Adjourned Meeting
March 23, 2021
6:00 P.M.

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.
• CALL MEETING TO ORDER
• PLEDGE OF ALLEGIANCE
• ROLL CALL

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.

1. **Resolution 2021-036 Making Findings of Fact and Conclusions of Law Regarding the Appeal of the Hearing Officer Decision Approving the 738 Campfire Drive Extra Occupancy Rental House #FDP 200018.** (staff: Will Lindsey, Paul Sizemore; no presentation; 5 minute discussion)

   The purpose of this item is to make Findings of Fact and Conclusions regarding the Appeal of the Hearing Officer decision to approve the 738 Campfire Drive Extra Occupancy Rental House combined Project/Final Development Plan. The appeal was heard by Council on March 16, 2021.

2. **Resolution 2020-030 Approving an Agreement to Secure Public Benefits for Mulberry Development as Provided in Service Plan for Mulberry Metropolitan District Nos. 1 through 6.** (staff: Clay Frickey; 5 minute presentation; 45 minute presentation)

   The purpose of this item is to consider a Resolution adopting the Agreement to Secure Public Benefits for the Mulberry Development (Public Benefits Agreement). The Public Benefits Agreement is contemplated in the Consolidated Service Plan for Mulberry Metropolitan Districts Nos. 1-6, approved by City Council on April 16, 2019 (Service Plan). Staff has completed its review of the Public Benefits Agreement to ensure it conforms to the Service Plan.

3. **First Reading of Ordinance No. 050, 2021, Amending Chapter 22 of the Code of the City of Fort Collins to Add a New Article V. Concerning the Establishment of Tourism Improvement Districts.** (staff: Clay Frickey; 5 minute presentation; 30 minute presentation)

   The purpose of this item is to consider adoption of an ordinance outlining the requirements for establishing a Tourism Improvement District (TID). Visit Fort Collins (VFC) began exploring a TID based on engagement for the Tourism and Destination Master Plan. Due to the COVID-19 pandemic, hoteliers are looking for additional revenue streams. Lodging tax collections are down 47.6% through December 2020. A TID would allow hotels to levy an assessment or fee on all hotels that would allow the TID to undertake activities that would help increase demand for overnight visitation.
VFC contemplates a TID that would levy an assessment or fee on hotel businesses rather than the underlying property owner. This necessitates a local ordinance outlining the process for forming a TID, the powers of a TID, and TID governance, amongst others. If adopted by Council, VFC contemplates starting the formation process of a TID beginning in April with Council considering the TID in July.

- **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**
AGENDA ITEM SUMMARY
March 23, 2021
City Council

STAFF
Will Lindsey, Associate Planner
Paul Sizemore, Interim Director, Comm. Devt. & Neighborhood Serv.
Claire Havelda, Legal

SUBJECT
Resolution 2021-036 Making Findings of Fact and Conclusions of Law Regarding the Appeal of the Hearing Officer Decision Approving the 738 Campfire Drive Extra Occupancy Rental House #FDP 200018.

EXECUTIVE SUMMARY
The purpose of this item is to make Findings of Fact and Conclusions regarding the Appeal of the Hearing Officer decision to approve the 738 Campfire Drive Extra Occupancy Rental House combined Project/Final Development Plan. The appeal was heard by Council on March 16, 2021.

STAFF RECOMMENDATION
Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION
On December 18, 2020, the Administrative Hearing Officer approved the 738 Campfire Drive Extra Occupancy Rental House combined Project/Final Development Plan (PDP/FDP). On January 4, 2021, a community member filed an appeal with the following allegations:

• That the Hearing Officer failed to properly interpret and apply Land Use Code (LUC) Section 3.2.2(C)(4)(b) regarding the number and type of required bicycle parking spaces.
• The Appellant alleges the Hearing Officer’s Decision approving the project did not require the number of bicycle parking spaces required by the LUC and that the type of bicycle parking spaces approved do not meet the LUC definition of fixed bicycle parking spaces.

On March 16, 2021, Council considered the appeal allegations and testimony from parties in interest. Council discussed all specific assertions of the appeal. Council denied the appeal while also finding the Administrative Hearing Officer did properly interpret Land Use Code Section 3.2.2(C)(4)(b) regarding the number and type of required bicycle parking spaces.
RESOLUTION 2021-036
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE
APPEAL OF THE HEARING OFFICER DECISION APPROVING THE 738 CAMPFIRE
DRIVE EXTRA OCCUPANCY RENTAL HOUSE #FDP 200018

WHEREAS, on December 10, 2020, hearing officer Marcus A. McAskin (“Hearing Officer”) conducted a public hearing to review the Extra Occupancy request for a rental house as a permitted use for the existing single-family dwelling located at 738 Campfire Drive, Parcel No. 8704305006 (the “Property”); and

WHEREAS, on December 18, 2020, the Hearing Officer issued a written decision approving the Extra Occupancy request for the Property finding that the homeowner applicant (“Homeowner”) had met the requirements of Land Use Code (“LUC”) Sections 3.8.16(E)(1), 4.5 (B)(2)(a)(8), 3.8.28(A), 3.2.2(C)(4), and 3.2.2(K)(1)(j); and

WHEREAS, on January 4, 2021, Joseph Brown (the “Appellant”), an individual living in the same neighborhood as the Property who attended the December 10, 2020 Hearing and is a “party-in-interest” under City Code Section 2-46, filed a Notice of Appeal with the City Clerk appealing the Hearing Officer approval of the Extra Occupancy; and

WHEREAS, the Notice of Appeal asserted that the Hearing Officer failed to properly interpret and apply Land Use Code Section 3.2.2(C)(4) as it related to bicycle parking for Extra Occupancy approval; and

WHEREAS, on March 16, 2021, the City Council, after notice given in accordance with Chapter 2, Article II, Division 3, of the City Code, held a public hearing to consider the appeal, reviewed the record on appeal, received evidence for consideration, and heard presentations from the Appellant, Homeowner, tenants of the Property 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 10, 2020, hearing that the Hearing Officer did properly interpret and apply Land Use Code Section 3.2.2(C)(4), regarding the number of bicycle parking spaces and type of bicycle parking required for the Extra Occupancy request; 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 March 16, 2021, Council hearing, Council found that the Hearing Officer properly interpreted and applied Land Use Code Section 3.2.2(C)(4) regarding the required number and type of bicycle parking spaces because:

   (a) With respect to the number of bicycle parking spaces, the number of beds on the Property is three and this means the required number of spaces is three; and
   (b) With respect to the type of the required bicycle parking spaces, the bicycle parking provided meets the intent and purpose of the Land use Code requirement by providing all enclosed parking, which meets a higher standard of parking for the occupants.

4. That the Hearing Officer’s decision issued on December 18, 2021, for Extra Occupancy of the Property is hereby upheld.

5. That based on the evidence in the record and presented at this hearing, the appeal is without merit and is denied in its entirety.

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 23rd day of March A.D. 2021.

   __________________________________________
   Mayor

   ATTEST:

   __________________________________________
   City Clerk
AGENDA ITEM SUMMARY
March 23, 2021

STAFF
Clay Frickey, Redevelopment Program Manager
John Duval, Legal

SUBJECT

EXECUTIVE SUMMARY
The purpose of this item is to consider a Resolution adopting the Agreement to Secure Public Benefits for the Mulberry Development (Public Benefits Agreement). The Public Benefits Agreement is contemplated in the Consolidated Service Plan for Mulberry Metropolitan Districts Nos. 1-6, approved by City Council on April 16, 2019 (Service Plan). Staff has completed its review of the Public Benefits Agreement to ensure it conforms to the Service Plan.

STAFF RECOMMENDATION
Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION
Project Overview
The Mulberry development is a proposed 232-acre mixed-use community located north of Mulberry Street along both sides of Greenfield Court (Project). Upon buildout, the Project is proposed to include the following:

- Approximately 1,600 homes including single-family detached, single-family attached, and multi-family.
- 20-30 acres of retail and office uses.
- Up to 160,000 square feet of commercial and retail uses including a grocery store.
- Up to 86,000 square feet of office uses integrated into a pedestrian-oriented market street.

To date, the developer has not submitted to the City a formal development application for the Project. The developer intends to apply for a Planned Unit Development (PUD). The PUD will contain more detailed information about the proposed phasing of the Project.

Public Benefits
City Council adopted on April 16, 2019, Resolution 2019-050 approving the Service Plan. The Service Plan contains the above information about the Project and is the document that governs the powers and responsibilities of the Mulberry Metropolitan District Nos. 1-6 (Mulberry Metro Districts). The City’s current policy for considering metropolitan district service plans requires developers to provide public benefits as part of the approval of the service plan for those metropolitan districts which are proposed to serve a primarily residential development. Exhibit I of the approved Service Plan for the Mulberry Metro Districts outlines the public benefits proposed by the developer for the Project. Please note that while the Service Plan references the developer’s desire to provide attainable housing, the Service Plan provides no firm commitment on the
provision of attainable housing. What follows is the list of public benefits to be secured contractually by the proposed Public Benefits Agreement between the developer and the City:

Provide Affordable Housing

- 15% of the residential units must be affordable for a period of 20 years.
- A minimum of 40 units must be for-sale homes affordable for households earning 80% or less of the area median income adjusted for household size (AMI).
- A minimum of 200 units must be for-rent averaging not more than sixty percent (60%) or less of the AMI.
- If build out of the PUD results in more than 1,600 homes, at least 15% of the overall number of units must be affordable.
- If build out results in less than 1,600 homes, a minimum of 240 homes must still be affordable.
- 20-year affordability period begins upon unit obtaining certificate of occupancy.
- 66% of the affordable units must be secured prior to the City issuing building permits for more than 800 of the total housing units.
- The remaining 34% of affordable units must be secured prior to the City’s issuance of building permits for the last 100 housing units.

Critical On-site and Off-site Public Infrastructure

- Construction of a rail crossing on Greenfield Court right-of-way.
- Construction of a roundabout for Greenfield Court.
- $250,000 financial contribution for improvements to the Vine and Timberline intersection.
- $800,000 financial contribution to or construction of landscape improvements for frontage road, Mulberry/Highway 14 median, and the intersection of Mulberry/Highway 14.
- $500,000 financial contribution for community gateway features that will enhance the Mulberry/Highway 14 street frontage.

High Quality and Smart Growth Elements

- Higher density than required by the Low-Density Mixed-Use Neighborhood (LMN) zone district.
- Alley loaded homes for at least 40% of dwelling units.
- Added utility services and raw water dedication.
- Enhanced pedestrian crossings.
- A central pedestrian-oriented greenway spine through the center of the neighborhood.
- Secondary bicycle path to improve bicycle connectivity.
- An enhanced east-west greenway to connect from the railroad crossing to Cooper Slough.
- A mixed-use design.
- Neighborhood parks, pocket parks adjacent to the pedestrian-oriented greenway spine, and a commercial center promenade.

Environmental Sustainability Through Energy Conservation, Water Conservation and Enhanced Community Resiliency

- 800 kW of solar power system distributed across the Project.
- A non-potable water irrigation system for community landscaping and landscaping on individual lots. This system projects to result in 45% less demand for potable water.
- Sustainable landscape design.
- Improvements to the Cooper Slough that will reduce runoff and lower peak flows.
- Lake Canal improvements that will take portions of the property out of the floodplain.
- Creation of pollinator corridors using enhanced landscaping throughout the development.

Staff have reviewed the Public Benefits Agreement and finds it aligns with the requirements for the public benefits identified in the approved Service Plan.
Performance Assurances

The Mulberry Metro Districts may not issue debt, impose mill levies, or fees until the delivery of the Public Benefits are secured in a manner that is approved by Council. This requirement can be satisfied by anyone of three methods. The method being used here is for the developer to enter into a public benefits agreement with the City to provide the public benefits before the City is required to issue building permits and/or certificates of occupancy for the buildings to be built within the Project. The proposed Public Benefits Agreement sets forth the terms, conditions and timing under which the various public benefits must be provided before the developer can obtain such building permits and certificates of occupancy.

Funding/Securing Public Benefits

The developer must fund, develop, construct, and/or build the public benefits in accordance with the terms and conditions of the Public Benefits Agreement. It is the intent that the Mulberry Metro Districts will reimburse the developer for some of the expenses related to delivering the public benefits to the extent state law and the Service Plan allow the Mulberry Metro Districts to reimburse such expenses.

Service Plan Review

The Service Plan identifies the public improvements the Mulberry Metro Districts will build as part of the Project. The Project will occur in phases. The Service Plan estimates completion of the Project by 2028. Highlights of the Service Plan include:

- Assessed Value - Estimated to be $66,356,893 in 2029, the first full year after build-out.
- Aggregate Mill Levy - 50 mills.
- Debt Mill Levy - 40 mills for all properties, which the Mulberry Metro Districts may not levy until the pledged public benefits have been secured by a public benefits agreement.
- Operating Mill Levy - 10 mills.
- Maximum Debt Authorization - $65 million. If Inclusion Area is added to the Districts’ boundaries, the Maximum Debt Authorization will be $75 million.
- Regional Mill Levy - 5 mills for planning, design, acquisition, funding, construction, installation, relocation, redevelopment, administration, and overhead costs related to the provision of regional Improvements.

Conclusion

The Public Benefits Agreement conforms to the public benefits outlined in the Service Plan. The Agreement meets both the letter and spirit of the City’s current metropolitan district policy and helps the City achieve its strategic objectives. The metropolitan district policy speaks to the City’s commitment to water and energy efficiency, and this project provides benefits beyond typical code requirements. The Project will also provide at least 240 units of affordable housing, addressing the City’s objective of increasing the inventory of affordable units as outlined in the City’s Housing Strategic Plan. The smart growth and energy efficiency measures integrated in the Project will also help meet objectives outlined in City Plan and Our Climate Future for sustainable development.

CITY FINANCIAL IMPACTS

The proposed Public Benefits Agreement will not have an impact on the City’s financials. The applicant has paid the fees required under the City’s metropolitan district policy, which fees are designed to offset the cost of staff and outside consultant review.

ATTACHMENTS

1. Mulberry Presentation (PDF)
Topics for Tonight

1. Project overview
2. Metro District Commitments
3. Recommendation
Project Overview

• 232-acre mixed-use development
  • 1,600 homes
  • 20-30 acres retail and office

• City Council adopted Metro District Service Plan on April 16, 2019
Summary of Public Benefits

1. Affordable Housing
2. Infrastructure
3. Smart Growth
4. Environmental Sustainability
Developer Commitments

Affordable Housing
- 15% of units affordable
- For rent
- For sale

Infrastructure
- Rail crossing
- Vine & Timberline
- Greenfield Roundabout
- Rail crossings
- Mulberry improvements

Smart Growth
- Increased density
- Alley loaded homes
- Bike/Pedestrian connectivity
- Mixed-use

Environmental Sustainability
- 800 kWh solar system
- Non-potable irrigation
- Pollinator corridor
- Cooper Slough improvements
- Lake Canal improvements
Conclusions

• Conforms to Service Plan
• Will deliver at least 240 units of affordable housing
• Performance measures
  • Affordable housing front loaded
    • 66% delivered in first half of development
  • Solar delivered throughout development
    • 50% in first half of development
Recommendation

Staff recommends adoption of the resolution
RESOLUTION 2021-030
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN AGREEMENT TO SECURE PUBLIC
BENEFITS FOR MULBERRY DEVELOPMENT AS PROVIDED IN SERVICE PLAN FOR
MULBERRY METROPOLITAN DISTRICTS NOS. 1 THROUGH 6

WHEREAS, Mulberry Development LLC, a Colorado limited liability company (the “Developer”) is currently under contract to purchase approximately 232 acres of vacant land in two separate parcels from two different owners, which real property is legally described in Exhibit “A” attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, the Property is located north of Mulberry Street (Highway 14) along both sides of Greenfield Court; and

WHEREAS, the Developer has not yet submitted to the City a development application for the Property but intends to apply to the City for approval of a planned unit development (“PUD”) for the Property as such PUDs are authorized under the City’s Land Use Code; and

WHEREAS, the Developer desires to develop the Property under a PUD in phases and proposes to construct approximately 1,600 dwelling units consisting of single-family attached and detached units and multi-family units, up to 160,000 square feet of commercial and retail uses including a grocery store, and up to 86,000 of square feet of office uses integrated into a pedestrian-oriented market street (the “Project”); and

WHEREAS, pursuant to the provisions of Colorado’s Special District Act, the Developer previously submitted to the City an application for approval of a Consolidated Service Plan for the Mulberry Metropolitan District Nos. 1-6 (the “Service Plan”), which Service Plan the City Council approved on April 16, 2019, in Resolution 2019-050; and

WHEREAS, the Developer sought the organization of Mulberry Metropolitan District Nos. 1-6 (the “Districts”) to enable development of the Property in a manner that will provide the public benefits described in Exhibit “I” of the Service Plan, which are: (1) affordable housing; (2) critical on-site and off-site public infrastructure; (3) high-quality and smart growth elements; and (4) environmental sustainability (collectively, the “Public Benefits”); and

WHEREAS, Section IV.B.2. of the Service Plan requires that Developer’s provision of the Public Benefits be secured by a development agreement between the City and the Developer that has been approved by resolution of the City Council before the Districts can, among other things, impose any property taxes or issue any debt; and

WHEREAS, City staff and the Developer have negotiated the “Agreement to Secure Public Benefits for the Mulberry Development as Provided in Service Plan for Mulberry Metropolitan District Nos. 1 Through 6” attached as Exhibit “B” and incorporated herein by reference (the “Public Benefits Agreement”), which sets forth the terms and conditions by which the Developer’s provision of the Public Benefits will be secured for the City; and
WHEREAS, the City Council hereby finds that approval of the Public Benefits Agreement is in the City’s best interest and will serve the public’s health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS, COLORADO, 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 approves the Public Benefits Agreement.

Section 3. That the City Manager is authorized to enter into the Public Benefits Agreement on the City’s behalf in substantially the form attached as Exhibit “B,” subject to minor modifications as the City Manager, in consultation with the City Attorney, may determine to be necessary and appropriate to protect the interests of the City or to the effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 23rd day of March, A.D. 2021.

_________________________________
Mayor

ATTEST:

_________________________________
City Clerk

-2-
The Whitham Property

The NW1/4 of Section 9, Township 7 North, Range 68 West of the 6th P.M., EXCEPT Right of Way for County Road 48 and EXCEPT Right of Way in Book 245 at Page 77, County of Larimer, State of Colorado.

The Springer-Fisher Property

The West ½ of the Southwest ¼ of Section 9, Township 7 North, Range 68 West of the 6th P.M.,

EXCEPT that portion thereof conveyed in Deed recorded July 3, 1959 in Book 1097 at Page 148 and corrected in Deed recorded May 20, 1965 in Book 1290 at Page 520;

ALSO EXCEPT that portion thereof conveyed in Deed recorded December 3, 1984 in Book 2300 at Page 1701,

ALSO EXCEPT that portion conveyed to Larimer County by Special Warranty Deed recorded July 10, 2017 at Reception Number 20170044766,

County of Larimer, State of Colorado.
AGREEMENT TO
SECURE PUBLIC BENEFITS FOR
MULBERRY DEVELOPMENT AS PROVIDED IN SERVICE PLAN FOR
MULBERRY METROPOLITAN DISTRICT NOS. 1 THROUGH 6

THIS AGREEMENT TO SECURE PUBLIC BENEFITS FOR MULBERRY DEVELOPMENT AS PROVIDED IN SERVICE PLAN FOR MULBERRY METROPOLITAN DISTRICT NOS. 1 THROUGH 6 (this “Agreement”) is made and entered into this ___ day of __________, 2021, by and between the CITY OF FORT COLLINS, COLORADO, a home rule municipality of the State of Colorado (the “City”) and MULBERRY DEVELOPMENT LLC, a Colorado limited liability company (the “Developer”). The City and the Developer may be referred to herein individually as a “Party” and jointly as the “Parties.”

WITNESSETH:

WHEREAS, Whitham Farms LLC (“Whitham”) is currently the owner of the approximately 157.55 acres of real property legally described in Exhibit “A” attached hereto and incorporated herein by reference (the “Whitham Property”); and

WHEREAS, Springer-Fisher Inc. (“Springer-Fisher”) is currently the owner of the approximately 75 acres of real property legally described in Exhibit “B” attached hereto and incorporated herein by reference (the “Springer-Fisher Property”); and

WHEREAS, Whitham and Springer-Fisher shall hereafter be referred to jointly as “the Owners” and the Whitham Property and Springer-Fisher Property shall hereafter be referred to jointly as “the Property”; and

WHEREAS, the Developer is currently under contract with each of the Owners to purchase from them their respective portions of the Property, which Property is generally located north of East Mulberry Street, south of East Vine Drive and east of the East Ridge Subdivision; and

WHEREAS, although the Developer has not yet submitted to the City under the City’s Land Use Code (the “LUC”) any development approval applications for the Property, the Developer anticipates that such future development approval applications will seek development review approval for approximately 1,600 dwelling units, including single-family detached, single-family attached, and multi-family living options, as well as a neighborhood town center and pedestrian-oriented market street, including approximately 20-30 acres of retail, commercial, and office uses to be developed on the Property (the “Project”); and

WHEREAS, the Project will be developed on the Property in phases and for each phase the Developer will be required to obtain the approval of a “final plan” as provided in the LUC (“Final Plan”) and, as part of that approval of the Final Plan for each phase, the Developer will be required under the LUC to enter into a development agreement with the City for each phase setting forth, among other things, the Developer’s obligations for constructing public improvements related to that phase of the Project and any restrictions placed on the issuance on building permits and certificates of occupancy for structures built in that phase (the “Development Agreement”); and

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WHEREAS, it is the intent of the Parties that this Agreement, the Final Plans and the Development Agreements for all the phases of the Project shall be read together in determining the Developer’s obligations to provide the “Public Benefits” as hereafter described and required in this Agreement; and

WHEREAS, the Developer’s goals for the Property align with and promote the City’s Triple Bottom Line priorities of economic health, environmental services and social sustainability; and

WHEREAS, pursuant to the provisions of Article 1 of Title 32 of the Colorado Revised Statutes (the “Special District Act”), the City Council of the City (the “Council”) approved on April 16, 2019, the Consolidated Service Plan (the “Service Plan”) for the Mulberry Metropolitan District Nos. 1-6 (each a “District” and collectively the “Districts”) by Resolution 2019-050; and

WHEREAS, organization of the Districts is intended to enable development of the Property in a manner that will provide the public benefits generally described in Exhibit I of the Service Plan, and more particularly defined and described in Paragraph I.B. below (the “Public Benefits”); and

WHEREAS, Section IV.B.2. of the Service Plan requires that the Public Benefits to be provided by the Developer for its planned development shall be secured by a development agreement between the City and the Developer and the City and the Developer desire to secure the Public Benefits in accordance therewith through this Agreement; and

WHEREAS, the Parties also desire to more fully address in this Agreement the timing and requirements related to the provision of certain of the Public Benefits that shall be delivered through approved Final Plans and related Development Agreements entered into as part of the development review approval of each phase of the Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements of the Parties contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

I. SECURING OF PUBLIC BENEFITS

A. Overview

1. Method of Securing Public Benefits. Although the intent is that one or more of the Districts will ultimately reimburse the Developer for those Public Benefits they have the legal ability to fund, the Developer shall have the obligation to develop, construct and/or install the Public Benefits in accordance with the terms and conditions of this Agreement.

2. Public Benefits Summary. Exhibit I to the Service Plan generally summarizes four (4) categories constituting the Public Benefits which are required to be secured under this Agreement: (1) Affordable Housing, (2) Critical On-Site and Off-Site Public Infrastructure, (3) High-Quality and Smart Growth Elements, and (4) Environmental Sustainability. Each of these categories are defined and addressed in Sections I.B.1 through I.B.4. below.
B. Public Benefits Secured

1. Affordable Housing.

   a. The Developer has not yet submitted final site plans or development approval applications to the City for the Property, but the Developer anticipates that such future site plans and development approval applications will include approximately 1,600 dwelling units to be constructed on the Property. The “Total Dwelling Units” shall mean the total number of dwelling units authorized under one or more approved Final Plans for the Property. For the purposes of determining compliance with this Section I.B.1.a., at least fifteen percent (15%) of the Total Dwelling Units approved within the Project (with any fraction rounded up to the next whole number) must each be a dwelling unit affordable for households earning eighty percent (80%) or less of the area median income, as adjusted for household size, in the for-sale context, and an average of not more than sixty percent (60%) or less of the area median income, as adjusted for household size, in the for-rent context, both as measured against the Fort Collins/Loveland Metropolitan Statistical Area published annually by the U.S. Department of Housing and Urban Development (“AMI”), which units may be offered either for-sale or for-rent consistent with the additional parameters set forth below (“Required Affordable Units”). If more than 1,600 Total Dwelling Units are approved for the Property, the number of the Required Affordable Units shall be increased accordingly so that the Required Affordable Unit count meets or exceeds the fifteen percent (15%) requirement. On the other hand, if less than one thousand six hundred (1,600) Total Dwelling Units are approved, the number of Required Affordable Units shall not be less than two hundred forty (240) dwelling units. Of the Required Affordable Units, a minimum of forty (40) dwelling units shall be offered for-sale at a price that is affordable for households earning eighty percent (80%) or less of AMI, as adjusted for household size (the “For-Sale Affordable Units”). The For-Sale Affordable Units shall be built as “dispersed site” units, integrating market rate units and affordable housing units within the Project. The above-referenced disbursement requirement does not apply to The Required Affordable Units offered for rent. This sixty percent (60%) average AMI in the for-rent context shall be calculated using the averaging methodology adopted by the Colorado Housing and Finance Authority in effect at the time the affected Required Affordable Units are determined by the City to count toward the Required Affordable Units as provided in Section I.B.1.c. below.

   b. Each of the Required Affordable Units must continue to satisfy its affordability standard as defined in Section I.B.1.a. above for at least twenty (20) years from the date of issuance of the first certificate of occupancy for each such unit. This means that it is the intent of the Parties that the initial and subsequent conveyances and leases of each of the Required Affordable Units during the twenty (20)-year period must be to purchasers or lessees whose AMI qualifies them for that Required Affordable Unit as defined in Section I.B.1.a. above. This requirement shall be deemed satisfied upon recording of a restrictive covenant or deed restriction for each of the Required Affordable Units in a form reasonably acceptable to the City, which shall include (without limitation) the information set forth in the last paragraph in Section I.B.1.c. below, that is for the City’s benefit and enforceable by the City at law and in equity and recorded with the Larimer County Clerk and Recorder (the “20-Year Covenant”). When recorded, the 20-Year Covenant shall not be subordinate to any lien or other financial encumbrance other than liens for real property taxes. Notwithstanding the foregoing, the Developer may use methods...
other than the 20-Year Covenant to ensure for twenty (20) years the affordability of the Required Affordable Units if the method is first approved in writing by the City.

c. The Required Affordable Units may be provided through any of the following four (4) mechanisms or by any other mechanism mutually agreed upon in writing by the Developer and the City, or any combination of the same:

(i) Developer has developed any portion of the Required Affordable Units within the Project under one or more approved Final Plans for the Project.

(ii) Execution of a contract for the sale of land of any portion of the Project by the Developer to a non-profit or for-profit builder with a legally enforceable contract obligation to the City in a form reasonably acceptable to the City to develop such land as part or all of the Required Affordable Units, and the subsequent development of that land under one or more future approved final development plans for the Project by such builder as part or all of the Required Affordable Units. At the time any such sale is closed and relevant documentation provided to the City by the Developer for each such sale, the City shall determine the number and type of Required Affordable Units which reasonably could be expected to develop on such acreage pursuant to the future approved final development plan and all other applicable City ordinances, regulations, standards and policies and, upon such determination, those units shall count toward the Required Affordable Units.

(iii) A reservation of any portion of the Property to be developed under one or more future approved Final Plans by the Developer for the benefit of and legally enforceable by the City at law and in equity for the eventual sale to an entity for development of all or a portion of the Required Affordable Units. At the time such reservation is made by the Developer and the reservation is in a form reasonably acceptable to the City that is for the City’s benefit and enforceable by the City at law and in equity and recorded with the Larimer County Clerk and Recorder, the City shall determine the number and type of Required Affordable Units which could reasonably be expected to develop on such acreage pursuant to the future approved Final Plan(s) and all other applicable City ordinances, regulations, standards and policies. Upon such determination, those units shall count toward the Required Affordable Units.

(iv) The Developer conveys any portion of the Property to the City to be used by the City in its land bank program for affordable housing. At the time such conveyance is made by the Developer to the City, the City shall determine the number and type of Required Affordable Units which could reasonably be expected to develop on such acreage pursuant to the future approved Final Plan(s) for that Property and all other applicable City ordinances, regulations, standards and policies. Upon such determination, those units shall count toward the Required Affordable Units.

d. As to any Required Affordable Units provided pursuant to subparts I.B.1.(ii) and (iii) above, in the deed conveying the land for development of such Required Affordable Units from Developer to the initial purchaser thereof from the Developer (the “Initial Purchaser”), the Developer must include the following:
(i) A specific reference in the body of the deed, reflecting that the property conveyed thereby is conveyed subject to the 20-Year Covenant,

(ii) A copy of the 20-Year Covenant as an exhibit to such deed,

(iii) A requirement that the Initial Purchaser include, in the body of the deed conveying each such Required Affordable Unit to a residential purchaser from such Initial Purchaser, a statement that, in accordance with the 20-Year Covenant, if such residential purchaser or any subsequent owner of such Required Affordable Unit sells or leases such Required Affordable Unit while the Required Affordable Unit is subject to the 20-Year Covenant, such subsequent owner or lessee must comply with the affordability requirements of the 20-Year Covenant as set forth in Section I.B.1.a. above (the “Affordability Notice”), and

(iv) A provision that, while the Required Affordable Units to be developed on such land are subject to the 20-Year Covenant, the Initial Purchaser thereof is responsible for causing to be prepared and filed annually with the City Manager’s Office, as provided in Section I.B.1.f. below, a written report stating compliance of such Required Affordable Unit with the 20-Year Covenant as set forth in Section I.B.1.a. above (the “Compliance Report”).

e. As to any of the Required Affordable Units provided pursuant to subpart I.B.1.c.(i) above, the Developer shall:

(i) Include in any deed by which it conveys a Required Affordable Unit to the Initial Purchaser of the Unit: (1) a specific reference in the body of the deed, reflecting that the property conveyed thereby is conveyed subject to the 20-Year Covenant, (2) attach a copy of the 20-Year Covenant as an exhibit to such deed, and (3) the Affordability Notice; and

(ii) Cause the Compliance Reports for these Units to be prepared and delivered to the City on an annual basis.

f. Each annual Compliance Report for the Required Affordable Units provided under subparts (i), (ii) and (iii) above must be delivered to the City Manager’s Office within ninety (90) days after the end of each calendar year and must report whether any Required Affordable Units which were for-rent at any time during the past calendar year and whether any Required Affordable Units which were sold during such preceding calendar year, that such rentals and/or sales, as applicable, were to a household satisfying the requirements of Section I.B.1.a. above.

g. At least sixty-six percent (66%) of the Required Affordable Units must be provided through one of the mechanisms described in Sections I.B.1.c.(i) through (iv) above (or through any other mechanism agreed upon in writing between the City and the Developer) before the City is required to issue any building permit that will authorize the construction of more than eight hundred (800) Total Dwelling Units within the Project, and the remaining thirty-four percent (34%) of the Required Affordable Units must be so provided prior to the City being required to issue a building permit that will authorize the construction of any of
the last one hundred (100) of the Total Dwelling Units within the Project. The City agrees that this hold on the last one hundred (100) Total Dwelling Units shall not apply to the issuance of a building permit for any Required Affordable Unit.

2. **Critical On-Site and Off-Site Public Infrastructure.** The Developer agrees that one or more of the future Final Plans for the Property and related future Development Agreements between the City and Developer shall require that the following critical public infrastructure and contributions be provided by the Developer:

   a. **Rail Crossing.** Fund, design and construct a railroad crossing of the Great Western Railroad for both vehicular and pedestrian access in the dedicated Greenfield Court right of way (the “**Rail Crossing Improvements**”);

   b. **Greenfields Roundabout.** Fund, design and construct a traffic roundabout on Greenfields Court planned near East Mulberry Street (the “**Greenfields RAB**”);

   c. **Vine & Timberline Intersection Contribution.** Contribution to the City by the Developer of $250,000 for the design and construction, or alternatively design and construction by the Developer at a cost of $250,000 or greater, of the improvements to the intersection of East Vine Drive and North Timberline Road (the “**Vine & Timberline Contribution**”);

   d. **Frontage Road and Highway 14 Median Contribution.** Contribution to the City by the Developer of $800,000 for the design and construction, or alternatively design and construction by the Developer at a cost of $800,000 or greater, of landscape improvements in the North Frontage Road and Highway 14 Median and at the intersection of North Frontage Road and Highway 14 (the “**Median Contribution**”); and

   e. **Community Gateway Contribution.** Contribution to the City by the Developer of $500,000 for the design and construction, or alternatively design and construction by the Developer at a cost of $500,000 or greater, of monumentation and landscape improvements on parcels located between the realigned North Frontage Road and East Mulberry Street to create a welcoming entry feature (the “**Community Gateway Contribution**”). Despite this parcel of property’s ideal location for a profitable convenience store or drive-thru site, the Developer has committed to developing this site as a City monument and community entry feature, at a lost opportunity cost to Developer of approximately $1,250,000 in foregone land value.

The timing for each of the above-described critical onsite and off-site public infrastructure shall occur as reasonably determined by the City as part of its consideration of the development application filed with the City under the LUC for each phase of the Project and with the resulting obligations included in the Final Plan and Development Agreement approved for each such phase of the Project. The City’s approval of one or more future Final Plans and Development Agreements for the Project, as required under the LUC, that legally obligates the Developer to provide the Rail Crossing Improvements, Greenfields RAB, Vine & Timberline Contribution, Median Contribution and/or the Community Gateway Contribution shall be prerequisites to the Developer’s receipt from the City of any residential building permit for construction under the
applicable future approved Final Plan and Development Agreement for the relevant phase of the Project.

3. **High-Quality and Smart Growth Elements.** The Developer agrees that the future approved Final Plans for the Property and the related future Development Agreements between the City and Developer shall include the following smart growth elements: (i) increased density from Low Density Mixed-Use Neighborhood District standard of 4 units per acre in LUC Division 4.5, (ii) alley access to the garages of at least 40% of the Total Dwelling Units, (iii) added utility services and raw water dedication, (iv) enhanced pedestrian crossings, (v) a central pedestrian-oriented greenway spine through the center of the neighborhood, (vi) a secondary bicycle path to provide a more direct route for cyclists, (vii) an enhanced east-west greenway to connect from the railroad crossing to Cooper Slough, and (v) a mixed-use design. Such future approved Final Plans shall also include neighborhood parks, pocket parks adjacent to the pedestrian-oriented greenway spine, and a commercial center promenade (collectively, “Smart Growth Elements”). The timing of Developer’s obligation for each of the Smart Growth Elements shall occur as reasonably determined by the City as part of its consideration of the development applications filed with the City under the LUC for each phase of the Project and with the resulting obligations included in the Final Plan and Development Agreement approved for each such phase of the Project. The City’s approval of one or more future Final Plans and Development Agreements for the Project that legally obligates the Developer to provide any of the Smart Growth Elements, shall be prerequisites to the Developer’s receipt from the City of any residential building permit for construction under the applicable future approved Final Plan and Development Agreement for the relevant phase of the Project.

4. **Environmental Sustainability.**

   a. **Solar Photovoltaic Energy.** The Developer agrees that one or more of the future approved Final Plans for each of the phases of the Project and related future Development Agreements shall require the Developer to construct a solar power generation system or systems that shall generate a minimum of 800 kilowatts (each a “Solar Power Generation System”). At Developer’s option, each Solar Power Generation System shall be certified by either (i) a licensed, independent, third-party electrical engineer or solar professional in accordance with the requirements of the City, or (ii) an agent or representative of the City, in accordance with the requirements of the City. The Developer shall also provide documentation satisfactory to the City certifying that each Solar Power Generation System will be owned, operated and maintained by the owner of the property on which the Solar Power Generation System is located (the “Owner’s Certification”). The City must have received certification of one or more Solar Power Generation Systems generating at least 400 kilowatts and the related Owner’s Certification before the City is required to issue any certificate of occupancy for more than fifty percent (50%) of the Total Dwelling Units within the Property, and certification of one or more Solar Power Generation Systems generating the remaining 400 kilowatts and the related Owner’s Certification shall be received by the City prior to the City being required to issue a certificate of occupancy for any of the last one hundred (100) of the Total Dwelling Units within the Property.

   b. **Water Conservation through Non-Potable Irrigation System.** The Developer agrees that the future approved Final Plans for each phase of the Project and related future Development Agreements shall require the Developer to design and install a non-potable
water system to provide irrigation water to all the natural areas and private lots in that phase of the Project (the “Water System”). The Parties acknowledge that it is the Developer’s intention that the Water system shall be owned, operated and maintained by Mulberry Metropolitan District No. 1 or one of the other Districts. The Developer shall apply to the applicable District for acceptance of the Water system in accordance with the relevant agreement(s) in place between the Developer and the District concerning the District’s acquisition of public improvements and infrastructure. Nevertheless, the Developer shall be responsible for ensuring the Water System and each phase of it is in full compliance with all applicable federal and Colorado law including, without limitation, the Colorado Constitution, statutes and regulations regarding water use, applicable court decrees regarding water rights and well permitting requirements. The Developer shall also provide to the City, for its prior approval, the Water System design plans for each phase of the Project and such plans must comply with all applicable City ordinances, regulations, standards and policies, as well as all applicable county, state and federal laws and regulations. Developer’s legal obligation to provide the Water System for each phase of the Project, as provided in this Agreement, shall be included in the Final Plan and Development Agreement for that phase, and Developer agreeing to this obligation in the Final Plan and Development Agreement is a prerequisite to Developer’s receipt from the City of a building permit for the construction of any building in that phase of the Project. In addition, the approved Final Plan and Development Agreement for each phase of the Project must provide that the City shall not be required to issue a certificate of occupancy for any building in that phase if the portion of the Water System designed to serve that building has not been installed in accordance with the City-approved design plans for that phase of the Water System and the Water System is operational to serve that building.

c. Sustainable Landscape Design. The Developer desires to promote water conservation in the Project through its landscaping design. The Developer agrees that all the future approved Final Plans for the Project and related future Development Agreements related to each phase of the Project shall require xeric plantings and grouping of plant species with similar water needs to allow for efficiency in irrigation (the “Sustainable Landscape Design”). The Developer also agrees that its legal obligation to provide the Sustainable Landscape Design for each phase of the Project shall be a prerequisite to Developer’s receipt from the City of any building permit for residential construction within that phase of the Project.

d. Enhanced Community Resiliency. The Developer agrees that one or more of the future approved Final Plans for the Project and related future Development Agreements shall require that the following improvements to provide for enhanced community resiliency be provided by the Developer:

(i) Improvements to the Cooper Slough to reduce runoff and lower peak flows through upstream planting and mitigation;

(ii) Improvements to Lake Canal to help bring it out of the current flood plain; and

(iii) Landscape architecture designed to support the flight distances and migration patterns of applicable pollinators (together, the “Enhanced Community Resiliency Improvements”).
The timing of Developer’s obligation for each of the Enhanced Community Resiliency Improvements shall occur as reasonably determined by the City as part of its consideration of the development applications filed with the City under the LUC for each phase of the Project and with the resulting obligations included in the Final Plan and Development Agreement approved for each such phase of the Project. The City’s approval of one or more future Final Plans and Development Agreements for the Project that legally obligates the Developer to provide any of the Enhanced Community Resiliency Improvements, shall be prerequisites to the Developer’s receipt from the City of any residential building permit for construction under the applicable future approved Final Plan and Development Agreement for the relevant phase of the Project.

C. City Acknowledgement. The City and Developer specifically acknowledge and agree that the Public Benefits described and secured in paragraphs I.B.1 through I.B.4. above, shall only be deemed to have satisfied the requirement and precondition set forth in Section IV.B. of the Service Plan for securing the Public Benefits as generally described in Exhibit I of the Service Plan when this Agreement goes into full effect as provided in Section II. R. below.

II. MISCELLANEOUS

A. City Findings. The City hereby finds and determines that the approval of this Agreement is in the best interests of the City and the public’s health, safety and general welfare.

B. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

C. Covenants/Binding Effect. This Agreement shall run with the Property, including any subsequent replatting of all, or a portion of the Property. This Agreement shall also be binding upon and inure to the benefit of the Parties and their respective personal representatives, heirs, successors, grantees and assigns. It is agreed that all improvements required pursuant to this Agreement touch and concern the Property regardless of whether such improvements are located on the Property. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement and the Final Plans and Development Agreements approved for the Property.

D. Default.

1. Notice; Cure. If either Party defaults under this Agreement, the non-defaulting Party shall deliver written notice to the defaulting Party of such default in accordance with Section II.L., and the defaulting Party shall have thirty (30) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such
thirty (30) day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure and provided further that in no event shall such cure period exceed a total of six (6) months. Notwithstanding the cure period set forth in this Section II.D.1, Developer, its successors and assigns, shall have the right to include a claim for breach of this Agreement in any action brought under C.R.C.P. Rule 106 if Developer, its successors and assigns, believes that the failure to include such claim may jeopardize its ability to exercise its remedies with respect to this Agreement at a later date. Any claim for breach of this Agreement brought before the expiration of the applicable cure period set forth in this Section II.D. shall not be prosecuted by Developer, its successors and assigns, until the expiration of such cure period except as set forth in this Agreement, and shall be dismissed by Developer, its successors and assigns, if the default is cured in accordance with this Section II.D.

2. Remedies. If any default under this Agreement is not cured as described above, the non-defaulting Party shall have the right to enforce the defaulting Party’s obligation hereunder by an action at law or in equity, including, without limitation, injunction and/or specific performance, and shall be entitled to an award of any damages available at law or in equity.

E. Governing Law. This Agreement shall be construed under and governed by the laws of the State of Colorado.

F. Integration; Amendment. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and there are no oral or collateral agreements or understandings. The Parties agree that this Agreement may be amended only by an instrument in writing signed by the City and the Developer, and successors and permitted assigns of the Developer to whom the Developer has granted in writing the right to consent to any such amendments. Notwithstanding the foregoing, this Agreement shall be in addition to and supplemented by the Development Agreements that will be entered into by the Developer with the City for the Property as required in the LUC.

G. Jurisdiction and Venue. The City and the Developer, its successors and assigns, stipulate and agree that in the event of any dispute arising out of this Agreement, the courts of the State of Colorado shall have exclusive jurisdiction over such dispute and venue shall only be proper in Larimer County, Colorado. The Parties hereby submit themselves to jurisdiction of the State District Court, 8th Judicial District, County of Larimer, State of Colorado.

H. City Approvals. Where this Agreement requires the City’s future approval or consent, such approval or consent may be given by the City Manager of the City within his or her sole discretion. Where this Agreement requires the City Council’s approval or consent, such approval or consent shall be within the Council’s sole discretion.

I. Multiple-Fiscal Year Obligations. To the extent that any of the obligations of the City contained in this Agreement are or should be considered multiple-fiscal year obligations, such obligations shall be subject to annual appropriation by the Fort Collins City Council, in its sole discretion.
J. No Joint Venture or Partnership. No form of joint venture or partnership exists between the Developer and the City, and nothing contained in this Agreement shall be construed as making the Developer and the City joint venturers or partners.

K. No Third-Party Beneficiaries. Except as otherwise provided in this Agreement, enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Developer, and its successors and assigns, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party.

L. Notices. Any notice or communication required under this Agreement between the City and the Developer, and its successors and assigns, must be in writing and may be given either personally, by registered or certified mail, return receipt requested, by Federal Express or other reliable courier service that guarantees next day delivery or by facsimile transmission (followed by an identical hard copy via registered or certified mail). If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by any other method, a notice shall be deemed to have been given and received on the first to occur of: (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent; or (b) as applicable: (i) three (3) days after a registered or certified letter, return receipt requested, containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail; (ii) the following business day after being sent via Federal Express or other reliable courier service that guarantees next day delivery; or (iii) the following business day after being sent by facsimile transmission (provided that such facsimile transmission is promptly followed by an identical hard copy sent via registered or certified mail, return receipt requested). Any Party hereto may at any time, by giving written notice to the other party hereto as provided in this Section II.L, designate additional persons to whom notices or communications shall be given and designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:  
City of Fort Collins  
ATTN: City Manager  
300 LaPorte Avenue  
Fort Collins, CO 80521

With a copy to:  
City of Fort Collins  
ATTN: City Attorney  
300 LaPorte Avenue  
Fort Collins, CO 80521

If to Developer:  
Mulberry Development LLC  
4801 Goodman Road  
Timnath, CO 80547  
ATTN: Patrick McMeekin

With copies to:  
WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law
ATTN: Robert Rogers, Esq.
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

M. **Paragraph Captions.** The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

N. **Recordation.** The Developer agrees to record this Agreement with the Larimer County Clerk and Recorder after the recording of each of the deeds from the Owners conveying their respective portions of the Property to the Developer and prior to recording any other encumbrance on the Property, and the Developer shall pay the cost of both recordings of this Agreement.

O. **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force.

P. **Survival.** The covenants, representations and warranties and agreements to be performed or complied with under this Agreement by the Parties shall be continuing obligations of the Parties until fully complied with or performed, respectively.

Q. **Waiver.** No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

R. **Effective Date and Termination.** This Agreement shall not go into full effect unless and until all of the following events have occurred: (i) the Owners have both deeded their respective portions of the Property to the Developer, (ii) both deeds have been duly recorded with the Larimer County Clerk and Recorder, and (iii) this Agreement has been duly recorded as against both the Whitham Property and the Springer-Fisher Property as provided in Section II.N above. However, if any of these events has not occurred on or before June 30, 2023, this Agreement shall terminate on July 1, 2023, and the Parties shall be released from all obligations hereunder.

[Remainder of page left intentionally blank. Signature Pages follow.]
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first written above.

CITY: CITY OF FORT COLLINS, COLORADO, a Municipal Corporation

By: ______________________________
   Darin Atteberry, City Manager

Date: ______________, 2021

ATTEST:

____________________________
Delynn Coldiron, City Clerk

APPROVED AS TO FORM:

____________________________
John R. Duval, Deputy City Attorney

STATE OF COLORADO  )
 ) ss
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this _____ day of ________, 2021, by ____________________________ as City Manager of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires:

____________________________
Notary Public
DEVELOPER: MULBERRY DEVELOPMENT LLC, a Colorado limited liability company

By: __________________________
Its: __________________________

STATE OF COLORADO )
) ss.
COUNTY OF LARIMER )

The foregoing Agreement was acknowledged before me this ___ day of __________, 2021, by __________________ of Mulberry Development LLC.

WITNESS my hand and official seal.

____________________________
Notary Public

My commission expires: ____________
EXHIBIT A

The Whitham Property

The NW1/4 of Section 9, Township 7 North, Range 68 West of the 6th P.M., EXCEPT Right of Way for County Road 48 and EXCEPT Right of Way in Book 245 at Page 77, County of Larimer, State of Colorado.
EXHIBIT B

The Springer-Fisher Property

The West ½ of the Southwest ¼ of Section 9, Township 7 North, Range 68 West of the 6th P.M.,
EXCEPT that portion thereof conveyed in Deed recorded July 3, 1959 in Book 1097 at Page 148
and corrected in Deed recorded May 20, 1965 in Book 1290 at Page 520;

ALSO EXCEPT that portion thereof conveyed in Deed recorded December 3, 1984 in Book 2300
at Page 1701,

ALSO EXCEPT that portion conveyed to Larimer County by Special Warranty Deed recorded
July 10, 2017 at Reception Number 20170044766,

County of Larimer, State of Colorado.
SUBJECT

First Reading of Ordinance No. 050, 2021, Amending Chapter 22 of the Code of the City of Fort Collins to Add a New Article V. Concerning the Establishment of Tourism Improvement Districts.

EXECUTIVE SUMMARY

The purpose of this item is to consider adoption of an ordinance outlining the requirements for establishing a Tourism Improvement District (TID). Visit Fort Collins (VFC) began exploring a TID based on engagement for the Tourism and Destination Master Plan. Due to the COVID-19 pandemic, hoteliers are looking for additional revenue streams. Lodging tax collections are down 47.6% through December 2020. A TID would allow hotels to levy an assessment or fee on all hotels that would allow the TID to undertake activities that would help increase demand for overnight visitation.

VFC contemplates a TID that would levy an assessment or fee on hotel businesses rather than the underlying property owner. This necessitates a local ordinance outlining the process for forming a TID, the powers of a TID, and TID governance, amongst others. If adopted by Council, VFC contemplates starting the formation process of a TID beginning in April with Council considering the TID in July.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

In 2019, the City and Visit Fort Collins (VFC) jointly funded an effort to create a Tourism and Destination Master Plan. Work began on the Plan and came to a halt in April 2020 due to the COVID-19 pandemic. During the engagement, stakeholders noted additional revenue sources would be beneficial to hoteliers. From this discussion came the idea to create a Tourism Improvement District (TID) in Fort Collins to supplement hotel revenues. An additional revenue stream for hotels became more important during the COVID-19 pandemic. Lodging tax collections are down 47.6% through December 2020, demonstrating the severity of the pandemic’s impact on the hospitality industry. The VFC Board of Directors approved moving forward with a feasibility study to determine if a TID is an option for Fort Collins.

VFC hired Civitas to conduct the TID Feasibility Study. The Feasibility Study finds that Colorado statutes permit TIDs and that Fort Collins may create its own local ordinance permitting a business-based TID. The VFC Board of Directors considered and approved a formal proposal to move forward with the formation of a business-based TID. This led to Civitas and VFC approaching the City to begin formal exploration of a TID. Civitas and VFC presented an update on the Tourism and Destination Master Plan and the idea of forming a TID at the Council work session on February 23, 2021. Council unanimously supported further exploration of a TID and the adoption of a local ordinance permitting a business-based TID.
Business Based Improvement District Overview

The proposed ordinance would allow the formation of a TID that levies an assessment based on type of business. Most Business Improvement Districts (BIDs) levy an assessment on the property itself. BIDs may form and levy an assessment on property owners using State statutes. This is an important distinction for the TID as the levy will apply to the hotels in Fort Collins regardless of who owns the underlying real property, necessitating a local ordinance. Not all hotels own their property and so this method of assessment directly targets hotels.

Another distinction between a TID and a standard BID is the boundaries of the district. Most BIDs form based on a shared geography. The Midtown BID, for example, formed since the businesses share issues and desired improvements by virtue of their location in the community. Under this type of improvement district, VFC contemplates the boundaries of the TID to be co-terminus with City limits. VFC’s proposal is that any hotel with more than three rooms operating within the City’s boundaries would be subject to the TID assessment. This will also allow the TID to include hotels into the district as they annex into the City.

The TID is required to submit to the City its initial plan (Initial Plan), which will govern its future operations and activities and will be subject to Council approval.

One of the key qualities of a TID is that the levy is an assessment or fee, not a tax. Unlike taxes, assessment and fee dollars may only fund programs and services that benefit only those paying the assessment or fee, and not to those not charged. Furthermore, assessment and fee revenue cannot fund other activities outside of TID services. TID assessment dollars will always remain allocated for the provision of TID activities and services. Assessments and fees are also not subject to a TABOR vote.

Formation Process

Establishing a TID would follow a similar procedure to creating a BID. Formation steps include:

1. **Petition:** Hotel operators consisting of more than 50% of the overall hotel rooms within the proposed boundaries of the TID must sign the petition forming the TID. The petition is filed with the City Clerk.
2. **Public hearing:** Council would hold a public hearing to consider the formation of the TID. Council would consider the service area, geographic boundaries, and activities of the proposed district at the public hearing and determine whether establishing the TID is in the City’s best interest.
3. **Adoption of an Initial Plan:** Council must also take action to approve the TID’s Initial Plan prior to collecting its assessment or fee and conducting any of its activities. The TID must also file annually with the City an annual plan (Annual Plan), which includes the budget for the upcoming year, by September 30 of each year. The Annual Plan is subject to the Council approval.

General Powers of a TID

A TID under the ordinance would have the following general powers:

- Exist in perpetuity or for a limited term;
- To levy taxes subject to a TABOR vote, but not property taxes
- Enter into contracts and agreements;
- Borrow money and incur indebtedness, except it would not be allowed to issue bonded debt without prior Council approval;
- Acquire, construct, finance, install, and operate “tourism improvements” and provide “tourism services” as contemplated by the Ordinance;
- Nominate the directors for the TID board for Council approval;
- TID board may adopt and amend bylaws.
The Ordinance outlines the various activities, defined as “tourism improvements” and “tourism services,” that a TID may perform. These activities include:

- Promotion and marketing in support of tourism;
- Organization, promotion, marketing, and management of public events;
- Provision and maintenance of tourism improvements

Prohibited Powers:

- No eminent domain power
- No regulatory powers

**Proposed TID Assessment/Fee Rate**

The Ordinance proposes a three percent (3%) annual assessment/fee rate of gross short term (stays less than 31 days) room rental revenue. Based on the benefit received, assessments/fees will not be collected on lodging business stays of more than thirty (30) consecutive days.

**Governance**

Owners or representatives of the lodging businesses paying the assessment/fee will be eligible to serve on the TID Board to provide improvements and activities for a Fort Collins TID. The TID Board must provide an annual report to City on the TID’s annual activities and expenditures, similar to other BIDs. This report is also available to business owners.

**Next Steps**

If Council adopts this Ordinance, VFC will begin the formation process of a TID. VFC anticipates the following timeline for adopting a TID:

- April 2021: Finalize Initial Plan and Petition.
- May-June 2021: Petition drive securing signatures of business owners subject to assessment, in the proposed District operating not less than fifty percent of the hotel rooms.
- July 2021: Notice of hearing not less than 21 days nor more than 42 days after filing of petition.
  - Must be published in the newspaper and mailed to each assessed business owner.
- July 2021: Hearing on formation of the District.
- August 2021: District begins collecting assessment/fee.

**CITY FINANCIAL IMPACTS**

TIDs are separate legal entities and will not impact the City financially.

**ATTACHMENTS**

1. Powerpoint Presentation (PDF)
Tourism Improvement District (TID) Ordinance
Clay Frickey, Redevelopment Program Manager
• Initiated by Visit Fort Collins
• Tourism industry heavily impacted by COVID-19
  • Revenues down 47.6% through December
• TID would provide additional revenue
• Presented at Council Work Session on February 23
  • Provided direction to develop local ordinance
## Ordinance Comparison

<table>
<thead>
<tr>
<th></th>
<th>Business Based Assessment/Fee</th>
<th>Property Based Assessment/Fee</th>
</tr>
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<tbody>
<tr>
<td><strong>Governing Law</strong></td>
<td>Local ordinance</td>
<td>BID Act</td>
</tr>
<tr>
<td><strong>Assessment Basis</strong></td>
<td>Type of business, annual revenue, occupancy/capacity, # of employees</td>
<td>Lot size, built square footage, lineal square feet frontage, use code/zoning</td>
</tr>
<tr>
<td><strong>Collection</strong></td>
<td>Collected with transient occupancy taxes or other method as determined by the TID and the City</td>
<td>Collected with property taxes</td>
</tr>
<tr>
<td><strong>Overlap</strong></td>
<td>Allows for overlap with existing and future districts</td>
<td>No allowable overlap authorized</td>
</tr>
</tbody>
</table>
Formation Process

1. Petition
   • Need approval of 50% of hotel rooms

2. Public hearing
   • Service area
   • Boundaries
   • Activities

3. Adopt Initial Plan
   • Outlines activities and budget of TID
   • Adopted by City Council
Powers of TID

- Exist in perpetuity or limited term
- Enter into contracts or agreements
- Borrow money/incur debt
  - Requires Council approval
- Develop improvements
- Nominate Board
  - Board appointed by Council
- Adopt and amend bylaws
Activities of TID

- Promotion/marketing supporting tourism
- Organization, promotion, marketing, management of public events
- Provision and maintenance of tourism improvements
- Two powers prohibited
  - Eminent domain
  - Regulatory powers
Governance

- May nominate a Board
  - Payors of assessment
- Must provide annual report to City Council
  - Activities
  - Expenditures
  - Available to all members
<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>Finalize Initial Plan and Petition</td>
<td>April 2021</td>
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<tr>
<td>Petition drive</td>
<td>May - June 2021</td>
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<tr>
<td>Public hearing</td>
<td>July 2021</td>
</tr>
<tr>
<td>TID begins collecting assessment</td>
<td>August 2021</td>
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</tbody>
</table>
Staff recommends adoption of the ordinance.
ORDINANCE NO. 50, 2021
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 22 OF THE CODE OF THE CITY OF FORT COLLINS
TO ADD A NEW ARTICLE V CONCERNING THE ESTABLISHMENT OF
TOURISM IMPROVEMENT DISTRICTS

WHEREAS, as a home rule municipality, the City has the authority under Article XX, Section 6 of the Colorado Constitution to establish local improvement districts and other types of special districts that are separate and distinct governmental entities from the City; and

WHEREAS, the City may establish these districts to provide public improvements and services that are of local and municipal concern as needed to benefit the health, safety and welfare of the City’s residents and its visitors; and WHEREAS, due to the recent COVID-19 pandemic and its effect on the hospitality industry, the City’s lodging businesses have suffered a substantial decrease in revenues and, as a result, the City has suffered a corresponding decrease in its sales tax and lodging tax revenues collected from these lodging businesses; and

WHEREAS, tourist and other people visiting the City contribute substantially to the health of the City’s economy and provide a significant number of jobs for City residents, as well as directly benefiting the City’s lodging business and other tourism-related businesses in the City; and

WHEREAS, as one tool to help these sectors of the City’s tourism and visitor economy to recover from the effects of the pandemic, this Ordinance will allow the City’s lodging business to organize and establish, subject to City Council’s approval, tourism improvement districts that will, among other things, be able to impose certain taxes, fees and assessments to paid by the lodging businesses and for the resulting revenues to be used by the districts to provide certain tourism-related improvements and services to encourage tourists and others to visit the City and stay at the City’s lodging businesses; and

WHEREAS, adoption of this Ordinance will therefore serve the public purposes of helping to restore the economic health of the City’s hospitality industry, restore jobs lost in that industry and generally contribute to the public’s health, safety and welfare.

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 Chapter 22 of the Code of the City of Fort Collins is hereby amended by the addition of a new Article V, which reads in its entirety as follows:

ARTICLE V
TOURISM IMPROVEMENT DISTRICTS

-1-
Sec. 22-150. Council findings.

It is the policy of the City that tourism improvement districts be organized under this Article V to provide improved, enhanced, additional or otherwise unavailable tourism-related facilities and services that are over-and-above the facilities and services regularly provided by the City. The organization of tourism improvement districts within the City having the purposes and powers provided in this Article V will serve the following public purposes: (i) promote economic health; (ii) promote the health, safety, prosperity, security and general welfare of the City's residents and visitors; and (iii) specially benefit the lodging businesses within the boundaries of any district created under this Article V. The City is empowered to create tourism improvement districts as authorized in this Article V under its plenary home rule authority over matters of local and municipal concern, as authorized by Article XX, § 6 of the Colorado Constitution.

Sec. 22-151. General power to establish tourism improvement districts.

The City authorizes the establishment and organization of tourism improvement districts within the City under this Article V to fund and provide tourism improvements and tourism services that will confer special benefits upon lodging businesses within such districts and confer general benefits to the City and its residents and visitors.

Sec. 22-152. Legal status of tourism improvement districts.

Any tourism improvement district created under this Article V shall be deemed a body corporate and politic, a "district" within the meaning of Article X, § 20(2)(b) of the Colorado Constitution, and a unit of local government distinct and separate from the City itself. As a legal entity established entirely through an exercise of the City's home rule authority, tourism improvement districts shall not be considered political subdivisions of the state. The multiple-fiscal year debt and other financial obligations of a tourism improvement district shall not be considered obligations of the City nor shall a district’s fiscal year spending and revenue be considered that of the City.

Sec. 22-153. - Definitions.

As used in this Article V, unless the context indicates otherwise, the following words and terms shall have the meanings set forth below:

*Annual plan* shall mean the board's annual report outlining the district's revenues, expenditures, projects and goals.

*Authorized manager* shall mean the person who exercises overall responsibility to manage the day-to-day operations of a specific lodging business and is authorized by the lodging business to sign a petition for the inclusion of the lodging business in a tourism improvement district.

*Board* shall mean the board of directors of a tourism improvement district.
City shall mean the City of Fort Collins, a home rule city and municipal corporation of the State of Colorado.

City Clerk shall mean the City Clerk duly appointed by the City Manager as provided in Article II, § 12 of the Charter, or their designee.

City Council shall mean the City Council of the City.

City Manager shall mean the City Manager duly appointed by the City Council as provided in Article III, § 1 of the Charter, or their designee.

Director shall mean a member of the board of a tourism improvement district.

Elector shall mean a natural person who is a resident of the State of Colorado, is eighteen (18) years of age or older and registered to vote in general elections in the State of Colorado, and who:

(1) Maintains a lodging tax license with City and is obligated to pay the lodging tax by virtue of ownership and operation of a lodging business in the tourism improvement district; or

(2) Is the natural person designated to vote for an entity that:

   a. Is not a natural person, and

   b. Maintains a lodging tax license with the City and is obligated to pay the lodging tax by virtue of ownership of a lodging business in the tourism improvement district.

   Such designation must be in writing, under oath, on a form approved by the board and filed with the secretary of the district. Only one (1) such natural person may be designated by the lodging business owner.

Nothing in this definition shall permit a lodging business to cast more than one (1) vote per lodging business whether through a designated elector or as a natural person.

Establishment ordinance shall mean the ordinance passed by City Council establishing a tourism improvement district and containing the information required in § 22-163.

Financial Officer shall mean the Financial Officer duly appointed as provided in Article V, § 21 of the Charter, or their designee.

Initial plan shall mean the plan submitted with the petition to organize a tourism improvement district containing the information required in § 22-158.

Lodging accommodation shall have the meaning given to it in the lodging tax ordinance.
Lodging business shall mean any “lodging provider,” as this term is defined in the lodging tax ordinance, who is required to obtain a lodging license and to pay the lodging tax.

Lodging license shall mean the license that lodging businesses must obtain from the Financial Officer under the lodging tax ordinance to engage in the business of providing lodging accommodations within the City.

Lodging tax shall mean the lodging tax imposed by the lodging tax ordinance.

Lodging tax ordinance shall mean Article IV of Chapter 25 of the Code.

Maintenance shall mean the periodic cleaning, repair, restoration, rehabilitation, refurbishment and replacement of an existing improvement.

Room shall mean any portion of a building designed for an occupancy as a complete, independent living quarter for one (1) or more natural persons, having direct access from outside the building or through a common hall and having living, sleeping and sanitary facilities, and may also include kitchen facilities, which living quarter is for the exclusive use of the occupant(s).

Self-affirmation shall mean a self-affirmation substantially in the form shown in § 22-157(a).

Tourism improvements shall mean any public improvements designed and intended to be used in support of the tourism services to be provided by the district, which may include, without limitation: decorative structures; identification and directional signs; bicycle and pedestrian paths; buildings and facilities located anywhere in the City primarily designed to host and serve conventions and meetings or to otherwise serve visitors to the City and the traveling public; and all necessary, incidental and appurtenant structures and improvements thereto.

Tourism improvement district or district shall mean a tourism improvement district established under this Article V.

Tourism services shall mean any of the following: (a) the maintenance of any district-owned tourism improvements and any other publicly-owned buildings or facilities located anywhere in the City primarily designed to host and serve conventions and meetings or to otherwise serve visitors to the City and the traveling public; (b) the organization, promotion, marketing and management of public events; (c) marketing and promotions services designed to attract more tourists, visitors, conventions and other meetings to the City; and (d) any combination of the foregoing services.

Sec. 22-154. General powers of tourism improvement districts.

Except as may be limited or modified by the establishment ordinance, tourism improvement districts shall have the following powers:
(1) **Term.** To have perpetual existence unless limited as provided in the establishment ordinance.

(2) **Levy taxes, fees or assessments.** To fund tourism improvements, tourism services and the other affairs of the district by levying taxes, fees and assessments on the lodging businesses or upon persons purchasing lodging; provided, however, that a district shall have no authority to impose any ad valorem property tax.

(3) **Elections.** To hold elections for the purpose of levying taxes, approving any multiple-fiscal year obligation of the district, or conducting any other district affairs. A district’s elections shall be conducted in accordance with the Colorado Local Government Election Code in Article 13.5 of the Title 1 of the Colorado Revised Statutes. Provided, however, that the definition of electors eligible to vote in such an election shall be as provided in this Article V. In the event of any other conflict between this Article V and the Colorado Local Government Election Code, the requirements of this Article V shall control.

(4) **Contracts.** To enter into contracts and agreements affecting the affairs of the district, including, without limitation: (i) contracts relating to the district’s tourism improvements and tourism services; (ii) contracts with the City for the collection and expenditure of district tax, fee and assessment revenue; and (iii) contracts for any other administrative, legal or financial services necessary to assist the district in the performance of its lawful functions.

(5) **Control of district business.** To have the management, control and supervision of all the business and affairs of the district and of the acquisition, construction, financing, installation and operation of tourism improvements and the funding and operation of district tourism services.

(6) **Property interests.** To acquire, construct, finance, install and operate the tourism improvements contemplated by this Article V and to acquire all property, rights or interests necessary, incidental or appurtenant thereto and to dispose of real and personal property and any interest therein, including leases and easements in connection therewith.

(7) **Employees and contractors.** To hire employees and retain agents, engineers, consultants, attorneys, accountants and other professionals as need to conduct the affairs of the district.

(8) **Litigation.** To sue and be sued and be a party to suits, actions or proceedings.

(9) **Bylaws.** To adopt and amend bylaws not in conflict with the constitution and laws of the United States and State of Colorado or in conflict with the City’s Charter, Code and ordinances as needed by the district for carrying on its business objectives and the affairs of its board.
(10) **Necessary, incidental, and implied powers.** To exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this Article V. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this Article V.

**Sec. 22-155. Prohibited powers.**

A tourism improvement district shall have neither the power of eminent domain nor any police or regulatory powers. A tourism improvement district shall not have the power to incur bonded debt or similar indebtedness in any other form without the City Council’s prior written consent. However, a district may have the power to enter into contractual multiple-fiscal year debt or other financial obligations within the meaning of Article X, § 20(4)(b) of the Colorado Constitution, subject to the approval of the electors of the district or provided that the district’s payment of such debt or other financial obligations are subject to annual appropriation by the board.

**Sec. 22-156. How initiated.**

(a) **Petition.** Any proposal for the establishment of a tourism improvement district may be initiated by a petition filed with the City Clerk subject to the requirements in this section.

(b) **Contents of petition.** Each petition shall include:

1. A description of the boundaries of the district, which may be coterminous with the boundaries of the entire City or a smaller geographical area encompassing only a portion of the City;

2. A listing and description of the total number of lodging businesses to be included within the district, the street address of each such lodging business, and the tax account and lodging license numbers maintained with the City for such lodging businesses;

3. Description of the type and kind of lodging businesses to be initially included in the district and the type and kind of future lodging businesses to be included in the district under § 22-160;

4. A general description of the tourism improvements and tourism services that the district intends to fund and provide;

5. The proposed taxes to be levied by the district, if approved by the electors of the district, any other proposed fees or assessments to be levied by the district, the proposed method by which any taxes, fees or assessments will be collected and disbursed, and the intended uses of any revenue derived from any tax, fee or assessment;

6. The proposed composition of the board, including the number of directors desired, which must be in accordance with § 22-164(a);
(7) The names of three (3) persons who shall represent the petitioners on matters relating to the petition and initial plan;

(8) The initial plan of the district, containing the information specified in § 22-158; and

(9) All signatures on petitions shall be accompanied by a self-affirmation substantially in the form provided in § 22-157(a).

(c) **Petition sections.** A petition may consist of one (1) or more petition sections, all of which will be aggregated to determine whether the requirements of § 22-158 have been met.

(d) **Fee for petition.** The City Manager may require, as provided in Article I of Chapter 7.5, for the payment of an administrative fee for the filing, review, approval and amendment of any petition and initial plan for a district. The City Manager may waive such fee upon a showing of good cause.

**Sec. 22-157. Self-affirmation; penalties.**

(a) The self-affirmation on a petition shall state: "I state, under penalty of law that to my knowledge and belief the facts stated in the petition are true, that my signature and name are as shown on this petition, and that I have signed this petition or have been duly authorized to sign this petition by the entity identified hereunder."

(b) A self-affirmation on a petition shall not be valid after one (1) year has elapsed between the date of the self-affirmation as shown on the petition and the date the petition is filed with the City Clerk under § 22-158.

(c) A self-affirmation shall be presumed valid unless competent evidence to the contrary is presented to and accepted by the City Manager, or the City Council determines otherwise.

(d) If a person eligible to sign a petition is unable to make a signature, such person may affirm by making a mark on the self-affirmation, with or without assistance, witnessed by another person.

(e) It shall be unlawful for any person knowingly to make a false statement on a self-affirmation on any petition filed under this Article V. A violation of this subsection (e) shall be a misdemeanor offense subject to the penalties in Code § 1-15(a).

(f) It shall be unlawful for any person to, by use of force or any other means, unduly influence a person to sign a petition or to not sign a petition, falsely make, alter, forge or counterfeit any petition before or after it has been filed as provided in § 22-158 or to destroy, deface, mutilate or tamper with any petition before or after it has been filed as provided in § 22-158. A violation of this subsection (f) shall be a misdemeanor offense subject to the penalties in Code § 1-15(a).
Sec. 22-158. Petition submittal and initial plan.

In all cases in which a district is proposed pursuant to this Article V, the petition filed with the City Clerk under § 22-156 must be signed by authorized managers representing lodging businesses having at least fifty percent (50%) of the total rooms to be included in the district, and appended to the petition shall be an initial plan for the district which shall include, in addition to the information specified in § 22-156(b), the following information:

(a) **Name.** The proposed name of the district, which must substantially follow the form "______ Tourism Improvement District".

(b) **Purpose.** The primary purpose or rationale for the district.

(c) **Location.** A description and map of lodging businesses within the proposed district, providing sufficient specificity so an owner of a lodging business can reasonably determine whether their lodging business is within or outside of the district's boundaries.

(d) **Public participation.** A summary of the process employed by petitioners to inform the eligible electors of the proposed district and of the efforts to organize the district in a manner that will allow the electors the opportunity to participate, and the results of such process.

(e) **Board.** The proposed names of the board’s initial directors and a description of how future directors will be nominated for the City Council’s consideration of their appointment to the board.

(f) **Promotional plan.** A summary of the promotional efforts, if any, that the district plans to undertake as part of its proposed tourism improvements and tourism services, the cost thereof, and the manner in which such promotional efforts will be administered.

(g) **Financial plan.** A financial plan showing:

1. The type and rate of any tax, fee or assessment that will be levied for district purposes and how revenues derived from any tax, fee or assessment will be used over time;

2. Any anticipated multiple-fiscal year debt or other financial obligations and other contractual obligations anticipated to be incurred by the district;

3. The reasonably estimated costs of the tourism improvements and tourism services that will be funded by the district; and

4. A draft first year budget.

(h) **Term.** The proposed term for the district, which may be either perpetual or for a limited term. If the term for the district is less than perpetual, the establishment ordinance shall include provisions for dissolution of the district at the end of the term or may include provisions
sec. 22-159. boundaries of district.

the boundaries of a district may be coterminous with the boundaries of the city, or may consist of a smaller geographical area encompassing only a portion of the city, if so provided in the petition and approved in the establishment ordinance, and such boundaries may consist of contiguous or noncontiguous tracts or parcels of land on which the lodging businesses listed in the petition are located. the boundaries of the district shall be described in the establishment ordinance. the boundaries of districts may overlap.

sec. 22-160. inclusion or exclusion of lodging businesses after district is established.

unless an alternative procedure for future inclusion or exclusion of lodging businesses is provided in the petition for establishment of a tourism improvement district, the establishment ordinance for a district may provide for the automatic inclusion within the district of the future lodging businesses described in the petition under § 22-156(b)(3) upon the financial officer’s issuance of a lodging license to those lodging businesses and for the automatic exclusion from the district of any lodging business that ceases to exist after the district is established. in addition, if the boundaries of the district will be coterminous with the city’s boundaries, such future lodging businesses annexed into the city after the establishment of the district shall automatically be included within the district when the financial officer issues a lodging license to that lodging business.

sec. 22-161. notice of petition.

in all cases when a petition to organize a district has been filed with the city clerk and the city manager has determined the petition complies with the requirements of this article v, the city manager shall forward the petition to the city council for its consideration of the proposed district’s establishment ordinance at a public hearing. the city clerk shall give notice of the city council’s hearing by publishing the notice once in a newspaper of general circulation in the city, by mailing it by first class mail to the lodging businesses proposed to be included in the district, and by posting it on the city’s website for at least thirty (30) days before the hearing. said notice shall:

1. generally describe the tourism improvements and tourism services that the district intends to undertake;

2. generally describe the district boundaries and the lodging businesses within such boundaries; and
Prominently state the place, date and time for the City Council hearing on the establishment of the proposed district, which hearing shall be held no fewer than twenty-one (21) days and no more than forty-two (42) days after the date of the mailing of notices.

The petition representatives shall reimburse the City for its costs to publish and mail the notices.

Sec. 22-162. Hearing on the petition.

(a) At the time and place specified in the notice required by § 22-161, the City Council shall conduct a hearing to determine if the petition and initial plan satisfy the following criteria:

   1. The petition has been circulated and signed in conformity with the applicable requirements of this Article V; and
   2. The initial plan and the establishment of the district are in the best interest of the City.

(b) The findings of City Council on its determination of the genuineness of the petition signatures, the sufficiency of the petition and its determination of the City’s best interest shall be final, conclusive and in the City Council’s sole discretion.

Sec. 22-163. Establishment ordinance.

(a) If the City Council determines that the petition and initial plan satisfy the criteria of § 22-162, the City Council shall adopt an establishment ordinance.

(b) At a minimum, the establishment ordinance shall contain the following:

   1. The City Council’s findings concerning the criteria in § 22-162;
   2. Boundaries of the district;
   3. Description of the type and kind of lodging businesses to be initially included in the district and the type and kind of future lodging businesses to be included in the district under § 22-160;
   4. The powers and limits of power to be conferred on the district;
   5. The number of directors, appointments of the initial directors and the initial terms of the initial directors, and a description of how future directors will be nominated for appointment by City Council;
   6. The term of the district;
   7. The other contents of the initial plan of the district as required by § 22-158;
Any other provisions the City Council deems necessary to protect the interests of the City, its residents or those of the affected lodging businesses; and

A declaration by City Council that the district is duly established and organized.

(c) If City Council adopts the establishment ordinance, such ordinance shall establish the district and approve the initial plan as presented unless the petition representatives consent at the hearing to the City Council modifying the initial plan. The City Council’s determinations by adoption of the establishment ordinance that the district is duly organized after notice duly given, or that a petition was or was not filed or was or was not duly subscribed and acknowledged as herein required, or that the evidence presented at the hearing was sufficient or insufficient to support the adoption of the establishment ordinance, shall be conclusive in every court or other tribunal.

(d) If there is any conflict between the provisions of the initial plan and the establishment ordinance, the establishment ordinance shall control.

Sec. 22-164. Board of directors.

(a) Board of directors. As specified in the establishment ordinance, a district shall have a board of five (5) to nine (9) directors. The directors of the board shall be nominated in the manner stated in the petition, provided that any such nominees shall be subject to appointment by the City Council. The directors of the initial board shall be confirmed in the establishment ordinance with one-third, or as near to one-third as possible as determined by the City Council, of initial appointees to have a term of one (1) year, one-third of the appointees to have a term of two (2) years, and one-third of the appointees to have a term of three (3) years. All directors of the board shall be electors within the district. The terms of the initial directors on the board shall be deemed to have commenced on the effective date of the establishment ordinance. Upon the expiration of the initial terms, successor directors shall be appointed by the City Council by resolution for terms of three (3) years unless the appointee is being appointed to finish the term of a director who has left the board for any reason before the expiration of their term and, in such case, the appointee shall only be appointed to finish the term of the departed director.

(b) Board serves at pleasure of the City Council. All directors on the board serve at the pleasure of the City Council and can be removed at any time by City Council with cause or removed without cause if a majority of the board votes to recommend the director’s removal.

(c) Officers and duties. The board shall appoint a president, secretary, treasurer and such other officers as the board deems necessary, and the same board director may hold more than one (1) position except that president and secretary shall not be held by the same person. The secretary shall keep a record of all proceedings, minutes of meetings, certificates, contracts and corporate acts of the board. The district shall keep permanent records containing accurate
accounts of all money received by or disbursed on behalf of the district and shall make such annual or other reports to the City as it may require in the establishment ordinance.

(d) **Conflicts of interest.** Each director of the board shall be subject to and comply with the conflicts of interest provisions in Charter Article IV, § 9.

(e) **Meetings and public records.** All board meetings shall be conducted in compliance with the Colorado Open Meetings Law in Part 4 of Article 6 in Title 24 of the Colorado Revised Statutes. All district public records shall be open for public inspection as provided in the Colorado Open Records Act in Part 2 of Article 72 in Title 24 of the Colorado Revised Statutes.

(f) **Board action.** The board shall act by resolution or motion.

**Sec. 22-165. Taxing authority; other district revenues.**

(a) A district shall exercise taxing authority and the authority to impose fees and assessments to the extent and in the manner provided for in the establishment ordinance for the district.

(b) Procedures for the collection and disbursement of district tax revenue and other district revenue shall be as provided in the establishment ordinance. A district may contract with the City for collection and enforcement of district taxes, fees and assessments in a manner similar to the collection and enforcement of the lodging tax, as provided in the lodging tax ordinance.

(c) No district tax or multiple-fiscal year debt or other financial obligation in which such taxes or other revenues of the district are pledged shall be imposed or incurred unless the electors of the district have approved the tax or multiple-fiscal year debt or other financial obligation in an election conducted in compliance with Article X, § 20 of the Colorado Constitution.

**Sec. 22-166. Annual plan and operating budget.**

The board of any tourism improvement district shall, by September 30 of each year, file with the City Clerk a budget and annual plan for the ensuing year. District’s shall operate on a calendar fiscal year. The annual plan and budget shall be subject to the City Council’s approval each year in a manner similar to the way the operating plans and budgets of business improvement districts are approved under C.R.S. § 31-25-1211. The annual plan and budget may, from time to time, be amended by the district with the approval of the City Council in substantially the same manner as the process for formulating the annual plan and operating budget for each year.

**Sec. 22-167. Correction of faulty notices.**

In any case where it is found that a notice provided for in this Article V was not given or insufficient in any way, the City Council, City Manager, City Clerk or board, as applicable, shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or abated. The City Council, City Manager, City Clerk or board, as applicable, shall order due notice be given and shall continue the proceeding until such time as notice is properly given and thereupon shall proceed as though notice had been properly given in the first instance.
Sec. 22-168. Dissolution of a district.

(a) Initiation by City Manager. Once established, a district shall not be dissolved except when a provision for automatic dissolution on a date certain or upon the happening of an event is provided in the establishment ordinance, the establishment ordinance provides a different manner for dissolution or by a request made by the City Manager to the City Council for a dissolution ordinance as provided in this section.

(b) Contents of request for dissolution. A request for dissolution shall state:

1. Name of the district;
2. A description of the district’s current boundaries;
3. A description of the lodging businesses within the district;
4. A description of the tourism improvements and tourism services being furnished by the district;
5. A statement whether district’s tourism improvements and tourism services will continue to be provided after dissolution and, if so, the plan for their continued provision;
6. A description of the district’s plan, if any, for the disposition of its real and personal property; and
7. A finding by the City Manager that dissolution is in the best interests of the City and the district and the City Manager’s statement that one or more of the following has occurred: (i) a misappropriation of funds, malfeasance, misfeasance, nonfeasance or violation of the law in connection with the management of the district; (ii) the district has failed for two consecutive years to timely file its annual plan and budget as required in § 22-166; or (iii) a petition requesting dissolution of the district signed by the electors in the district who represent at least fifty percent (50%) of the total rooms then existing in the district has been filed with the City Clerk and the signatures on the petition are accompanied by a self-affirmation substantially in the form provided in § 22-157(a), the petition includes the information required in subsections (b)(1) through (b)(5) above, and it states that all the district’s contracts and legal obligations have been fulfilled.

(c) Winding up of district. A district shall not be dissolved until all its contracts and legal obligations have been fulfilled and the plan for the district’s disposition of its real and personal property has been completed.

(d) Notice and hearing. Unless automatic dissolution of the district on a date certain is provided in the establishment ordinance, no dissolution shall occur except by an ordinance adopted by the City Council following a public hearing called after notice of the hearing is given in the same manner as provided in § 22-161 for the hearing on the establishment ordinance.
except the notice shall describe the tourism improvements and tourism services that the district intends to discontinue providing and describe any plan for continued provision of such improvements and services.

Sec. 22-169. Limitations of actions.

No action or proceeding, at law or in equity, to review any acts or proceedings, or to question the validity or enjoin the performance of any act, or the levy or collection of any tax for a district, or for any other relief against any acts or proceedings done or had under this Article V, whether based upon a claim of illegalities, irregularities or jurisdictional defects, shall be maintained unless commenced within thirty (30) days after the performance of the act complained of or else such proceeding shall be thereafter perpetually barred.

Sec. 22-170. Liberal construction.

This Article V, being necessary to secure the public health, safety, welfare, and convenience, shall be liberally construed to affect its purposes within the parameters of the Charter and the City’s home rule authority.

Sec. 22-171. Substantial compliance.

Substantial compliance with this Article V shall be all that is required in determining the validity of any petition or the performance of any duty hereunder.

Sec. 22-172. Prior City bonds and other City obligations.

Nothing herein shall be deemed or construed in any manner that impairs the rights of the owners or holders of any City bonds or other City obligations. In the event of any such impairment, the section, clause, phrase or word of this Article V causing such impairment shall be deemed severed from this Article V to avoid the impairment.

Sec. 22-172. Compliance with all City standards.

Tourism improvement districts established under this Article V shall be subject to and must comply with all applicable provisions in the Charter and Code and in all City ordinances, resolutions, regulations, standards and plans, except as may be expressly provided in the establishment ordinance, but such exception shall not apply to applicable Charter provisions.

Introduced, considered favorably on first reading, and ordered published this 23rd day of March, A.D. 2021, and to be presented for final passage on the 20th day of April, A.D. 2021.

____________________________
Mayor

ATTEST:
City Clerk

Passed and adopted on final reading on this 20th day of April, A.D. 2021.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
CALL TO ORDER.

1. **Connexion Update.** (staff: Erin Shanley, Ginny Sawyer; 15 minute presentation; 15 minute discussion)

   The purpose of this item is to provide Council and the public with an overview and update of the Connexion municipal fiber buildout.

2. **Municipal Immigration Legal Fund.** (staff: JC Ward, Leo Escalante, Caryn Champine; 20 minute presentation; 60 minute discussion)

   The purpose of this work session item is to provide Council with information requested on the need for immigration legal services in Fort Collins, existing municipal immigration legal fund implementation and funding models, and alignment of potential solutions with our community-specific needs.

3. **Wastewater Utility Overview.** (staff: Theresa Connor; 20 minute presentation; 30 minute discussion)
The purpose of this item is to provide an overview of the Fort Collins Wastewater Utility. Wastewater Utility collects, treats, and either discharges or reuses the effluent from approximately one-third of the city’s residents and businesses. On average, 14 million gallons of sewage is treated every day. Treatment exceeds standards required for discharge back into the Cache la Poudre River or Fossil Creek Reservoir Inlet Ditch. This represents one of the largest investments the City makes in Environmental Health and Public Health outcomes for the city. The system is in relatively good shape, however, investment in the aging sewer system and the treatment plants to meet increased environmental regulations will be needed in future years. It should be noted that the Clean Water Industry as well as Utilities staff continue to see this service as less “waste” and more of a resource recovery opportunity. This overview will cover how the Utility is recovering nutrients, energy and water (ReNEW) from the raw sewage. In the near future, it is expected that these services will be referred to as the “ReNEWal Utility” or “Resource Recovery Utility”.

4. Staff Report: Winter Storm Xylia Impacts on Water Supply and Quality (staff: Matt Zoccali)

Presentation to be provided as a read-before memo.

● ANNOUNCEMENTS.

● ADJOURNMENT.
DATE: March 23, 2021

STAFF: JC Ward, Senior Planner
       Caryn Champine, Director of PDT

WORK SESSION ITEM
City Council

SUBJECT FOR DISCUSSION

Municipal Immigration Legal Fund.

EXECUTIVE SUMMARY

The purpose of this work session item is to provide Council with information requested on the need for immigration legal services in Fort Collins, existing municipal immigration legal fund implementation and funding models, and alignment of potential solutions with our community-specific needs.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. What feedback does Council have regarding the research and unmet needs assessment for immigration legal services in Fort Collins?

2. What next step would Council like Staff to pursue regarding a municipal immigration legal fund for Fort Collins residents?

BACKGROUND / DISCUSSION

As Council has acknowledged, fear and uncertainty due to immigration status and lack of due process can impact overall community safety, equity, and livability. While immigration policy and enforcement are controlled by the federal government Council noted in the 2020 Legislative Policy Agenda that “issues pertaining to civil rights at the United States’ borders and immigration law more broadly have wide impacts that can directly impact the day-to-day life of Fort Collins residents.” Council’s Resolution 2019-100 details concerns that fear resulting from federal immigration law and enforcement policies could discourage Fort Collins residents from engaging with safety personnel, Police Services, and other City departments to access services and resources.

Fort Collins has an immigrant community of more than 11,000 people or 6.8% of the total population. Approximately 4,500 Fort Collins residents are currently not United States citizens. 2,200 residents are eligible for naturalization and the remaining 2,300 non-citizen immigrants are estimated to be undocumented and at risk for detention and deportation. 15% of children in Fort Collins live with at least one immigrant parent and 75% of these children are themselves United States citizens.

In December 2020, there were 418 Larimer County residents with pending immigration deportation proceedings, 83 of whom lacked legal representation. Many people in deportation proceedings have valid legal claims to remain in the United States but cannot effectively assert those claims or gather necessary evidence without legal representation. Any non-citizen including lawful permanent residents, refugees, and people who entered legally on visas can be placed in deportation proceedings. Immigrants are 10.5 times more likely to be able to lawfully remain in the U.S. when they have legal representation. There are 42 municipalities in the U.S. that have some form of immigration legal assistance to assure due process and equity so that inability to afford an attorney is not a determining factor in the ability to lawfully remain in the United States.

Fort Collins lacks available pro bono or low-cost legal advice and assistance for cases related to extension of visas, DACA renewal, citizenship, or legal permanent resident applications. There is one immigration attorney practicing in Fort Collins and, although community partners provide assistance for immigrants, no organizations currently provide pro bono or low-cost immigration legal defense and advice for Fort Collins residents. There are
2,963 Northern Larimer County residents eligible for immigration relief needing low-cost or pro bono legal services to pursue lawful paths to citizenship. Best practices from other municipal immigration legal fund delivery models include legal services that meet the most urgent needs, reach the greatest number of impacted community members, and build trust in the immigrant community through ongoing self-advocacy and program support. In Fort Collins, those services have an estimated funding need of $145,000-$380,000 annually based on the service levels and number of cases that would be provided to the community.

Strategic Alignment

- **Strategic Outcome - Neighborhood Livability & Social Health 1.4** Advance equity for all, leading with race, so that a person’s identity or identities is not a predictor of outcomes.
- **Strategic Outcome - Economic Health 3.2** Understand trends in the local labor market and work with key partners to grow diverse employment opportunities.
- **Strategic Outcome - Safe Communities 5.1** Improve overall community safety while continuing to increase the level of public trust and willingness to use emergency services.
- **Strategic Outcome - High Performing Government 7.3** Improve effectiveness of community engagement with enhanced inclusion of all identities, languages and needs.
- **2020 Legislative Policy Agenda - Immigration and National Border Conditions 1.** Supports the humane treatment of persons who are detained by Immigration Officials and the rapid resolution of legal proceedings to determine their status; 2. Supports a pathway to legal immigration into the United States that is sustainable in the long term.
- **City Council Resolution 2019-100 re: The Immigration Crisis at the Southern Border of the United States and its Impact on the Fort Collins Community**
- **Social Sustainability Strategic Plan (2016) - Equity and Inclusion Theme B1.2.b** Research existing partner and community programs to help inform refugee and immigrant populations of their legal rights and responsibilities; seek opportunities to create programs where none currently exist.

Immigration policy, enforcement, and adjudication are under federal jurisdiction, but as Council noted in the 2020 Legislative Policy Agenda, “issues pertaining to civil rights at the United States’ borders and immigration law more broadly have wide impacts that can directly affect the day-to-day life of Fort Collins residents.” Resolution 2019-100 and Community Trust Initiative outline additional concerns that fear resulting from federal immigration law and enforcement policies could discourage Fort Collins residents from engaging with safety personnel, Police Services, and other City departments to access services and resources. This lack of engagement could discourage people from obtaining emergency assistance or reporting crimes, and ultimately interfere with obtaining an accurate count of people living in Fort Collins, putting at risk the City’s accurate representation in Congress and in the Colorado General Assembly, as well as federal funding. These local impacts on safety, equity, and livability led 42 municipal government entities across the United States to create immigration legal defense programs.

Challenges for Immigrant Communities

Fort Collins lacks available pro bono or low-cost legal advice and assistance for cases related to extension of visas, DACA renewal, citizenship, or legal permanent resident applications. There is one immigration attorney practicing in Fort Collins and although community partners are providing assistance for immigrants, no organizations currently provide pro bono or low-cost immigration legal defense and advice for Fort Collins residents. 2,963 Northern Larimer County residents are eligible for immigration relief and need low-cost or pro bono legal services to pursue lawful paths to citizenship.

- Deportation proceedings are the only legal proceedings in the United States where people are detained without access to legal representation. Because deportation is considered a civil rather than criminal penalty, immigrants facing removal are not protected by the Sixth Amendment “right to counsel” in place for criminal defendants. Every immigrant in a deportation hearing is confronted by a government prosecutor advocating for their deportation and is not entitled to representation even if they are in the most vulnerable categories like children, detainees, or asylum seekers.
A common misperception is that deportation proceedings are only for undocumented immigrants. In fact, any non-citizen including lawful permanent residents, refugees, and people who entered legally on visas can be placed in deportation proceedings.

Increases in economic hardship, food insecurity, and housing instability are associated with deportation of a family member. In Colorado, families lose 30% of their income when an individual is detained or deported. Colorado immigrants in detention lose $3.9 million in earnings per year.

According to the Colorado Fiscal Institute, “Every dollar spent by an immigrant family generates $1.60 in local economic activity.” The $3.9 million in earnings lost by immigrant families due to detention equals $6.2 million lost by Colorado’s local economies each year.

There is currently one immigration attorney practicing in Fort Collins.

Although community partners are providing a wide spectrum of assistance for immigrants, organizations and attorneys taking on pro bono immigration cases currently provide limited pro bono or low-cost immigration legal defense and advice for Fort Collins residents. This assistance does not meet the need for local, immigration legal services.

No statewide pro bono or subsidized immigration legal defense is provided in Colorado. Currently, the State of Colorado does not provide legal services or support for immigration cases and proposed legislation to create an immigration legal fund will still be insufficient to meet the needs of Colorado immigrants. The Colorado Legislature is considering HB21-1194 to create a statewide immigration legal defense fund. However, the fund would be limited to providing legal representation for detention-deportation cases. If approved, the anticipated funding level is unlikely to meet 100% of the overall need for all Colorado residents. Advocates for the Fort Collins immigrant community say the solution is not exclusively federal or state or local but requires the additive combination of funding and policy change at all levels.

Attachment 1 provides additional information on the immigration process, associated costs, and timelines.

Current Conditions in Colorado

In 2019 the Department of Homeland Security adjudicated 8,500 immigration deportation cases in Colorado. Sixty-five percent of immigrant detainees in those cases did not have legal representation. In Colorado in 2020, 2,154 children faced immigration court deportation proceedings and 61% of these children did not have access to legal representation. Unfortunately, those without representation are much more likely to be detained while awaiting their hearings and to eventually be deported. Being represented by an attorney helps immigrants return to their families, jobs, and communities more quickly and keeps them there while their case is awaiting the deportation hearing. Immigrants are 10.5 times more likely to be able to remain in the United States when they have legal representation. Immigrants are 3.5 times more likely to be released on bond while awaiting trial if they have access to legal counsel.

The direct and indirect effects of detention and deportation harm employers, communities, and Colorado’s economy. The negative impacts of detention and deportation on individuals, their families, and their community range from negative emotional and mental effects on children to economic loss from the absence of a breadwinner. It is extremely costly for employers to replace immigrant workers with little to no notice. In Colorado, employers of workers earning less than $30,000 per year expend roughly 16% of the employee’s wages to replace them. Providing universal legal representation would allow more immigrants to remain in Colorado and on the job, thereby reducing costly disruption and expense for employers. Immigrants in our Congressional District contribute $172.4 million in state and local taxes and more than $406 million in federal taxes. When a provider is detained, state and local governments also lose over $350,000 in tax revenue for critical public services and infrastructure.

Current Unmet Need for Immigration Services in Fort Collins

In the Fort Collins 2020 Legislative Policy Agenda, Council indicated support for the humane treatment of immigration detainees, rapid resolution of legal proceedings to determine their status, and pathways to legal immigration into the United States. The City also affirms its commitment as an organization to equity, inclusion, and diversity through the articulated Equity Statement and Social Sustainability Strategic Plan. City Leadership
acknowledges “the role of local government in helping create systems of oppression and racism and are 
committed to dismantling those same systems in pursuit of racial justice.” A coalition of regional service providers 
believes that helping to establish pro bono and low-cost legal services in Fort Collins is a key part of building 
equity and trust.

Demographics - General

In addition to the absence of critical representation for detained immigrants awaiting hearings, legal advice and 
assistance are lacking in Fort Collins for cases related to extension of visas, DACA renewal, citizenship, or legal 
permanent resident applications. The lack of affordable legal services and representation is considered the 
biggest barrier to successful integration for immigrants in Fort Collins by local service providers. This unmet need 
creates significant challenges to our unauthorized and partially documented immigrant community members, 
including financial and emotional instability; lack of access to health care, stable housing, higher education, and 
meaningful work; and a cycle of poverty.

• Fort Collins has an immigrant community of more than 11,000 people or 6.8% of the total population.
• Approximately 4,500 residents are currently not United States citizens: 2,200 residents are eligible for 
naturalization and the remaining 2,300 non-citizen immigrants are estimated to be undocumented and 
currently at risk for detention and deportation.
• 2,963 Northern Larimer County residents are eligible for immigration relief and need low-cost or pro bono 
legal services to pursue lawful paths to citizenship and presence.
• As of December 2020, there were 418 Larimer County residents with pending immigration deportation 
proceedings initiated by Department of Homeland Security, 83 of whom lacked legal representation. The 
Larimer County case numbers and unrepresented immigrants in detention as of December 2020 are almost 
double the 2019 case numbers.
• An August 2020 poll of immigrant residents in Fort Collins had 162 respondents of which 70% reported their 
unmet need for immigration attorney services. 49% of respondents cited the high cost of immigration legal 
services as the primary barrier to access, 36% could not find information on local legal services, and 39% did 
not think their current status had a pathway to citizenship.

Demographics - Children

Because of valid concerns about disclosure of immigration status to federal government agencies, state and local 
relief and assistance programs are increasingly filling the gap in those services to assure that all children and 
families can meet basic needs.

• 15% of children in Fort Collins live with at least one immigrant parent and 75% of these children are 
themselves United States citizens.
• “Mixed status” families, where one or more family member is undocumented, can face uncertainty due to 
inconsistent federal policy. Children who are United States citizens did not receive the first round of COVID-
19 economic stimulus benefits if even one parent was undocumented. The second round of those benefits 
could be accessed by the children if one parent is lawfully present, but not if both parents are undocumented.
• Locally, undocumented parents (even those with citizen children) indicate a reluctance to allow their citizen 
children to enroll in or access programs like Supplemental Nutrition Assistance (SNAP) Program, Medicaid, or 
Section 8 housing vouchers out of fear that the parent’s future application for citizenship would be negatively 
impacted.
• In the Poudre School District, there are 54 students who arrived in the United States as unaccompanied 
minors seeking asylum because they are unable to return to their countries of origin due to threat of death or 
imminent harm. These students could remain in the United States through Special Immigrant Juvenile Status 
(“SIJS”) and later adjust their status to lawful permanent resident if they apply before the child’s 21st birthday. 
Processes for both SIJS and Adjustment of Status are complex, require payment of multiple fees or
applications for fee waivers at varying points in the process, and have strict deadlines.

- In Fort Collins, the Interfaith Solidarity And Accompaniment Coalition ("ISAAC") has successfully assisted 12 Fort Collins youth through these processes and established relationships with local attorneys who can provide these services. Ultimately, costs of application, legal fees, and age may determine whether any of these children can safely remain in the U.S.

- Abused, neglected, and abandoned children in any other court system in the United States are entitled to legal representation as well as a Guardian ad Litem to assess the best interests of the child. Children in immigration proceedings have no right to legal counsel, Guardian ad Litem evaluation, or adult supervision during detention or hearings.

Peer City Municipal Immigration Legal Funds - Program Design

Local government entities are increasingly creating and expanding immigration defense funds. 42 municipalities in the United States currently have some form of immigration legal assistance to assure due process and equity so that inability to afford an attorney is not a determining factor in the ability to lawfully remain in the United States.

Public-Nonprofit Partnerships

Of the 42 municipal immigration legal funds, 39 are public-nonprofit partnerships with municipal oversight which are dispersed through competitive grant processes to qualified, local immigration legal service providers. Twenty-nine distribute funds through municipal purchasing or grant processes. Coordination of the work of multiple grant recipients for municipal immigration legal funds is often part of the scope of work for one of the external grant recipients.

Ten municipal immigration legal funds work with a community foundation that coordinates distribution of the funds, contracts with service providers, and reports annually to the municipality.

Public Defender’s Office Units

Some large metropolitan areas like San Francisco and Chicago initially began immigration legal defense funding by establishing units inside their existing Public Defender’s Office dedicated to detention and deportation defense. Most have now evolved into the municipality funding not only Public Defender positions, but also community partner-delivered education, outreach, affirmative case assistance, and legal advice clinics.

City/County Employee Coordinator

Dane County, Wisconsin is the only municipality that created a municipal staff position to coordinate the immigration legal defense fund and associated projects from their Department of Human Services. The county Immigration Affairs Coordinator is a social worker who provides holistic case management, family support, and coordination of outside legal services.

Student Law Office Clinics and Fellows

In addition to funding a county staff member and one local immigration attorney, Dane County also funds a portion of the student law office immigration clinic at the University of Wisconsin to offer pro bono immigration legal representation and advice.

The state of New York offers a unique service delivery model with funding assistance from New York University and the Vera Institute of Justice, this immigration legal defense fund co-locates law school graduate fellows with legal aid programs throughout the state.
Peer City Municipal Immigration - Funding

The table below provides comparative information on funding and sources for immigration legal funds for Fort Collins’ peer cities as well as municipalities with similar percentages of immigrant community members to that of Fort Collins. Fort Collins has an immigrant community of more than 11,000 people or 6.8% of the total population. The Fort Collins Metropolitan Statistical Area has an immigrant community of more than 19,000 people or 11.4% of the total population.

- **Baltimore, MD**
  - $200,000/year
  - 26 cases/year
  - 60,000 immigrant population/10% of total population
  - Municipal Funds ($200K)

- **Minneapolis, MN (Hennepin County)**
  - $275,000/year
  - 75 cases/year
  - 42,000 immigrant population/10% of total population
  - Municipal Funds ($275K)

- **Santa Rosa, CA (Sonoma County)**
  - $550,000/year
  - 193 cases/year
  - 82,060 immigrant population/17% of total population
  - Municipal Funds ($300K)
  - Nonprofit Funds ($250K)

- **Dane County, WI**
  - $250,000/year
  - 75 cases/year
  - 49,202 immigrant population/9% of total population
  - Municipal Funds ($150K)
  - Grant Funds ($100K)

- **San Antonio, TX (Harris County)**
  - $250,000/year
  - 75 cases/year
  - 180,960 immigrant population/12% of total population
  - Municipal Funds ($150K)
  - Grant Funds ($100K)

- **Columbus, OH**
  - $159,000/year
  - 68 cases/year
  - 87,800 immigrant population/10% of total population
  - Municipal Funds ($25K)
  - Grant Funds ($100K)
  - Nonprofit Funds ($34K)

- **Denver, CO**
  - $325,000/year
  - 42 cases/year
  - 84,670 immigrant population/12% of total population
  - Municipal Funds ($200K)
  - Grant Funds ($100K)
  - Nonprofit Funds ($25K)
Service Levels and Delivery Model Options for the City of Fort Collins

Estimates for funding levels to provide effective pro bono or low-cost immigration legal services to residents of Fort Collins were determined by demographic analysis and current unmet need; data, regional service costs, and subject matter expertise from local and regional community partners on inputs necessary to build and support local capacity for these services; and comparative service levels, outcomes, and costs from cities with existing municipal immigration legal funds.

Best practices demonstrated by effective municipal immigration legal funds and modeled by the Vera Institute of Justice’s ‘Safety & Fairness for Everyone’ Initiative offer wrap-around, holistic services to meet the most urgent needs, reach the greatest number of impacted community members, and build trust in the immigrant community through ongoing self-advocacy and program support. The majority of municipal immigration legal funds include these free and low-cost elements:

- Direct legal representation for the lifecycle of immigration cases;
- Emphasis on legal services for deportation and detention cases;
- Support for legal pathways to citizenship;
- Scholarships or subsidized application and renewal fees for affirmative cases like DACA, SIJS, Visa Renewals, Adjustment of Status for LPR, U Visas, and Family Reunification;
- Legal advice and consultations through legal clinics;
- Know Your Rights Trainings in detention centers and embedded in local immigrant communities;
- Education and outreach that includes leadership and empowerment training to improve self-advocacy;
- Focus on outcomes-based program metrics (program accomplishments like improvements in community safety) rather than output-based metrics (participant numbers or number of cases resolved); and
- Program coordinator housed in a local nongovernmental organization.

Potential future success of these elements in our community is further indicated by the outcomes of the successful City of Fort Collins Eviction Legal Fund 2020 pilot, which used a similar model and employed direct legal representation, education and outreach, self-advocacy empowerment, and community partner leadership to reach residents and landlords in need of assistance with eviction prevention.

A successful municipal immigration legal fund in Fort Collins would include some form of the above-referenced effective elements with the delivery model determined through continuing collaboration with legal services providers, community partners, members of the immigrant community, and economic stakeholders. The difference in the funding options below is the level of service that could be provided with each annual funding amount.

Each option includes a full-time program coordinator position employed by a partner organization rather than the City of Fort Collins to increase community trust and avoid putting the City in the position of providing direct legal services. Optimally, the coordinator role would be staffed by someone with paralegal experience and the potential to assist with program fundraising at the lower funding levels.

The estimated unmet need for Fort Collins Detention/Deportation cases is 75-100 per year, SIJS cases is 100 per year, and affirmative cases (DACA, LPR, Naturalization) is 400 per year.

<table>
<thead>
<tr>
<th>Annual Funding Level</th>
<th># Detention/Deportation Cases per year</th>
<th>SIJS Cases per year*</th>
<th>Affirmative Cases - DACA, LPR, Naturalization per year*</th>
</tr>
</thead>
<tbody>
<tr>
<td>$380,000</td>
<td>20</td>
<td>25</td>
<td>100</td>
</tr>
<tr>
<td>$220,000</td>
<td>10</td>
<td>10</td>
<td>50</td>
</tr>
<tr>
<td>$145,000</td>
<td>10</td>
<td>4 OR 25</td>
<td>25 OR 4 SIJS Cases (funding level does not support both)</td>
</tr>
</tbody>
</table>

*Includes standard fee for application and renewal.
POTENTIAL PARTNERS FOR FORT COLLINS MUNICIPAL IMMIGRATION LEGAL FUND

Vera Institute of Justice

The Vera Institute of Justice provides matching funds to municipal immigration legal funds for deportation defense through the SAFE Initiative catalyst grants of up to $100,000, the community seed grants of $15,000 to $30,000, and in-kind infrastructure support. Municipalities partnering with the Vera Institute of Justice receive training and technical assistance for legal service providers, program evaluation and reporting of metrics, streamlined program administration, strategic support in communications and outreach, and connection to a national movement for due process, universal representation, and community-led advocacy. The Vera Institute of Justice is an important partner for the City and County of Denver's immigration legal fund and has worked closely with City staff over the past five months to provide valuable information and guidance for our research.

Student Law Office Clinics

The University of Colorado Law School and University of Denver College of Law offer immigration clinics through their student law offices that are funded by the institutions. Both clinics offer no cost, law student representation, consultation, removal defense, and advising on detention/deportation and DACA cases. At their current funding levels, neither can expand services to represent immigrants from the Fort Collins community.

Rocky Mountain Immigrant Advocacy Network

The Rocky Mountain Immigrant Advocacy Network (“RMIAN”), a Colorado nonprofit organization serving low-income adults and children in immigration proceedings, also provides legal representation, Know Your Rights training sessions, and legal clinics for immigrants in detention in Aurora. RMIAN promotes knowledge of legal rights, provides effective representation to ensure due process, and works to improve detention conditions under a universal representation model, selecting cases based on the need of the client and capacity of attorneys, not likelihood of winning. RMIAN employs immigration attorneys and works with a network of pro bono attorneys to provide these services. Additional funding would be necessary for RMIAN to build capacity necessary to provide representation specifically for Fort Collins residents.

Engagement

The Project Team would like to sincerely thank the community partners for their contributions, patience, and openness in supplying valuable data, connections, and anecdotal information on the unmet needs of the Fort Collins immigrant community. Because of the understandable reluctance of undocumented immigrants to self-identify and open themselves and their families to the risk of deportation, staff worked with local and statewide advocacy groups with existing relationships with Fort Collins immigrants to conduct a local needs assessment, research existing and projected conditions in Larimer County for the immigrant community, analyze other municipal immigration fund program and budget models, and conduct public engagement.

We appreciate the community partners who worked directly and indirectly with the Staff Team: Alianza NORCO, Colorado Immigrant Rights Coalition (CIRC), Interfaith Solidarity And Accompaniment Coalition (ISAAC), Rocky Mountain Immigrant Advocacy Network (RMIAN), Fuerza Latina, Catholic Charities, BIPOC Alliance, Foothills Unitarian Church Community Dreamer Fund, Mujeres de Colores, CSU Dreamers United, La Cocina, Vera Institute of Justice, University of Colorado Law School and Dr. Violeta Chapin, The Denver Foundation, Denver Councilmember Jamie Torres, and BakerRipley (Immigration Fund Manager in Harris County, Texas).

ATTACHMENTS

1. General Immigration Process: Background, Costs and Timelines (PDF)
2. Powerpoint Presentation (PDF)
SUBJECT FOR DISCUSSION

Wastewater Utility Overview.

EXECUTIVE SUMMARY

The purpose of this item is to provide an overview of the Fort Collins Wastewater Utility. Wastewater Utility collects, treats, and either discharges or reuses the effluent from approximately one-third of the city’s residents and businesses. On average, 14 million gallons of sewage is treated every day. Treatment exceeds standards required for discharge back into the Cache la Poudre River or Fossil Creek Reservoir Inlet Ditch. This represents one of the largest investments the City makes in Environmental Health and Public Health outcomes for the city. The system is in relatively good shape, however, investment in the aging sewer system and the treatment plants to meet increased environmental regulations will be needed in future years. It should be noted that the Clean Water Industry as well as Utilities staff continue to see this service as less “waste” and more of a resource recovery opportunity. This overview will cover how the Utility is recovering nutrients, energy and water (ReNEW) from the raw sewage. In the near future, it is expected that these services will be referred to as the “ReNEWal Utility” or “Resource Recovery Utility”.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Does Council have any questions or feedback about the strategic direction or operations of the wastewater utility?

BACKGROUND / DISCUSSION

Water is an essential ingredient to the many activities and businesses that make Fort Collins special. This first installment of the community-owned Fort Collins Utilities overviews relates to the Wastewater Utility, which is responsible for collecting and treating water after it is used and then returning it to the environment. Water and wastewater utilities are foundational community institutions that provide critical and reliable services 24/7 while protecting the health of our community and natural resources. The challenges we face today and tomorrow require new technology, innovation, and foresight. Investments in our water and wastewater resources and infrastructure help protect our community allowing it to continue to thrive.

The following United States Water Alliance description of forward-thinking wastewater utilities captures the Fort Collins Utilities’ approach: “Wastewater is not waste; rather, it’s a precious resource. Water utilities throughout the country are recovering nutrients, reclaiming water, and producing energy from waste streams - all of which help reduce carbon and nitrogen emissions to the atmosphere and generate power and heat. Water utilities are using biogas cogeneration, wind turbines, heat exchangers, and solar systems to recover and produce net energy positive facilities. They have embraced the idea that wastewater treatment plants can be transformed into resource recovery facilities, as some produce more energy than required for their operations and sell the excess energy back to the grid. Similarly, biosolids management has evolved from a “disposal” problem to a “reuse” opportunity.”

The Numbers

- Residential customers - 32,500
- Commercial customers - 2,000
  - Industrial customers - 15
• Average Total Daily Flow - 12.8 million gallons/day
  o Average Flow at Mulberry Water Reclamation Facility - 2.7 million gallons/day
  o Average Flow at Drake Water Reclamation Facility - 10.1 million gallons/day
• Average Reuse Flow - 3 million gallons/day
• Annual Average Tons of Biosolids - 2,200 dry tons
• Acreage of Meadow Springs Ranch - 26,500 acres
• # of Miles of Sanitary Sewer Collection System - ~458 miles
• # of Employees - 92
• 2021 Operating Budget - $17.9M
• 2021 Capital Budget - $13.6M

Customer Satisfaction Survey
Utilities has a long history of measuring customer satisfaction to ensure world-class customer service. In 2020, Utilities transitioned our customer satisfaction survey to a benchmark survey and partnered with J.D. Power. J.D. Power compares the results for Fort Collins Utilities with utilities nationwide and the mid-size west utilities. Utilities made the change to support the Baldridge practice of benchmarkable data to understand how we compare industry wide and received J.D. Power results presentations on what Key Performance Indicators drive higher overall customer satisfaction within the six factors of the survey. Utilities intends to conduct the J.D. Power surveys and other surveys to capture the voice of the customer following this schedule:

• Even years, Residential Electric and Water and Wastewater survey, fielded in two waves of surveys to track customer satisfaction of Utilities business customers.
• Odd years, beginning in 2021, Commercial Electric Survey fielded in one wave. Utilize the Fort Collins Community Survey to track Utilities residential customer satisfaction.

In 2020, the Residential Water & Wastewater survey achieved a response rate of 4.4%, exceeding the goal of 99% confidence level and less than 5% margin of error. The response rate was three times higher than our previous survey participation rate. In addition to Overall Satisfaction, the survey uses six factors for measuring customer satisfaction:

• Quality & Reliability
• Billing & Payment includes both water and wastewater.
• Price
• Communication includes both water and wastewater.
• Conservation
• Customer Service includes both water and wastewater.

The Overall Satisfaction score, as well as three of the six factors, are relevant to the wastewater utility - Billing and Payment, Communications and Customer Service.

• Overall Satisfaction: Utilities scored 758, above the national average of 742, and above the mid-size west utilities of 739, an excellent score for a newly participating utility. However, Utilities’ score of 758 was below the top quartile score of 785, which is an overall customer satisfaction greater than 75% of national utilities, e.g., a top-performing utility.
• Billing and Payment: Utilities scored 801, just above the national and mid-size west utilities scores, both of which are 791.
• Customer Service: Utilities scored 783, below the national average of 812, and below the average of mid-size west utilities of 808. Customer service includes both the phone and digital experience. Overall, Utilities performed above average on the phone experience and below average on the digital experience.
• Communication: Utilities scored 675, below the national average of 705, and below the average mid-size west utilities of 699.
Three wastewater-specific questions were added to the residential water survey in 2020:

- Overall satisfaction specific to the Wastewater Utility (because most of the general overall satisfaction score relates to the Water Utility):
  - Utilities scored 7.79 on a scale of 1-10. Utilities scored above the national average of 7.32 and above average for mid-size west utilities of 7.30.

- Percentage of customers not experiencing issues with wastewater services:
  - Fort Collins Utilities scored 96%. National average was 82%, and the average mid-size west utilities was 88%.

- Average billing comparisons:
  - The average reported customer wastewater monthly bill in Fort Collins was $43, lower than the national average of $93 per month and lower than the average mid-size west utilities of $79 per month.

In summary, the Utility industry nationwide continues to respond to the needs and desires of our customers and scores continue to increase yearly. Partnering with J.D. Power enables Utilities to compare our performance within the evolving industry to measure and achieve outstanding customer service.

**Background of the Infrastructure System**

Utilities serves approximately one third of the City’s Growth Management Area as well as the town of Laporte. Other areas of the city are generally served by the Boxelder Sanitation District or South Fort Collins Sanitation District. There are about 32,500 residential customer, and 2,000 commercial customers with 15 industrial customers.

- Utilities operates approximately 458 miles of sanitary sewer system. Operations and maintenance goals include washing of the system every two years and televising the system every 10 years.

- Approximately 20 miles of sanitary sewer pipe are over 100 years old. Useful life of the pipe was expected to be 50-70 years, and much of this pipe is undersized. Currently, Utilities is replacing about two miles of sanitary sewer system per year.

- The Mulberry (MWRF) and Drake Water Reclamation Facilities (DWRF) operate within and maintain ISO 14001 certifications, which manages the environmental impacts of our activities and products. Both facilities also are recognized by CDPHE as Gold Level Environmental Leaders.

- MWRF is operated remotely by the operators located at DWRF through a SCADA system that monitors operating conditions at the plant.
  - Mulberry is rated at 6 million gallons/day (mgd) capacity with average daily flow of 2.7 mgd. The discharge from MWRF flows directly into the Cache la Poudre River Segment 11.

- DWRF recently was recognized by the National Association of Clean Water Agencies for Platinum Peak Performance and the State of Colorado as an ELP Gold Certified Facility.
  - DWRF is rated for 23 mgd capacity with an average daily flow of 10.1 mgd. It has permitted discharge points to the Cache la Poudre River and the Fossil Creek Reservoir Inlet Ditch.
  - DWRF produces about 3 mgd of reclaimed water that is sent to the Platte River Power Authority’s Hamilton Reservoir at the Rawhide Energy Station, in partnership with Anheuser Busch and the Water Supply and Storage Company, in a complex reuse agreement (that may be revisited in association with the Rawhide Coal-Fire Plant’s planned closing in 2030).

- The Pollution Control Lab (PCL) is located at DWRF and performs critical analysis to ensure we are protecting the public and our environmental resources from pollution. The Lab collects and analyzes over 40,000 samples each year from a variety of sources including the Poudre River, urban creeks, industrial discharge, as well as various points in the wastewater treatment process. Over 90 parameters are assessed to demonstrate that the wastewater processes are meeting regulations.
  - An in-house laboratory provides the community with control over the quality and validity of the data and
keeps costs low. This allows for the quick delivery of sound, reliable data to allow staff to respond to changing conditions in a timely and effective manner.

- The Lab is certified and accredited through an annual “blind sample” audit program and has always achieved a 100% score over the last several decades. It also serves as a regional and community resource for environmental analytical expertise. The Lab provides analytical and reporting services to local entities including Boxelder Sanitation District, South Fort Collins Sanitation District, Carestream Health, the Township of Windsor, Leprino Foods, and the City of Greeley’s Bellvue Water and Wastewater Treatment and Boyd Lake Treatment facilities.

- The biosolids operations at both DWRF and Meadow Springs Ranch (MSR) have achieved Platinum Level Certification with the National Biosolids Partnership program. Biosolids are the stabilized residual from the anaerobic digesters at DWRF. In addition to being the biosolids application site, MSR serves an important role in environmental stewardship, maintaining water rights, and is a working cattle ranch. Numerous archeological and historically relevant sites are on the ranch, including a barn used during the Pony Express days.

CHALLENGES TO OUR SYSTEM

What Not to Flush

As with all our Utility services, we depend on community partnerships to be effective. What people put into the sewer system can negatively impact performance of the system and the wastewater treatment plant and drive up costs to operate both systems. Examples include:

- “Flushable” wipes are generally not flushable. They do not disperse upon flushing and stay like rags in the sewer system where they can collect on tree roots in or in bellies within the pipes and cause sewer backups into basements. New research conducted this summer, the first of its kind, indicates that higher microplastic concentrations in the wastewater effluent have been linked to higher levels of wipes within the system in Galway, Ireland.

- Fats, Oil and Greases (FOG) are often discharged during the holidays. Once FOGs are in the sewer system, they will congeal and coat the pipe walls, which reduces capacity of the sewer system and potentially causes sewer system backups. “Flushable” wipes also can combine with FOG to create Fatbergs (concrete-like masses in the system). Certain areas of town have pipes called “greasers” that are cleaned monthly, which drives up maintenance costs.

- Stickers from fruits and vegetables, those seemingly innocuous stickers found on fruits and vegetables at the grocery store, find their way down the drain. When they arrive at a water reclamation facility, they gum up the headworks of the plant as badly as wipes, hair or other various items found in the wastewater stream. Those stickers that make it through the headworks do float and are able to make it all the way through the process to the discharge.

- When pharmaceutical drugs are flushed down the toilet, they end up at the wastewater plant, which is not designed to treat these drugs. The concentrations of “emerging contaminants,” such as pharmaceutical drugs in the wastewater effluent, are increasing. Currently, these contaminants are not regulated but are expected to be in the future.

Aging Infrastructure

- Much of the DWRF facility was constructed in 1960, is reaching its useful life and requires renewal.

- Due to the gases and other conditions at a wastewater treatment plant, the environment is quite corrosive. Replacement of the clarifier mechanisms and the plant headworks will be upcoming projects within the CIP program.

- Over 20 miles of our sewer system is over 100 years old and is in Old Town or downtown area. The pipe used at that time had an expected life of 50-70 years and is difficult to maintain. Much of that system is also undersized and will require normal (open cut excavation) construction to replace the sewer pipe, which is disruptive to the community.
• Approximately 2 miles, or 0.44%, of sewer line is replaced each year. Best practice within the industry is to replace 1% of the system per year so that every hundred years, the system is renewed or replaced. In future capital plans, this rate of replacement or renewal increases to 4 to 5 miles per year to prevent future failures of the system.

• To renew the sanitary sewer system, Utilities uses various pipe lining methods where the pipe size is adequate. “Trenchless technology,” such as sewer lining, can be used to minimize impact where possible.

• Approximately 116 miles of the 450+ miles of pipe in the system exist in backyards or private property, which causes access issues for maintenance and replacement.

Nutrient and Temperature Regulations

• CDPHE is expected to adopt rules regulating temperature of discharges in 2022 that will require upgrades to MWRF that are expected to cost between $4-6 million. The rules are based upon the CDPHE need to protect suitable wildlife habitat (brown trout) in the Cache la Poudre River and its regulatory authority of point source facilities. Staff continues to work with the state on alternative regulatory solutions such as site-specific standards or variances.

• Excess nitrogen and phosphorous levels within the wastewater discharge are harmful to receiving waterways. CDPHE will require reductions in phosphorous concentrations from the wastewater effluent in 2021.

• CDPHE is promulgating rules that would regulate the temperature of discharges. Currently, MWRF does not meet those regulations approximately six days a year during the winter months.

24/7 Operations During a Pandemic

• Operating a wastewater system through the COVID-19 pandemic has been challenging. Initially, there was concern that contact with the raw sewage was an exposure route to the virus, so construction projects that included connection of laterals were stopped to prevent potential exposure.

• The sewer cleaning crews needed to continue to work, so PPE was increased for them, including higher level respirator protection.

• At the plants, operators were separated to different areas of the facilities and kept separate from construction projects occurring during the pandemic.

• At the Pollution Control Lab, staffing was rotated until a scheme could be developed to keep employees separated within the lab itself.

Innovation and Opportunities

• Since wastewater systems were first developed in Europe to address the plagues of the early and mid-1800s, it is fitting that we now use the wastewater systems as early surveillance warning for COVID spread within the community. This partnership continues through CDPHE, CSU, and 17 front range wastewater utility providers. Currently, the wastewater COVID concentrations are trending higher a few days ahead of the reported clinical positive cases through Larimer County Public Health. The City has further partnered with CSU and Larimer County to utilize sewer shed monitoring to identify potential outbreaks in specific areas such as the college dorms.

• DWRF just began a side stream nutrient treatment process to reduce phosphorous in the effluent, required by upcoming regulations from CDPHE. Process data to date from this project shows a 95% effluent phosphorus levels in the Drake effluent. Additional operational optimization strategies have reduced the nitrogen and phosphorus levels at MWRF and DWRF.

• DWRF will continue to reduce its carbon footprint through harvesting energy from the methane produced by the anaerobic digestors, known as the Co-Generation Energy System. This will roughly meet 6% of DWRF’s energy demands.
Optimizing Operations

- Water Reclamation and Biosolids (WRB) is a charter member of the Partnership for Clean Water (PCW) through the American Association of Water Works. Through this effort, the WRB teams have implemented strategies at the operational level that will minimize the need for expensive capital projects going forward.
  - One example is optimizing the primary treatment trains to generate and hold onto more internal carbon for use in the secondary treatment process. Similar efforts have been made with determining dissolved oxygen set points for secondary treatment processes to improve phosphorus and nitrogen removal. These efforts will reduce the need and costs associated with external carbon supplementation.
  - As part of the PCW, the WRB team has established performance goals that exceed regulatory limits. These established goals, strategies for success, and documented case studies are part of the PCW Partnership Application were scheduled to be submitted by end of January 2021.
- Recently, pipe lining technology has begun to use a thinner liner and UV to cure the liner in place. This method also eliminates the resin off gassing and water by-product associated with previous steam-cured processes. We are piloting this technology to determine effectiveness and could potentially use it in smaller pipelines.

FINANCIAL OUTLOOK

A scan of typical monthly residential bills for wastewater charges across the Front Range is provided below. Fort Collins Utilities is right in the middle of the range.

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Boulder</td>
<td>$23.49</td>
<td>$24.67</td>
<td>$24.96</td>
<td>$31.83</td>
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<td>$36.87</td>
<td>$38.71</td>
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<tr>
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<td>$31.53</td>
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<td>$34.45</td>
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<td>$34.25</td>
</tr>
<tr>
<td>Longmont</td>
<td>$19.72</td>
<td>$23.01</td>
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<td>$32.71</td>
<td>$33.38</td>
<td>$34.10</td>
<td>$34.10</td>
</tr>
</tbody>
</table>

Wastewater Capital Improvement Plan

The Capital Improvement Plan for the Wastewater Fund includes capital improvements at the reclamation facilities as well as a significant increase in asset renewal of the wastewater collection system to address the significant need to replace an aging sewer system.
Wastewater Operations

Operating revenues have grown modestly over the past decade with rate increases often not being fully realized. Modest rate adjustments will be necessary to increase revenues in this utility service.

The colored area represents the 95% confidence band around the expected operating expense.

Wastewater Operations and Maintenance (O&M) expenses have increased 2.5% over the past decade. If this can be maintained over the coming decade, this Enterprise Fund will be well-positioned to meet the anticipated increase in capital investments.

The colored area represents the 95% confidence band around the expected operating expense.

The combination of operating revenues increasing very modestly and O&M increasing at a slightly faster rate will, over time, reduce the operating income being generated for this utility. However, operating income is expected to remain adequate to meet all debt service needs without significant contributions being required from plant investment fees.
Wastewater Rate and Debt Forecasts

As the table below shows, very modest rate adjustments are anticipated along with the issuance of $25-35 million of debt over the coming decade to provide adequate financial resources to complete the anticipated $150-170 million of capital improvements.

<table>
<thead>
<tr>
<th>Year</th>
<th>Rate Increase</th>
<th>Debt Issuance $M</th>
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<tbody>
<tr>
<td>2020</td>
<td>0.0%</td>
<td>$10-15M</td>
</tr>
<tr>
<td>2021</td>
<td>0.0%</td>
<td></td>
</tr>
<tr>
<td>2022</td>
<td>0.0%</td>
<td></td>
</tr>
<tr>
<td>2023</td>
<td>0-2%</td>
<td></td>
</tr>
<tr>
<td>2024</td>
<td>0-2%</td>
<td></td>
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<td>2026</td>
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<tr>
<td>2029</td>
<td>0-3%</td>
<td></td>
</tr>
<tr>
<td>2030</td>
<td>0-3%</td>
<td>$15-20M</td>
</tr>
</tbody>
</table>

$150-170M of capital work is expected to be needed between 2020 and 2030 in addition to the current capital appropriations.

Summary

Fort Collins Utilities runs a very competitive and cost-effective wastewater system that delivers a high level of service to the community and is looked to as an innovation leader in the state and across the nation. Like many wastewater system providers, we are challenged with aging infrastructure and changing regulations. We are poised to address those challenges while continuing to optimize our operations and performance of the system.

ATTACHMENTS

1. Powerpoint Presentation (PDF)
General Background, Costs, and Timelines

Immigration & Federal Process

Immigration has long been a source of demographic revitalization, cultural enrichment, and innovation for our country.\(^1\) Immigration boosts economic growth and raises the general productivity of the American workforce by providing much-needed skill and intellectual capital. Immigrant workers allow crucial sectors of the economy to expand, which attracts investment and creates additional employment opportunities for all Americans. The world becomes more interconnected through cultural exchange and shared experiences, fostering global progress on human rights causes.

Lawful Entry into the US

Legal entry into the U.S. for foreign-born non-citizens requires a valid visa issued to the immigrant or visitor by the federal government prior to stepping onto U.S. soil.\(^2\) Visa categories include temporary tourist, education, work, and immigration.\(^3\) Immigration visas are issued to potential permanent immigrants who are either: related to American citizens, qualified priority professionals with special skills, asylum seekers, or winners of the “diversity” lottery. Each of these immigration visa categories has annual limits on the number issued, although the caps can change based on the federal administration.\(^4\) The United States currently allows up to 675,000 permanent immigrant Visas each year across various categories.\(^5\) Additional permanent immigrants are granted lawful entry through the Refugee Resettlement Process, which also has annual caps.\(^3\)\(^4\) Visa applications and renewals have varying filing fees and though the price varies widely, average approximately $4,000 in attorney costs.

Citizenship through Naturalization

It is impossible to apply for U.S. citizenship through the naturalization process without first becoming a Lawful Permanent Resident (“LPR”), usually requiring lawful initial entry into the country.\(^6\) Once a person obtains a permanent immigrant visa and comes to the United States, they obtain Lawful Permanent Residency, or become a LPR-holder. In some very limited circumstances, non-citizens already inside the United States can obtain LPR status through a process known as Adjustment of Status.

People with Lawful Permanent Residency are permitted to work and live permanently in the United States.\(^7\) After residing in the U.S. for five years, people with Lawful Permanent Residency are then eligible to apply for citizenship. The naturalization process takes approximately two years (after eligibility is attained). The cost is $725 in filing fees, which are nonrefundable regardless of the outcome, and attorney’s fees of $500-1,200 per person per application.

Lawful Presence through Special Circumstances

Victims of trafficking and violence may remain in the U.S. under a temporary non-immigrant visa, the U Visa.\(^8\) U Visas protect non-citizens who have been the victims of certain crimes and who have aided law

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\(^1\) [https://www.cato.org/publications/commentary/immigrants-have-enriched-american-culture-enhanced-our-influence-world#:~:text=Successive%20waves%20of%20immigrants%20have,edge%20in%20the%20world%20economy](https://www.cato.org/publications/commentary/immigrants-have-enriched-american-culture-enhanced-our-influence-world)

\(^2\) [https://www.usatoday.com/pages/interactives/graphics/deportation-explainer/](https://www.usatoday.com/pages/interactives/graphics/deportation-explainer/)

\(^3\) [https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html](https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html)

\(^4\) [https://www.uscis.gov/](https://www.uscis.gov/)

\(^5\) [https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works#:~:text=The%20overall%20numerical%20limit%20for,less%20than%20140%2C000%20each%20year.](https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works)

\(^6\) [https://www.justice.gov/eoir/page/file/eoir_an_agency_guide/download](https://www.justice.gov/eoir/page/file/eoir_an_agency_guide/download)


enforcement in the investigation and prosecution of those crimes. It was created to encourage victims to cooperate with police and prosecutors without fear of deportation. A U Visa provides legal status and employment authorization but expires after four years unless a renewal is sponsored and supported by law enforcement. Cooperating with law enforcement may open victims or their families to further violence or retaliation, which deters some eligible victims from applying for U Visas that provide only temporary protection. After five years of lawful presence under a U Visa, an immigrant can apply for LPR status if they have remained cooperative with law enforcement agencies. There is no application or renewal fee for the U Visa, but LPR application fees are $1,225 and U Visa LPR applications must be sponsored by the law enforcement agency the victim cooperated with while in the U.S. Legal assistance to process a U Visa application is approximately $5,000 per case.

Some immigrants who entered the U.S. without authorization have current lawful presence through the Deferred Action for Childhood Arrivals program ("DACA"). Children brought to the country before their 16th birthday and prior to June 2007 who are currently in school, a high school graduate, or honorably discharged from the military, and were under the age of 31 as of June 15, 2012, qualify to apply for DACA. DACA status allows recipients to receive a renewable two-year deferral of deportation and a work permit. In September 2017, the federal administration announced a plan to phase out DACA, triggering multiple lawsuits challenging this action. In 2020, the Supreme Court blocked this phaseout of the program on the grounds that the rationale stated by the Executive Branch was arbitrary and capricious. The Court did not rule on the merits of the DACA program itself, opening it to future elimination with underlying lawful rationale. On January 20, 2021, President Biden issued an executive order fully reinstating DACA. The DACA program has increased the wages and employment status of recipients, improved the mental health outcomes for DACA participants and their children, and reduced the number of undocumented immigrant households living in poverty.

DACA does not provide LPR status or a path to citizenship for recipients and must be renewed every two years. DACA applications and renewals require $495 in fees. Colorado is home to 18,555 DACA recipients whose renewal fees generate approximately $460,000 per year for the federal government. Legal representation for DACA applications costs approximately $2,000 per case.

Undocumented Immigrants

Immigrants who enter or remain in the U.S. without authorization are known as “undocumented immigrants.” Most undocumented immigrants in the United States entered lawfully but overstayed temporary visas and often have insufficient economic resources to pursue legal extensions or citizenship. Lawful paths to citizenship, LPR status, refugee status, and asylum dramatically decreased

10 https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca
16 https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/D
during the Trump administration. The current federal administration has committed to immigration policy reform but needs bipartisan support in Congress to expand or create pathways to citizenship for all categories of immigrants. The proposed comprehensive immigration bill from President Biden contains an eight-year waiting period of unlawful presence before undocumented residents could apply for citizenship or LPR status and a plan for citizenship for DACA recipients. Currently, there is inadequate support in Congress for passage of this bill and several stand-alone immigration bills are anticipated to be considered in 2021 instead of the comprehensive immigration bill.

**Detention and Deportation**

A common misperception is that deportation proceedings are only for undocumented immigrants. In fact, any non-citizen including lawful permanent residents, refugees, and people who entered legally on visas can be placed in deportation proceedings. Another common misconception is that deportation proceedings are reserved for those with a criminal conviction. Many immigration arrests do not begin with arrest by local law enforcement. More than 1 in 4 immigrants arrested by Immigration and Customs Enforcement (ICE) have no criminal conviction and for those that do, the majority have been convicted of victimless crimes such as immigration or traffic offenses.

Deportation proceedings begin with an arrest. If a crime is committed, local police may notify U.S. Immigration and Customs Enforcement (“ICE”) that they suspect an immigrant is unlawfully present or that the crime alleged to have been committed would qualify the immigrant for deportation. If an immigrant is suspected of entering or remaining in the country without authorization, ICE or U.S. Border Patrol may arrest the individual and put them into detention, or custody of the federal government. Usually, a case is then filed for a hearing in Immigration Court against the immigrant by the Department of Homeland Security attorneys.

The immigrant can be detained upon arrest while awaiting their first court appearance or may be released on immigration bond or on their own recognizance in limited cases known as “catch and release”. Immigration bonds are set at a minimum of $1,500 but average $10,000 in Colorado. Denial of an immigration bond or objection to the bond amount may be filed by the detainee, who must also gather all supporting documentation and sponsor letter, then have all documents translated into English to file with the court. There is no right to an attorney, translator, or communication with family or friends during this process, but detainees have the right to one free local phone call. The average time between being taken into detention and the immigration hearing is 500 days.

There is no requirement that a detainee remain in the state they were arrested in, so transfers to out of state detention centers may be made at any time in the process without notice to the individual or their families and the case transferred to a different immigration court.

At the merits hearing, the judge determines whether to deport the immigrant. That decision can be appealed within 30 days by either party and deportation typically is ordered within two months of the order. ICE air operations fly people who are deported back to what has been adjudicated as their home country. Some people being deported report paying for their own deportation flights. Deported individuals from Mexico are flown to U.S. border cities and bused or walked across the border into Mexico. If an individual returns to the U.S. and enters illegally after being deported, they are permanently banned from lawful entry under any visa type. After deportation, an immigrant may apply for lawful reentry after a waiting period of 5-20 years, depending on the underlying cause for the initial deportation. Out of pocket expenses for deportation defense range from $6,000 to $20,000 in filing fees and $10,000 to $50,000 for attorney costs depending on the specifics and complexity of the case.

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21 https://www.usa.gov/deportation
22 https://www.cato.org/blog/criminal-aliens-commit-mostly-victimless-crimes-few-violent-crimes
23 https://www.usatoday.com/pages/interactives/graphics/deportation-explainer/
Expedited Removal Order
Initially, expedited removals of immigrants could only take place if an individual were to be arrested within 100 miles of a U.S. border and had not been in the U.S. for more than two weeks. The time limit for unlawful presence was expanded to up to two years under the Trump administration and arrests can now happen anywhere in the U.S., not just within 100 miles of the border. President Biden ordered a review of this change in February 2021, but as of today it is still the prevailing policy.

Under expedited removal processes, non-citizens are deported in a single day without an immigration court hearing or other appearance before a judge. U.S. Border Patrol officers exclusively conduct the process, which is usually completed within a couple of hours, affording little to no opportunity for the non-citizen to collect evidence or consult with an attorney. In most circumstances, the non-citizen does not have a right to appeal. Those who have been subjected to expedited removal are detained until they are formally removed. This provides the immigration officer with broad authority in the removal of a non-citizen, allowing the officer to operate as both prosecutor and judge.

Impact of the Ambiguous Status or Threat of Deportation
Livability, public participation, and access to community services are also affected by uncertainty related to immigration status. Family members forced to take on additional paid employment or caregiving responsibilities following detention or deportation weaken family stability. Older children assuming additional caregiving responsibilities for younger family members see their own school performance and retention decline. Community members who are fearful and mistrustful of public institutions based on immigration policy or enforcement are less likely to participate in churches, schools, health clinics, cultural activities, and social services. Changes in immigration policy at the federal level are shown to reduce participation by immigrants in local communities through reductions in visits to parks, libraries, restaurants, and community events. Following a visible immigration raid or arrest, school attendance drops, businesses see fewer customers, and fewer immigrants seek medical services or pick up prescriptions. This disconnect from public life and community services can remove social safety nets for families and children. Many immigrant parents do not enroll their children in school lunch or health care programs the children are legally eligible to participate in because of fear that participation will disqualify the parents or children from future immigration applications under the Public Charge policy, which leads to elevated food insecurity and poor health outcomes. Prioritizing safety and inclusion for all families, regardless of immigration status, through programs to foster support networks, sense of belonging, mental health, and community building are recommended by psychologists and social scientists as solutions to foster wellness for children and families.

Fearfulness and mistrust can extend to local public safety officials when community members feel federal law enforcement or legal systems are unjust or inconsistent. Families are reluctant or unwilling to call local police for any reason after a deportation in their family or local community. Unwillingness to call the police is strongest for those who are unauthorized with 70% of survey participants reporting that they would not call police even if they were victims of crimes (compared to 44% of Latinx people who were documented immigrants or US citizens).

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26 https://www.communitypsychology.com/effects-of-deportation-on-families-communities/
29 https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF
Municipal Immigration Legal Fund

JC Ward, Leo Escalante
1. What feedback does Council have regarding the research and unmet needs assessment for immigration legal services in Fort Collins?

2. What next step would Council like staff to pursue regarding a municipal immigration legal fund for Fort Collins immigrant community members?
1. **Strategic Alignment**
   - Strategic Outcomes & 2020 Legislative Policy Agenda,
   - City Council Resolution 2019-100 & Social Sustainability Strategic Plan

2. **Equity Challenges for Immigrant Communities**
   - Legal, economic, and health inequities

3. **Current Conditions in Colorado**
   - Fort Collins demographics (general & children)

4. **Peer City Municipal Legal Funds**
   - Delivery and funding models

5. **Community Partners’ Testimonials**
   - Equity challenges for immigrant families in Fort Collins
STRATEGIC OUTCOMES

**Neighborhood Livability & Social Health**
1.4 Advance equity for all, leading with race, so that a person’s identity or identities is not a predictor of outcomes.

**Economic Health**
3.2 Understand trends in the local labor market and work with key partners to grow diverse employment opportunities.

**Safe Communities**
5.1 Improve overall community safety while continuing to increase the level of public trust and willingness to use emergency services.

**High Performing Government**
7.3 Improve effectiveness of community engagement with enhanced inclusion of all identities,
2020 Legislative Policy Agenda

IMMIGRATION AND NATIONAL BORDER CONDITIONS
NEIGHBORHOOD LIABILITY & SOCIAL HEALTH; SAFE COMMUNITY; HIGH PERFORMING GOVERNMENT
The City recognizes that federal issues pertaining to civil rights at the United States' borders and immigration law more broadly have wide impacts that can directly impact the day to day life of Fort Collins residents. It can also impact those residents' willingness and comfort with engaging with local public safety agencies and other key service providers.

Therefore, the City:
1. Supports the humane treatment of persons who are detained by Immigration Officers and the rapid resolution of legal proceedings to determine their status.
2. Supports a pathway to legal immigration into the United States that is sustainable in the long term.
3. Supports regulations and laws that increase or mandate the use of E-verify by employers.

City Council Resolution 2019-100

RESOLUTION 2019-100
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REGARDING IMMIGRATION CONDITIONS AT THE SOUTHERN BORDER OF THE UNITED STATES AND ITS IMPACT ON THE FORT COLLINS COMMUNITY

WHEREAS, Fort Collins welcomes and celebrates immigrants and their role in our City’s history and in the richer fabric and history of the United States and

WHEREAS, in 2018 and the first part of 2019, thousands of people, including families with children, asked for asylum at the United States’ borders with Mexico and

WHEREAS, recent events at the border between the United States and Mexico highlight potential humanitarian issues – particularly concerning children being separated from their families and the conditions in which they are being held in separation and

WHEREAS, the national focus on this topic is not inexcusable from Fort Collins immigrants, associations, and others on this situation have caused fear among communities living in Fort Collins; and

WHEREAS, this fear manifests itself in a variety of ways, but of importance to the City is the fear of engaging with government authorities; and

WHEREAS, the City is concerned that this fear of the government could discourage people from engaging with public safety agencies, and could prevent the Denver Metropolitan Area from obtaining an accurate count of people living in Fort Collins, putting at risk accurate representation in Congress and in the Colorado General Assembly, as well as federal funding; and

WHEREAS, understanding this fear and its impact on the community, the City Council wants to restate that this City is committed to building trust among all our residents, particularly our immigrant communities, and that we believe their contributions and presence in this community make for a stronger City and

WHEREAS, the City recognizes that our community alone cannot solve the national issues which are inherently causing many of these challenges at a local level.

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

Section 1. That the City Council wishes to foster a Fort Collins community that is welcoming to those fleeing seeking asylum in the United States and wants residents to feel secure in their homes.
SOCIAL SUSTAINABILITY PLAN 2016

Equity & Inclusion
ALL ARE WELCOME

B.1 PROMOTE AND MAINTAIN A WELCOMING, INCLUSIVE COMMUNITY WHERE PEOPLE FEEL CONNECTED

2. Promote and develop culturally and income diverse neighborhoods through the following City actions:

b. Research existing partner and community programs to help inform refugee and immigrant populations of their legal rights and responsibilities; seek opportunities to create programs where none currently exist.

COLLABORATE
Equity Challenges

LEGAL EQUITY

• Lack of representation during deportation legal proceedings

• Expedited removal permits immigration authorities to deport people without a hearing, a lawyer or a right of appeal

• Immigrants are 10.5 times more likely to be able to remain in the U.S. when they have legal representation

• The average time between being taken into detention and the immigration hearing is 500 days
ECONOMIC EQUITY

• Visa applications and renewal fees have varying filing fees and are approximately $4,000

• Naturalization has a cost of
  o $725 in filing fees plus
  o $500 - $1,200 attorney fees per person, per application

• Immigrants in our Congressional District contribute:
  o $172.4 million in state and local taxes
  o More than $406 million in federal taxes
HEALTH & SAFETY EQUITY

- Undocumented immigrants typically have extremely limited access to care
- Fears of deportation contribute to negative health outcomes
- Children of undocumented parents:
  - Greater mental health issues in adolescence
  - Lasting negative effects on adult educational attainment and income
- Negative impact on public safety
  - Heightened fear of police contribute to social isolation and exacerbation of mistrust of law enforcement authorities
Current Conditions in Colorado

Colorado

- In 2019, **65% of 8500** immigration deportation cases did not have legal representation
- In 2020, **61% of 2,154** children in deportation cases did not have access to legal representation

Fort Collins

- Immigrant community of more than **11,000 or 6.8%** of total population
- Approximately, **4,500** Fort Collins community members are currently not United States Citizens
- Approximately, **2,200** are eligible for naturalization
- Approximately, **2,300** are currently at risk for detention and deportation
Current Conditions in Colorado

DEMOGRAPHICS - CHILDREN

- **15% of children** in Fort Collins live with at least one immigrant parent and **75% of these children** are themselves U.S. citizens.

- In PSD, there are **54 students** who arrived as unaccompanied minors seeking asylum due to **threat of death or imminent harm**.

- Children in immigration proceedings have **no right to legal counsel**, Guardian ad Litem evaluation, or adult supervision during hearings.
Peer City Models

PROGRAM DESIGN

• Public-nonprofit Partnerships
  o 39 of 42 municipal immigration legal funds

• Public Defender’s Office Units
  o Established units inside Public Defender’s Office

• City/County Employee Coordinator
  o Dane County, Wisconsin created municipal staff position

• Student Law Office Clinics and Fellows
  o Dane County funds a portion of the student law office immigration clinic at the University of Wisconsin
Peer City Models

PROGRAM FUNDING

• Municipal Funding
  o Baltimore, MD
  Minneapolis, MN

• Municipal & Nonprofit Funding
  o Santa Rosa, CA
  Dane County, WI
  San Antonio, TX

• Municipal, Nonprofit & Grants Funding
  o Columbus, OH
  Denver, CO
## Peer City Models

### Baltimore, MD

<table>
<thead>
<tr>
<th>Immigrant Population</th>
<th>Annual Funding</th>
<th>Funding Source</th>
<th>People Assisted</th>
</tr>
</thead>
<tbody>
<tr>
<td>60,000 (10% of Total Pop.)</td>
<td>$200,000</td>
<td>Municipal Funding</td>
<td>36 cases (direct representation)</td>
</tr>
</tbody>
</table>

### Minneapolis, MN (Hennepin County)

<table>
<thead>
<tr>
<th>Immigrant Population</th>
<th>Annual Funding</th>
<th>Funding Source</th>
<th>People Assisted</th>
</tr>
</thead>
<tbody>
<tr>
<td>42,000 (10% of Total Pop.)</td>
<td>$275,000</td>
<td>Municipal Funding</td>
<td>75 cases (direct representation)</td>
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## Peer City Models

### Santa Rosa, CA

<table>
<thead>
<tr>
<th>Immigrant Population</th>
<th>Annual Funding</th>
<th>Funding Source</th>
<th>People Assisted</th>
</tr>
</thead>
<tbody>
<tr>
<td>82,060 (17% of Total Pop.)</td>
<td>$550,000</td>
<td>$300K Municipal, $250K Nonprofit fund</td>
<td>193 cases (direct representation)</td>
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</table>

### Dane County, WI

<table>
<thead>
<tr>
<th>Immigrant Population</th>
<th>Annual Funding</th>
<th>Funding Source</th>
<th>People Assisted</th>
</tr>
</thead>
<tbody>
<tr>
<td>49,202 (9% of Total Pop.)</td>
<td>$250,000</td>
<td>$150K Municipal, $100K Grants</td>
<td>75 cases (direct representation)</td>
</tr>
</tbody>
</table>
## Peer City Models

### San Antonio, TX

<table>
<thead>
<tr>
<th>Immigrant Population</th>
<th>Annual Funding</th>
<th>Funding Source</th>
<th>People Assisted</th>
</tr>
</thead>
<tbody>
<tr>
<td>180,960 (12% of Total Pop.)</td>
<td>$250,000</td>
<td>$150K Municipal, $100K Nonprofit fund</td>
<td>75 cases (direct representation)</td>
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</tbody>
</table>

### Columbus, OH

<table>
<thead>
<tr>
<th>Immigrant Population</th>
<th>Annual Funding</th>
<th>Funding Source</th>
<th>People Assisted</th>
</tr>
</thead>
<tbody>
<tr>
<td>87,800 (9% of Total Pop.)</td>
<td>$159,000</td>
<td>$25k Municipal, $100k Grants, $34k Nonprofit fund</td>
<td>68 cases (direct representation)</td>
</tr>
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</table>
## Denver, CO

<table>
<thead>
<tr>
<th>Immigrant Population</th>
<th>Annual Funding</th>
<th>Funding Source</th>
<th>People Assisted</th>
</tr>
</thead>
<tbody>
<tr>
<td>84,670 (12% of Total Pop.)</td>
<td>$325,000</td>
<td>$200K Municipal, $100K Grants, $100K Nonprofit fund</td>
<td>42 cases (direct representation)</td>
</tr>
</tbody>
</table>
“When my son was deported back to Mexico, a place he did not know, he got lost for about 3 weeks, and no one could find him, until they found him living under a kiosk, like a beggar”

Berta, Restaurant Worker
“Like any other immigrant, you just want to find opportunities here, find a job, work hard, earn a living to live a better life, to better yourself”

Terry, Healthcare Worker, CSU Master’s in Anthropology, Nursing Student
“There’s a lot of need in our immigrant community, we need legal representation and assistance, not just my parents, but thousands of people; it’s a lengthy process that is very expensive”

Kristin, Student at Poudre High School
Council Direction

1. What feedback does Council have regarding the research and unmet needs assessment for immigration legal services in Fort Collins?

2. What next step would Council like staff to pursue regarding a municipal immigration legal fund for Fort Collins immigrant community members?
SUBJECT FOR DISCUSSION

Connexion Update.

EXECUTIVE SUMMARY

The purpose of this item is to provide Council and the public with an overview and update of the Connexion municipal fiber buildout.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

What questions does Council have for the Connexion team?

BACKGROUND / DISCUSSION

The City Connexion team along with its partners Atlantic Engineering Group and OnTrac, continue to build and install fiber to the home service throughout the City. This voter-approved initiative began in 2018 and is on target to complete the main buildout in 2022. Reliable broadband service for all is extremely important and Connexion is providing this important broadband service while introducing beneficial competition into the market.

Since construction began in late 2018, Connexion now has residential, business, and digital equity customers, a 24/7 technical support team, and a majority of the city under design and/or construction.

Connexion remains in the tenuous position of keeping details regarding the build and customer base at a minimum to ensure competitive stewardship. It is anticipated that by late Q2 2021, Connexion will be able to provide more information with less risk.

2021 UPDATES

Anticipated to Actuals

There are operational items that are different than outlined in the original 2017-2018 feasibility and business plan. These elements include product design, partnerships, and infrastructure assumptions. Some of these have been enhancements and opportunities while others have been challenges. Staff and the governance structure have allowed Connexion to be nimble and respond in timely and productive ways to all necessary revisions.

<table>
<thead>
<tr>
<th>Initial Inputs</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>70,000 premises</td>
<td>77,700 premises</td>
</tr>
<tr>
<td>72% vacant conduit</td>
<td>48% vacant conduit</td>
</tr>
<tr>
<td>Operate under normal business hours</td>
<td>Provide 24/7, 365 day support</td>
</tr>
<tr>
<td>Stand-alone staffing</td>
<td>Integrated staffing (IT, Light &amp; Power, Customer Service, Billing)</td>
</tr>
<tr>
<td>Provide internet and phone service</td>
<td>Providing Internet, phone, and video service</td>
</tr>
<tr>
<td>Provide multiple residential internet tiers</td>
<td>Providing 1 GB for all with 10 GB available</td>
</tr>
</tbody>
</table>
**Build Progress**

As discussed in previous work sessions, the design-build approach to the project has allowed construction to move quickly and adds an element of schedule uncertainty. Staff continues to message that residents can anticipate service availability within 6-9 months of initial construction. While crews continue to aim for the shorter duration, some neighborhoods have seen longer times between construction and service.

Spring and warmer weather will increase construction production. The core downtown area will start to see construction during this time. Staff is working very closely with the Downtown Development Authority to thoroughly communicate and minimize impacts to businesses. Most Connexion work in the core downtown area will take place in the alleys using existing conduit to further minimize impact to downtown stakeholders.

**Products and Service**

Connexion continues to offer service in new areas every week resulting in healthy new signups. Connexion is also seeing the uptake of video service since its launch in November. Our installation vendor, OnTrac, has continued to add staff to address these increases.

The City’s Digital Equity program is offering full 1-gig service and WIFI at a reduced price of $19.95. Staff are working with local non-profit housing organizations as well as directly notifying those that may qualify to engage customers. Current PILOT funding can support the program in perpetuity.

Connexion will continue to update Council and the public through monthly reports (available at [fcconnexion.com](http://fcconnexion.com)) and quarterly Council work sessions.

*The presentation will be provided as a read-before memo prior to the meeting.*
Overview

1. Outcome of Service & Customers
2. System Overview & Challenges
3. Innovation and Opportunities
4. Financial Considerations
5. How It Happens
6. Questions, Comments, Discussion
Transformation of Wastewater

Old Mindset

Disposal

Removal of Waste

New Mindset

reNEWal

Recovery of Nutrients
Energy
(Clean) Water
Customer Satisfaction Survey

Customer Breakdown
- Residential: 32,500 accounts
- Commercial: 2,000
- Industrial: 15

New Residential Survey Tool – J.D. Power
- Benchmarkable
- Three times greater response
- Actionable information

Residential Wastewater Results

<table>
<thead>
<tr>
<th>Wastewater Survey Questions</th>
<th>Fort Collins Wastewater</th>
<th>Industry Mean National</th>
<th>Industry Mean Mid-Size West</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Satisfaction</td>
<td>7.79</td>
<td>7.32</td>
<td>7.30</td>
</tr>
<tr>
<td>Customers w/o Issues</td>
<td>96%</td>
<td>82%</td>
<td>88%</td>
</tr>
<tr>
<td>Average Bill</td>
<td>$43</td>
<td>$93</td>
<td>$79</td>
</tr>
</tbody>
</table>

Commercial Wastewater Results

- Customers Ranked Service Excellent or Good: 94%
Wastewater System

- Water Reuse to Rawhide Power Station
- Biosolids Application at Utilities-Owned and -Operated Meadow Springs Ranch

Cache la Poudre River
Fossil Creek Ditch

Rawhide Energy Station
Meadow Springs Ranch
Laporte
Fort Collins
Mulberry
Drake
Sewer System By the Numbers

Maintain and Operate
- **455 miles** of collection and trunk main, 6” - 42”
- ~25% of mains in backyards or easements
- **Property owner maintains laterals**

Preventative Maintenance
- ~50% or 270 miles of mains hydro-jet washed annually
- ~10% or 40 miles of mains television inspected annually
- ~2 miles of mains lined with cured-in-place pipe liner
- 20 wastewater mains bio-augmented for grease weekly
<table>
<thead>
<tr>
<th>Pipe Condition</th>
<th>Total Length (miles)</th>
<th>Percent of System</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Poor</td>
<td>10.4</td>
<td>2.3%</td>
</tr>
<tr>
<td>Poor</td>
<td>22.6</td>
<td>5.0%</td>
</tr>
<tr>
<td>Fair</td>
<td>27.9</td>
<td>6.2%</td>
</tr>
<tr>
<td>Good</td>
<td>46.9</td>
<td>10.5%</td>
</tr>
<tr>
<td>Excellent</td>
<td>340.0</td>
<td>75.9%</td>
</tr>
</tbody>
</table>
Aging Infrastructure

Approximately 70-Year-Old Brick Manhole

Root Ball Growing in 60-Year-Old Clay Sewer Pipe

Collapsed 24” 60-Year-Old Sewer Trunk Main

Roots Growing in 90-Year-Old Clay Sewer Service

Sewer System
Asset Reliability

Risk of Failure = Consequence x Likelihood

Root Cause Failure Analysis

Operational Optimization

Capital Improvement Forecasting

Innovation and Opportunities

Sewer System
OLD TOWN—WHAT LIES BENEATH?

What we see on the surface is a beautiful, vibrant downtown... but underneath is a labyrinth of pipes of all sizes, wires and structures that are part of the city's utilities systems.
Mulberry Water Reclamation Facility treats **SIX MILLION GALLONS** of wastewater per day.

Drake Water Reclamation Facility treats **23 MILLION GALLONS** of wastewater per day.
## Water Reclamation Facility Effluent Discharge Goals

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Current Permit Limit</th>
<th>Permits Compliance Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOD$_5$ (30/7 day avg)</td>
<td>30/45 mg/L</td>
<td>90% of Permit Limit (27 mg/L)</td>
</tr>
<tr>
<td>TSS (30/7 day avg)</td>
<td>30/45 mg/L</td>
<td>90% of Permit Limit (27 mg/L)</td>
</tr>
<tr>
<td>TIN - annual median</td>
<td>15 mg/L</td>
<td>90% of Permit Limit (13.5 mg/L)</td>
</tr>
<tr>
<td>TIN - 95th Percentile</td>
<td>20 mg/L</td>
<td>90% of Permit Limit (18 mg/L)</td>
</tr>
<tr>
<td>NH3-N</td>
<td>limits vary by month</td>
<td>90% of Permit Limit</td>
</tr>
<tr>
<td>TP - annual median</td>
<td>1.0 mg/L</td>
<td>0.95 mg/L</td>
</tr>
<tr>
<td>TP - 95th Percentile</td>
<td>2.5 mg/L</td>
<td>95% of Limit (2.38 mg/L)</td>
</tr>
<tr>
<td>Combined Facility Energy Efficiency</td>
<td>1% annual reduction</td>
<td></td>
</tr>
</tbody>
</table>
Facilities Awards and Recognition

- Peak Performance Awards
  National Association of Clean Water Agencies

- Environmental Management System

- ISO 14001:2015

- National Biosolids Partnership

- Recognized Management Program

Attachment: Powerpoint Presentation (10080 : Wastewater Utility Overview)
Aging Infrastructure

Reclamation Facilities

Drake – Cyclones for Inorganic Separation

Drake – ¾-Inch Bar Screens

Mulberry – UV Installed in 1996
Regulation 85 limits Total Inorganic Nitrogen and Total Phosphorus in effluent.

Limits could lower beginning in 2028.
Current Challenges

Temperature
- Changing stream classification at Mulberry
- Emphasis on fish habitat

Emerging Contaminants
- Pharmaceuticals
- Manmade chemicals
- Personal care products
- Microplastics
- Radioactive material

Nutrient Regulations
- Total inorganic nitrogen
- Total phosphorus
Innovation and Opportunities

Cogeneration Unit at Drake

Natural Gas Fleet Vehicles

Hybrid & Alternative Fuel

Energy Optimization
Investing in Our Infrastructure

Renewing Our System
Increasing Environmental Performance

UV Pipe Lining
Side Stream
Innovative Technology
Pollution Control Lab

- **40,000+ samples** each year from sewer collection, water reclamation and environmental discharge points
- Ensures **contaminants are removed** before water returns to the environment
- **Serves 6+ outside organizations**
- **Cost-effective** way to ensure quality results and response
- **100% score** over decades in annual “blind sample” audit certification program
System Components

Meadow Springs Ranch
Community Partnership

DID YOU KNOW
FOG CLOGS?

Fats, oil and grease (FOG) stick to the inside of pipes and can cause backups. Please do not put FOG down your drain.

More information: fgov.com/foq

TOILET RULES
ONLY FLUSH THE 3Ps
PEE POO
TOILET PAPER

Toilet paper 15 minutes
Wipes 8 weeks

Packet Pg. 69
How Much Does Sewer Service Cost?

Residential Wastewater Monthly Bill

- Boulder
- Loveland
- Ft Collins
- Longmont
- Colorado Springs
- Greeley

Wastewater Fund Operating Income

- **Operating Income**
  - 1.5% growth

- **Total Operating Expenses**
  - 2.2% growth

- **Total Operating Revenue**

<table>
<thead>
<tr>
<th>Year</th>
<th>Operating Income</th>
<th>Total Operating Expenses</th>
<th>Total Operating Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>$10,000,000</td>
<td>$20,000,000</td>
<td>$30,000,000</td>
</tr>
<tr>
<td>2011</td>
<td></td>
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<td>2012</td>
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<td>2030</td>
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</tbody>
</table>
How It Happens
How It Happens
How It Happens
How It Happens
How It Happens
How It Happens

Attachment: Powerpoint Presentation (10080 : Wastewater Utility Overview)
How It Happens
How It Happens
Questions?