCE OF 100.57 FEET TO THE WEST LINE OF SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 9;

THENCE N00°17'21"E, A DISTANCE OF 477.22 FEET ON SAID WEST LINE TO THE SOUTH 1/16TH CORNER COMMON TO SECTION 9 AND 8 MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED "LS 7839, 2000";

THENCE N00°17'04"E, A DISTANCE OF 1323.84 FEET ON THE WEST LINE OF NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 9 TO THE WEST QUARTER OF SAID SECTION 9 MONUMENTED WITH NO. 6 REBAR WITH 3-1/4" ALUMINUM CAP STAMPED "LS 34995, 2016";

THENCE S88°56'09"E, A DISTANCE OF 1323.29 FEET ON THE NORTH LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9 TO THE CENTER-WEST 1/16TH CORNER THEREOF MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED "PLS 23503, 2007";

THENCE S00°13'30"W, A DISTANCE OF 2604.35 FEET ON THE EAST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9 TO THE POINT OF BEGINNING.

PARCEL CONTAINS 3,107,842 SQUARE FEET OR 71.346 ACRES.

BASIS OF BEARING: THE SOUTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO,
IS ASSUMED TO BEAR NORTH 89°12'17" WEST FOR 1326.07 FEET BETWEEN THE WEST 1/16TH CORNER, COMMON TO SECTION 9 AND 16, MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED "PLS 23503, 2007" AND SOUTHWEST CORNER, SECTION 9, MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP IN A MONUMENT BOX, STAMPED "LS 34174, 2015", WITH ALL OTHER BEARINGS REFERENCED THERETO.
ATTACHMENT “A”
LEGAL DESCRIPTION OF THE ANNEXATION (Cont.)

LEGAL DESCRIPTION
SPRINGER-FISHER ANNEXATION 2

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 7 NORTH,
RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHWEST CORNER OF SECTION 9, MONUMENTED WITH NO. 6 REBAR WITH
2-1/2" ALUMINUM CAP STAMPED “LS 34174, 2015”;

THENCE N00°17'21"E, A DISTANCE OF 37.00 FEET ON THE WEST LINE OF SAID WEST HALF OF THE
SOUTHWEST QUARTER OF SECTION 9 TO THE NORTH RIGHT OF WAY LINE OF THE COLORADO
STATE HIGHWAY NO. 14 AS RECORDED IN THE COLORADO STATE HIGHWAY DEPARTMENT FEDERAL
AID PROJECT NO. F 44 (8) STATE HIGHWAY NO. 14 AND THE POINT OF BEGINNING;

THENCE N00°17'21"E, A DISTANCE OF 728.91 FEET ON THE WEST LINE OF THAT PARCEL RECORDED
AT BOOK 2300, PAGE 1701 IN THE LARIMER COUNTY CLERK AND RECORDER’S OFFICE;

THENCE ON THE SOUTHWEST LINE OF THE ABOVE REFERENCED BOOK 2300, PAGE 1701 FOR THE
FOLLOWING 4 COURSES;

1. THENCE S60°03'09"E, A DISTANCE OF 50.43 FEET;
2. THENCE S43°21'09"E, A DISTANCE OF 356.39 FEET;
3. THENCE S49°41'09"E, A DISTANCE OF 155.67 FEET;
4. THENCE S57°53'09"E, A DISTANCE OF 61.41 FEET TO THE WEST LINE OF A PARCEL
   RECORDED AT BOOK 1290, PAGE 520 IN THE LARIMER COUNTY CLERK AND RECORDER’S
   OFFICE;

THENCE S00°40'52"W, A DISTANCE OF 317.61 FEET ON SAID WEST LINE TO THE NORTH RIGHT OF
WAY LINE OF SAID COLORADO STATE HIGHWAY NO. 14;

THENCE N89°12'17"W, A DISTANCE OF 459.01 FEET ON SAID NORTH RIGHT OF WAY LINE TO THE
POINT OF BEGINNING.

PARCEL CONTAINS 237,828 SQUARE FEET OR 5.460 ACRES.

BASIS OF BEARING: THE SOUTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF
SECTION 9, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO,
IS ASSUMED TO BEAR NORTH 89°12'17" WEST FOR 1326.07 FEET BETWEEN THE WEST 1/16TH
CORNER, COMMON TO SECTION 9 AND 16, MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM
CAP STAMPED “PLS 23503, 2007” AND SOUTHWEST CORNER, SECTION 9, MONUMENTED WITH NO. 6
REBAR WITH 2-1/2" ALUMINUM CAP IN A MONUMENT BOX, STAMPED “LS 34174, 2015”, WITH ALL
OTHER BEARINGS REFERENCED THERETO.
ATTACHMENT "B"

STATE OF COLORADO
)
COUNTY OF Larimer
)

The undersigned, being first duly sworn upon his oath states:

That he was the circulator of the attached Petition for Annexation and that each signature therein is the signature of the person whose name it purports to be.

[Signature]
Circulator's Signature

Subscribed and sworn to before me this 20th day of October, 20__,
by Hunter Donaldson.

WITNESS my hand and official seal.

[Signature]  Commission Expiration
[Signature]  Notary Public

Belinda Harrington
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124533030
MY COMMISSION EXPIRES AUGUST 6, 2024

Springer-Fisher: Annexation Petition
ATTACHMENT “C”
ATTORNEY CERTIFICATION

I, [Name], an attorney licensed to practice in the State of Colorado, hereby certify that, as of the date of this certificate, the signers of this Annexation Petition for the area referred to as the Springer-Fisher Annexation to the City of Fort Collins are the owners of real property in the area proposed for annexation. Furthermore, I certify that said owners constitute more than 50% of the landowners in the area proposed for annexation, as said area is described on Attachment “A” of said Annexation Petition, exclusive of highways, streets and alleys, and own more than 50% of the land in said area, exclusive of streets and alleys.

10-20-2020
Date

27592
Attorney Reg. No.
Springer-Fisher Annexation Area No. 1 Map
Springer-Fisher Annexation
Area No. 2 Map
Springer-Fisher Annexation
East Mulberry Corridor Plan Map
RESOLUTION 2020-115
OF THE COUNCIL OF THE CITY OF FORT COLLINS
FINDING SUBSTANTIAL COMPLIANCE AND
INITIATING ANNEXATION PROCEEDINGS FOR THE
SPRINGER-FISHER ANNEXATION NO. 2

WHEREAS, a written petition, together with four (4) prints of an annexation map, has been filed with the City Clerk requesting the annexation of certain property to be known as the Springer-Fisher Annexation No. 2, as more particularly described below; and

WHEREAS, the City Council desires to initiate annexation proceedings for the Springer-Fisher Annexation No. 2 in accordance with the Municipal Annexation Act, Section 31-12-101, et seq., Colorado Revised Statutes.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby accepts the annexation petition for the Springer-Fisher Annexation No. 2, more particularly described as situate in the County of Larimer, State of Colorado, to wit:

PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 9, MONUMENTED WITH NO. 6 REBAR WITH 2-1/2" ALUMINUM CAP STAMPED “LS 34174, 2015”;

THENCE N00°17'21"E, A DISTANCE OF 37.00 FEET ON THE WEST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 9 TO THE NORTH RIGHT OF WAY LINE OF THE COLORADO STATE HIGHWAY NO. 14 AS RECORDED IN THE COLORADO STATE HIGHWAY DEPARTMENT FEDERAL AID PROJECT NO. F 44 (8) STATE HIGHWAY NO. 14 AND THE POINT OF BEGINNING;

THENCE N00°17'21"E, A DISTANCE OF 728.91 FEET ON THE WEST LINE OF THAT PARCEL RECORDED AT BOOK 2300, PAGE 1701 IN THE LARIMER COUNTY CLERK AND RECORDERS OFFICE;

THENCE ON THE SOUTHWEST LINE OF THE AFORE REFERENCED BOOK 2300, PAGE 1701 FOR THE FOLLOWING 4 COURSES;

1. THENCE S60°03'09"E, A DISTANCE OF 50.43 FEET;
2. THENCE S43°21'09"E, A DISTANCE OF 356.39 FEET;
3. THENCE S49°41'09"E, A DISTANCE OF 155.67 FEET;
4. THENCE S57°53'09"E, A DISTANCE OF 61.41 FEET TO THE WEST LINE
   OF A PARCEL RECORDED AT BOOK 1290, PAGE 520 IN THE LARIMER
   COUNTY CLERK AND RECORDERS OFFICE;

THENCE S00°40'52"W, A DISTANCE OF 317.61 FEET ON SAID WEST LINE TO
THE NORTH RIGHT OF WAY LINE OF SAID COLORADO STATE HIGHWAY NO.
14;

THENCE N89°12'17"W, A DISTANCE OF 459.01 FEET ON SAID NORTH RIGHT
OF WAY LINE TO THE POINT OF BEGINNING.

PARCEL CONTAINS 237,828 SQUARE FEET OR 5.460 ACRES.

Section 3. That the City Council hereby finds and determines that the annexation
petition for the Springer-Fisher Annexation No. 2 is in substantial compliance with the
Municipal Annexation Act in that the annexation petition contains the following:

(1) An allegation that it is desirable and necessary that such area be annexed to the
municipality;

(2) An allegation that the requirements of Colorado Revised Statutes sections 31-12-104
and 31-12-105 exist or have been met;

(3) An allegation that the signers of the petition comprise more than fifty percent of
the landowners in the area and own more than fifty percent of the area proposed to be
annexed, excluding public streets and alleys and any land owned by the annexing
municipality;

(4) The signatures of such landowners;

(5) A request that the annexing municipality approve the annexation of the area
proposed to be annexed;

(6) The mailing address of each such signer;

(7) The legal description of the land owned by such signer;

(8) The date of signing of each signature; and

(9) The affidavit of the circulator of such petition that each signature therein is the
signature of the person whose name it purports to be.

Section 4. That the City Council hereby finds and determines that the annexation
map, four copies total, accompanying the annexation petition for the Springer-Fisher Annexation
No. 2 is in substantial compliance with the Municipal Annexation Act in that the map contains the following:

(1) A written legal description of the boundaries of the area proposed to be annexed;

(2) A map showing the boundary of the area proposed to be annexed;

(3) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks; and

(4) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

Section 5. That the Notice attached hereto as Exhibit “A” is hereby adopted as a part of this Resolution. Said Notice establishes the date, time and place when a public hearing will be held regarding the passage of annexation and zoning ordinances pertaining to the above described property. The City Clerk is directed to publish a copy of this Resolution and said Notice as provided in the Municipal Annexation Act.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins held this 15th day of December, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
NOTICE

TO ALL PERSONS INTERESTED:

PLEASE TAKE NOTICE that the City Council of the City of Fort Collins has adopted Resolution 2020-115 initiating annexation proceedings for the Springer-Fisher Annexation No. 2, consisting of approximately 5.46 acres and generally located northwest of the intersection of East Mulberry Street and Greenfields Court, and west of the Front Range Veterinary Clinic, said Annexation being more particularly described in Resolution 2020-115, a copy of which is available from the City Clerk’s Office.

That, on January 19, 2021, at the hour of 6:00 p.m., or as soon thereafter as the matter may come on for hearing in the Council Chambers in the City Hall, 300 LaPorte Avenue, Fort Collins, Colorado, the Fort Collins City Council will hold a public hearing upon the annexation petition and zoning request for the purpose of finding and determining whether the property proposed to be annexed meets the applicable requirements of Colorado law and is considered eligible for annexation and for the purpose of determining the appropriate zoning for the property included in the Annexation. At such hearing, any persons may appear and present such evidence as they may desire.

The Petitioner has requested that the Property included in the Annexation be placed in the General Commercial (“C-G”) Zone District.

The City of Fort Collins will make reasonable accommodations for access to City services, programs and activities and will make special communication arrangements for persons with disabilities. Please call 221-6515 (V/TDD: Dial 711 for Relay Colorado) for assistance.

Dated this _____ day of December, A.D. 2020.

_______________________________
City Clerk
Resolution 2020-116 Making Appointments to the Downtown Development Authority Board.

The purpose of this item is to appoint individuals to fill vacancies that currently exist on the Downtown Development Authority Board.

Staff recommends adoption of the Resolution.

This Resolution makes appointments to fill the three current vacancies on the Downtown Development Authority (DDA) Board. Cheryl Zimlich is term limited creating the first vacancy. The terms of Bevin Parker and Jenny Schulz have expired creating the second and third vacancy.

City Code Section 2-462 provides that the DDA Board shall consist of eleven (11) members, nine (9) of whom are either residents, landowners or tenants within the boundaries of the Authority, one (1) of whom shall be a Councilmember and one (1) of whom shall be a member of the Board of County Commissioners of Larimer County, provided Larimer County continues to meet the qualifications for membership on the Board of the Authority as either a landowner or tenant within the boundaries of the Authority, and formally designates one (1) Commissioner to serve in such capacity.

On December 2, 2020, Councilmember Susan Gutowsky and Councilmember Ken Summers interviewed applicants for the Downtown Development Authority.

These terms will begin on January 1, 2021. Names of those individuals recommended to fill vacancies have been inserted in the Resolution with the expiration date following the names.

ATTACHMENTS

1. Applications(PDF)
APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

Eligibility Requirements - 1 year residency within the Fort Collins Growth Management Area

Board or Commission: Downtown Development Authority

Name: Jenny Schultz

Mailing Address: ___________________________ Zip: ____________

Residence: ___________________________ Zip: Cell ____________

Home Phone: ____________ Work Phone: ____________ Phone: ____________

E-Mail Address: ___________________________

Have you resided in the Fort Collins Growth Management Area for at least one year? Yes ☒ No ☐

Do you reside or own property within the DDA? Yes ☒ No ☐

Current Occupation: Regional Credit Manager, SVP Employer: Great Western Bank

Recent and/or relevant work experience (please include dates) As an officer of Great Western Bank, with a branch in our Downtown corridor, I interact directly & indirectly with business owners and residences in the District. As a Regional Credit Manager, I approve business loan requests for all of CO & AZ, which involves not only reviewing financials of a business, but also understanding their operations & structure in order to assist.

Recent and/or relevant volunteer experience (please include dates) Current Board Chair of the Downtown Development Authority - applying for 2nd installment Junior Achievement Teacher/Volunteer - 2004-2016 Regular United Way volunteer In my more distant past, I've also volunteered with PVH, Santa Cops & the Poudre School District Foundation

Are you currently serving on a City board or commission? Yes ☒ No ☐

If so, which one? Downtown Development Authority

Why do you want to become a member of this particular board or commission? The activities & decisions of the board make a real impact to the economic growth of our downtown, and I believe my finance background has provided insight & expertise to assist in these decisions.

Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? Yes ☒ No ☐

If yes, please share your experience:

I am currently serving as the DDA Board Chair.

List any abilities, skills, certificates, specialized training, or interests you have which are applicable to this board or commission:

I have a Bachelors of Business Administration with an emphasis in Finance from Colorado State University, and I have been in the banking industry for over 25 years.
Briefly explain what you believe are the three most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) Maintaining the vitality of our downtown, as a place where residents and visitors come to explore & enjoy all that it has to offer. Ensuring that the decisions that are made with regards to construction, expansion, parking, entertainment, rules & regulations, etc. . .are always keeping the economic, social & cultural impact to the downtown at the forefront.

2) Affordable housing for those that live & work in the downtown.

3) COVID 19 and its impact on the short and long term future of business & entertainment/culture in the downtown.

Please specify any activities which might create a serious conflict of interest if you should be appointed to this board or commission:
If there is a project being reviewed by the board which Great Western Bank is involved in the financing. In these instances, I would recuse myself from the Board meeting and any discussion/decisions related to that client or project.

Upon application for and acceptance of appointment, board and commission members demonstrate their intention and ability to attend meetings. If appointed, frequent nonattendance may result in termination of the appointment.

By typing your name in the space provided, I submit my electronic signature and application to the City of Fort Collins and swear or affirm under penalty of perjury pursuant to the laws of the State of Colorado:
- that I meet the eligibility requirements of the position sought and
- that the information provided in this application is true and correct to the best of my knowledge.

Signature: ___________________________ Date: ________________

Optional: How did you learn of a vacancy on this board or commission:
☐ Newspaper ☐ Cable 14 ☐ City News (Utility Bill Insert) ☐ Website
Other (please specify) ________________________________________
APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES
INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED FOR APPOINTMENT

If you have questions or need more information, contact:
City Clerk’s Office (300 LaPorte Avenue) at 970.416.2525

Eligibility Requirements - 1 year residency within the Fort Collins Growth Management Area

Board or Commission: Downtown Development Authority

Name: Amanda T. Huston

Mailing Address: ____________________________ Zip: ____________________________
Residence: ____________________________ Cell Phone: ____________________________
Home Phone: ____________________________ Work Phone: ____________________________

E-Mail Address: ____________________________

Have you resided in the Fort Collins Growth Management Area for at least one year? ☐ Yes ☒ No

Do you reside or own property within the DDA? ☐ Yes ☒ No

Current Occupation: Attorney
Employer: Coan, Payton & Payne, LLC

Recent and/or relevant work experience (please include dates)
Coan, Payton & Payne - Business and Real Estate Transactional Attorney, November 2017 - Present
Colorado Court of Appeals - Law Clerk, September 2016-September 2017
Law Clerk, Burns Figa & Will, P.C., Summer 2015 & January, 2016-May 2016
Greeley Downtown Development Authority, Administrative Assistant, 2011- May 2013

Recent and/or relevant volunteer experience (please include dates)
Neighbor to Neighbor, Asset Management Committee - August 29, 2019 - Present
Immigrant & Refugee Center of Northern Colorado, March, 2018 - Present
Colorado Lawyer, YLD Coordinating Editor, January 2018 - Present
Larimer Bar Association, YLD Executive Board Member, 2018 - Present (Vice President, 2020)
Wild Animal Sanctuary, Annual Celebration Volunteer Committee - October, 2018 - April, 2019

Are you currently serving on a City board or commission? ☐ Yes ☒ No

If so, which one?

Why do you want to become a member of this particular board or commission? I believe that a thriving downtown is vital to our community as a whole, and I am passionate about seeing something for everyone in Downtown Fort Collins, and helping make it a place to gather, play, work, connect, and innovate.

Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? ☐ Yes ☒ No

If yes, please share your experience:
I have spoken very briefly with Attorney Clay Bartlett at my firm about his experience on the Board, and he enjoys the opportunity to be a part of the Board.

List any abilities, skills, certificates, specialized training, or interests you have which are applicable to this board or commission:
Critical thinking, problem solving, downtown development authority experience, and experience with a variety of business and real estate transactions in practice.
Briefly explain what you believe are the three most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) Vitality is one issue I believe the board is facing. Namely, it is difficult to keep the organization's services consistent with the needs of the district in order to assist the district in maintaining vitality. Vitality is fluid, not static, and circumstances contributing to economic vitality (as witnessed with COVID-19) can change very quickly. Adapting the strategies of the Downtown Development Authority to meet the current needs of a rapidly changing economic landscape is an important issue.

2) Diversity is another important issue. A thriving downtown environment will include something for everyone, such that it will serve as a place where people of various many cultures, races, backgrounds, and socioeconomic statuses converge in a meaningful way. This is a necessary benchmark and a vision for a healthy community.

3) The rising cost of doing business is another important issue. Downtown businesses are seeing high rent prices in the midst of an Internet shopping era (and now a pandemic), which reduces in-person shoppers and purchases and squeezes the profits typically attributable to a having a traditional storefront. This is an issue that requires creative and forward-thinking dialogue that is centered on how the downtown community can maintain its sense of place with traditional brick and mortar businesses in this new age.

Please specify any activities which might create a serious conflict of interest if you should be appointed to this board or commission:

The practice of law and representation of certain clients.

Upon application for and acceptance of appointment, board and commission members demonstrate their intention and ability to attend meetings. If appointed, frequent nonattendance may result in termination of the appointment.

By typing your name in the space provided, I submit my electronic signature and application to the City of Fort Collins and swear or affirm under penalty of perjury pursuant to the laws of the State of Colorado:

- that I meet the eligibility requirements of the position sought and
- that the information provided in this application is true and correct to the best of my knowledge.

Signature: ____________________________ Date: ________________

Optional: How did you learn of a vacancy on this board or commission:

☐ Newspaper ☐ Cable 14 ☐ City News (Utility Bill Insert) ☐ Website

Other (please specify) ____________________________
AMANDA T. HUSTON 308 West Street Fort Collins, Colorado 80521 - 303-910-5205 - AHUSTON@CP2LAW.COM EDUCATION GPA · Juris Doctorate (certificate in Corporate & Commercial Law), University of Denver Sturm College of Law (2016) ...3.84 (3rd in class) · Master of Arts in Communication Studies, University of Northern Colorado (May, 2009) ... ..4.0 · Bachelor of Arts in Communication Studies; Political Science Minor, University of Northern Colorado (May, 2007) . ..3.7 · Extended Spanish study, Aims Community College (2011-2012); and Málaga, Spain (2017) 4.0 · Extended study Adobe Illustrator, Aims Community College (Spring, 2013) ...4.0


PREVIOUS WORK EXPERIENCE
Administrative Assistant, Greeley Downtown Development Authority (August, 2011-May, 2013)
Instructor, Communication Studies and 1st Year Experience Programs, University of Northern Colorado (2007-2009)
Compound Director, Camp Balcones Springs, Marble Falls, TX (Summer, 2008)
Ambassador, University of Northern Colorado (January, 2005-January, 2006)
Case Administration Intern/ File Clerk, United States Bankruptcy for the District of Colorado (Summer, 2003 & 2004)

PREVIOUS PUBLICATIONS AND AFFILIATIONS
Prior Student Organization Membership:
Student Trial Lawyers Association, (Fall, 2013)
Dean's Excellence Committee (2013-2016)

Professional and Local Publications:
Allen L., Keaten, J., Lee, Y, Hammack, A., & Huston, Z., A deconstruction of the linguistic and cultural assumptions
APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES
INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED FOR APPOINTMENT

Eligibility Requirements
- 1 year residency within the Fort Collins Growth Management Area

Board or Commission: Downtown Development Authority
Name: David Lingle
Mailing Address:_________________________________________ Zip:________________________
Residence:_________________________________________ Zip:________________________
Home Phone: ____________________ Work Phone: ____________________ Cell Phone:________________________
E-Mail Address: __________________________________________

Have you resided in the Fort Collins Growth Management Area for at least one year? ☑Yes ☐No
Do you reside or own property within the DDA? ☑Yes ☐No

Current Occupation: Development Project Manager Employer: Loveland Housing Authority

Recent and/or relevant work experience (please include dates) Former principal with Aller-Lingle-Massey
Architects P.C. (now alm2s) in Fort Collins for over 30 years, retiring in 2017. I now work part time for the
Loveland Housing Authority As an architect, I worked on many projects in downtown Fort Collins, including the renovation
and additions to the Lincoln Center, the Northside Aztlan Community Center, restoration of the C&S Freight Depot

Recent and/or relevant volunteer experience (please include dates) City of Fort Collins, Planning & Zoning
of Estes Park, Stanley Historic District Technical Review Committee, 2006 City of Loveland, Planning Commission,

Are you currently serving on a City board or commission? ☐Yes ☑No

Why do you want to become a member of this particular board or commission? I have worked with the DDA in the past, both as an architect in Fort Collins and as a past member of the Planning & Zoning Board and Landmark Preservation Commission. Now that I live downtown, I would like to offer to serve the DDA on their board.

Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? ☑Yes ☐No

If yes, please share your experience:
I have previously presented projects to the DDA Board for facade grants, have participated in panel discussions with previous DDA Boards related to architecture, urban planning and historic preservation, and have worked with the Executive Director

List any abilities, skills, certificates, specialized training, or interests you have which are applicable to this board or commission:
Bachelor of Arts in Architecture and Bachelor of Architecture degrees, with specializations in my architectural practice in historic preservation and affordable housing. I was previously licensed to practice architecture in Colorado, New Mexico and Wyoming, however those licenses are now “inactive”. I am also a LEED Accredited Professional.
Briefly explain what you believe are the three most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) Continued investment in downtown Fort Collins. The DDA should continue to invest in new infrastructure downtown, such as the enhanced alleyways and the rehabilitated Old Town Square, and continue to support private owner’s investments in their properties through the facade grant program.

2) Encourage creative and innovative architecture in the downtown area, while respecting the preservation of historic structures in downtown. The DDA should strive to promote creativity and innovation in architecture through their grant program, while advocating that the City’s LPC and P & Z Board fairly interpret and apply the applicable historic preservation standards to projects within the downtown district.

3) Encourage an appropriate blend of local retail, office, residential, restaurant/bar and theater/entertainment businesses in the downtown. While I do not fully understand the DDA’s role in promoting a healthy mix of businesses, I do know that the character of downtown changes dramatically after about 10:00 pm. While downtown’s level of activity is enviable compared to many places in the country, it needs to remain a welcoming and safe place for all residents at all times of the day.

Please specify any activities which might create a serious conflict of interest if you should be appointed to this board or commission:

Now that I have retired from practicing architecture, I don’t believe that there are any issues that would constitute a conflict of interest.

Upon application for and acceptance of appointment, board and commission members demonstrate their intention and ability to attend meetings. If appointed, frequent nonattendance may result in termination of the appointment.

By typing your name in the space provided, I submit my electronic signature and application to the City of Fort Col and swear or affirm under penalty of perjury pursuant to the laws of the State of Colorado:

- that I meet the eligibility requirements of the position sought and
- that the information provided in this application is true and correct to the best of my knowledge.

Signature: ________________________________ Date: __________________

Optional: How did you learn of a vacancy on this board or commission:

☐ Newspaper  ☐ Cable 14  ☐ City News (Utility Bill Insert)  ☐ Website

Other (please specify) ________________________________________________
RESOLUTION 2020-117
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING APPOINTMENTS TO THE BOARD OF THE
DOWNTOWN DEVELOPMENT AUTHORITY

WHEREAS, vacancies currently exist on the Downtown Development Authority of the City due to vacancies created by an expiration of the term and resignation of certain members; and

WHEREAS, the City Council desires to make appointments to fill the vacancies that exist on the Downtown Development Authority; and

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the following named persons are hereby appointed to fill current vacancies on the Downtown Development Authority hereinafter indicated, with terms to begin immediately and to expire as set forth after each name:

<table>
<thead>
<tr>
<th>Downtown Development Authority</th>
<th>Expiration of Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amanda Huston</td>
<td>December 31, 2024</td>
</tr>
<tr>
<td>David Lingle</td>
<td>December 31, 2024</td>
</tr>
<tr>
<td>Jenny Schultz</td>
<td>December 31, 2024</td>
</tr>
</tbody>
</table>

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 15th day of December, A.D. 2020.

__________________________________________
Mayor

ATTEST:

_______________________________
City Clerk
AGENDA ITEM SUMMARY
December 15, 2020

STAFF
Maren Bzdek, Historic Preservation Planner
Paul Sizemore, Interim Director, Comm. Devt. & Neighborhood Serv.
Brad Yatabe, Legal

SUBJECT
Resolution 2020-117 Making Findings of Fact and Conclusions of Law Regarding the Appeal of the Landmark Preservation Commission's Determinations of Landmark Eligibility for 724 and 726 South College Avenue.

EXECUTIVE SUMMARY
The purpose of this item is to make findings of fact and conclusions regarding the appeal of the Landmark Preservation Commission's Determinations of Landmark Eligibility for 724 and 726 South College Avenue. The appeal was heard by Council on December 1, 2020. The Council voted to overturn the Commission's decision.

STAFF RECOMMENDATION
Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION
On September 16, 2020, the Landmark Preservation Commission (LPC) decided on a 5-1 vote that the properties at 724 and 726 South College Avenue are eligible for designation as Fort Collins landmarks based on the requirements in City Code Section 14-22, finding that the two properties demonstrate significance for their design and construction as vernacular wood dwellings and retain historic integrity in all of the seven aspects of integrity.

On September 30, 2020, Gannett Properties, LLC, filed a Notice of Appeal with the City Clerk, alleging that the LPC failed to properly interpret and apply Land Use Code Section 14-22 - Standards for determining the eligibility of sites, structures, objects, and districts for designation as landmarks or landmark districts.

On December 1, 2020, Council held a hearing to consider the appeal. After discussion, Council adopted a motion on a 4-3 vote (Nays: Stephens, Cunniff, Gutowsky) that overturned the Landmark Preservation Commission's decision that the properties are eligible for historic landmark designation because the Commission failed to properly interpret and apply City Code Section 14-22(a) in finding that 726 and 726 South College possessed integrity, because the integrity criteria such as feeling and association were not met.
RESOLUTION 2020-117
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE
APPEAL OF THE LANDMARK PRESERVATION COMMISSION’S DETERMINATIONS
OF LANDMARK ELIGIBILITY FOR 724 AND 726 SOUTH COLLEGE AVENUE

WHEREAS, on September 16, 2020, the Landmark Preservation Commission (“LPC”) conducted a de novo public hearing on the appeal of the City staff determination that 724 and 726 South College Avenue (the “Properties”) were eligible for Fort Collins landmark designation; and

WHEREAS, the LPC determined that the Properties are eligible for Fort Collins landmark designation pursuant to City Code Section 14-22, Standards for determining the eligibility of sites, structures, objects and districts for designation as landmarks or landmark districts, because the Properties are significant for their design and construction and meet all seven aspects of integrity; and

WHEREAS, on September 30, 2020, Gannett Properties, LLC, (the “Appellant”), the owner of the Properties, timely filed a Notice of Appeal with the City Clerk appealing the LPC eligibility determination pursuant to City Code Sections 2-47 and 14-9; and

WHEREAS, the Notice of Appeal asserted that the LPC failed to properly interpret and apply City Code Section 14-22; and

WHEREAS, on December 1, 2020, the City Council, after notice given in accordance with Chapter 2, Article II, Division 3, of the City Code, considered the appeal, reviewed the record on appeal, received new evidence for consideration, and heard presentations from the Appellant and City staff; and

WHEREAS, after discussion, the City Council found and concluded based on the evidence in the record and presented at the December 1, 2020, hearing that the LPC failed to properly interpret and apply City Code Section 14-22 because the LPC incorrectly determined that the Properties possess integrity when in Council’s determination, the Properties lack sufficient feeling and association necessary to establish integrity and are, therefore, not eligible for Fort Collins landmark designation; and

WHEREAS, City Code Section 2-56(c) provides that no later than the date of its next regular meeting after the hearing of an appeal, City Council shall adopt, by resolution, findings of fact in support of its decision on the Appeal.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, pursuant to Section 2-56(c) of the City Code, the City Council hereby makes and adopts the following findings of fact and conclusions:

1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
2. That the grounds for appeal stated in the Notice of Appeal conform to the requirements of Section 2-48 of the City Code.

3. That based on the evidence in the record and presented at the December 1, 2020, Council hearing, the Appellant’s allegation that the LPC failed to properly interpret and apply City Code Section 14-22 has merit.

4. That the December 1, 2020, LPC determination that the Properties are eligible for Fort Collins landmark designation is hereby overturned and the Properties are not eligible for Fort Collins landmark designation.

5. That except as stated in this Resolution, any other issues raised in the Notice of Appeal are hereby found to be without merit and denied.

6. That adoption of this Resolution shall constitute the final action of the City Council in accordance with City Code Section 2-56(c).

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 15th day of December A.D. 2020.

____________________________
Mayor

ATTEST:

____________________________
City Clerk
SUBJECT

First Reading of Ordinance No. 164, 2020. Authorizing the City Manager to Execute an Agreement with the Developer of Montava for the Annual Use of Up to 25 Acre-Feet of Water of Fort Collins Utilities in a Plan for Augmentation for a Potable Water Supply for the Montava Property.

EXECUTIVE SUMMARY

The purpose of this item is to consider a perpetual agreement between HF2M Inc., the Developer of Montava (Developer), and Fort Collins Utilities (Utilities). Under the agreement, in exchange for cash payments, Utilities would annually deliver up to 25 acre-feet of augmentation water from the City’s Rigden Reservoir in southeast Fort Collins to the Poudre River. The Developer (and successor entities) would use the augmentation water to replace the steam depletions from groundwater wells that would provide a potable water supply for Montava. The cash payments and water deliveries contemplated in the agreement are contingent on the Developer acquiring various City and Water Court approvals.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Montava is a multi-phase, long-term development proposal located in the northeast portion of Fort Collins. The project is located in the area covered by the Mountain Vista Sub Area Plan (MVSAP) first envisioned in 1999 and updated in 2009. A map from the Developer has been included. (Attachment 2) It is estimated to take about 20-25 years to build, will include about 4,000 housing units across ~1,000 acres, and is estimated to serve about 11,000 new residents.

Summary of Montava development activity to date:

- September 2018: Council approved the Montava Metro District Service Plan.
- January 2020: Council approved the Metro District Public Benefits Agreement.
- February 2020: Council approved the Montava Master Plan and Planned Unit Development (PUD) Overlay (the “Development”).

By way of the Montava Metro District, the development is bound to certain additional public benefits outlined in the Public Benefits Agreement. These include the following, with some additional information for context:
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• **Affordable Housing**: The Montava Metro District is obligated to deliver 300 affordable and 300 attainable housing units. One of the enforcement mechanisms is that they must build 65% of the affordable/attainable units before they can start the 2nd half of building permits. There will be a 20-year deed on the affordable units.

  o The City’s current goal based on the 2015-19 Affordable Housing Strategic Plan is to have 10% of housing stock be affordable by 2040. Staff estimates this requires about 300 more affordable units each year. Staff are updating this plan and aim to have it adopted by Council in early 2021. The term “affordable” refers to residents earning 80% or less than the Area Median Income (AMI). The term “attainable” refers to residents earning 81-120% of AMI. To learn more visit fcgov.com/housing.

• **Climate Action-related Requirements**: All single-family units will be constructed to the Department of Energy Zero Energy ready standard, will require a 3rd party verification and cannot get Certificate of Occupancy without meeting this obligation.

• **Non-potable water for irrigation** of common areas, using wells that have historically been used to irrigate the Montava property. City Planning will review and will withhold Certificate of Occupancy if not constructed.

• **Agri-urban Component**: Development of a working 47-acre farm with a 5-year period to become operational. If the farm does not come to fruition in this time period, the City has an option to purchase the land.

*What is the status for water and sewer for the Development?*

The Montava property is within the East Larimer County Water District (ELCO) and the Boxelder Sanitation District service areas. At the PUD Master Plan stage, which is conceptual and very high level, the only requirement in City’s Land Use Code related to water and sewer is to prove that utility services are available for the site. Both ELCO (water) and Boxelder Sanitation District (sewer) have provided “will serve” letters, satisfying the requirement at this point.

The Developer has stated that ELCO’s policies and cost of fees for water service are a barrier to financing the Development. To have certainty to finance a development of this size, the Developer states that it needs to show certainty around the water service, which they state will require the Developer to purchase or develop all of the water supplies for the development up front. ELCO requires that developers desiring water service meet a “water supply requirement” by transferring to ELCO Colorado-Big Thompson Project contractual units or shares from certain local ditch companies (not all water rights can be utilized by ELCO or will increase the firm yield of their water supply portfolio). ELCO will also accept up to 30% of this water supply requirement as cash-in-lieu payments. A map of the water districts has been included. (Attachment 3)

The Developer has discussed the alternative groundwater-based approach discussed below with the ELCO Board in October 2020 and ELCO has opted to investigate the potential impacts to their system over the next 6-9 months before deciding how it will proceed with respect to the Developer’s proposal to use groundwater.

Note that the Developer is planning to utilize Boxelder Sanitation District for wastewater services.

GROUNDWATER FOR MONTAVA and AN AUGMENTATION PLAN

*What is the new proposed plan for a potable water supply for Montava?*

To meet the indoor potable water demands of the Development, the Developer is now proposing to pump and treat groundwater from the Boxelder Creek alluvial aquifer on or near the eastern edge of the Montava property. This would involve drilling several new wells. The existing wells on the property would be used for outdoor irrigation only. 
Wells that are tributary to surface streams can only pump groundwater on a permanent basis pursuant to a Water Court-approved “augmentation plan.” The aquifer in this case is a tributary of the Poudre River and Boxelder Creek, meaning pumping will cause depletions to both. Groundwater pumped must be replaced so as not to injure other senior water users downstream. Colorado water law is based on the doctrine of prior appropriation or “first in time, first in right”. These new wells’ rights will be junior to many other water rights downstream. In a case where a junior water right is diverting water “above” a senior water right, the senior water right is entitled to make a “call” on the river and limit those who are junior until the senior user is getting its full amount again. The effect of groundwater pumping is delayed in how it ultimately depletes the water available in the river. For this reason, and to avoid having to stop pumping, separate “augmentation” water must be delivered to the river when there is a downstream call by a senior water right. The full amount may not be needed every year, but to be allowed to pump the groundwater the Developer must have the augmentation water in place when this situation occurs.

What water will be used to replace the groundwater depletions?

Most of the depletions from the groundwater pumping (about 90%) will be replaced with treated effluent at the Boxelder Sanitation District plant, because most water used indoors is eventually collected and reclaimed at the sanitation facility. This water is effectively the groundwater that would be pumped and used by Montava residents. To account for the water that does not return to the system this way, a small amount of additional augmentation water is required for the other depletions. See the included chart provided by the Developer of overall water demands and supplies. (Attachment 2)

Deliveries of augmentation water under the agreement with Utilities would be made between September 1 and April 30 each year. According to the Developer, the requested 25 acre-feet amount is based on the worst-case scenario as determined by reviewing historical calls on the river during these months. The overall groundwater approach will require being prepared with additional augmentation water at different points in the river, and the Developer is working with different entities to secure rights to that water.

The Developer has proposed this timeline of when augmentation water will be needed:

- 2021-2022: Pursue decree for a plan for augmentation in Water Court.
- 2023: Build potable water treatment facility.
- 2024: Starting building first phase of homes.
- 2026: Earliest need for augmentation water, and only if a call on the river.
- 2084: Expected to reach full need for augmentation water, again, based on calls on the river.

Other details related to the augmentation plan:

An approved augmentation plan is set forth in a Water Court decree that: (1) quantifies the depletions from well pumping (in time, location, and amount); (2) defines when augmentation water must be delivered to the stream to replace those depletions (in time, location, and amount) so that other water rights are not injured; and (3) includes other terms and conditions needed to ensure that pumping the wells does not injure other water rights.

The Developer would use the water provided under this agreement with Utilities to replace some of the depletions. In Water Court proceedings, agreements for augmentation water are generally required to be firm and definite, so that other water users and the Water Court can be sure that there will be augmentation water in the future to replace depletions from today’s pumping.

Purpose of this groundwater: Note that the Developer has indicated that the new groundwater wells will primarily be for potable water use as well as some ancillary uses, such as purposes related to replacing water that evaporates from an irrigation pond. The proposed agreement includes two points of delivery from Rigden Reservoir. Which one is used at any given time would depend on whether a call is being placed at the Fossil Creek Reservoir Inlet Ditch, or downstream.
What about the rest of the Development’s water needs?

As part of the Montava Metro District public benefits agreement, they are required to complete a non-potable irrigation system to meet the other needs of the Development. This water would come from existing non-tributary “Coffin” wells and some wells included in an already existing augmentation plan, all of which have historically served the farmland on the property, according to the Developer. Additional information about these wells and the non-potable irrigation system are not available yet.

Where will the Utilities “augmentation water” come from?

The water will be delivered via the City-owned Rigden Reservoir (Rigden) located in the southeast part of Fort Collins. Utilities has several water rights that are already allowed to be used for augmentation. Rigden was built in 2015 and has 1,900 acre-feet of capacity of which 1,600 acre-feet is allocated to Utilities and 300 acre-feet is allocated to Natural Areas. Utilities’ current and planned main use of Rigden is for meeting return flow obligations as Utilities grows into fully utilizing changed irrigation water rights, which will become more necessary with projected growth and the construction of the Halligan Water Supply Project. Utilities also uses Rigden to help meet some small (current) augmentation requirements for Natural Areas, managing reusable effluents from the Drake Water Reclamation Facility and making (small) annual leases on an “as available” basis. Natural Areas uses their 300 acre-feet in Rigden to store water rights they have changed to help meet augmentation requirements for various unlined gravel pits.

POTENTIAL IMPACTS to UTILITIES

The current Water Supply and Demand Management Policy water supply reliability criteria includes:

- Meeting all demands through a 1-in-50-year drought; and
- Maintaining 20 percent of annual demand in storage.

Based on the Utilities water supply system model, releasing 25 acre-feet of water as contemplated in the agreement is not projected to impact the ability to meet demands, though the ability to meet the storage reserve is diminished slightly. This impact could be offset by using the financial compensation received under the agreement (described below) to acquire additional water supplies, particularly rights that provide storage.

Water available at Rigden is below the Utilities treated water supply system intakes (i.e., well below the pipelines that deliver raw water to the Water Treatment Facility) and thus generally unable to increase the firm yield to our treated water customers. However, if there was an issue with delivering Rigden water to meet the needs of this proposed agreement (e.g., infrastructure failure, extreme multiyear drought, etc.) Utilities would have to draw from other supplies (e.g., Joe Wright and/or (future) Halligan Reservoirs) to meet Montava’s augmentation needs.

What are the other potential risks and considerations?

- Utilities is planning to update the Water Supply and Demand Management Policy in the next few years that will likely incorporate results of the recently completed Water Supply Vulnerability Study, which could result in a different outlook on the impact of the agreement.
- Utilities or other City departments may want or need to use this volume of water stored in Rigden in the future and it would be hard to affordably replace this small amount via gravel pit storage or some other alternative to Rigden.
- There is no existing code or policy around providing permanent augmentation water to an outside entity (non-Utilities customers). Utilities has never entered into an agreement of this nature and it would potentially set a policy precedent outside of a comprehensive policy-making process.
- Utilities providing this water may imply that Utilities is able to provide other support or services related to the Development’s water supply plan.
- This agreement requires staff time and resources to administer and operate.
• The City will need to be a party to the Water Court case to ensure that the augmentation plan does not adversely impact the City’s water rights.

COMPENSATION

When Utilities agrees to lease raw water on a short-term, temporary basis (e.g., one year), it does not require the user to satisfy a water supply requirement by providing water rights or a cash-in-lieu payment. These lessees only pay a volumetric rental rate up front.

To compensate for *permanent* use of a Utilities water supply, any developer must generally satisfy a water supply requirement. Utilities’ water supply requirement for treated water service in City Code is helpful but is not truly analogous to the Developer’s request. For treated water service, Utilities can provide single-use and reusable water. However, the Developer desires deliveries of augmentation water requiring fully reusable water supplies, which are difficult to obtain and manage (e.g., requires storage to provide winter demands).

*Have we done a perpetual augmentation agreement before?*

No. Utilities has entered two other agreements to provide either augmentation or reusable supplies:

• A permanent agreement with a Utilities customer that requires reusable water sources.
• A 50-year augmentation lease for 1 acre-foot to a non-Utilities entity (US Fish and Wildlife Service) for rehabilitating the black-footed ferrets on previously owned City land.

In both arrangements, Utilities applied a multiplier of 2.63 to the number of acre-feet (AF) requested since augmentation water requires fully reusable supplies, which, as noted above, are harder to obtain and manage.

*The initial, one-time “water supply requirement” payment for a permanent use of a Utilities water supply would be:*

Cash payment = Cash-in-Lieu Rate x 2.63 multiplier

Under the 2021 Cash-in-Lieu rate of $22,145, the total payment would be $58,241.35 per acre-foot, or $1,456,033.75 for all 25 acre-feet.

It will likely take a few years to get Water Court approval of its augmentation plan and to acquire other City approvals. In the case that this agreement goes into effect after 2021, the payment will increase by 5% each year to account for inflation. The Developer will also have the option of paying for less than the full 25 acre-feet if, after receiving approval of the augmentation plan, they need fewer than 25 acre-feet.

There are also the following additional costs:

• **Reserve Payment:** Until the Developer is through Water Court, an annual payment will reserve the augmentation water for the Developer. The rate is half of the applicable raw water rental rate (currently $400/AF).
• **Annual Payment:** To compensate for administrative and operational costs, the Developer will pay an annual amount based on the total augmentation water delivered. The rate is the applicable raw water delivery charge(s) for fully consumable water (currently $120/AF).

**OTHER COMMUNITIES**

*What do other Front Range cities do?*

City of Boulder

• Boulder City Code prevents perpetual lease agreements (only 20 year maximum).
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- Only one (20 year) augmentation lease for 0.6 AF/year exists which was seen as a broad community benefit.
- A reusable water requirement was not charged possible because it is not a permanent agreement.
- Annual lease rate is $750/AF.

City of Loveland

- Loveland does not have any policy related to providing augmentation water.
- Water is provided for three augmentation plans, each of which were in individually negotiated from about 10 - 30 years ago.
- Water requirements were variable, but the two most recent were met with 2-3 times the CBT units per AF of need.
- Staff has generally avoided more recent long-term augmentation requests.
- Annual lease rate varies per agreement.

City of Longmont

- Longmont does not allow perpetual leases (only 10 year maximum).
- A reusable water requirement is not defined most likely because the city does not have permanent agreements.
- Annual reusable lease rate is $641/AF.

City of Greeley

- Greeley considers perpetual leases if the terms are such that the lease will substantially offset the potential impacts (i.e., get more water rights/cash than "normal").
- Several perpetual leases exist with various terms and conditions (and costs).

ADDITIONAL CONSIDERATIONS

The proposal presented here is a step the Developer needs to take to pursue use of groundwater to provide potable water to Montava residents. There are many other issues to eventually address as part of this approach.

A significant issue to eventually evaluate is the question of whether this water source is adequate for the population of the Development.

Council has not had to address the question of water adequacy as other development within the City has been served by an existing, vetted water provider. The Colorado statute defines "adequate" to mean "a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability". (C.R.S. §29-20-301 et seq) Given that land use decisions are local decisions in Colorado, the state also puts the determination in the hands of the local land use authority. Certain information is required and the statute allows the local authority to require additional information and analysis as it sees fit.

There are, of course, additional items that Council and City Planning will need to consider later in the process of evaluating the Developer's proposal, including:

- Building a new water treatment plant;
- Water quality of the groundwater;
- Water reliability and resiliency;
- Cost to build the treatment plant; and
- Cost to customers (water bills), among others.

Finally, this approach may lead to the creation of another water provider in the GMA that furthers complicates challenges the community already experiences.
CITY FINANCIAL IMPACTS

To compensate for perpetually dedicating a Utilities asset developed for the Utilities system and customers to an outside entity, the agreement includes a financial payment for the water supply requirement.

BOARD / COMMISSION RECOMMENDATION

Staff presented this item as an informational item to the Water Board on November 19, 2020. Staff returned to the Water Board on December 3, 2020 for additional discussion and for the Board to consider making a recommendation to Council. The unapproved minutes from the December 3, 2020 meeting are included. The Water Board’s unanimous motion was:

“Water Board recommends that Council approve this 25 acre-foot augmentation agreement, conditional upon City determination of water adequacy, among other approvals — including the appropriateness of using groundwater to meet the Montava project’s water supply needs — and because the compensation will ensure this is neutral to Utilities customers, and because this only represents an incremental action that will lead to additional analysis.”

PUBLIC OUTREACH

Staff conducted outreach to peer organizations to help inform the proposed agreement and develop the potential impacts to Utilities. Otherwise, the technical agreement that did not require public outreach, but is one component of a larger discussion that will likely involve a public conversation.

ATTACHMENTS

1. Water Demand Chart (PDF)
2. Map of System from Developer (PDF)
3. Water Districts Map (PDF)
4. Water Board Minutes (excerpt) (PDF)
5. Powerpoint Presentation (PDF)
### Total Montava Annual Water Demand

- **Total Water Demand:** 1388 acre feet (AF)
- **Total Potable Demand:** 600 AF
- **Non-potable Demand:** 788 AF

### Potable vs. Non-Potable Demand

- **600 AF Total Potable Demand**
- **600 AF Potable Indoor Uses**
- **18 AF irrigation pond evap**
- **300 AF irrigation of lots / common areas**
- **200 AF irrigation for 3 PSD schools**
- **170 AF irrigation of Regional Park (mainly WSSC)**
- **70 AF irrigation of Native Hill Farm @ M**
- **30 AF irrigation of Neighborhood Parks**

### Water Use Description

- **30 AF Irrigation of Neighborhood Parks**
- **170 AF Irrigation of Regional Park (mainly WSSC)**
- **200 AF irrigation for 3 PSD schools**
- **300 AF irrigation of lots / common areas**
- **18 AF irrigation pond evap**

### Water Source

- **618 AF from Tributary Groundwater Wells**
- **~ 770 AF from Groundwater wells not requiring augmentation & surface water i.e. WSSC/NPIC**

### Augmentation Need

- **558 AF Replaced via treated effluent**
- **40 AF augmented via Seaworth, WSSC, Other**
- **25 AF augmented via Fort Collins Utilities**
- **These sources do not require augmentation**

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Chart is not to scale. Values provided by Developer.
Developer Request for Perpetual Water Augmentation Agreement
Interim Utilities Deputy Director-Water Resources & Treatment Operations Liesel Hans gave an overview of the request and draft agreement. The Montava developer (HF2M) requests a perpetual agreement in which Fort Collins Utilities would deliver up to 25 acre-feet of augmentation water to the Poudre River during winter months from Rigden Reservoir. The agreement would be conditional upon the developer (or a successor entity, such as a metro district) meeting certain criteria. Dr. Hans, Assistant City Attorney Eric Potyondy, Water Resources Manager Donnie Dustin, and Interim Utilities Executive Director Theresa Connor responded to board members’ questions.

Discussion Highlights
Board members commented on and inquired about various related topics including precedent; what proof City needs that water has been acquired (staff responded this development is within an existing service area; service exists and is available for this property); groundwater well water impact on the Poudre River; “Coffin wells” (refers to several wells adjudicated in the 1950s; the judge at the time, named Claude C. Coffin, determined these wells were non-tributary and were allowed to pump without an augmentation plan); water quality; water rights decreed for augmentation; other communities’ perpetual water augmentation agreements; Utilities water rights activity; future drought and return flow obligations; likelihood of a bigger housing development in the future requesting a similar agreement (staff responded this agreement does not obligate Utilities to another entity); unintended impacts such as the possibility of opening the door to Montava regarding other services, such as a secondary backup system (staff responded East Larimer County Water District (ELCO) would more likely provide backup); water adequacy issues; water supply planning as it relates to the Growth Management Area (GMA); reason for rushed feeling of developer’s request (staff responded that the developer is motivated due to the fact that it will take several years to go through the water court process, and there’s a possibility of other entities’ water court filings); parallel paths and appropriate safeguards; Boxelder Sanitation District; City offers lower cost water.

Board Member Michael Brown, Jr moved that the Water Board recommend City Council approve this 25 acre-foot transaction agreement, conditional upon City determination of water adequacy, among other approvals – including the appropriateness of using groundwater to meet the Montava project’s water supply needs -- and because the compensation will ensure this is neutral to Utilities customers, and because this only represents an incremental action that will lead to additional analysis.
Discussion on the motion: A board member offered a friendly amendment to the motion to replace “transaction” with “augmentation.” Board Member Brown accepted the friendly amendment.

The revised motion is as follows:

Board Member Michael Brown, Jr moved that the Water Board recommend City Council approve this 25 acre-foot augmentation agreement, conditional upon City determination of water adequacy, among other approvals – including the appropriateness of using groundwater to meet the Montava project’s water supply needs -- and because the compensation will ensure this is neutral to Utilities customers, and because this only represents an incremental action that will lead to additional analysis.

Board Member Nicole Ng seconded the motion.

Discussion on the motion: A board member inquired whether the amendment would add burden to the process. Staff replied that it would not.

Vote on the Motion: it passed unanimously, 10-0.
Montava: Request for Augmentation Water
Liesel Hans, Interim Deputy Director, Utilities
• Request
• Review of Montava
• Groundwater and augmentation water
• Considerations
• Discussion
Request for Consideration

HF2M (Developer of Montava) requests a perpetual agreement where Fort Collins Utilities will deliver up to 25 acre-feet of augmentation water to the Poudre River via City-owned Rigden Reservoir.

Conditional upon:

- a final and unappealable determination that the proposed potable water supply for the Property is adequate
- all necessary approvals under the Fort Collins Municipal Code and the City’s Land Use Code
What is Montava?

- About 4,000 homes built on ~1,000 acres in northeast Fort Collins over ~25 years
- Master-planned community
- Expected to serve ~11,000 people
- “…connected community with new neighborhoods, parks, schools, town center, urban agriculture, businesses, and transportation connections…”
Montava development progress

September 2018
City Council approved Metro District Service Plan

January 2020
City Council approved Metro District Public Benefits Agreement

February 2020
City Council approved Master Plan and (PUD) Overlay

March 2020
1st phase submitted to Planning for a Preliminary Design Review (PDR)

Ex: 600 affordable/attainable housing units

Water and sewer “will serve” letters
Where are we today?

- Undeveloped land within the GMA is becoming increasingly scarce.
- Much of the remaining undeveloped land in the GMA is not served by City sewer and water utilities, which could impact the availability, timing, and pricing of future development in these areas.
- Underutilized properties have significant potential for infill and redevelopment, particularly along current and future transit corridors.
- Without a significant increase in density and key locations, a transportation system desired by the community, including improvements to transit and infrastructure for bicycles and pedestrians, will not be viable.
Groundwater and augmentation water
Colorado Water Law
“First in time, first in right”

Water rights, mostly surface water diversions

New groundwater wells, junior water rights
Groundwater and surface water are a connected system.

Pumping groundwater will deplete water in the river.

Downstream users rely on that water being in the river and depletions need to be replaced.
Colorado Water Law
"First in time, first in right"

Senior water rights, mostly surface water diversions

Add water back to the river

New groundwater wells, junior water rights
Groundwater and surface water are a connected system.

Replace depletions by releasing water into the river:

1) Treated effluent and 2) Augmentation water
1388 acre feet (AF) Total Water Demand

Total Montava Annual Water Demand

600 AF Total Potable Demand

Potable vs. Non-Potable Demand

600 AF Potable Indoor Uses

Water Use Description

618 AF from Tributary Groundwater Wells

Water Source

558 AF Replaced via treated effluent

Augmentation Need

25 AF augmented via Fort Collins Utilities

200 AF irrigation for 3 PSD schools

300 AF irrigation of lots / common areas

170 AF irrigation of Regional Park (mainly WSSC)

20 AF Irrigation of Native Hill Farm @ M

30 AF Irrigation of Neighborhood Parks

~ 770 AF from Groundwater wells not requiring augmentation & surface water i.e. WSSC/NPIC

These sources do not require augmentation

Chart is not to scale. Values provided by Developer. AF = acre-feet
Timeline proposed by Developer

- **2021-2022**: Pursue plan in water court
- **2023**: Build groundwater treatment facility
- **2024**: Deliver potable water to first homes
- **2026**: Earliest need for aug. water
- **2154**: Expected need for full aug. water amount
Considerations
Based on the current Utilities Policy and water supply system model:
• Does not impact ability to meet demands
• Reduces ability to meet the storage reserve criteria

**The overall impact is neutral** because the agreement includes the financial payment which can be used to acquire additional water supplies, particularly ones that provide storage

Utilities is set to update the Policy soon; different policy criteria may result in a different conclusion
Financial compensation

Water Supply Requirement Payment = ~$58k per acre-foot

- Utilities does not have a codified water supply requirement (WSR) for reusable or augmentation water
- Proposed approach is based off the two “most similar” scenarios
- Other payments: Reserve payment, Annual payment
Loveland has no policy. Has agreements (mostly older), significant WSR.

Boulder does not allow lease longer than 20 years. $750/AF annual lease rate.

Greeley will consider perpetual agreements if benefits more than offset impacts. Various terms and conditions.

Longmont does not allow lease longer than 10 years. $641/AF annual lease rate.
Additional considerations

- No existing policy; No precedent
- City may want or need the water in the future
- Requires staff time to administer and operate
- Utilities providing this water may imply ability to provide other support or services related to the development's water supply plan
- Current proposal may lead to the creation of another water provider in the GMA and furthers complicates those challenges
- May result in a large development relying on a different water source
Just one piece of the pie

Augmentation Water
ELCO
Water Adequacy
Water Treatment Facility
Energy costs
Water quality
Water costs
Water Board recommends City Council approve this 25 acre-foot augmentation agreement, conditional upon City determination of water adequacy, among other approvals – including the appropriateness of using groundwater to meet the Montava project’s water supply needs – and because the compensation will ensure this is neutral to Utilities customers, and because this only represents an incremental action that will lead to additional analysis.
HF2M (developer of Montava) requests a perpetual agreement where Fort Collins Utilities will deliver up to 20 AF of augmentation water to the Poudre River during winter months via Ridgen Reservoir.

Conditional upon:

- a final and unappealable determination that the proposed potable water supply for the Property is adequate
- all necessary approvals under the Fort Collins Municipal Code and the City’s Land Use Code
Thank you
Additional Slides
ORDINANCE NO. 164, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE
DEVELOPER OF MONTAVA FOR THE ANNUAL USE OF UP TO 25 ACRE-FEET OF
WATER OF FORT COLLINS UTILITIES IN A PLAN FOR AUGMENTATION FOR A
POTABLE WATER SUPPLY FOR THE MONTAVA PROPERTY

WHEREAS, the City owns and operates a water utility as part of Fort Collins Utilities
(“Utilities”), which includes various water rights and contractual and other rights to use water
(“Utilities Water Interests”); and

WHEREAS, City of Fort Collins Charter Article XII, Section 4 provides that the use of
water belonging to the City shall always be subject to the most comprehensive scrutiny,
management, and control by the City; and

WHEREAS, Charter, Article XII, Sections 3 and 6 prohibit actions that materially impair
Utilities water system or do not benefit the citizens of Fort Collins and Utilities ratepayers; and

WHEREAS, water attributable to some of the Utilities Water Interests can be used to
replace out-of-priority depletions under a plan for augmentation approved by the District Court
for Water Division 1 (“Water Court”) or substitute water supply plan approved by the Colorado
Division of Water Resources (“augmentation use”) pursuant to the terms and conditions of their
respective decrees, contracts, and other controlling documents (“Utilities Augmentation Water”); and

WHEREAS, HF2M, Inc., a Texas corporation (“Developer”), is pursuing a development
on approximately 1,000 acres within the City’s municipal boundaries, commonly referred to as
the “Montava” development (“Property”); and

WHEREAS, the Developer is pursuing the development of a potable water supply system
for the Property as described further below (“Potable System”), which includes some ancillary
non-potable uses, such as purposes related to an irrigation pond on the Property; and

WHEREAS, implementation of this Potable System will require various permits and
approvals, including from the City, a water adequacy determination under Colorado statute
C.R.S. §29-20-303, and various approvals under City Code and the Land Use Code; and

WHEREAS, for this Potable System, the Developer intends to initiate proceedings in
Water Court to seek judicial confirmation of water rights and approval of a plan for
augmentation for wells located on and/or near the Property that would pump ground water
tributary to Boxelder Creek and the Cache la Poudre River for the primary purpose of a potable
water supply for the Property (“Augmentation Plan”); and

WHEREAS, the Developer thus requires water for augmentation use to be used pursuant
to the terms and conditions of the Augmentation Plan or associated substitute water supply plans,
and Utilities Staff and the Developer have thus negotiated a proposed agreement, a copy of which is attached as Exhibit “A” (“Agreement”); and

WHEREAS, under the proposed Agreement, Utilities would annually deliver up to 25 acre-feet of Utilities Augmentation Water to specific locations for augmentation use under the Augmentation Plan or associated substitute water supply plans, provided that the Developer and any successor(s) have strictly complied with all terms and conditions set forth in the Agreement; and

WHEREAS, such terms and conditions in the proposed Agreement include those providing that, to be entitled to deliveries of water under the Agreement, the Developer and any successor(s) must first acquire from the City: (1) a final and unappealable determination that the Potable System for the Property is adequate pursuant to C.R.S. §29-20-301 et seq.; and (2) all final and unappealable approvals required under City Code and the Land Use Code to begin construction of the initial phase of the Montava development (together, “City Approvals”); and

WHEREAS, with respect to the Potable System, the Agreement thus amounts to an incremental action in advance of additional analyses, including those associated with the City Approvals; and

WHEREAS, such terms and conditions in the proposed Agreement also include those requiring the Developer and any successor(s) to make various cash payments to Utilities in compensation for the annual use of up to 25 acre-feet of Utilities Augmentation Water in the Augmentation Plan and any associated substitute water supply plans, which will result in the Agreement being neutral or beneficial to the City’s water utility and its water system, the City’s water utility ratepayers, or the citizens of Fort Collins; and

WHEREAS, the Water Board has reviewed the proposed Agreement and has recommended that City Council approve it pursuant to terms and conditions consistent with those identified herein and set forth in the proposed Agreement; and

WHEREAS, City Council has reviewed and evaluated the proposed Agreement and determined that the City can enter into the Agreement without adverse impacts or injury to the City’s water utility and its water system, the City’s water utility ratepayers, or the citizens of Fort Collins.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Manager is hereby authorized to execute an Agreement substantially in the form of Exhibit “A”, attached hereto and incorporated herein by this reference, with such additional terms and conditions as the City Manager, in consultation with
the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 15th day of December, A.D. 2020, and to be presented for final passage on the 5th day of January, A.D. 2021.

__________________________________
Mayor

ATTEST:

_____________________________
City Clerk

Passed and adopted on final reading on this 5th day of January, A.D. 2021.

__________________________________
Mayor

ATTEST:

_____________________________
City Clerk
AGREEMENT FOR THE ANNUAL USE OF UP TO 25 ACRE-FEET OF WATER OF THE CITY OF FORT COLLINS IN A PLAN FOR AUGMENTATION FOR A POTABLE WATER SUPPLY FOR THE MONTAVA PROPERTY

This Agreement, dated ______________, is entered into by and between the following Parties: the City of Fort Collins, Colorado, a municipal corporation (“City”); and HF2M, Inc., a Texas corporation with an office located at 430 N. College Ave., Suite 410, Fort Collins, Colorado (“HF2M”).

RECAPITALS

A. The City owns and operates a municipal water supply system and various water rights and contractual and other rights to use water (“City Water Interests”). Water attributable to some of the City Water Interests can be used to replace out-of-priority depletions under a plan for augmentation or substitute water supply plan (“augmentation use”) pursuant to the terms and conditions of their respective decrees, contracts, and other controlling documents (“City Augmentation Water”). A list of some of the City’s Water Interests associated with City Augmentation Water is attached as Exhibit A.

B. HF2M is pursuing a development on approximately 1000 acres within the City’s municipal boundaries, commonly referred to as the “Montava” development. The property on which the development is located is: the E1/2 and portions of the SW1/4 of Section 32, Township 8 North, Range 68 West of the 6th P.M.; the W1/2 of Section 33, Township 8 North, Range 68 West of the 6th P.M.; the NW1/4 and portions of the NE1/4 of Section 4, Township 7 North, Range 68 West of the 6th P.M. (“Property”). The general location of the Property is shown on the map attached as Exhibit B.

C. HF2M is pursuing the development of a potable water supply system for the Property, which includes some ancillary uses, such as purposes related to an irrigation pond on the Property. Implementation of such a potable water supply system will require various permits and approvals, including from the City. See, e.g., C.R.S. §29-20-303. Such permits and approvals are not the subject of this Agreement and nothing in this Agreement shall in any way affect or limit the City’s rights to exercise its authority or discretion with respect to any permits or approvals or their associated processes.

D. HF2M intends to seek judicial confirmation of water rights and approval of a plan for augmentation for wells located on and/or near the Property that would pump ground water tributary to Boxelder Creek and the Cache la Poudre River for the primary purpose of a potable water supply for the Property (“Augmentation Plan”). See C.R.S. §37-92-103(9); §37-92-305. HF2M thus requires water for augmentation use to be used pursuant to the terms and conditions of the Augmentation Plan or a substitute water supply plan approved pursuant to C.R.S. §37-92-308(4) associated with the Application, as the same may be amended (“SWSP”). A copy of the draft application for approval of the Augmentation Plan (“Application”) is attached as Exhibit C. Nothing in this Agreement shall be

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1 HF2M is also developing a separate, non-potable water supply system for the development that is not the subject of this Agreement.
interpreted to affect in any way the City’s rights to fully participate in any proceedings associated with the Application and to take any position regarding any claims in the Application.

E. HF2M intends to transfer the ownership of and rights and responsibilities for the potable water supply for the Property. HF2M and any assignees pursuant to Paragraph 7 are referred to herein as the “Montava Entity.”

F. This Agreement has been approved by City Council pursuant to Ordinance No. 2025-02 (“Ordinance”). A copy of the Ordinance is attached as Exhibit D. Pursuant to the Ordinance and the findings therein, the City has determined that, pursuant to the terms and conditions of this Agreement, it can annually supply the Montava Entity with up to 25 acre-feet of City Augmentation Water for the Augmentation Plan or SWSP without adverse impacts on the City’s water utility and its ratepayers.

Agreement

1. INCORPORATION OF RECITALS. The Recitals set forth above are hereby incorporated into this Agreement as if fully set forth herein.

2. CONDITION OF CITY APPROVALS. To be entitled to deliveries of water under this Agreement, the Montava Entity must first acquire from the City (collectively, “City Approvals”):

   - a final and unappealable determination that the proposed potable water supply for the Property is adequate pursuant to C.R.S. §29-20-301 et seq.; and
   - all final and unappealable approvals required under the Fort Collins Municipal Code and the City’s Land Use Code to begin construction of the initial phase of the Montava development.

Nothing in this Agreement shall in any way affect or limit the City’s processes, or the City’s authority or discretion with respect to any determinations and approvals associated with the City Approvals. If the Montava Entity fails to acquire the City Approvals on or before December 31, 2025, this Agreement shall terminate by operation of law without any requirement for further action.

3. PAYMENTS.

   3.1. Reserve Payment.

      3.1.1. Purpose of Reserve Payment. It may be several years before the Montava Entity obtains all City Approvals and a final unappealable decree for the Augmentation Plan. In the interim, the City will be reserving 25 acre-feet of City Augmentation Water for the Montava Entity for the City’s planning and other purposes on a conditional basis. To compensate the City, the Montava Entity shall therefore pay the City an annual “Reserve Payment” pursuant to this Paragraph 3.1. All payments of the Reserve Payment shall be nonrefundable.

      3.1.2. Amount of Reserve Payment. Each Reserve Payment shall be calculated as:

      Reserve Payment = Rental Rate x 0.5 x 25
“Rental Rate” = shall be the applicable rental rate for fully consumable water (or an analogous classification of water that applies to City Augmentation Water delivered out of Rigden Reservoir) that was most recently approved by the City.\(^2\) Nothing in this Agreement shall be construed to affect in any way the City’s authority or discretion to change the rental rate.

“0.5” is a factor to account for the Montava Entity’s conditional reservation of 25 acre-feet of City Augmentation Water.

“25” refers to the 25 acre-feet of City Augmentation Water.

3.1.3. **Reserve Payment for 2021.** Within 28 days of the date of this Agreement, the City will send an invoice to the Montava Entity for the Reserve Payment for the 2021 calendar year. The Montava Entity shall pay the Annual Payment within 30 days after the date of the invoice.

3.1.4. **Reserve Payments for 2022 Through 2025.** On or before December 31 of 2021, 2022, 2023, and 2024, the City will send an invoice to the Montava Entity for the Reserve Payment for the following January 1 through December 31 time period, provided however, that no further Reserve Payments shall be required if the Montava Entity has paid the Water Supply Requirement Payment pursuant to Paragraph 3.2. The Montava Entity shall pay the Annual Payment within 30 days after the date of the invoice.

3.1.5. **Effect of Failure to Timely Pay.** If the Montava Entity fails to timely pay any Reserve Payment as required by this Paragraph 3.1, the City will notify the Montava Entity of that failure to pay and the Montava Entity shall have 10 days from such notice to make the Reserve Payment and if it fails to do so, this Agreement shall terminate by operation of law without any requirement for further action.

3.2. **Water Supply Requirement Payment.**

3.2.1. **Purpose of Water Supply Requirement Payment.** Under this Agreement, the City will be reserving the “Agreement Water” (as defined in Paragraph 3.2.2) for the Montava Entity’s augmentation use, as well as for the City’s planning and other purposes. To compensate the City, the Montava Entity shall therefore pay the City the Water Supply Requirement Payment pursuant to this Paragraph 3.2. The payments of the Water Supply Requirement Payment shall be nonrefundable.

3.2.2. **Amount of Agreement Water.** The Montava Entity has not yet determined the exact amount of City Augmentation Water (up to 25 acre-feet) that it requires for the

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\(^2\) For reference purposes only, the current rental rate is $400 per acre-foot as set forth in *Ordinance No. 038, 2018 of the City Council of the City of Fort Collins Establishing Rental Rates and Delivery Charges for Use of Water Available Under the City’s Raw Water Interests for 2018 Through March 2021.*
Augmentation Plan, which may depend on the specific terms and conditions of the decree for the Augmentation Plan. When the Montava Entity makes payment of the Water Supply Requirement Payment pursuant to this Paragraph 3.2, it shall state the exact number of whole, nonfractional acre-feet of City Augmentation Water being paid for, which shall not exceed 25 acre-feet (“Agreement Water”). A notice from the City to the Montava Entity pursuant to Paragraph 12 confirming the amount of Agreement Water shall be considered to be part of this Agreement. The amount of Agreement Water shall thereupon be established for all purposes under this Agreement. If the Montava Entity pays for less than 25 acre-feet, nothing shall entitle the Montava Entity to subsequently pay an additional Water Supply Requirement Payment for the difference between 25 acre-feet and the amount of Agreement Water.

3.2.3. **When Payment Due.** Within 63 days after the date upon which the Montava Entity has acquired all the City Approvals and obtained a final unappealable decree for the Augmentation Plan, and provided that such payment occurs on or before December 31, 2025, the Montava Entity shall pay the City the Water Supply Requirement Payment for the Agreement Water.

3.2.4. **Amount.** The Water Supply Requirement Payment shall be made as a cash payment to the City, with the Water Supply Requirement Payment cash amount initially being $58,241.35 per acre-foot of Agreement Water, provided that, on January 1 of 2022, 2023, 2024, and 2025, the Water Supply Requirement Payment cash amount from the previous year shall be increased for that January 1 through December 31 period by 5% to account for inflation.

3.2.5. **Effect of Failure to Timely Pay.** If the Montava Entity fails to timely pay the Water Supply Requirement Payment as required by this Paragraph 3.2, this Agreement shall terminate by operation of law without any requirement for further action.

3.3. **Annual Payment.**

3.3.1. **Purpose.** Under this Agreement, the City will be delivering the Agreement Water for the Montava Entity’s augmentation use, which will impose certain administrative and other costs on the City. To compensate the City for these costs, the Montava Entity shall pay the City (via its Fort Collins Utilities) an “Annual Payment” pursuant to this Paragraph 3.3. The payments of the Annual Payment shall be nonrefundable.

3.3.2. **Amount.** The Annual Payment shall be calculated as:

Annual Payment = Acre-Feet of Agreement Water Delivered x Charge per Acre-Foot

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3 This amount was calculated as the product of the 2021 City’s Water Supply Requirement cash-in-lieu rate of $22,145 multiplied by a water supply factor of 2.63.
“Acre-Feet of Agreement Water Delivered” shall be the volume of Agreement Water the City delivered under this Agreement in the previous September 1 through April 30 time period.

“Charge per Acre-Foot” shall be the applicable raw water delivery charge(s) for fully consumable water (or an analogous classification of water that applies to the Agreement Water delivered out of Rigden Reservoir) that was most recently approved by the City.\(^4\) Nothing in this Agreement shall be construed to affect in any way the City’s authority or discretion to change the raw water delivery charge.

3.3.3. **When Payment Due.** On or before June 30 of each year, the City will send an invoice to the Montava Entity identifying the Annual Payment owed for the previous September 1 through April 30 time period, including the amount of the Agreement Water delivered during that time period and the current charge per acre-foot consistent herewith. The Montava Entity shall pay the Annual Payment within 30 days after the date of the invoice.

3.3.4. **Effect of Failure to Timely Pay.** If the Montava Entity fails to timely pay the Annual Payment as required by this Paragraph 3.3, the City shall be entitled to suspend all deliveries of Agreement Water until payment is received. If the Montava Entity fails to timely pay the Annual Payment for three consecutive years, the City shall be entitled to terminate this Agreement with notice under Paragraph 12.

4. **MONTAVA ENTITY’S USE OF THE AGREEMENT WATER.** The City agrees to deliver the Agreement Water to the Montava Entity pursuant to the terms and conditions of this Agreement.

4.1. **Volume.** The City agrees to annually deliver up to 25 acre-feet of Agreement Water to the Delivery Points (defined below) in each September 1 through April 30 period during the term of this Agreement and consistent with the provisions of this Agreement.

4.2. **Approved Uses.** The Montava Entity shall only use the Agreement Water delivered under this Agreement for augmentation use in:

- the Augmentation Plan after it has received judicial approval in a final and unappealable decree; or
- an approved SWSP (as defined above).

Any such use shall be pursuant to the terms and conditions of the Augmentation Plan or SWSP. The Montava Entity shall not be entitled to claim or use any return flows of Agreement Water from the above-described uses. The City shall have no responsibility or liability regarding whether this Agreement meets the requirements of the Augmentation Plan or an approved SWSP.

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\(^4\) For reference purposes only, the current such charge is $120 per acre-foot as set forth in *Ordinance No. 038, 2018 of the City Council of the City of Fort Collins Establishing Rental Rates and Delivery Charges for Use of Water Available Under the City’s Raw Water Interests for 2018 Through March 2021.*
4.3. **Annual Delivery Schedule.** The City will deliver the Agreement Water pursuant to an annual delivery schedule approved by the City, with the understanding that the Agreement Water will only be required and delivered during September 1 through April 30. On or before August 1, the Montava Entity shall provide the City with a proposed annual delivery schedule for the following September 1 through April 30 period. The proposed annual delivery schedule will identify the daily volume of deliveries at each Delivery Point, subject to adjustment of the Delivery Point for the applicable call as discussed in Paragraph 4.5. The City will approve the proposed annual delivery schedule if it is consistent with the terms and conditions of this Agreement, and may reject or modify the proposed annual delivery schedule if it is not. Following approval, the City, in its sole discretion, may make minor adjustments to the delivery schedule if the Montava Entity so requests, provided however, that the total annual volume of water to be delivered under this Agreement during September 1 through April 30 shall not exceed the amount of the Agreement Water. The City shall have no responsibility or liability regarding whether the annual delivery schedule meets the requirements of the Augmentation Plan or an approved SWSP.

4.4. **Deliveries.** Deliveries of the Agreement Water will be made in increments of 0.1 acre-feet and, at the City’s discretion, may be made in daily “slug” releases, as opposed to a constant flow rate throughout a single day. The City reserves the right to not make deliveries pursuant to the annual delivery schedule if there is no applicable downstream call (a.k.a. “free river” conditions) or if there are no other legal requirements to make the deliveries. The City shall have no responsibility or liability regarding whether actual deliveries meet the requirements of the Augmentation Plan or an approved SWSP.

4.5. **Delivery Points.** The Agreement Water will be delivered to the “Delivery Points”, being:

- the confluence of the Foothills Outfall Channel and the Cache la Poudre River in the NW1/4 of the NW1/4 of Section 34, Township 7 North, Range 68 West, 6th P.M. (just below Rigden Reservoir); and

- the Fossil Creek Reservoir Inlet Ditch, at the location where the City is able to pump water from Rigden Reservoir into that ditch in the SW1/4 of Section 28, Township 7 North, Range 68 West, 6th P.M.

The Montava Entity and the City will coordinate on which of the above Delivery Points is needed at any given time under the Augmentation Plan or SWSP, with the understanding that it will depend upon whether there is an applicable call at the Fossil Creek Reservoir Inlet Ditch. The Montava Entity must give the City at least 48 hours advance notice of any change of Delivery Points. Upon delivery of the Agreement Water to the appropriate Delivery Point under this Agreement, the City shall have no responsibility for the management and use of the Agreement Water.

4.6. **Transit Loss.** The City will bear any transit losses assessed on the delivery of the Agreement Water to the Delivery Points. The Montava Entity shall bear any transit losses on the conveyance of the Agreement Water from the Delivery Points.
4.7. **Source of City Water.** The Agreement Water will be attributable to the City Water Interests that are lawfully available for the Montava Entity’s augmentation use at the Delivery Points consistent with this Agreement, including those listed in Exhibit A. The City shall have the sole discretion to select which City Water Interest to use to deliver the Agreement Water to the Montava Entity.

4.8. **Force Majeure.** In the event that the City cannot deliver the Agreement Water to the Delivery Points due to circumstances beyond its control, the City will deliver the water to the Delivery Points as soon as practicable, but shall have no obligation or liability to the Montava Entity for the delay in such deliveries. In the event that the City cannot make the Agreement Water available to the Montava Entity for the uses described herein due to circumstances beyond its control (including physical issues (including infrastructure failure and river conditions), administrative and legal issues (including administrative interpretations or actions by the Colorado Division of Water Resources regarding the use of the City Water Interests)), the City shall have no obligation or liability to the Montava Entity.

4.9. **Ownership and Assessments.** This Agreement only authorizes the Montava Entity to use the Agreement Water delivered to the Montava Entity pursuant to the terms and conditions herein. The City retains all other rights pertaining to the underlying City’s Water Interests.

4.10. **Accounting.** The City will account for such deliveries of Agreement Water to the Delivery Points in the City’s accounting and report the same to the State Engineer’s Office on a monthly basis, and will reasonably cooperate with the Montava Entity as may be reasonably necessary for the Montava Entity to complete its own accounting. The City shall have no obligation or liability related to the accounting or other obligations associated with the Montava Entity’s use of the Agreement Water in the Augmentation Plan or SWSP. Upon request by the Montava Entity, the City will provide it with information on the specific City Water Interests used to deliver water to the Montava Entity under this Agreement provided, however, that the City shall have no obligation to provide such information to the Montava Entity until the City has submitted its final accounting for the subject time period to the Division Engineer for Water Division 1.

5. **WATER COURT AND SWSP PROCEEDINGS.** Nothing in this Agreement shall be construed to limit in any way the City’s right to fully participate in any proceedings associated with the Application, Augmentation Plan, and/or SWSP(s).

6. **TERM AND TERMINATION.** Provided that this Agreement has not terminated pursuant to Paragraph 2, Paragraph 3.1.5, or Paragraph 3.2.5, the term of this Agreement shall be perpetual, unless it is terminated pursuant to the terms of this paragraph or it is amended or terminated by written agreement of the Parties. The Montava Entity shall be entitled to terminate this Agreement at its sole discretion upon written notice to the City.

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5 In this Agreement, “includes” means that the list that follows is not exclusive. *See, e.g., Southern Ute Indian Tribe v. King Consol. Ditch Co.*, 250 P.3d 1226, 1233 n. 4 (Colo. 2010).
7. **ASSIGNMENT.** No rights or obligations under this Agreement shall be assigned or otherwise transferred to benefit lands other than the Property.

7.1. **Assignment by the City.** The City may not assign any rights and obligations under this Agreement without the written consent of the Montava Entity.

7.2. **Assignment by HF2M to a Subsequent Montava Entity.** HF2M, or a proper assign hereunder, may assign the entirety of its rights and obligations under this Agreement to a successor entity that is responsible for the Augmentation Plan. If HF2M (or a successor entity) desires such an assignment, HF2M (or successor Montava Entity) shall provide written notice to the City pursuant to Paragraph 12 identifying, at minimum:

1. identity and background information regarding the assignee; a contact person and contact information from the desired assignee;
2. certification that the proposed assignee is aware of and assumes HF2M’s (or then-current Montava Entity’s) obligations under this Agreement; and
3. an executed copy of the assignment.

8. **DEFAULT AND REMEDIES.** If any Party fails to comply with the provisions of this Agreement and such failure is not otherwise expressly addressed herein, the other Party, after providing prompt written notification to the noncomplying Party, and upon the failure of the noncomplying Party to achieve compliance within 35 days following receipt of such notice, may seek all such remedies available under Colorado law, including but not limited to specific performance, provided that neither Party shall be entitled to consequential or punitive damages.

9. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is entered into between the Parties for the purposes set forth herein. It is the intent of the Parties that they are the only beneficiaries of this Agreement and the Parties are only benefitted to the extent provided under the express terms and conditions of this Agreement.

10. **GOVERNING LAW AND ENFORCEABILITY.** This Agreement shall be construed in accordance with the laws of the State of Colorado, insofar as any matter is not regulated by applicable laws of the United States. The Parties recognize that the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, as well as the parties respective bylaws, city charters and codes, and rules and regulations, impose certain legal constraints on each Party and that the Parties intend to carry out the terms and conditions of this Agreement subject to those constraints. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

11. **WAIVER.** A waiver of a breach of any of the provisions of this Agreement shall not constitute a waiver of any subsequent breach of the same or another provision of this Agreement.

12. **NOTICES.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered, or after the lapse of five (5) business days following mailing by certified mail-return receipt requested, postage prepaid, addressed as follows:
To the City: City Manager  
City Hall West  
300 LaPorte Avenue; P.O. Box 580  
Fort Collins, Colorado 80522-0580  

With copy to: Fort Collins City Attorney  
300 LaPorte Avenue; P.O. Box 580  
Fort Collins, Colorado 80522-0580  
epotyondy@fcgov.com  

and: Fort Collins Utilities  
Attn: Water Resources Manager  
700 Wood Street P.O. Box 580  
Fort Collins, Colorado 80522-0580  

To HF2M / Montava Entity: Registered Agent on File with the  
Colorado Secretary of State  

13. **COLORADO LAW.** The Agreement shall be governed by the laws of the State of Colorado, insofar as any matter is not regulated by applicable laws of the United States.  

14. **ENTIRE AGREEMENT.** The making, execution and delivery of this Agreement by the Parties has been induced by no representations, statements, warranties or agreements other than those expressed in this Agreement. This Agreement embodies the entire understanding of the Parties as to the subject matter hereof and there are no further or other agreements or understandings, written or oral, in effect between the Parties relating to its subject matter unless expressly referred to in this Agreement. Modification of this Agreement by the Parties may be made only by a writing signed by the Parties.  

[Remainder of Page Left Blank Intentionally]
CITY OF FORT COLLINS, COLORADO, a municipal corporation

By: ___________________________  Date: __________________
    Darin A. Atteberry, City Manager

ATTEST:

By: ___________________________
    City Clerk

APPROVED AS TO LEGAL FORM:

By: ___________________________
    Eric R. Potyondy
    City Attorney’s Office
HF2M, INC., a Texas Corporation

By: ________________________________ Date: __________________________

____________, President

ATTEST:

By: ________________________________
EXHIBIT A
(City Water Interests)

The City Augmentation Water delivered under this Agreement will be attributable to City Water Interests, including those listed below, to the extent that they are lawfully available for the Montava Entity’s augmentation use under this Agreement.

<table>
<thead>
<tr>
<th>Water Interest Name</th>
<th>Decree References(^6) and Notes</th>
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<tr>
<td>Arthur Irrigation Company Shares or Effluent</td>
<td>Case No. 1992CW129; Case No. 2005CW323</td>
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<tr>
<td>Halligan Reservoir Enlargement Water Right</td>
<td>Case No. 2013CW3185</td>
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<tr>
<td>Joe Wright Reservoir Water Rights</td>
<td>Case No. W-9322-78</td>
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<tr>
<td>Larimer County Irrigating Canal No. 2 Company Shares and Effluent</td>
<td>Case No. 1992CW129; Case No. 2005CW323</td>
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<tr>
<td>Michigan Ditch Water Rights and Effluent</td>
<td>Case No. W-1424; Case No. 1988CW206</td>
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<tr>
<td>New Mercer Ditch Company Shares and Effluent</td>
<td>Case No. 1992CW129; Case No. 2005CW323</td>
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<td>North Poudre Irrigation Company Shares</td>
<td>Multiple Use Portion</td>
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<tr>
<td>Rigden Reservoir and Effluent</td>
<td>Case No. 2014CW3158</td>
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<tr>
<td>Warren Lake Reservoir Company Shares and Effluent</td>
<td>Case No. 1992CW129; Case No. 2005CW323</td>
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<tr>
<td>Water Supply Storage Company Shares and Effluent</td>
<td>Case No. 1992CW129; Case No. 2005CW323</td>
</tr>
<tr>
<td>Windy Gap Units and Effluent</td>
<td>Case No. W-9322-78</td>
</tr>
</tbody>
</table>

\(^6\) The decrees identified in the table are for reference purposes only and are not intended to be a comprehensive list of all relevant decrees.
EXHIBIT B
(General Location Map of the Development)

[TO BE INSERTED]
EXHIBIT C
(Application)

[TO BE INSERTED]
EXHIBIT D
(Ordinance)

[TO BE INSERTED]
AGENDA ITEM SUMMARY
City Council

December 15, 2020

STAFF
Molly Saylor, Senior Sustainability Specialist
Judy Schmidt, Legal

SUBJECT
Resolution 2020-118 Giving Staff Direction on Next Steps for City Council Adoption of Plastic Pollution Mitigation Strategies.

EXECUTIVE SUMMARY
The purpose of this item is to present a Resolution to Council that directs staff to prepare an ordinance for Council adoption, with anticipation that Council refers the adopted ordinance to the April election.

Based on Council feedback to date, the ordinance will include a hybrid approach, banning plastic bags and putting a fee on paper bags at all large grocers.

STAFF RECOMMENDATION
Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION
Reducing Plastics Pollution is an adopted Council Priority, which aligns with the community’s Road to Zero Waste goal to produce zero waste by 2030 as well as the goal to sustain and improve the health of the Cache la Poudre River and watershed.

PAST COUNCIL ACTION

- Funding
  - Midcycle budget offers funded:
    - $35k to conduct plastic pollution reduction awareness and engagement during 2020.
    - $35k for a study to address microplastics pollution in Fort Collins’ local waterways.

- Work Sessions
  - February 11, 2020 - During this work session, staff provided plastic pollution context and learnings from peer communities. Council provided direction for action both on micro and macro pollution. (Attachment 1)
  - October 27, 2020 - During this work session, staff provided a progress update on plastic pollution awareness work, including impacts of COVID-19 on plastic use, policy development and community engagement, and a staff recommendation. Councilmembers indicated interest in moving plastic bag policy to a ballot measure. (Attachment 1)
  - December 8, 2020 - During this work session, staff provided Council a suite of policy options for a plastic pollution ordinance and related ballot measure. Council provided feedback on these policy elements and other logistics as outlined below. (Attachment 1)
Based on Council direction at the December 8 work session, the Resolution directs staff to develop a plastic pollution ordinance that:

- Leverages staff recommended base case with additions around equity and performance measurement and emphasis on risk mitigation language.
- Takes a hybrid approach, banning plastic bags and putting a fee on paper bags.
- Applies the policy to large grocers.
- May include other items such as Styrofoam (i.e. expanded polystyrene), pending further discussion (see section on optional language).

COUNCIL PREFERRED POLICY ELEMENTS

The Council preferred policy elements that are reflected in the attached resolution are outlined in Figure 1.

<table>
<thead>
<tr>
<th>Type of policy</th>
<th>Businesses impacted</th>
<th>Mechanism</th>
<th>Other additions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ban</td>
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<td>Initiative</td>
<td>Accessory items</td>
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<td></td>
<td>All grocers</td>
<td>Referendum</td>
<td>Expanded polystyrene</td>
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<td>All food service</td>
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<td>Plates, cups, etc.</td>
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<td></td>
<td>All retailers</td>
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<td>Future consideration - OCF</td>
</tr>
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<td>Fee – plastic and paper</td>
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<tr>
<td>Hybrid</td>
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Figure 1. Council preferred policy elements

Optional Language

Policy elements that multiple Councilmembers indicated interest in will be developed as optional policy language for further discussion on January 12 and are outlined in Figure 2. Items marked with an exclamation point require additional clarification from Council. Staff will develop optional language for these if Council provides specific direction to do so.

<table>
<thead>
<tr>
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</table>

! = clarity needed

Figure 2. Optional language for consideration at January 12 work session. Note: Accessory items are the straws, stirrers, and plastic toothpicks.

Policy Details

Note: Updates have been made to staff’s recommended base case to reflect Council’s feedback around equity,
performance measures, and risk mitigation.

- **Implementation:**
  - Implementation begins one year post election.
    - Note: Pending the addition of other business types or items, implementation could be phased to alleviate pressure on small businesses.
  - Two-year campaign to provide free reusable bags to the community, ensuring distribution to those most impacted by the change.
  - Include an income-qualified exemption to the paper bag fee.

- **Enforcement and Reporting:**
  - Compliance audit and data collection from large grocers.
  - Civil penalties applied to retailers violating the bag policy.
  - Annual reporting to Council on equity impacts, compliance, and outcomes, including performance metrics around:
    - Number and type of bags distributed; and
    - Presence of single use plastic items in the environment, as a percent of litter removed from sensitive areas such as Natural Areas and the Poudre River.
    - Reporting can highlight the presence of bags specifically as part of this data set.

- **Risk Mitigation:**
  - Include language in ordinance affirming Council’s commitment to monitoring equitability of the ordinance and to adjusting based on future stakeholder engagement.
  - Include language allowing Council to:
    - Amend ordinance implementation dates if conditions change due to COVID-19 or other unforeseen situations.
    - To suspend in unforeseen situations, like COVID-19, that impact public health or disrupt supply chains.

**Engagement**

With the timing of the April election, online engagement will need to end on January 31 for Council to consider the ordinance on First Reading on February 2 and Second Reading on February 16.

**Next Steps**

Pending Council’s vote on this Resolution, staff anticipates the following next steps:

- Dec 16 - Jan 31 - Online engagement on OurCity ([https://ourcity.fcgov.com/plastics](https://ourcity.fcgov.com/plastics)) around the preferred elements of a plastic policy.
- Jan 12 - Present ordinance and ballot language aligned to the Dec 15 Resolution for Council feedback.
- Feb 2 - First Reading of the plastic pollution ordinance.
- Feb 16 - Second Reading of plastic pollution ordinance and resolution to refer the ordinance to the ballot as a referendum.
  - Note: After this point, Environmental Services staff can no longer conduct any engagement on the issue. City Clerk’s office manages the logistics of the ballot process.
PUBLIC OUTREACH

General public outreach conducted on plastic pollution policy from April through December. (Attachment 1)
No public outreach has been done on this Resolution specifically.

ATTACHMENTS

1. Work Sessions (PDF)
2. Powerpoint Presentation (PDF)
SUBJECT FOR DISCUSSION

Single Use Plastics Ballot Item Discussion

EXECUTIVE SUMMARY

The purpose of this work session is to continue Council discussion on initiating a single-use plastic ballot measure.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

What are Councilmember preferences on the outlined decision points?

- What type of regulation should the ballot measure include: ban, fee, or ban/fee hybrid?
- What businesses should be subject to such regulation: large grocers, all grocers, food service, retailers?
- What mechanism should be used for adoption of regulation:
  o submission of ordinance to voters without Council adoption first
  o referral of ordinance to voters after Council adoption
- What items should the regulation cover: plastic bags, paper bags, polystyrene, accessory items, plastic plates, cups, etc.?

BACKGROUND / DISCUSSION

Reducing Plastics Pollution is an adopted Council Priority, which aligns with the community’s Road to Zero Waste goal to produce zero waste by 2030 as well as the goal to sustain and improve the health of the Cache la Poudre River and watershed.

Past Council Action

Funding:

- Midcycle budget offers funded:
  o $35k to conduct plastic pollution reduction awareness and engagement during 2020.
  o $35k for a study to address microplastics pollution in Fort Collins’ local waterways.

Work Session:

- February 11, 2020 - During this work session, staff provided plastic pollution context and learnings from peer communities. Council provided direction for action both on micro and macro pollution. (Attachment 1)

- October 27, 2020 - During this work session, staff provided a progress update on plastic pollution awareness work, policy development and outreach, and a staff recommendation. Councilmembers indicated interest in moving plastic bag policy to a ballot measure. (Attachment 1 and 2)

To put a plastic pollution question on the April ballot, staff will need direction on key decision points covering both logistical matters and preferred policy elements. The following sections provide details of the outstanding decision
points. Based on recent conversations with Council and best practices from other cities, staff also presents a recommended base suite of policy elements that can apply to various types of policies (bans, fees, etc.) following the key decision point sections.

**Key decision points**

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**Type of policy**

**Question:** Does Council prefer a ban on plastic bags, a fee on plastic bags, or a plastic bag ban with paper bag fee combination? The following options, information on efficacy and notes provide context on these elements:

- **Plastic Bag Ban** - Prohibits plastic bags from being distributed by a specific type of business (e.g. grocers, retailers, etc.).

  - **Efficacy:** Dramatically reduces plastic bags but can significantly increase paper bag distribution which may shift the environmental burden elsewhere instead of mitigating it.

    - **Note:** Few cities have solely used a ban - most have switched to a ban/fee hybrid. When paper bags are still distributed for free, most consumers simply switch to using paper bags. Paper bags have a higher environmental impact than plastic in some categories (e.g. GHG emissions, water use for producing, etc.). See section on Systems Approaches for more details.

- **Plastic and/or Paper Bag Fee** Places a fee on plastic bags and/or paper bags, ranging from five to twenty cents to recover costs of recycling and managing these material streams.

  - **Efficacy:** Data from the City of Boulder suggests a fee on plastic and paper bags is effective at reaching a 70% reduction in bags overall. This approach typically does not achieve a 100% reduction. Note that if the fee applies only to plastic bags, consumers may shift to paper bags. See section on Comprehensive and Systems Approaches for more details.

  - **Note:** Many cities (including Boulder) have conducted an evaluation to review the costs incurred to the City and determine the appropriate fee amount. *(Attachment 3)*

- **Bag/Fee Hybrid**

  - **Efficacy:** Best peer city examples suggest that combining a plastic bag ban with a paper bag fee results in the best long-term results for single use plastic bag reductions, keeping paper bag use low, and encouraging reusable bags to contribute to zero waste goals. The Palo Alto case study has more information of their hybrid approach. *(Attachment 4)*
Businesses impacted

**Question:** What types of businesses should be subject to this policy? Many types of businesses hand out plastic bags with purchases, including grocers, restaurants, and retail establishments. The following information outlines options and considerations.

- **Large grocers**
  - **Note:** Many large grocers have existing practices and policies that can be applied locally if a bag policy is enacted. These practices and policies have already been developed to comply with bag policies in other jurisdictions.

- **Expanded scope**
  - All grocers
  - Food service
  - All retailers and food service
  - **Note:** Due to COVID-19 food service and many retailers are experiencing significant challenges that may be exacerbated by policy changes in the near-term.
  - Significantly increases the number of locations regulated and the compliance workload for the City.

Ballot timing

Staff understands Council interest to submit or refer a ballot question to the April election, which is lower cost and initiates potential nearer term progress on Council’s priority. Including the question on the November ballot is also an option. (Attachment 5)

Mechanism

**Question:** With no community-led petition being circulated currently, does Council wish to submit a question as a Council initiative or adopt an ordinance and use the ballot measure as a referendum?

Pursuant to the Charter, Council may submit any question or proposed ordinance or resolution to the voters via Council initiative. Alternatively, Council may refer any adopted ordinance or resolution to a vote of the people via Council referendum.

- **Initiative:**
  - Council submits ordinance to the voters without adopting it first
  - If adopted by the voters, the ordinance can only be amended by subsequent vote of the people
  - Council could include the ability for Council to make amendments in the ordinance, pending further legal review

- **Referendum:**
  - The Council adopts an ordinance first, and then puts it on the ballot for voter consideration
  - If voter approval is received, Council is able to make future changes to the ordinance without voter approval

Other additions

**Question:** Does Council wish to expand the policy beyond bags and add any of the following items or other policy types?
• Additional items
  o Accessory items (e.g. straws, stirrers, toothpicks)
  o Polystyrene (i.e. Styrofoam)
  o Serviceware (e.g. cups, plates, lids, etc.)

• Policy options
  o Bans - Ban single use plastic items.
    o Note: May need to be evaluated for alignment with State law.
  o Upon Request - Require single-use plastic items only be provided upon customer request.
  o Note: Can create a broad reaching policy to reduce single-use plastics that does not create access issues for disabled community members or limiting consumer choice.

Staff recommended base case

• The base case is the recommended approach to any of the policy options.

• Implementation:
  o Implementation begins one-year post election
  o Two-year campaign to provide free reusable bags to the community, ensuring distribution to those most impacted by the change.

• Enforcement:
  o Compliance audit of retailers and data collection from retailers.
  o Civil penalties applied to retailers violating the bag policy.
  o Annual reporting to Council on outcomes: equity impacts, mitigation impacts, compliance.

• Risk mitigation:
  o Draft ballot language/ordinance to allow City Council to:
    • amend the ordinance if future stakeholder engagement or annual reporting finds policy elements to be inequitable or ineffective.
    • amend ordinance implementation dates if conditions change due to COVID-19 or other unforeseen situations.
  o Draft ballot language/ordinance to allow City Manager to suspend in unforeseen situations, like COVID-19, that impact public health or disrupt supply chains.

Engagement

With an April election, all engagement from the City would need to end by February 2, 2021. In December 2020 and January 2021, staff would share with the community an online survey to gather feedback about the proposed elements.

Systems Approaches

Mayor Troxell recently shared an article (link below) with Council and staff speaking to the need for a systems approach, the trade-offs of alternatives and policy action as only one piece of the puzzle.

A systems (or comprehensive) approach is one that engages multiple elements in the system to address an issue. For example, in the case of addressing single-use plastics, a systems approach could include policy that
balances trade-offs between different types of environmental burdens, improving existing recycling infrastructure and technologies, addressing the circular value chain for packaging, and increasing consumer awareness and community support for behavior change.

For plastic bag policies specifically, a systems approach involves addressing multiple materials systemically for maximum positive environmental impact. This avoids an unintended consequence if an item targeted by a policy is replaced by an item of similar environmental impact, thus shifting rather than reducing environmental impact.

- An example of shifting environmental impact could be reducing the waterway pollution impact from plastic bags with a ban but increasing greenhouse gas impacts from paper bags if they are not also considered in a policy.

A systems approach is supported in the following mechanisms at the City:

- Our Climate Future Big and Next Moves
  - The broader work of taking a systems approach to plastics and waste management is incorporated in the Our Climate Future work, through Big Moves such as:
    - Circular Economy
    - Cooperative Communities
      - Universal Recycling and Composting
  - The City’s Legislative Policy Agenda on Recycling and Solid Waste Reduction incorporates many elements of a systems approach, including these statements
    - Encourages integrated, sustainable waste management planning and implementation policy, including but not limited to centralized data collection requirements and reaching statewide diversion targets.
    - Supports greater producer responsibility initiatives, such as “take back” regulations that assist consumers to appropriately recycle packaging materials or certain products (e.g., cardboard and expanded polystyrene packaging, single-use plastic shopping bags, or mattresses). Producer Responsibility is already successfully implemented in Colorado for paint.


Next steps

Pending Council’s work session discussion on December 8, 2020, staff anticipates the following next steps:

- At the December 15, 2020 Council Meeting, consider a resolution directing staff to draft ballot language and a corresponding ordinance.
- Early December - end of January - Online survey and engagement for ballot measure.
- Additional next steps are dependent on Council direction on December 8, 2020. (Attachment 6)

ATTACHMENTS

1. Work Session Agenda Item, October 27, 2020 (PDF)
2. Work Session Summary, October 27, 2020 (PDF)
3. Fees vs. Attachments in Context of Plastic and Paper Bags Memo (PDF)
4. Comprehensive Approach Case Study - Palo Alto (PDF)
5. Ballot Timing Considerations Memo (PDF)
6. Paths to April Election (PDF)
7. PowerPoint Presentation (PDF)
DATE: October 27, 2020

STAFF: Molly Saylor, Senior Sustainability Specialist
Richard Thorp, Lead Specialist, Utilities Watershed Program
Jackie Kozak-Thiel, Chief Sustainability Officer

WORK SESSION ITEM
City Council

SUBJECT FOR DISCUSSION

Plastic Pollution Update.

EXECUTIVE SUMMARY

The purpose of this work session is to update Council on the status of the Microplastics Mitigation Study and Macroplastic Pollution Awareness and Policy work.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

MACROPLASTIC POLLUTION: Which option would councilmembers like staff to pursue for plastic pollution?

1) **Focus on Awareness and Delay Policy Discussion.** Focus awareness work funded through 2020 on making single-use “opt-in” vs. “opt-out” and other simple actions; re-evaluate policy work in 2021 based on readiness criteria (outlined below).

2) **Limited Policy Work.** In addition to awareness, focus policy work on most feasible option with respect to COVID-19 (e.g. “utensils and accessory items upon request only”) and reevaluate comprehensive approach to other plastic items in 2021.

3) **Comprehensive Approach.** In addition to awareness, prioritize policy work and maintain comprehensive approach.

4) **Refer Ballot Initiative.** In addition to awareness, place single-use plastic bag regulation on the April 2021 ballot.

BACKGROUND / DISCUSSION

Reducing plastics pollution is a Council priority, which aligns with the community’s Road to Zero Waste goal to produce zero waste by 2030 as well as its goal to sustain and improve the health of the Cache la Poudre River and its watershed.

**Past Council Action**

- **Funding**
  - Midcycle budget offers funded
    - $35k to conduct plastic pollution reduction awareness and engagement during 2020.
    - $35k for a study to address microplastics pollution in Fort Collins’ local waterways.
  - Work Session February 11, 2020
    - During this work session, staff provided plastic pollution context and learnings from peer communities. *(Attachment 1)* Council provided direction for action both on micro and macro pollution.

**Macroplastic Pollution Awareness and Policy Update**

1) **Awareness: Outreach and Data Collection BFO Offer Update**

   a. Elements that have changed
      - Majority of campaign was delayed due to budget restrictions between March and mid-July.
      - Some messages have been adapted and presentations have been held virtually.
Litterati app to characterize local plastic pollution had limited participation, as the best conditions for litter collection are in spring, which coincided with the onset of COVID-19.

b. Progress
- Adapted consumer awareness campaign in response to COVID-19: May the Fork Be With You campaign (Attachment 2).
- Outreach to businesses and groups interested in plastic pollution from March through September.
- Fall business recognition and awareness campaign will launch in late October and run through the end of the year. Campaign will feature businesses reducing plastic pollution and provide tips businesses can apply in their operations.
- Community science and litter pick up campaign ran from March-July. Staff has also secured another year of the Litterati license to continue collecting litter pick up data.

2) Policy Development: Progress Update

A. Councilmember direction: Targeted engagement and equity lens
   1) Elements that have changed
      - COVID-19 has disproportionately impacted several of the stakeholder groups that would potentially be highly impacted by a plastic policy.
      - With other priorities such as navigating closures, lost business, paying rent, and covering basic needs for these groups during the pandemic, this is a challenging time to ask for input. The Our Climate Future planning project has worked to engage these stakeholder groups and has encountered significant barriers to these groups engaging at this time; the same difficulty applies to engagement on the plastics topic.

B. Councilmember direction: Robust stakeholder and community engagement
   1) Elements that have changed
      - During several months of engagement we have heard from primarily members of environmental groups and senior community members, and not the community at-large.
        - Broad engagement tools not getting typical results (e.g. Utility Bill inserts).
        - Low participation may relate to the significant focus in the community on COVID-19.
      - While there are committed individuals asking for change, it is unclear if there is broad support without more diverse participation.
   2) Progress
      - Policy-focused outreach campaign including presentations, advertising, OurCity informational website and two online surveys between March and October of 2020.
      - Over 200 community members have engaged to date, primarily people from environmental groups and senior community members.
        - Individual community members have also shared their interest directly with Council and staff is aware of a 600+ person petition to ban plastic bags.

C. Councilmember direction: Take a comprehensive approach to policy development
   1) Elements that have changed
      - A comprehensive approach assumes the ability of community members to use reusable items (mugs, bags, containers etc.). Due to COVID-19 and new corporate policies, reusables are not currently allowed in many businesses.
        - It is unclear when these will be available again making implementation uncertain.
2) Progress
   ○ 117 people have shown support for acting on many types of single-use plastic items (recognizing the limitations of who has been/not been engaged) with only four respondents disagreeing that the City should act. See Attachment 3 for more information.

D. Councilmember direction: Collect more data on the problem and existing solutions

1) Elements that have changed
   ○ Data collection from businesses
     ▪ Businesses have been closed or operating in a limited capacity, making outreach to them about plastic pollution policy difficult.

2) Progress
   ○ See “Outreach and Data Collection BFO offer update” above for information on the Litterati community science data collection effort.
   ○ 4 out of 9 major and natural/organic grocery stores in Fort Collins offer a bag credit for bringing a reusable bag in non-COVID times. (Attachment 4)

Other elements that have changed

- Staff capacity
  ○ Due to retirement and COVID-related deployments, the Waste Reduction and Recycling team is currently understaffed.

- Resources
  ○ The mid-cycle offer for plastic pollution awareness and engagement was on pause from March-July to support the 2020 budget rebalancing process, meaning only Q3 and Q4 is left for planning and executing policy engagement and awareness work.

Figure 1. Summary: Awareness and Policy Work Challenges

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<th>Council Direction</th>
<th>On track</th>
<th>Significant challenges</th>
<th>Significant barrier</th>
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<td>Targeted engagement and equity lens</td>
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<td>Robust stakeholder and community engagement</td>
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<td>✓</td>
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<td>Comprehensive approach to policy development</td>
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<td>More data on the problem and existing solutions</td>
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Key: COVID-19 ☀ Staffing ☐ On track ✓

Possible approaches for moving forward

As discussed, community and stakeholder capacity for engagement, lack of reusable alternatives and unclear timelines for when they will be reintroduced, and understaffing present significant challenges to policy development. Recognizing this, the following options, including staff’s recommendation, are intended to focus future efforts based on Council direction.
1) **Staff Recommendation - Focus on Awareness and Delay Policy Discussion.** Focus awareness work funded through 2020 on making single-use “opt-in” vs. “opt-out” and other simple actions; re-evaluate policy work in 2021 based on readiness criteria (outlined below).

**Benefits:**
- Respects community priorities and limitations (e.g. basic needs, rent, lost business, etc.) related to COVID-19.
- Allows staff to focus on supporting businesses on COVID-19-related strategies to mitigate plastic waste.
- Delivers on awareness element of Council priority in anticipated timeline.
- Future policy work can be timed to when reusable alternatives are available again.
- Early results indicate future policy work may be supported by plastic-related strategies emerging from the Our Climate Future planning process.

**Risks:**
- This approach will not deliver a new plastics pollution policy for Council consideration by the end of Q1 2021.

**Proposed Criteria for Restarting Policy Engagement**

- Alternatives to single-use plastic items (e.g. reusable bags, mugs, etc.) are available or there is indication of their reintroduction within a one-year timeframe
- Community partners connected to key stakeholders indicate various groups are ready to engage in the conversation
- Staff proposes a mid-2021 update to Council on readiness criteria status

2) **Limited Policy Work.** In addition to awareness, focus policy work on most feasible option with respect to COVID-19 (e.g. “utensils and accessory items upon request only”) and reevaluate comprehensive approach to other plastic items in 2021.

**Benefits:**
- Mid-cycle funding available to support engagement.
- Advances Council priority with a policy consideration.

**Risks:**
- The highly impacted stakeholders may not be available for engagement.
- Scope of engagement and policy process is more limited than initially proposed.
- May need to be evaluated for consistency with State legislation.
- Would require new or redeployed additional staffing, such as a co-lead to support engagement.

3) **Comprehensive Approach.** In addition to awareness, prioritize policy work and maintain comprehensive approach.

**Benefit:**
- Delivers comprehensive policy for this Council’s consideration.

**Risks:**
- Policy conversation may not get needed buy-in in the current moment.
  - If the community does not support, may impede future policy work.
- Policy may not be possible to implement for several years due to COVID and conditions may change significantly in that time.
- To accomplish comprehensive policy work, would require additional staffing or staff resources would have to be diverted from other Environmental Services Department priorities (such as Our Climate Future, Regional Wasteshed, etc.), given the short timeframe now remaining for comprehensive plastics policy engagement.
4) **Refer Ballot Initiative.** In addition to awareness, place single-use plastic bag regulation on the April 2021 ballot.

**Benefit:**
- If successful, a ballot initiative would enact plastic bag regulation, reducing the amount of plastic bags that become litter.

**Risks:**
- Ballot initiative may have similar challenges as the Comprehensive Approach above, specifically, the availability of potentially highly-impacted community members and businesses to inform an equitable policy solution, of staff to develop ballot language, and of reusable alternatives due to the pandemic.
- May need to be evaluated for consistency with State legislation.
- Few peer or leading city examples are available to learn from.
  - The only example City staff is currently aware of is Louisville, CO. Louisville has referred a plastic bag fee of 25-cents to the April 2021 ballot.

**Microplastic Pollution Update**

1) **BFO offer:** Council appropriated $35,000 as part of the 2019 mid-cycle budget process to fund a study to address microplastics pollution in Fort Collins’ local waterways. There is currently an information gap that limits the ability of staff to quantify the occurrence of microplastics and develop a targeted mitigation action plan. Staff proposed hiring a contractor to conduct a scientific review of available microplastics monitoring and analytical methods and best practices and technologies for the collection and treatment of water to mitigate microplastics pollution within the City’s drinking water, wastewater and stormwater infrastructure.

   a. **Elements that have changed**
   - The project was paused in 2020 due to budgetary restrictions.
   - The COVID-19 Pandemic has forced program staff to adjust work priorities, workloads and schedules in order to continue providing world class services to our community while also providing necessary care for family members.
   - Expanded technical support for the Halligan Expansion as well as the emerging monitoring, response and recovery efforts for the Cameron Peak Wildfire have resulted in no staff capacity to complete the Microplastics Pollution Mitigation Project in 2020.

   b. **Progress**
   - Budgetary restrictions and constraints on staff capacity delayed progress on this project.
   - Staff will re-evaluate by the end of Q2 2021 if it will be feasible to complete in 2021. A reappropriation of 2020 funds will be required to complete this project. By this time, more will be known about the wildfire response and recovery effort resource needs.

2) **Council direction:** Council desired the project to also focus on outcomes related the health impacts of microplastics on people and wildlife

   a. **How direction would be addressed**
   - The prevalence of microplastics in our local waterways and impacts to humans and wildlife are not well understood. This project will provide an inventory of monitoring and analytical methods. Evaluating the toxicity of microplastics to people and wildlife is beyond the scope of this study; however, mitigating microplastics pollution with the City’s water infrastructure will likely lessen health risks of these pollutants to people and wildlife.
ATTACHMENTS

1. Agenda Item Summary - Work Session February 11, 2020 (PDF)
2. Spring Awareness Campaign (PDF)
3. Community Engagement Data (PDF)
4. Data Collection (PDF)
5. Powerpoint Presentation (PDF)
SUBJECT FOR DISCUSSION

Mitigating Plastics Pollution.

EXECUTIVE SUMMARY

The purpose of this item is to share existing best practice research and to propose taking a comprehensive approach to mitigating single-use (macroplastic) pollution, while continuing to study microplastic pollution.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Macroplastics pollution

1. Do Councilmembers support a comprehensive policy and engagement approach to reducing plastic pollution?
2. Does Council have a preference on an initial focus area (e.g., plastic bags, straws, take-out containers)?

Microplastics pollution

3. Do Councilmembers have input on staff’s approach to addressing microplastics?

BACKGROUND / DISCUSSION

City Council has identified plastics pollution as a priority concern for the City to mitigate, which aligns with the community’s Road to Zero Waste goal to produce zero waste by 2030 and its goal to sustain and improve the health of the Cache la Poudre River and its watershed.

Waste Reduction Context

In Fort Collins, plastic makes up around 10% of what is landfilled as “municipal solid waste”. With a community vision of producing zero waste by 2030, mitigating plastic pollution will be a necessary component of achieving this goal.

River Health Context

A healthy Poudre River and surrounding watershed provides innumerable benefits to the Fort Collins community, some of which include reliable, high quality water supply; flood attenuation and protection; recreation, health and wellness opportunities; healthy plant communities and habitat for fish and wildlife. Accordingly, the City invests considerable resources each year to ensure that the health of Poudre River is maintained and whenever possible, improved. Plastic pollution has the potential to negatively impact all these beneficial functions, whereas conversely, mitigating the problem supports and potentially even enhances outcomes in these areas.

Overview of Micro and Macroplastic Pollution Sources and Pathways

Practitioner knowledge about micro- and macroplastics differs. While the former is still a relatively new area, more is known about how to measure, track, and mitigate macroplastic pollution.
Microplastics

Microplastics are small plastic particles that are less than 5 millimeters in size and can include both visible and microscopic particles and fibers. Microplastics include particles that are either intentionally manufactured at very small sizes for the production of other plastic products or particles that form when larger plastic materials break down and fragment into progressively smaller pieces. These plastics originate from a variety of sources, including car tires, road markings, litter, personal care products, synthetic textiles and clothing, among others. The pathways for these materials to enter the environment include domestic and industrial disposal via the wastewater collection system and subsequent discharge of treated wastewater, stormwater runoff from the urban landscape, and improper disposal. Once these materials enter aquatic and terrestrial environments, they present hazards to fish, wildlife and potentially even humans, through ingestion and/or chemical exposure.

While the ubiquity of microplastics in terrestrial and aquatic ecosystems is well recognized, there is much less information available about effective methods for identifying, monitoring and mitigating microplastics pollution. As a result, the City is currently limited in its ability to develop targeted action plans around this issue.

To begin addressing this knowledge gap, Utilities provided funding in 2019 towards a microplastics study of the South Platte River Basin that was designed to identify sampling and analytical methods that are well-suited for Rocky Mountain streams. The study is a cooperative effort between Inland Ocean Coalition and the University of Colorado-Boulder. Utilities supporting funds for this project came from the Utilities Watershed Program operational budget and enabled the inclusion of two new study sites on the Poudre River.

Additionally, through the 2019 mid-cycle budget revision process, Council funded $35,000 for the purpose of conducting a scientific review focused on (1) analytical and sampling methods for monitoring microplastics; and (2) control technologies and industry best practices for mitigating microplastics pollution during the treatment of drinking water, wastewater and stormwater.

Macroplastics

Macroplastics are plastic particles (or products) larger than 5mm, including but not limited to single-use plastic items such as grocery bags, cups, take-out containers, etc. While some plastic is actively littered, many single-use plastic items enter the environment inadvertently. As depicted in the graphic below, winds can gust lightweight plastic items out of receptacles (or garbage trucks or landfills) and into the surrounding area. From there, storm events move plastic items into natural areas and local waterways. Once in natural areas and waterways, they may persist for hundreds of years, degrading into microplastics and at risk of being ingested by wildlife.

Global markets and impacts

Global markets for recyclable materials have suffered due to sweeping nationwide policy changes in China that halted the import of U.S. recycling commodities, including plastic materials. As the largest end-market for U.S. recycled plastics, this change has dramatically impacted cities’ ability to maintain recycling for some types of low-grade plastic.

Single-use items, including those made from low-grade plastic, often have a higher environmental impact than the same items made from sturdier materials that can withstand reuse (for example, durable plastic bags or utensils). While the environmental “payback” period may be longer for reusable items, they reduce environmental impacts along the supply chain, as well as locally.
Regional Wasteshed Coalition

Fort Collins, Larimer County, Loveland, Estes Park, and Wellington have collaborated since 2015 to plan for waste, recycling, and composting infrastructure once the Larimer County landfill reaches capacity. Waste-to-Energy (WTE), a technical process that converts materials, such as plastic, into energy through a combustion process, was identified as a Tier II recommendation. After Tier I recommendations have been implemented, the coalition will evaluate how waste-to-energy could recover single-use plastic items that cannot be recycled. The Regional Wasteshed Coalition’s Policy Advisory Committee is scheduled to reassess Tier 2 recommendations (including waste to energy) in Q4 of 2020.

Past Council Actions

In 2014, City Council passed a single-use bag policy requiring grocers to charge a 10-cent fee on plastic and paper bags. Under this ordinance, grocers retained the fee with 50% being directed to the purchase and distribution of free durable bags for customers. This ordinance was repealed later in 2014 in response to the concerns of community members opposing restrictions on single-use bags.

Best Practice Approaches to Mitigating Single-Use Plastic Pollution

Measures to reduce plastic pollution range in mitigation potential, for example, awareness about littering or recycling plastic items (Attachment 1) may not have the same efficacy as options that reduce consumption of plastic in the first place. Many cities have embraced the “reduce” philosophy in order to disrupt the pathway described above. By reducing the consumption of single-use items, environmental impacts along the supply chain are also addressed. To understand nationwide best practices, staff engaged a Colorado consulting firm Ecocycle to speak with program managers across the U.S. about their plastic policies. Based on this research, some common mechanisms to reduce single-use plastics include:

- Banning items
- Enacting fees on items
- Restricting certain items and/or in certain situations
  - e.g., making accessory items like utensils available upon request only
- Awareness (generally paired with another measure to increase efficacy)

Some cities have targeted efforts to reduce single-use plastic as a whole category instead of enacting stand-alone policies that target individual plastic items (e.g., straws, bags, etc.). This comprehensive approach looks across multiple single-use plastic items and bundles of policies that, together, create a larger mitigation strategy to be implemented over time (multiple years). Creating a roadmap means impacted businesses and groups in the community know what to expect, can use up existing stocks, and have time to identify replacement items. Comprehensive approaches also allow time for the community to adjust to changes and learn from each policy component.
Cities with Comprehensive Approaches

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<th>City</th>
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<th>Regulations Date</th>
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<td>Disposable cups</td>
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<td>Disposable cups</td>
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Attachment 2 lists peer cities, Colorado cities, and other U.S. cities that have acted on single-use plastics. Attachment 3 provides a case study of Palo Alto’s policy work to mitigate plastic pollution.

**Current Actions - Plastic awareness campaign, data collection, and stakeholder engagement**

Through the 2019 mid-cycle budget revision process, Council funded $35,000 for an awareness and outreach campaign on plastic pollution, covering both macro and microplastics (separate from the $35,000 funded for scientific review on microplastics). The campaign will launch in Q2 and raise awareness on why single-use plastic items (macroplastics) are damaging to the environment, how they get there, and how they may eventually become microplastics. It will also encourage residents to:

- Reduce their use of single-use plastic items by declining items when they are offered and un-necessary
- Bring their own reusable items
- Correctly dispose of plastic items when they can’t be avoided.

The campaign will also have a business component that is currently under development.

In order to further raise awareness about the problem, the campaign will provide opportunities for the community to take action by:

1. **Removing plastic litter from the environment using the Litterati app**

   Litterati [https://www.litterati.org/about> is an app that allows community members to photograph, tag, and geocode litter before disposing of it. Over 100,000 users in 117 countries have used this app to remove litter from their surrounding areas. In a collaboration between Sustainability Services, Natural Areas, and Human Resources, volunteers will be directed to download the app for City-led cleanups. The broader community will also be invited to participate in challenges.

   An additional benefit of Litterati is its ability to provide staff with data on:

   - Ratio of plastic to other materials
   - Percentage of specific types of plastic relative to all plastic found
   - Whether these data points are influenced by location
2. Providing input on what the City should do to mitigate single-use plastic pollution in Fort Collins.

Outreach will include opportunities for community members to share thoughts, as well as engage key stakeholders on a more targeted basis (e.g., the accessibility community and straws), acknowledging that this is a communitywide issue and that certain groups and businesses may be disproportionately impacted.

Initial list of stakeholder categories (Subject to refinement based on Council direction)

- Residents
- Members of the accessibility community who must regularly use single use plastics
- Historically underrepresented community groups, residents, and business owners
- Local businesses *(restaurants, grocery stores, retail stores, etc.)* who provide single use plastics to their customers or otherwise rely on them to do business
- Local businesses who manage single use plastic waste or who use it as a raw material
- Local business associations and chambers of commerce
- Local producers and suppliers of single use plastics *(for example, wholesale suppliers of single use plastics)*
- Local nature, environment, and sustainability focused advocacy groups
- Organizations directly involved in litter clean up
- City departments

Key Takeaways

Staff’s evaluation of peer, Colorado, and U.S. cities has led to the identification of best practices that Fort Collins could build upon, if Council desires to move forward. Key learnings from staff’s review of other cities actions and best practices are:

- Take a comprehensive approach that includes multiple items *(e.g., individual type of plastic products)*, allowing the community to know what to expect, use up existing stocks, and have time to identify replacement items.
- Phase policy-development and implementation over time *(multiple years)*.
- Move toward reusables and away from *disposables*.
- Thoughtfully engage stakeholders, including groups and businesses that will be impacted by policy measures.

Fort Collins is in a strong position of having some of the key characteristics of successful cities, including well-founded policies based on community vision and goals *(Zero Waste, Climate Action Plan)*, as well as collaboration through regional wasteshed planning.

Next Steps

- Gather community and stakeholder input
- Launch plastics awareness campaign and collect data *(midcycle offer)*
  - Gather community and stakeholder input
- Regional Wasteshed Coalition’s Policy Advisory Committee is scheduled to reassess Tier 2 recommendations *(including waste to energy)* in Q4 of 2020.
- June 9, 2020 City Council work session.

ATTACHMENTS

1. Types of Single-Use Plastic Items *(PDF)*
2. List of Cities taking action *(PDF)*
3. Comprehensive Approach Case Study-Palo Alto *(PDF)*
4. Powerpoint presentation *(PDF)*
Types of Single-Use Plastic Items

Types of Single-Use Plastics

The broader category of single-use plastic includes a wide-range of items, from cigarette butts and sanitary wipes to plastic bags and straws. The items listed below are those most commonly addressed by municipal plastic policies.

- **Carry-out bags**: Bags made of thin, flexible plastic designed to transport purchases.
- **Polystyrene (Styrofoam)**: Plastic foam take-out coffee cups, plates, and containers.
- **Foodware**: Plastic plates, cups, and utensils.
- **Accessory items**: Lids, utensils, straws, stirrers, etc.
## Who is Taking Action?

Key: X = has taken action, P = planning to take action, C = comprehensive approach, R = repealed

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<th>Carry-out bags</th>
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<th>Accessory items</th>
<th>Food serviceware</th>
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### Colorado City

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<th>Accessory items</th>
<th>Food serviceware</th>
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<td>Winter Park</td>
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### Sample U.S. Cities - Not Comprehensive

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<tr>
<th>City</th>
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<th>Accessory items</th>
<th>Food serviceware</th>
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Comprehensive Approach Case Study – Palo Alto

Population: 66,666

Disposable Bag Policy (2008)

The City of Palo Alto began addressing single-use plastics in 2008 with the adoption of its Retail and Food Service Establishment Checkout Bag Requirements Ordinance which banned the distribution of single-use plastic carry-out bags from grocery stores. After subsequent creek cleanup events showed that plastic bags were still prevalent in local creeks and on streets, the policy was updated in 2013 to include all retailers and food service establishments. The updated ordinance also required a 10-cent fee on all paper and reusable bags that were distributed to deter the use of single-use paper bags. In 2019, the policy was updated again to ban the distribution of single-use plastic bags for produce, meat, and bulk food bags and require these bags to be certified compostable (paper or bioplastic). The city’s policy is now one of the most comprehensive in the country because it affects many different business types, including all retailers and food service establishments, and many different types of single-use plastic bags, including carry-out bags as well as meat, produce and bulk food bags.

Key drivers for success

- **Other local policies:** Palo Alto’s plastic bag ban followed in the footsteps of other California cities including San Francisco and Santa Monica.
- **Store leadership:** Three of the city’s seven supermarkets had stopped distributing plastic bags as the city was exploring the policy.
- **Community support:** Public and City Council supported exploring policy options. Local nonprofits dedicated to the reduction of plastic pollution were helpful in garnering community support.

Effectiveness at meeting local goals

- City data from creek cleanups showed a 90% reduction in the amount of plastic bags in the creeks after ordinance went into effect.
- Compliance checks conducted by the city after implementation in 2008 found that over 90% of businesses complied with the policy. Future compliance checks will be conducted through the
Zero Waste group and will be scheduled after the next phase of the ordinance goes into effect in January 2020.

- Through a survey, Palo Alto saw a sharp decline in plastic bag use and an increase in the use of reusable bags following its plastic bag ban. However, paper bag use increased immediately in response to the plastic bag ban. Paper bag use sharply decreased once the city implemented a fee on paper bags in 2013, and this led to a further increase in reusable bags and customers not using any bags. From 2008-2015, overall plastic bag use has declined from over 50% of bags used to zero, and over 75% of bag use is now reusable bags or no bag.

**Significant challenges faced**

- **Opposition from plastics industry:** The American Chemistry Council and Dart Container Corp., one of the largest manufacturers of polystyrene foam food containers, lobbied against the policy and testified before the city council. The industry group SaveThePlasticBag.com also threatened the city with a lawsuit. The California Restaurant Association also closely echoed the concerns of the plastic industry representatives.
- **Fee:** State law prohibits California cities from collecting a bag fee from retailers so retailers keep the entire 10-cent fee on all paper or reusable checkout bags sold.

**Disposable Foodware Policy (2019)**

In 2019, Palo Alto adopted the Disposable Foodware Reduction Plan, which is a three-phase program with the goal to eliminate the use of disposable foodware items and switch to reusable items in order to protect local watersheds and oceans, reduce litter, encourage Zero Waste, and reduce contamination in the composting program. The first phase of this plan was implemented in 2019 with the passage of the Disposable Foodware Items and Other Disposable Products Ordinance, which banned single-use plastic foodware accessory items including plastic straws, plastic utensils, plastic drink stirrers, plastic drink plugs, plastic food and drink picks, plastic drink accoutrements, and plastic produce bags. Businesses are required to provide only reusable or compostable alternatives, and these products must be offered only upon request or via a self-serve station. The policy applies to any business in Palo Alto that serves food, including restaurants, bars, delis, grocery stores, food trucks, hotels, convenience stores, and cafeterias. Hospitals were exempted from the program.

The goal of the Disposable Foodware Reduction Plan:

- Reduce the amount of single-use, disposable foodware generated in Palo Alto
- Encourage the use of reusable foodware
- Ensure that single-use disposable items are either recycled or composted

The plan has a phased approach:

- **Phase 1 – 2019:** Disposable Foodware Items and Other Disposable Products Ordinance
  - Bans single-use plastic foodware accessory items such as straws and stirrers.
Requires compostable or reusable alternatives are offered only upon request or via a self-serve station.

Phase 2 – 2021
- Charge for disposable cups and containers
- Require reusable foodware for dine-in customers
- Require all new construction for food service establishments to install a dishwasher

Phase 3 – 2025
- Ban all single-use disposable foodware for take-out
- Require all food service establishments to have one of the following services to support reusable foodware:
  - Have a dishwasher on site
  - Sign-up for dishwasher service
  - Sign-up for reusable foodware service program
- Require reusable foodware for take-out, including allowing residents to bring their own containers and/or implementing a citywide reusable food container rental/return program (see p. 59 for current pilot programs)

Key drivers for success
- **Mitigate environmental impact**: Palo Alto has a strong history of support for reducing waste, reducing the amount of plastics in oceans, decreasing litter in the community and reducing its climate impact.
- **Support for compostables in business survey**: The city’s survey of food businesses found ⅓ of food service establishments already utilized some form of compostable foodware and 52% reported it would be easy to switch to compostable products.
- **Local community partners**: The city partnered with Girl Scouts and a local high school biology class to conduct business surveys. Several nonprofits and community advocacy groups submitted a letter of support to the city and encouraged the city to take bolder action. Local stakeholders promoted not using plastic disposables and reducing use at local community events (i.e. farmer’s market).
- **ReThink Disposable proves success stories at local businesses**: The city signed a 3-year contract with ReThink, a technical assistance program provided by the City of Palo Alto Watershed Protection and Clean Water Action and Clean Water Fund. This program helps businesses, institutions, governments, and consumers reduce waste and associated costs by targeting disposable packaging items through outreach and education, and conducted local business case studies to show waste reduction and cost savings.

Effectiveness at meeting local goals
- The ordinance is expected to reduce waste by 290 tons per year and save 470 tons of carbon pollution once fully implemented.
- [ReThink Disposables Report](#) on how businesses in Palo Alto successfully reduced disposable foodware showed the effectiveness of minimizing disposable foodware: 111 businesses were
recruited and provided with outreach materials; 14 businesses were ReThink certified and found that 1,123,443 single-use foodware items were eliminated annually and had $32,023 combined total annual net-savings.

Significant challenges faced

- Council members were concerned with the availability of compostable foodware items.
- Businesses were primarily concerned about the additional cost of compostable items, the difficulty in finding replacements and that these products would still result in litter.

Supporting City Policies and Plans for Bags and Food Serviceware

- Palo Alto’s **Bag Ordinance** was adopted in 2008 to ban the distribution of single-use plastic bags at grocery stores. This was updated in 2013 to require a 10-cent fee on paper and reusable bags sold by the retailer, and to include all food service establishments. (There is no charge for customers to bring their own bags. However, retailers cannot provide reusable bags for free and must charge a minimum fee on any bags sold to the customer in order to reduce the distribution of any free bags of any type.) In 2019, the ordinance was updated again to include produce, meat, and bulk food bags, and require them to be reusable or certified compostable.

- The **Expanded Polystyrene and Non-Recyclable Food Service Containers Ordinance** was adopted in 2009 and updated in 2016. The policy prohibits foodservice and retail establishments from distributing prepared food in plastic foam or other non-recyclable plastic food service containers.
  - City facilities and events are prohibited from using disposable food service containers made from plastic foam or non-recyclable plastic.

- In 2017, guidelines were updated to prohibit city staff from using Petty Cash and procurement cards to purchase polystyrene products, bottled water, and other plastic products.

- The 2018 **City of Palo Alto Zero Waste Plan** has a goal of 95% waste diversion by 2030.

- The **Disposable Foodware Reduction Plan** was put together in 2018 by the Zero Waste Group, which is a roadmap for the city to switch from disposable foodware items to reusable foodware.

- The **Disposable Foodware Items and Other Disposable Products Ordinance** was adopted in 2019, banning plastic: straws, utensils, stirrers, beverage plugs, and produce bags. Alternative products must be compostable and can only be provided upon request or at a self-serve station.

- The Municipal Regional Stormwater Permit requires the city to eliminate storm drain litter by 2022.
Mitigating Plastics Pollution

Molly Saylor and Richard Thorp
Questions to Council

Macroplastics pollution
1. Do Councilmembers support a comprehensive policy and engagement approach to reducing plastic pollution?
2. Do Councilmembers have a preference on an initial focus area? (such as plastic bags, straws, take-out containers)

Microplastics pollution
3. Do Councilmembers have input on staff’s approach to addressing microplastics?
Plastics Pollution

COUNCIL PRIORITY
Plastics Pollution
- Microplastics
- Macroplastics

STRATEGIC ALIGNMENT
Environmental Health
- 4.4 Zero waste
- 4.9 Poudre River health

BUDGET
Midcycle funding
- $35K each for macroplastics and microplastics

Approximately 10% of Fort Collins’ municipal solid waste is plastic
Microplastics
Plastic particles less than 5mm

Macroplastics
Plastic particles greater than 5mm

Less information  More information

- Knowledge of pollution pathways
- Ability to quantify and monitor
- Efficacy of mitigation options
Microplastics: What are they?

Primary – manufactured at a size less than 5mm
  • Examples: microfibers, microbeads, pellets or “nurdles”

Secondary – break down into micro-particles
  • Examples: water and soda bottles, fishing nets, and plastic bags
Sources of Microplastics

- Paint / Coatings
- Synthetic textiles & clothing
- Personal Care Products (microbeads)
- Car Tires / Brake Dust
- Pellets / manufactured plastics
- Litter
- Road Markings
- Artificial turf
- Atmospheric Deposition
Past Project
2019 Rocky Mountain microplastics survey phase II: Methodology Study
- Utilities Watershed Program funded two sites on Poudre River
- Study led by Inland Ocean Coalition & University of Colorado, Boulder

Current Project
Assess current state of the science on microplastics, with focus on:
- Analytical & monitoring methods - source identification and monitoring
- Control technologies - drinking water, wastewater, stormwater
## Mitigation Options

<table>
<thead>
<tr>
<th>Mitigation options</th>
<th>Challenges</th>
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<tr>
<td>Anti-littering awareness</td>
<td>Not primary pathway</td>
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<tr>
<td>Waste-to-Energy</td>
<td>Risk of blowing out of bin</td>
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<tr>
<td>Recyclable replacements</td>
<td>Risk of blowing out of bin</td>
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<tr>
<td>Compostable replacements</td>
<td>Wildlife risk &amp; contamination</td>
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</table>
## Mitigation Options

<table>
<thead>
<tr>
<th>Mitigation options</th>
<th>Benefits</th>
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<tr>
<td>Fees on items</td>
<td>Avoid plastic items entering the environment</td>
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<tr>
<td>Ban items/require reusables</td>
<td>Avoid supply chain impacts</td>
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<tr>
<td>Ban/fee hybrids</td>
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<tr>
<td>Item-specific restrictions</td>
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![Diagram showing the mitigation options process]
Types of Plastic Items

- Carry-out bags
- Polystyrene (Styrofoam)
- Foodware
- Accessory items
**Carry-Out Bags**

**What is it?**
Bags made of thin, flexible plastic designed to transport purchases

**Mitigation options:**
- Fees
- Bans
- Fee/ban hybrid

**Peer cities:** Santa Barbara CA, Palo Alto CA, Eugene OR, Portland ME, Santa Rosa CA, Tacoma, WA
Carry-Out Bags

Fort Collins context:

**Bag Policy 2014**: 10-cent fee on plastic and paper bags at grocery stores
- Grocers retained fee; 50% for free durable bags to customers
- Repealed in 2014 before implementation

**Current Efforts**: Awareness; plastic film recycling at TRC, grocers and box stores
Polystyrene Food Containers

What is it?
Plastic foam take-out coffee cups and containers.

Mitigation options:
• Fees
• Bans
• Restrictions
  • Dine-in only

Peer cities: Santa Barbara CA, Palo Alto CA, Eugene OR, Portland ME, Santa Rosa CA
Food Serviceware and Accessory Items

What is it?
Plastic plates, cups, lids, utensils, straws, stirrers, etc.

Mitigation options:
• Fees
• Bans
• Restrictions
  • Self-service stations; upon request

Peer cities: Palo Alto CA, Santa Barbara CA
Peer Communities

Palo Alto, CA
Santa Barbara, CA
Santa Rosa, CA
Portland, ME
Eugene, OR
Boulder, CO
Tacoma, WA
Denver, CO
Successful approaches:

- **Comprehensive strategy** with multiple policies
- Policy development and implementation over multiple years
- Move away from disposables and toward reusables
- Extensive stakeholder outreach
Stakeholder Outreach

Considerations
- Who should be engaged depends on item
- Insight from other cities
- Alignment with stakeholder goals

Examples of stakeholder types
- Accessibility community (need items due to disability)
- Local businesses that provide/sell/distribute single-use items
- Local businesses that recycle plastic
Next Steps

- Gather community and stakeholder input
- Launch plastics awareness campaign and collect data
- Continue supporting legislation to facilitate local action
- June 9th Council work session, single-use plastics update
- Regional Wasteshed: Policy Advisory Committee meeting on Tier 2 recommendations (including waste to energy) - in Q4 of 2020
- Microplastics study completion in Q3 2020
Questions to Council

Macroplastics pollution
1. Do Councilmembers support a comprehensive policy and engagement approach to reducing plastic pollution?
2. Do Councilmembers have a preference on an initial focus area? (such as plastic bags, straws, take-out containers)

Microplastics pollution
3. Do Councilmembers have input on staff’s approach to addressing microplastics?
Types of Plastic Items

- Carry-out bags
- Styrofoam
- Foodware
- Accessory items
Case Study - Palo Alto

Palo Alto, CA

- Disposable Foodware Reduction Plan
  - Reduce single-use
  - Encourage reusable
Sample Project Timeline

- **OCT**: RESEARCH - Sampling, Analysis & Control Technology
- **NOV**: MACRO - Policy Best Practices
- **DEC**: OUTREACH - B&C, Public & Stakeholders
- **JAN**: POLICY - Awareness
- **FEB**: RECOMMENDATIONS
- **MAR**: WORK SESSION
- **APR**: WORK SESSION
- **MAY**: WORK SESSION
- **JUN**: WORK SESSION
- **JUL**: WORK SESSION
- **AUG**: WORK SESSION
- **SEP**: WORK SESSION
- **OCT**: WORK SESSION
- **NOV**: WORK SESSION
- **DEC**: WORK SESSION
**Spring Awareness Campaign: May the Fork Be With You**

**Description:** May The Fork Be With You is an awareness and education campaign designed to raise awareness and provide an action that people can take to reduce single-use plastics. May The Fork Be With You encourages people to skip the utensils when ordering take-out. The campaign was designed specifically in response to the increase in take-out ordering due to COVID-19. Messages were shared via social media and City communications and newsletters from May through the summer.

**Community reception:** May The Fork Be With You was well-received and several community members have requested the associated Zoom background.
**ATTACHMENT III: Community Engagement Data**

**Bottom line:** Staff does not have a complete picture of community support or concern due to generally low sample sizes and very low or no participation from stakeholders who could be disproportionately impacted by a policy.

**Stakeholders minimally or not engaged through survey:**

- Member of the LatinX community
- Grocery store owner/manager
- Coffee shop owner/manager
- Restaurant owner/manager
- Clothing retail owner/manager
- Producer, wholesaler, or supplier of single-use plastics
- Waste industry professional
- Small business owner/manager
- Income less than $25,094 per year
- High school or college student
- Member of a historically underrepresented group, please describe below
- Business owner/manager
- Person living with a disability
- Minority-owned business owner/manager

**Stakeholders engaged:**

- 169 survey responses across two surveys
  - Plastic Bag Survey – 47 responses
  - Single-Use Plastic Survey – 122 responses
- A significant number of responses were from members of environmental groups and senior community members.

**Key themes:**

- The majority of respondents were positive about addressing plastic bags and single-use plastics and mentioned a variety of voluntary and regulatory options in their responses.
- Many respondents
  - Attempt to limit their use of single-use plastics, including bags.
  - Feel frustrated when they are given single-use plastic items by default and do not have an option to opt out.
  - Are noticing a significant increase in the amount of single-use plastics due to COVID-19 and fewer alternative options.
- Reuse single-use plastics, such as bags, before discarding or recycling.
- Some respondents (fewer than 15 responses)
  - Indicate support for action on single-use plastics but responded negatively to the City taking action.
  - Do not support action on single-use plastics at all.
ATTACHMENT IV: Plastic Pollution Data Collection

Community science campaign on local plastic pollution:

Starting in April 2020, Environmental Services partnered with Human Resources and Natural Areas to launch a community science project using the Litterati app to characterize local plastic pollution. Community members collected over 2,000 pieces of litter, much of which was plastic.

Key takeaways:

- Plastic litter comprised 48% of all items collected
  - 19% of items were cigarette butts
  - 29% of items were other types of plastic

Figure 1. Fort Collins Plastic Litter Distribution. Figure excludes cigarette butts to better present the other categories. Note that this is community science data and should be interpreted as directionally correct vs. precise.

Existing practices at Fort Collins major grocers:

Staff surveyed local bag-related practices by phone and found trends amongst national chains and natural/organic grocers.

Key takeaways:

- Major national chains in Fort Collins
- Offer plastic bags.
  - Do not offer bag credits for bringing reusable bags (3 out of 4 major grocers).
  - Report approximately 50% of people bring their own bags.
- Natural/organic grocers
  - Do not offer plastic bags (4 out of 5 natural/organic grocers).
  - Offer bag credits (4 out of 5 natural/organic grocers).
  - Report that the majority of people bring their own bags.
- Bag credits range from 2 – 10 cents and in some cases are associated with a donation program instead of the traditional cash back.
Which option would Councilmembers like staff to pursue for plastic pollution?
Plastics Pollution

COUNCIL PRIORITY
Plastics Pollution
• Microplastics
• Macroplastics

STRATEGIC ALIGNMENT
Environmental Health
• 4.4 Zero waste
• 4.9 Poudre River health

BUDGET
Midcycle funding
• $35K each for macroplastics and microplastics
Grounding in plastic pollution

- Plastic pollution threats to waterways and wildlife
- More information is needed on how to better quantify and monitor microplastic pollution
- Litter as a source of pollution we can act on now
  - Peer cities and best practices recommend a comprehensive approach
  - Engagement – broad and targeted – is essential to good policy
1) **Targeted** engagement and **equity lens**

2) **Robust** stakeholder and community **engagement**

3) **Comprehensive approach** to policy development

4) **More data** on the problem and existing solutions
Plastic Pollution Awareness

May the Fork Be With You
- Adapted to be relevant to COVID-19
- Well-received

Broad outreach
- Businesses & groups: HP, Broadcom, League of Women Voters, Interfaith Council
- Virtual Earth Day

Upcoming
- Business recognition and peer awareness
- Business tip guide
Engagement Insights

Who we’ve heard from
• 100+ people
• Environmental groups
• Seniors

What we’ve heard
• Broad support for action on most items
• Specific interest in bags and polystyrene
• Current lack of alternatives
• Concern about plastic pollutions impacts

Who we haven’t heard from
• BIPOC
• Small businesses
• People with disability
• People with limited English proficiency
1. Targeted engagement and equity lens
   - COVID-19 disproportionate impact on “most-impacted” stakeholders
   - Competing priorities for historically underrepresented community members, i.e. housing costs, job loss, childcare, health

2. Robust stakeholder and community engagement
   - Engaged to date: environmental groups and seniors
   - Broad engagement tools not getting results
3. Comprehensive approach to policy development
   • COVID-19-related restrictions on reusable alternatives
   • Unclear timeline for return of reusable items

4. More data on the problem and existing solutions
   • Impact of COVID-19 on businesses makes data collection on existing practices challenging
   • Litterati campaign launched and data collected! Yet, limited reach due to COVID-19
# COVID-19 and Staffing Impacts

<table>
<thead>
<tr>
<th>Council Direction</th>
<th>On track</th>
<th>Significant challenges</th>
<th>Significant barrier</th>
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<tbody>
<tr>
<td>Outreach and awareness work</td>
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<tr>
<td>Targeted engagement and equity lens</td>
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<td>Robust stakeholder and community engagement</td>
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<td>Comprehensive approach to policy development</td>
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<tr>
<td>More data on the problem and existing solutions</td>
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Key: COVID-19 ☼       Staffing 📂       On track ✓
Options for Moving Forward

1. **Focus on Awareness and Delay Policy Discussion.** Focus awareness work funded through 2020 on making single-use “opt-in” vs. “opt-out” and other simple actions; re-evaluate policy work in 2021 based on readiness criteria.

2. **Limited Policy Work.** In addition to awareness, focus policy work on most feasible option with respect to COVID-19 (e.g. “utensils and accessory items upon request only”) and reevaluate comprehensive approach to other plastic items in 2021.

3. **Comprehensive Approach.** In addition to awareness, prioritize policy work and maintain comprehensive approach.

4. **Refer Ballot Initiative.** In addition to awareness, place single-use plastic bag regulation on the April 2021 ballot.
Questions to Council

Which option would Councilmembers like staff to pursue for plastic pollution?

1. Focus on Awareness and Delay Policy Discussion
2. Limited Policy Work
3. Comprehensive Approach
4. Ballot Measure
MEMORANDUM

Date: October 30, 2020
To: Mayor Troxell and City Councilmembers
Thru: Darin Atteberry, City Manager
Jacqueline Kozak Thiel, Chief Sustainability Officer
Theresa Connor, Interim Utilities Executive Director
Liesel Hans, Utilities Deputy Director
Lucinda Smith, Environmental Services Director
From: Molly Saylor, Environmental Sustainability Senior Specialist
Richard Thorp, Lead Specialist, Science
CC: Jill Oropeza, Director of Sciences, Water Quality Services

Re: October 27, 2020 Work Session Summary: Plastics Pollution Update

Attendees: Jacqueline Kozak Thiel and Molly Saylor presented an update on microplastic and macroplastic pollution work in light of COVID-19 challenges. Mayor Troxell, Mayor Pro Tem Stephens, and Councilmembers Cunniff, Gorgol, Gutowsky, and Pignataro were present.

Key discussion points:

- Recognition of the challenges of engaging the community and most-impacted stakeholders on plastic pollution policy during COVID-19.
- Some interest in following the impact that State legislation would have on potential local action.
- There was interest in exploring a potential plastic pollution ballot measure
  - Perhaps a measure to ban plastic bags and perhaps considering accessory items as well.
  - Incorporating information from related actions in other communities.
- Perspective that COVID-19-related challenges, such as availability of alternative items and temporary suspensions in times of health crises, would need to be addressed
- Other perspectives include:
  - Interest in seeing waste-to-energy considered as part of a systems approach to plastic pollution mitigation, specific interest in follow up on the energy content of plastic items (see table below).
  - That a ballot measure is premature until more engagement can be done, more data collected on options (such as waste-to-energy) and COVID-19 has a lesser impact.
  - Concerns were raised about impacts of a regulation on businesses and consumers, especially while COVID-19 is reducing available options.
  - Interest in more data and health-related implications

Next steps:

- Macropastics:
  - December 8th work session to continue discussion of a plastic pollution ballot measure.
  - Continue existing online engagement.
- Micropastics:
  - Staff will re-evaluate by the end of Q2 2021 if it will be feasible to complete the micropastics study in 2021.
  - By this time, more will be known about the wildfire response and recovery effort resource needs.
  - A reappropriation of 2020 funds will be required to complete this project.
Table 1 summarizes a range of energy values contained in plastics often used to make single-use items.

Table 1: EEC|CCNY NRP higher and lower heating values compared to values reported in the literature (MJ/kg)

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<td>#1-PET</td>
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<td>24.4</td>
<td>23.8</td>
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<td>#2-HDPE</td>
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<td>22.6</td>
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<td>#4-LDPE</td>
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<td>21.0</td>
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<td>AVERAGE</td>
<td>35.7</td>
<td>38.4</td>
<td>27.9</td>
<td>40.2</td>
<td>42.8</td>
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Note: Average does not include #7 resin category as it is highly variable and not uniformly characterized.

Fees in the Context of Plastic and Paper Bags

Bottom Line:

1. The City could require vendors to charge customers a disposable bag fee, rather than permitting them to give disposable bags away. If such a fee is not shared with or remitted to the City, it would not be a fee (or a tax) charged by the City. The City could include acceptable uses of the fee by the vendor in its ordinance.

2. To support a disposable bag fee that is paid to the City in whole or in part, the fee would need to be imposed for the purpose of running education, mitigation and/or waste reduction programs and the City should:
   - Identify the police power basis for its imposition of the fee and its role in a larger regulatory scheme of activities to be funded by it;
   - Identify how the amount of the fee bears a reasonable relationship to the cost of the overall program/service (e.g. recycling costs) and/or regulatory scheme it is intended to support (e.g. education, outreach and awareness, mitigation, waste reduction programs – which may require a fee study).

Decision Points – Charging a Fee:

- Who collects the fee – vendor?
- Is any portion of the fee remitted to the City?
- What can the vendor and the City use the fee for (if City, must be used to offset cost of service provided such as education/mitigation related to waste reduction programs for example)?
- Is the fee reasonably related to and not more than the cost of the programs and/or regulatory structure it is intended to support?

Fees v. Taxes: Fees are assessed to defray costs of providing specific services and cannot be used for another purpose. Taxes are assessed on the value of something (property, sale of goods, etc. – often referred to as ad valorem (added to and based on the value) and are used for general governmental purposes. New taxes cannot be imposed under TABOR without a vote.

Aspen Case: With these principles in mind, the relevant details of the Aspen case can be summarized as follows:

- In the Aspen case, a $.20 fee (waste reduction fee) is imposed by Ordinance for each disposable paper bag provided to a customer (it also banned plastic bags). The grocer retained a portion of the waste reduction fee (up to a monthly cap) to be used for specific costs (educational information to customers, staff training, infrastructure improvement/alternation and administration of the fee). The remaining amount was paid into the City Waste Reduction and Recycling Account to be used to fund specified waste reduction and recycling activities and projects.
- The issue that the Colorado Supreme Court in the Aspen case addressed directly was whether the fee was a really tax (which required a TABOR vote), and the Court held that it was not a tax requiring a vote under TABOR.
The Court found the purpose of Aspen’s charge was not to raise revenue to fund general governmental expenses so it was not a tax (and not based on the legislative power to tax). Instead, the Court found that the primary purpose of the charge was to “defray some of the costs of a comprehensive regulatory scheme aimed at improving environmental health and safety through a waste-reduction program” arising out of Aspen’s exercise of its regulatory police power focused on protection of health, safety, and welfare (which can be used to support “education and outreach on environmental sustainability”).

The Court looked at the question of whether the charge was, “in fact, imposed to defray the direct or indirect costs of regulation and if the amount of the fee [was] reasonable in light of those costs. The Court found that the charge was only one part of a “larger regulatory scheme” to educate and promote waste reduction, recycling, and reduction of impact of disposable bags on the environment.

The Court also found that the charge was “reasonable” based on “a San Francisco waste-reduction study that found the cost of subsidizing recycling costs for plastic and paper bags was $0.17 per bag” and (2) the City’s analysis of its recycling costs for such bags. On this basis, the Court held that a $0.20 fee per bag bears a reasonable relationship to the costs of the regulatory scheme it was assessed to fund and did not need to exactly match the cost of providing the service or regulating the activity (the cost of permitting the use of such bags).
Comprehensive Approach Case Study – Palo Alto

Population: 66,666

Disposable Bag Policy (2008)

The City of Palo Alto began addressing single-use plastics in 2008 with the adoption of its Retail and Food Service Establishment Checkout Bag Requirements Ordinance which banned the distribution of single-use plastic carry-out bags from grocery stores. After subsequent creek cleanup events showed that plastic bags were still prevalent in local creeks and on streets, the policy was updated in 2013 to include all retailers and food service establishments. The updated ordinance also required a 10-cent fee on all paper and reusable bags that were distributed to deter the use of single-use paper bags. In 2019, the policy was updated again to ban the distribution of single-use plastic bags for produce, meat, and bulk food bags and require these bags to be certified compostable (paper or bioplastic). The city’s policy is now one of the most comprehensive in the country because it affects many different business types, including all retailers and food service establishments, and many different types of single-use plastic bags, including carry-out bags as well as meat, produce and bulk food bags.

Key drivers for success

- **Other local policies**: Palo Alto’s plastic bag ban followed in the footsteps of other California cities including San Francisco and Santa Monica.
- **Store leadership**: Three of the city’s seven supermarkets had stopped distributing plastic bags as the city was exploring the policy.
- **Community support**: Public and City Council supported exploring policy options. Local nonprofits dedicated to the reduction of plastic pollution were helpful in garnering community support.

Effectiveness at meeting local goals

- City data from creek cleanups showed a 90% reduction in the amount of plastic bags in the creeks after ordinance went into effect.
- Compliance checks conducted by the city after implementation in 2008 found that over 90% of businesses complied with the policy. Future compliance checks will be conducted through the
Zero Waste group and will be scheduled after the next phase of the ordinance goes into effect in January 2020.

- Through a survey, Palo Alto saw a sharp decline in plastic bag use and an increase in the use of reusable bags following its plastic bag ban. However, paper bag use increased immediately in response to the plastic bag ban. Paper bag use sharply decreased once the city implemented a fee on paper bags in 2013, and this led to a further increase in reusable bags and customers not using any bags. From 2008-2015, overall plastic bag use has declined from over 50% of bags used to zero, and over 75% of bag use is now reusable bags or no bag.

Significant challenges faced

- **Opposition from plastics industry:** The American Chemistry Council and Dart Container Corp., one of the largest manufacturers of polystyrene foam food containers, lobbied against the policy and testified before the city council. The industry group SaveThePlasticBag.com also threatened the city with a lawsuit. The California Restaurant Association also closely echoed the concerns of the plastic industry representatives.

- **Fee:** State law prohibits California cities from collecting a bag fee from retailers so retailers keep the entire 10-cent fee on all paper or reusable checkout bags sold.

Disposable Foodware Policy (2019)

In 2019, Palo Alto adopted the Disposable Foodware Reduction Plan, which is a three-phase program with the goal to eliminate the use of disposable foodware items and switch to reusable items in order to protect local watersheds and oceans, reduce litter, encourage Zero Waste, and reduce contamination in the composting program. The first phase of this plan was implemented in 2019 with the passage of the Disposable Foodware Items and Other Disposable Products Ordinance, which banned single-use plastic foodware accessory items including plastic straws, plastic utensils, plastic drink stirrers, plastic drink plugs, plastic food and drink picks, plastic drink accoutrements, and plastic produce bags. Businesses are required to provide only reusable or compostable alternatives, and these products must be offered only upon request or via a self-serve station. The policy applies to any business in Palo Alto that serves food, including restaurants, bars, delis, grocery stores, food trucks, hotels, convenience stores, and cafeterias. Hospitals were exempted from the program.

The goal of the Disposable Foodware Reduction Plan:

- Reduce the amount of single-use, disposable foodware generated in Palo Alto
- Encourage the use of reusable foodware
- Ensure that single-use disposable items are either recycled or composted

The plan has a phased approach:

- **Phase 1 – 2019:** Disposable Foodware Items and Other Disposable Products Ordinance
  - Bans single-use plastic foodware accessory items such as straws and stirrers.
Requires compostable or reusable alternatives are offered only upon request or via a self-serve station.

- **Phase 2 – 2021**
  - Charge for disposable cups and containers
  - Require reusable foodware for dine-in customers
  - Require all new construction for food service establishments to install a dishwasher

- **Phase 3 – 2025**
  - Ban all single-use disposable foodware for take-out
  - Require all food service establishments to have one of the following services to support reusable foodware:
    - Have a dishwasher on site
    - Sign-up for dishwasher service
    - Sign-up for reusable foodware service program
  - Require reusable foodware for take-out, including allowing residents to bring their own containers and/or implementing a citywide reusable food container rental/return program (see p. 59 for current pilot programs)

**Key drivers for success**

- **Mitigate environmental impact:** Palo Alto has a strong history of support for reducing waste, reducing the amount of plastics in oceans, decreasing litter in the community and reducing its climate impact.

- **Support for compostables in business survey:** The city’s survey of food businesses found ⅔ of food service establishments already utilized some form of compostable foodware and 52% reported it would be easy to switch to compostable products.

- **Local community partners:** The city partnered with Girl Scouts and a local high school biology class to conduct business surveys. Several nonprofits and community advocacy groups submitted a letter of support to the city and encouraged the city to take bolder action. Local stakeholders promoted not using plastic disposables and reducing use at local community events (i.e. farmer’s market).

- **ReThink Disposable proves success stories at local businesses:** The city signed a 3-year contract with ReThink, a technical assistance program provided by the City of Palo Alto Watershed Protection and Clean Water Action and Clean Water Fund. This program helps businesses, institutions, governments, and consumers reduce waste and associated costs by targeting disposable packaging items through outreach and education, and conducted local business case studies to show waste reduction and cost savings.

**Effectiveness at meeting local goals**

- The ordinance is expected to reduce waste by 290 tons per year and save 470 tons of carbon pollution once fully implemented.

- [ReThink Disposables Report](#) on how businesses in Palo Alto successfully reduced disposable foodware showed the effectiveness of minimizing disposable foodware: 111 businesses were
recruited and provided with outreach materials; 14 businesses were ReThink certified and found that 1,123,443 single-use foodware items were eliminated annually and had $32,023 combined total annual net-savings.

**Significant challenges faced**

- Council members were concerned with the availability of compostable foodware items.
- Businesses were primarily concerned about the additional cost of compostable items, the difficulty in finding replacements and that these products would still result in litter.

**Supporting City Policies and Plans for Bags and Food Serviceware**

- Palo Alto’s [Bag Ordinance](https://example.com) was adopted in 2008 to ban the distribution of single-use plastic bags at grocery stores. This was updated in 2013 to require a 10-cent fee on paper and reusable bags sold by the retailer, and to include all food service establishments. (There is no charge for customers to bring their own bags. However, retailers cannot provide reusable bags for free and must charge a minimum fee on any bags sold to the customer in order to reduce the distribution of any free bags of any type.) In 2019, the ordinance was updated again to include produce, meat, and bulk food bags, and require them to be reusable or certified compostable.
- The [Expanded Polystyrene and Non-Recyclable Food Service Containers Ordinance](https://example.com) was adopted in 2009 and updated in 2016. The policy prohibits foodservice and retail establishments from distributing prepared food in plastic foam or other non-recyclable plastic food service containers.
  - City facilities and events are prohibited from using disposable food service containers made from plastic foam or non-recyclable plastic.
- In 2017, guidelines were updated to prohibit city staff from using Petty Cash and procurement cards to purchase polystyrene products, bottled water, and other plastic products.
- The 2018 [City of Palo Alto Zero Waste Plan](https://example.com) has a goal of 95% waste diversion by 2030.
- The [Disposable Foodware Reduction Plan](https://example.com) was put together in 2018 by the Zero Waste Group, which is a roadmap for the city to switch from disposable foodware items to reusable foodware.
- The [Disposable Foodware Items and Other Disposable Products Ordinance](https://example.com) was adopted in 2019, banning plastic: straws, utensils, stirrers, beverage plugs, and produce bags. Alternative products must be compostable and can only be provided upon request or at a self-serve station.
- The Municipal Regional Stormwater Permit requires the city to eliminate storm drain litter by 2022.
Ballot Timing Considerations

This attachment provides context for timing for a question included in the April or November election. Descriptions include references to “submitting a ballot question” and “referring an ordinance” which are two different options for how Council may place a plastic policy on the ballot. More description and details on these options are presented in the Mechanisms section of the AIS.

April considerations

- Considerations by ballot mechanism:
  - If Council wants to submit a ballot question on the April 2021 ballot, it must do so by Resolution. In order to provide optimal time for preparation of the ballot, the preferred date to do so is February 2, 2021. The last possible date to do so is February 16, 2021.
  - If Council wants to adopt an ordinance and then refer it to the voters in April, second reading of the ordinance could occur no later than February 16. First reading could occur on February 2, or at an adjourned meeting on February 9.
- The cost to add an additional item to the April ballot is negligible, unless the total number and length of candidate races and ballot measures will not fit on a standard 8.5” x 11” ballot. An 8.5” by 14” ballot will increase material and mailing costs.

Staff support

- Ordinance development
- Online survey-based engagement between early December and January 31st
- City Clerk’s support for election-related matters
- City Attorney’s Office support for developing language

November considerations

- If Council determines it would rather target voter consideration at the November 2021 election, action to do so would need to occur no later than August 17.
- The cost to participate in a November election is based on three factors:
  - The number of entities participating in the election;
  - The number of registered voters in the City; and
  - Whether the City has any ballot issues required to be included in the TABOR notice.
- If the State of Colorado participates in the election, it pays $.80 per active voter in the County, thereby reducing the costs to be borne by all other participating entities.
- Until the participating entities for a November election are known, which can be as late as early September, there is really no way to estimate potential cost to the City to participate.
- The following table shows historical costs of November elections in which the City participated:

<table>
<thead>
<tr>
<th>Election Date</th>
<th>Cost</th>
<th>Questions on Ballot</th>
<th>TABOR Notice</th>
<th>In-City Voters</th>
<th>Ballots Cast</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nov 2017</td>
<td>$68,690</td>
<td>Authorization to revise medical marijuana provisions and a Charter amendment relating to Broadband</td>
<td>No</td>
<td>118,082</td>
<td>38,097</td>
</tr>
<tr>
<td>Nov 2016</td>
<td>$129,436</td>
<td>Retention of excess KFCG revenue</td>
<td>Yes</td>
<td>123,641</td>
<td>85,570</td>
</tr>
<tr>
<td>Year</td>
<td>Amount</td>
<td>Issue</td>
<td>Result</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>---------</td>
<td>----------</td>
<td>-------------------------------------------</td>
<td>--------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>Nov 2015</td>
<td>$61,425</td>
<td>Broadband</td>
<td>No</td>
<td>94,912</td>
<td>31,404</td>
</tr>
<tr>
<td>Nov 2013</td>
<td>$39,579</td>
<td>Fracking moratorium</td>
<td>No</td>
<td>96,824</td>
<td>43,562</td>
</tr>
<tr>
<td><strong>Nov 2012</strong></td>
<td><strong>$292,276</strong></td>
<td><strong>Repeal of ban on medical marijuana</strong></td>
<td>No</td>
<td>93,075</td>
<td>80,595</td>
</tr>
<tr>
<td>Nov 2011</td>
<td>$16,125</td>
<td>Ban on medical marijuana</td>
<td>NO</td>
<td>71,251</td>
<td>37,053</td>
</tr>
</tbody>
</table>

*Bold italics indicates a Presidential election year*

**Staff support**

- Ordinance development
- Online survey-based engagement
- Stakeholder meetings (pending COVID-19 developments may be possible by November, likely not possible in the April timeframe even if virtual)
Paths to April Election

Depending on the mechanism (Council initiative or referendum), the following dates reflect two possible paths to the April election.

**Council initiative.** Council may submit any question or proposed ordinance or resolution to the voters.

Dec 8 - Single Use Plastics Ballot Item Discussion to gain clarity on policy elements and other logistics.

Dec 16 – Jan 31 – Online engagement around the elements of a plastic policy.

Dec 15 - Council resolution to pursue a ballot measure and direct staff to prepare the ballot language/ordinance with specific elements as discussed on December 8.

Jan 12 - Present ballot language and ordinance for feedback from Council aligned to the Dec 15 resolution.

Feb 2 - Council passes resolution to submit the ballot question to the April election via Council initiative.

After this point, Environmental Services staff can no longer engage in any engagement on the issue. City Clerk’s office manages the logistics of the ballot process.

**April election**

**Council referendum.** Council may refer any *adopted* ordinance or resolution to a vote of the people.

Dec 8 - Single Use Plastics Ballot Item Discussion to gain clarity on policy elements and other logistics.

Dec 15 - Council resolution to pursue a ballot measure and direct staff to prepare the ballot language/ordinance with specific elements as discussed on December 8.

Dec 16 – Jan 31 – Online engagement around the elements of a plastic policy.

Jan 12 – Council work session to provide feedback on proposed plastic policy ordinance.

Feb 2

a) First reading of plastic policy ordinance.

Feb 16

a) Second reading of plastic policy ordinance.

b) Council resolution to refer the ordinance to the April ballot via Council referendum.
City Clerk’s office manages the logistics of the ballot process.

April election
Mitigating Plastics Pollution
Jacqueline Kozak Thiel and Molly Saylor
1. What are Councilmember preferences on the outlined decision points?
Plastics Pollution

COUNCIL PRIORITY
Plastics Pollution
- Microplastics
- Macroplastics

STRATEGIC ALIGNMENT
Environmental Health
- 4.4 Zero waste
- 4.9 Poudre River health

BUDGET
Midcycle funding
- $35K each for macroplastics and microplastics
<table>
<thead>
<tr>
<th>Type of policy</th>
<th>Businesses impacted</th>
<th>Mechanism</th>
<th>Other additions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ban</td>
<td>Large grocers</td>
<td>Initiative, Referendum</td>
<td>Accessory items, Styrofoam, Plates, cups, etc., Future consideration - OCF</td>
</tr>
<tr>
<td>Fee – plastic</td>
<td>All grocers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fee – plastic and paper</td>
<td>All food service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hybrid</td>
<td>All retailers</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Systems Approach

- Comprehensive approach
  - Trade-offs with alternatives

- Systems approach
  - Multiple systems changes needed to fully address plastic pollution

- Our Climate Future Big and Next Moves
  - Circular Economy
  - Cooperative Communities
<table>
<thead>
<tr>
<th>Policy Type</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fee:</strong> Small fee to plastic and/or paper bags</td>
<td>(Boulder) 70% reduction in paper and plastic bags</td>
</tr>
<tr>
<td><strong>Ban:</strong> No plastic bags allowed</td>
<td>(Palo Alto - initial) Reduced plastic bags, significantly increased paper bags</td>
</tr>
<tr>
<td><strong>Hybrid:</strong> Ban on plastic bags and fee on paper</td>
<td>(Palo Alto - revised) 100% reduction in plastic bags, reduced paper bags, increased reusable bags</td>
</tr>
<tr>
<td>Outcomes</td>
<td>Ban</td>
</tr>
<tr>
<td>--------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Reduction in plastic bags</td>
<td>✔️</td>
</tr>
<tr>
<td>Shifts behavior to reusable bags, rather than more paper</td>
<td>❌</td>
</tr>
<tr>
<td>Gives customers options</td>
<td>❌</td>
</tr>
</tbody>
</table>

- ✔️ Best outcome
- ✔️ Good outcome
- ❌ No outcome
Businesses Impacted

- Large grocers
- All grocers
- Food service
- All retailers and food service
Engagement

**Reducing Plastic Pollution**

- Online survey tools for engagement and comments on ballot language and related ordinance.
- **Begin:** Mid-December
- **End:** January 31
**Council initiative.** Council may submit any question or proposed ordinance or resolution to the voters.

**Council referendum.** Council may refer any adopted ordinance or resolution to a vote of the people.
Other Additions

Polystyrene (Styrofoam)  Foodware  Accessory items
Staff recommendation across ban, fee, or hybrid policy

<table>
<thead>
<tr>
<th>Implementation</th>
<th>Enforcement</th>
<th>Policy resilience*</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 2022 (One-year post election)</td>
<td>• Compliance audit &amp; data collection&lt;br&gt;• Civil penalties&lt;br&gt;• Annual reporting</td>
<td>• Public health&lt;br&gt;• Supply chain&lt;br&gt;• Start date&lt;br&gt;• Equity</td>
</tr>
</tbody>
</table>

*Assumes Council initiative
<table>
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<td></td>
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<tr>
<td>Hybrid</td>
<td>All retailers</td>
<td></td>
<td>Future consideration - OCF</td>
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1. What are Councilmember preferences on the outlined decision points?
COUNCIL PRIORITY
Plastics Pollution
- Microplastics
- Macroplastics

STRATEGIC ALIGNMENT
Environmental Health
- 4.4 Zero waste
- 4.9 Poudre River health

BUDGET
Midcycle funding
- $35K each for macroplastics and microplastics
## Council Preferences

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<tbody>
<tr>
<td>q Ban</td>
<td>Large grocers</td>
<td>q Initiative</td>
<td>q Accessory items</td>
</tr>
<tr>
<td>q Fee – plastic</td>
<td>All grocers</td>
<td>q Referendum</td>
<td>q Expanded polystyrene</td>
</tr>
<tr>
<td>q Fee – plastic and paper</td>
<td>All food service</td>
<td></td>
<td>q Plates, cups, etc.</td>
</tr>
<tr>
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<td>All retailers</td>
<td>q Future consideration - OCF</td>
<td></td>
</tr>
</tbody>
</table>
## Optional Wording

<table>
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<th>Mechanism</th>
<th>Other additions</th>
</tr>
</thead>
<tbody>
<tr>
<td>q Ban</td>
<td>q Large grocers</td>
<td>q Initiative</td>
<td>v Accessory items</td>
</tr>
<tr>
<td>q Fee – plastic</td>
<td>q All grocers</td>
<td>q Referendum</td>
<td>v Expanded polystyrene</td>
</tr>
<tr>
<td>q Fee – plastic and paper</td>
<td>q All food service</td>
<td></td>
<td>v Plates, cups, etc.</td>
</tr>
<tr>
<td>q Hybrid</td>
<td>q All retailers</td>
<td></td>
<td>v Future consideration - OCF</td>
</tr>
</tbody>
</table>

! = clarity needed       v = optional wording
### Policy Details

<table>
<thead>
<tr>
<th>Implementation</th>
<th>Enforcement</th>
<th>Risk Mitigation</th>
</tr>
</thead>
</table>
| • May 2022 (One-year post election)  
• **Income qualified fee exemption** | • Compliance audit & data collection  
• Civil penalties  
• Annual reporting including performance measures | • Public health  
• Supply chain  
• Start date  
• Equity |
Resolution directs staff to prepare ballot language with the following policy elements and logistical considerations:

- Staff recommended base case
- Hybrid approach – ban plastic bags, fee on paper
- Large grocers
- Referendum
- Optional language for further business types and items
RESOLUTION 2020-118
OF THE COUNCIL OF THE CITY OF FORT COLLINS
GIVING STAFF DIRECTION ON NEXT STEPS FOR CITY COUNCIL ADOPTION OF PLASTIC POLLUTION MITIGATION STRATEGIES

WHEREAS, City Council has identified plastics pollution as a priority concern for the City to mitigate, which aligns with the community’s Road to Zero Waste goal to produce zero waste by 2030 and its goal to sustain and improve the health of the Cache la Poudre River and its watershed; and

WHEREAS, because plastic makes up about 10% of landfilled as “municipal solid waste”, mitigating plastic pollution will be a necessary component of achieving the City’s goal of producing zero waste by 2030; and

WHEREAS, City Council funded midcycle budget offers to conduct plastic pollution reduction awareness and engagement during 2020 and fund a study to address a study of microplastic pollution in the local Cache la Poudre River and other waterways; and

WHEREAS, City Council has discussed various options for mitigating single-use plastic pollution, while continuing to study microplastic pollution, at three Council Work Sessions on February 11, 2020, October 27, 2020, and December 8, 2020; and

WHEREAS, City Council has discussed various options for mitigating single-use plastic pollution, while continuing to study microplastic pollution, at three Council Work Sessions on February 11, 2020, October 27, 2020, and December 8, 2020; and

WHEREAS, City Council wishes to direct City staff to develop for Council’s consideration a plastic pollution ordinance as described herein; and

WHEREAS, City Council further intends to adopt an ordinance and refer it to a vote of the of Fort Collins’ voters.

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

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That Council hereby directs that staff prepare and present to Council for consideration an ordinance containing the following elements:

A. Ban on distribution of single-use plastic bags and fee on paper bags, applicable to large retail grocers with a place of business in the City of Fort Collins; and

B. Said ban and fee to commence May 1, 2022; and

C. Set a not to exceed maximum for the paper bag fee and limit any portion of the fee returned to the City to no more than the reasonable costs of a defined plastic pollution mitigation and solid waste reduction program to be approved by Council; and

-1-
D. Include an exemption to the paper bag fee for low income residents; and

E. Include provisions for compliance audit of and data collection from retailers subject to the ban and fee and civil penalties for violation of the ordinance, and

F. Include provision allowing suspension of program requirements as deemed necessary due to public health emergencies or other unforeseen circumstances.

G. Require monitoring and annual reporting to Council on equity impacts, compliance and outcomes, including performance metrics related to number and type of bags distributed, presence of single-use plastic bags in the environment as a percentage of litter removed from sensitive areas such as Natural Areas and the Poudre River; and

H. Include language affirming Council’s commitment to evaluating and adjusting, whether by expanding, contracting or modifying, the requirements and provisions of the ordinance based on stakeholder engagement or other unforeseen circumstances.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 15th day of December, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
ORDINANCE NO. 163, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE FIRST AMENDMENT TO GROUND LEASE AGREEMENT BETWEEN
THE CITIES OF LOVELAND AND FORT COLLINS AND DISCOVERY AIR, LLC, FOR
PROPERTY AT THE NORTHERN COLORADO REGIONAL AIRPORT

WHEREAS, the Cities of Loveland and Fort Collins (collectively the “Cities,” and
“Loveland” or “Fort Collins” respectively) jointly own and operate the public airport known as
the Northern Colorado Regional Airport (the “Airport”); and

WHEREAS, the Cities entered into an Amended and Restated Intergovernmental
Agreement for the Joint Operation of the Airport on January 22, 2015 (the “IGA”), whereby the
Cities formed a commission and delegated certain duties and responsibilities to such commission
(the “Commission”); and

WHEREAS, by adoption of Ordinance No. 148-2018, the Fort Collins City Council
approved a fifty year ground lease of Airport property (the “Lease”) to Discovery Air, LLC
(“Lessee”) for a planned development for aviation purposes to include airplane hangars, a fixed-
base operation, associated office space, and a restaurant, as well as other potential improvements
such as a new access road which would create a new entrance to the Airport and expanded
tarmac (the “Project”); and

WHEREAS, continuation of the Lease is contingent on Lessee obtaining certain
approvals and financing for the proposed development and commencing certain development
activities within specified time periods; and

WHEREAS, the Lessee’s planning for the Project has progressed since execution of the
Lease and Lessee desires to develop the Project in four phases, and accordingly has requested
that the Cities amend the Lease to also phase the Lease rent; and

WHEREAS, Airport staff and Lessee have discussed and negotiated an amended rent
structure to correspond with the four phases, with rent for each phase of the Project having two
rent escalation points and annual adjustments based on Consumer Price Index increases, as more
fully set forth in the First Amendment to Ground Lease (the “First Amendment”) attached
hereto as Exhibit “A” and incorporated herein by this reference; and

WHEREAS, the Lessee is current on all rent payments and other obligations under the
Lease and has obtained preliminary development approvals from Loveland to enable Lessee
move forward with the Project, subject to an additional two-year “Inspection and Entitlement
Period” as set forth in the First Amendment; and

WHEREAS, in addition to amending rent structure, the Lessee proposes to amend the
Lease to update the site plan attached thereto as Exhibit B to match the current approved site
plan, to add a legal description of the Leased Premises, and to make some other minor
amendments; and
WHEREAS, the Commission reviewed the First Amendment at its regular meeting on November 12, 2020, and voted unanimously to recommend approval to the City Councils for the Cities; and

WHEREAS, the Loveland City Council will consider a resolution approving the First Amendment at its meeting scheduled for December 15, 2020; and

WHEREAS, Fort Collins Municipal Code Section 23-113 provides that City Council may approve leases of real property owned in the name of the City for a term in excess of twenty (20) years by ordinance where Council finds that the lease is in the best interests of the City; and

WHEREAS, the City Council finds that the Lease, as modified by the First Amendment, is in the best interests of the City because it may be a catalyst to attract additional Airport development and businesses, enhance the Airport's economic impact and job creation, and have an additional positive impact to the Airport's self-generated income and future financial sustainability; and

WHEREAS, the City Council desires to approve the First Amendment and to authorize the City Manager to execute the First Amendment on behalf of the City of Fort Collins.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the First Amendment is hereby approved.

Section 3. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the First Amendment in form or substance as deemed necessary to effectuate the purposes of this Ordinance or to protect the interests of the City.

Section 4. That the City Manager is hereby authorized and directed to execute the First Amendment on behalf of the City.
Introduced, considered favorably on first reading, and ordered published this 15th day of December, A.D. 2020, and to be presented for final passage on the 5th day of January, A.D. 2021.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 5th day of January, A.D. 2021.

Mayor

ATTEST:

City Clerk
FIRST AMENDMENT TO NORTHERN COLORADO REGIONAL AIRPORT GROUND LEASE AGREEMENT

This FIRST AMENDMENT TO NORTHERN COLORADO REGIONAL AIRPORT GROUND LEASE AGREEMENT ("Amendment") is entered into on this __________ day of ________, 2020 (the "Effective Date"), by and between CITIES OF FORT COLLINS AND LOVELAND, COLORADO (collectively, the "Cities"), and DISCOVERY AIR, LLC, a Colorado limited liability company ("Lessee").

RECITALS

A. The Cities and Lessee entered into that certain Northern Colorado Regional Airport Ground Lease Agreement dated January 16, 2019 (the "Lease"), for the lease of certain premises (the "Leased Premises"), located within the Northern Colorado Regional Airport (the "Airport"), Larimer County, Colorado;

B. Since execution of the Lease, the Lessee has developed its plans for the Leased Premises at the Airport such that it anticipates constructing its facilities and improvements in phases. As a result, Lessee has requested, and the Cities have agreed to also phase the rent due for the Leased Premises. The parties therefore desire to amend the Lease to phase the rent, to amend the rentable and non-rentable areas of the Leased Premises, and to clarify other items stated in the Lease.

C. The parties therefore desire to amend the Lease to phase the rent, to amend the rentable and non-rentable areas of the Leased Premises, and to clarify other items stated in the Lease as more particularly set forth and described herein below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions. All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Lease.

2. Amended Paragraph 1.4. The Cities and Lessee agree that Paragraph 1.4 of the Lease is deleted in its entirety and is hereby replaced with the following:

"1.4 In addition, Lessee shall have twenty four (24) months after the Effective Date (the "Inspection and Entitlement Period") (i) to obtain, at its sole cost and expense, any and all platting, master planned, subdivision, PUD, land use or other approvals, including approval of a site development plan ("Entitlements") which are required to enable Lessee to operate and develop the Leased Premises in accordance with the site plan depicted in Exhibit "B"; (ii) omitted; (iii) to inspect, test, examine, survey or conduct any studies of the Leased Premises as Lessee may deem necessary; (iv) to ascertain the availability of utilities and other services and to finalize any development agreements related thereto; and (v) to otherwise investigate the desirability and feasibility of the Leased Premises for Lessee’s use. Lessee further agrees to provide the Commission with Lessee’s final site development plan for review prior to Lessee’s submittal of such final site..."
development plan to Loveland in order for the Commission to provide input to Loveland regarding the plan. Lessee shall be entitled to terminate this Agreement upon notice in writing to the Cities at any time prior to the end of the Inspection and Entitlement Period if (i) Lessee is unable, in its business judgment, to assure itself that it will be able to obtain the necessary Entitlements, or finalize any development agreements related to utilities and other necessary infrastructure or (ii) Lessee otherwise determines, in its business judgment, that the condition of the Leased Premises is unsatisfactory for Lessee’s intended use, or that any necessary utilities, services, or approvals are unavailable. If Lessee so terminates this Agreement, all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement. If Lessee does not notify the Cities prior to the end of the Inspection and Entitlement Period of Lessee’s election to terminate this Agreement for any of the foregoing reasons, then this termination clause shall be inoperative and void, and this Agreement shall remain in full force and effect. If Lessee has not obtained approval of a site development plan for Lessee’s development of the Leased Premises in substantially similar form to the plan depicted on Exhibit B, the Cities may terminate this Agreement by providing Lessee notice of intent to terminate this Agreement within thirty (30) days. If Lessee fails to obtain approval of such site development plan by the end of the thirty (30) days, this Agreement shall automatically terminate as of the thirty-first (31st) day and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement.”

3. **Amended Paragraph 1.5.** The Cities and Lessee agree that Paragraph 1.5 of the Lease is deleted in its entirety and is hereby replaced with the following:

“1.5 In the event Lessee has not commenced construction of any horizontal improvements to the Leased Premises for example, grading work or installation of utilities, within three (3) years after the Effective Date of this Agreement, subject to extension mutually agreed upon in writing by the parties, this Lease shall automatically and immediately terminate. In addition, in the event Lessee has not commenced construction of any of the vertical improvements comprising Phase I (as hereinafter defined), subject to extension mutually agreed upon by the parties, this Agreement shall automatically and immediately terminate. Nothing contained herein shall prohibit or operate to prohibit Lessee from applying for or seeking reimbursement for any of the Improvements from any local government, state or federal entity.”

4. **Leased Premises.** The Cities and Lessee agree that Paragraph 2.1 is deleted in its entirety and is hereby replaced with the following:

2.1 The Leased Premises consist of the parcel of land described in Exhibit “A”, which is attached hereto and by this reference made a part hereof.

5. **Amended Rent.** The Cities and Lessee agree that Paragraph 4.2 of the Lease is deleted in its entirety and is hereby replaced with the following:
4.2 (a) **Phase I.** Commencing on the earlier of (i) January 1, 2021 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase I Rental Area (as hereinafter defined) (the “Phase I Rent Commencement Date”), Lessee agrees to pay to the Cities for the first (1st) year following the Phase I Rent Commencement Date an annual rent of $0.15 per square foot for the Phase I Rental Area, for a total of $18,044.10 per year, subject to adjustment pursuant to Section 4.2(f). Commencing on the 8th anniversary of the Phase I Rent Commencement Date (the “Phase I Rent Escalation Date”), Lessee shall pay to the Cities an annual rent of 167% of the previous year’s annual rent for the Phase I Rental Area, subject to adjustment pursuant to Section 4.2(f). “Phase I Rental Area” as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on Exhibit “C” which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase I Rental Area contains 120,294 square feet. The Phase I Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.

The parties acknowledge and agree that the annual rent for the remaining Rental Area (as hereinafter defined) other than the Phase I Rental Area shall remain as set forth in Paragraph 4.1 of the Lease until a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred. The term “Additional Phase Rent Commencement Date” shall mean any of the following: the Phase II Rent Commencement Date (as hereinafter defined), Phase III Rent Commencement Date (as hereinafter defined), or Phase IV Rent Commencement Date (as hereinafter defined), as the case may be.

The parties acknowledge and agree that Lessee intends to develop and construct the remaining Leased Premises in phases comprising currently undetermined portions of the Leased Premises at times reasonably determined by Lessee.

(b) **Phase II.** Commencing on the earlier of (i) January 1, 2026 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase II Rental Area (as hereinafter defined) (the “Phase II Rent Commencement Date”), Lessee agrees to pay to the Cities for the first (1st) year following the Phase II Rent Commencement Date an annual rent of 300% of the prior year’s annual rent for the Phase II Rental Area, subject to adjustment pursuant to Section 4.2(f). Commencing on the 8th anniversary of the Phase II Rent Commencement Date (the “Phase II Rent Escalation Date”), Lessee shall pay to the Cities an annual rent of 167% of the prior year’s annual rent for the Phase II Rental Area, subject to adjustment pursuant to Section 4.2(f). “Phase II Rental Area” as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on Exhibit “C” which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase II Rental Area contains 242,626 square feet. The Phase II Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.
The parties acknowledge and agree that the annual rent for the remaining Rental Area (as hereinafter defined) other than the Phase I Rental Area and Phase II Rental Area shall remain as set forth in Paragraph 4.1 of the Lease until a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred.

(c) Phase III. Commencing on the earlier of (i) January 1, 2029 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase III Rental Area (as hereinafter defined) (the “Phase III Rent Commencement Date”), Lessee agrees to pay to the Cities for the first (1st) year following the Phase III Rent Commencement Date an annual rent of 300% of the prior year’s annual rent for the Phase III Rental Area subject to adjustment pursuant to Section 4.2(f). Commencing on the 8th anniversary of the Phase III Rent Commencement Date (the “Phase III Rent Escalation Date”), Lessee shall pay to the Cities an annual rent of 167% of the prior year’s annual rent for the Phase III Rental Area, subject to adjustment pursuant to Section 4.2(f). “Phase III Rental Area” as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on Exhibit “C” which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase III Rental Area contains 150,622 square feet. The Phase III Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards. The parties acknowledge and agree that the annual rent for the remaining Rental Area (as hereinafter defined) other than the Phase I Rental Area, Phase II Rental Area, and Phase III Rental Area shall remain as set forth in Paragraph 4.1 of the Lease until a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred.

(d) Phase IV. Commencing on the earlier of (i) January 1, 2030 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase IV Rental Area (as hereinafter defined) (the “Phase IV Rent Commencement Date”), Lessee agrees to pay to the Cities for the first (1st) year following the Phase IV Rent Commencement Date an annual rent of 300% of the prior year’s annual rent for the Phase IV Rental Area, subject to adjustment pursuant to Section 4.2(f). Commencing on the eighth anniversary of the Phase IV Rent Commencement Date (the “Phase IV Rent Escalation Date”), Lessee shall pay to the Cities an annual rent of 167% of the prior year’s annual rent for the Phase IV Rental Area, subject to adjustment pursuant to Section 4.2(f). “Phase IV Rental Area” as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on Exhibit “C” which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase IV Rental Area contains 162,006 square feet. The Phase IV Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.
all of the Leased Premises upon which the parties hereto have agreed to calculate annual rental for the Leased Premises, the total Rental Area contains 675,548 square feet as depicted in Exhibit “C” which is attached hereto and by this reference made a part hereof. The Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.

The escalation of Rent described herein above is generally described in Exhibit “D” attached hereto, such Exhibit is for demonstration purposes and is not intended to control the Rent Commencement Date or Rent Escalation Date for any Phase (as defined for each Phase above), such Dates to be established as set forth herein above.

(e) **Contingent Phase V.** The Lessee shall not owe to the Cities any rent for the remaining portion of the Leased Premises not included as a Phase Rental Area (“Remainder Area”) until such time as the Lessee commences any development of the Remainder Area. For purposes of this Lease, “development” shall mean any of the following: (i) use of land; (ii) construction; and/or (iii) clearing, grading, re-grading, or cutting in anticipation of the construction of infrastructure, structures, or buildings, except that “development” shall not include solely landscaping or other activities or use of the Remainder Area that are not intended for the production of revenue for the Lessee. Commencing on the first day of the month following the date that the Lessee begins development of the Remainder Area, Lessee shall pay rent to the Cities as follows: (i) If the Lessee develops the Remainder Area for aeronautical uses, the Lessee shall pay rent at the same rate as Lessee has paid for each Phase listed above starting at the commencement rate ($0.15 per square foot adjusted for CPI for the term the Lease has been in effect since the Phase I Commencement Date) for a period of eight (8) years and increasing to the escalation rate of 167% of the previous year’s annual rent; or (ii) If the Lessee develops the Remainder Area for non-aeronautical uses, Lessee shall pay rent to the Cities at the Airport’s improved property rental rate in effect at the time or fair market value, whichever is required by the FAA. Lessee acknowledges and agrees that if the Remainder Area is developed for non-aeronautical uses, such use may require release of the Remainder Area by the FAA, which release shall be in the sole discretion of the FAA.

(f) Commencing on May 1st, 2022, and on May 1st in each year thereafter during the remainder of the Term, the annual rent shall be adjusted by multiplying the annual rent payable in the next preceding year by a fraction, the numerator of which shall be the C.P.I., as hereinafter defined, published for the previous month of December and the denominator of which shall be the C.P.I. published for the month of December which preceded the month used as the numerator. In no event shall the annual rent be reduced from that payable in a previous year. If this Agreement is executed after January 1st, such C.P.I. increase for the calendar year in which this Agreement is executed shall be prorated. The term "C.P.I." as used herein shall mean the Consumer Price Index for all Urban Consumers, all items, Selected Large Cities, for the Denver/Boulder Area as published by the Bureau of Labor Statistics of the United States.
Department of Labor, 1982-84 base = 100. In the event the base year is changed, the C.P.I. shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of Labor Statistics ceases to use the C.P.I., or this index, an equivalent or comparable economic index will be used.

6. **Deletion of Paragraph 4.3.** The Cities and Lessee agree that Paragraph 4.3 of the Lease is hereby deleted in its entirety.

7. **Amended Exhibit “A” and Exhibit “B”.** The Cities and Lessee agree that Exhibit “A” and Exhibit “B” to the Lease are deleted in their entirety and are hereby replaced with the attached Exhibit “A1” and Exhibit “B1” respectively. Furthermore, the Cities and Lessee agree that any all references to Exhibit “A” in the Lease are hereby amended to reference Exhibit “A1” and all references to Exhibit “B” in the Lease are hereby amended to reference Exhibit “B1”.

8. **Ratification of Lease.** Except as expressly set forth in this Amendment, the Lease otherwise is unmodified, remains in full force and effect and is incorporated and restated herein as if fully set forth at length. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.

9. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which will be deemed an original, which together will constitute one in the same agreement. A facsimile or other electronic signature shall have the same force and effect as an original signature; provided, however, subsequent to any execution of this Amendment by electronic means, the parties hereto agree to exchange original signatures upon the written request of either party.

10. **Modifications.** This Amendment may be modified only in writing signed by both the Cities and Lessee.

11. **Capitalized Terms.** All capitalized terms used herein shall have the meaning as set forth in the Lease, unless otherwise defined herein.

12. **Nature of Amendment.** The Lease as amended by this Amendment shall remain in full force and effect in accordance with all of its terms and provisions. This Amendment shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, personal representatives, successors and assigns. No additions or modifications of any term or provision of this Amendment shall be effective unless set forth in writing, signed by the party against whom enforcement of such addition or modification is sought. This Amendment contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements, negotiations or understandings between them concerning the subject matter contained herein.
IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment to Shopping Center Lease by their duly authorized officers, effective as of the Effective Date.

THE CITIES:

CITY OF LOVELAND, COLORADO

______________________________
Stephen C. Adams, City Manager

ATTEST:

______________________________
Clerk

APPROVED AS TO FORM:

______________________________
Assistant City Attorney

CITY OF FORT COLLINS, COLORADO

______________________________
Darin A. Atteberry, City Manager

ATTEST:

______________________________
City Clerk

APPROVED AS TO FORM:

______________________________
Assistant City Attorney

LESSEE:

Discovery Air, LLC, a Colorado limited liability company,

ATTEST:

______________________________
By: ___________________________
Name: __________________________
Title: __________________________

Packet Pg. 496
Discovery Air Lease Area

Approx. 1,301,774 SF

Boundary and area are approximate and subject to professional survey upon commencement of Phase I construction.
Exhibit "C"
Discovery Air Lease Areas

Phase II
Rental Area
242,626 SF

Phase I
Rental Area
120,294 SF

Phase III
Rental Area
150,622 SF

Phase IV
Rental Area
162,006 SF

Contingent Phase V
Remainder Area
253,595 SF

Public Taxiway
141,552 SF

Contingent Ramp
104,564 SF

Contingent Ramp
46,665 SF

Contingent Ramp
79,788 SF

Phase II
Rental Area
242,626 SF

Phase III
Rental Area
150,622 SF

Phase IV
Rental Area
162,006 SF

Phase I
Rental Area
120,294 SF

Contingent Phase V
Remainder Area
253,595 SF

Public Taxiway
141,552 SF

Contingent Ramp
104,564 SF

Contingent Ramp
46,665 SF

Contingent Ramp
79,788 SF
## Exhibit “D”
### Rent Phasing Example

**Rentable SF**: 675,548

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### Proposed Draft Lease Schedule

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This example assumes a constant 2% annual CPI.

### Attachment: Exhibit A

(9777 : Airport-Discovery Air Lease Amendment ORD)