Regular Meeting  
October 6, 2020

PUBLIC PARTICIPATION OPTIONS

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

- Live via the Zoom online meeting,
- Live via the telephone,
- Live in Council Chambers,
- 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 (IN PERSON)

To participate in person, individuals should come to City Hall and be prepared to follow strict social distancing, sanitizer and facial covering guidelines.

- A limited number of individuals will be allowed in Council Chambers. Therefore, staging for individuals who wish to speak will occur in the City Hall lobby and outside (weather permitting).
- Individuals will be required to wear masks while inside City Hall and any other City buildings being utilized.
- Individuals who wish to speak will line up at one of the two podiums available in Council Chambers, maintaining physical distancing by standing on the lines marked on the floor. Facial coverings need to stay in place while speaking.
- Once a speaker has provided comments, he or she will be asked to leave Council Chambers to make room for the next speaker.

PUBLIC PARTICIPATION (VIA EMAIL)

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

WATCH THE MEETING

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

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

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

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

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

A solicitud, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 221-6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione 48 horas de aviso previo cuando sea posible.
Proclamations and Presentations  
5:45 p.m.

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

A. Proclamation Declaring the Week of October 4-10 as Public Power Week.
B. Proclamation Declaring October 7 as Energy Efficiency Day.
C. Proclamation Declaring the Month of October as National Cybersecurity Month.
D. Proclamation Declaring October as Domestic Violence Awareness Month.

Regular Meeting  
6:00 p.m.

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

Individuals may comment regarding items scheduled on the Consent Calendar and items not specifically scheduled on the agenda. Comments regarding land use projects for which a development application has been filed should be submitted in the development review process** and not to the Council.

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

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

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

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

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

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

1. Consideration and Approval of the Minutes of the September 1, 2020 Regular Council Meeting.

The purpose of this item is to approve the minutes from the September 1, 2020 Regular Council Meeting.

2. Second Reading of Ordinance No. 113, 2020, Making Supplemental Appropriations and Authorizing Transfers of Appropriations for the Northside Aztlan Resilience Hub Project

This Ordinance, unanimously adopted on First Reading on September 15, 2020, appropriates $200,000 in Renewable and Clean Energy Challenge grant funds from the Department of Local Affairs (DOLA) for a project to establish the Northside Aztlan Community Center (Aztlan Center) as a resilience hub. The City has been notified of an award of $200,000 in support of energy and storage measures at the Aztlan Center to improve its function as a resilience hub during community emergencies.

The total project cost is $425,000, which includes an additional $200,000 as a required local match, and $25,000 for non-reimbursable project fees. The structure of the funding for the total project would use the $200,000 in grant proceeds from DOLA, $200,000 for the required local match from the 2020 Energy Services budget (already appropriated in the Light & Power Fund), and $25,000 for the non-reimbursable project fees from the 2020 Municipal Innovation Fund (already appropriated in the Keep Fort Collins Great Fund). The $200,000 for the local match from the 2020 Energy Services budget is available as a result of anticipated underspend due to the COVID-19 pandemic.

This Ordinance, unanimously adopted on First Reading on September 15, 2020, adopts the most up-to-date electrical code that will align the City and the minimum State allowed Electrical Code. The National Electrical Code (NEC) as Adopted by the State of Colorado Department of Regulatory Agencies (DORA) is the standard for all electrical installations in the State. By aligning our local adoptions with DORA, we will be in line with the minimum life safety requirement for electrical installations and repairs.

4. **Second Reading of Ordinance No. 115, 2020, Amending the Zoning Map of the City of Fort Collins and Amending Ordinance No. 177, 2017, by Changing the Zoning Classification for Property Known as the Spring Creek Rezoning REZ170001 – Correction of Map Errors.**

This Ordinance, unanimously adopted on First Reading on September 15, 2020, makes minor corrections to the legal description for a previously approved rezoning. On January 2, 2018, Council approved a rezoning ordinance for the Spring Creek Rezone with six conditions, following a recommendation of approval from the Planning and Zoning Board. In 2019, staff discovered errors in the legal description related to this rezoning action. The revised Ordinance and attachments correct the errors that have been identified. The City of Fort Collins is the applicant for this item.


This Ordinance, unanimously adopted on First Reading on September 15, 2020, will exempt certain child care uses from development review and Land Use Code requirements through May 28, 2021. The COVID-19 pandemic has created a need for distributed learning and daycare sites, but the number of buildings already approved for child care in the community is too limited to meet current demands. This Ordinance would allow for child care uses to operate within buildings that have not previously been approved for such use, provided all applicable health and life safety requirements have been met. It would exempt child care centers, as defined in the Land Use Code, from the development review process for a limited timeframe, aligned to the 2020-21 academic school year, to allow for remote learning and daytime care of children. Compliance with building code, fire code, health department requirements, and state licensing would still be required, as applicable.

6. **Items Pertaining to Annual Adjustment Ordinance.**

   A. **First Reading of Ordinance No. 117, 2020, Appropriating Unanticipated and Anticipated Revenue and Authorizing Transfers of Appropriations in Various City Funds.**

   B. **First Reading of Ordinance No. 118, 2020, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations in Various City Funds.**

The purpose of these Annual Adjustment Ordinances is to combine dedicated and unanticipated revenues or reserves that need to be appropriated before the end of the year to cover the related expenses that were not anticipated and, therefore, not included in the 2020 annual budget appropriation. The unanticipated revenue is primarily from fees, charges, rents, contributions, donations and grants that have been paid to City departments to offset specific expenses.
7. **Items Relating to Control of Animals.**

   A. First Reading of Ordinance No. 119, 2020, Amending Section 4-94 of the Code of the City of Fort Collins Regarding Animal Disturbance of Peace and Quiet.

   B. First Reading of Ordinance No. 120, 2020, Amending Various Sections of Chapter 4 of the Code of the City of Fort Collins Regarding Dangerous and Vicious Animals.

   The purpose of this item is to clarify existing City Code language to guide enforcement, prosecution and the Municipal Court regarding violations and penalties for animal disturbance and dangerous animals in the City.

8. **First Reading of Ordinance No. 121, 2020, Amending the Code of the City of Fort Collins to Correct an Error in Section 7-134 Relating to the Registration of Committees During Election Campaigns.**

   The purpose of this item is to correct a long-standing error in Section 7-134 relating to the registration of committees prior to accepting any contributions or making any expenditures.

9. **Public Hearing and First Reading of Ordinance No. 122, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification of that Certain Property Known as the Fischer Rezoning.**

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

   The purpose of this item is to amend the City’s Zoning Map to change the zoning designation on two existing single family residential properties, 1185 and 1201 Westward Drive, from RL, Low Density Residential, to NCB, Neighborhood Conservation Buffer. 1185 Westward abuts the single family property at the southwest corner of Shields Street and Westward Drive, and 1201 abuts 1185. The rezoning would merge the two properties into a larger NCB-zoned area along South Shields Street that abuts the properties on two sides.

   The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 4-2 to recommend approval of the request with one condition as recommended in the staff report with agreement from the petitioner.

10. **First Reading of Ordinance No. 123, 2020, Authorizing the Conveyance of a Permanent Waterline Easement and a Temporary Construction Easement on Meadow Springs Ranch to the Northern Colorado Water Association.**

    The purpose of this item is to authorize the conveyance of a permanent waterline easement and a temporary construction easement to the Northern Colorado Water Association (NCWA) on Utilities’ Meadow Springs Ranch. The proposed easement area will traverse Meadow Springs Ranch (MSR) over an alignment that City staff previously worked on, and agreed to, with NCWA in 2009. The primary purpose of the pipeline is to provide a redundant transmission main to assist in providing a reliable water supply to NCWA’s existing and future customers.

11. **Emergency Ordinance No. 124, 2020, Approving Updated Emergency Rule and Regulation No. 2020-17A Regarding Temporary Outdoor Expansion Permits.**

    The purpose of this item is to update Emergency Rule and Regulation No. 2020-17 enacted by the City Manager on May 28, 2020, in response to the COVID-19 emergency. Section 2-671(a)(6)a. of the City Code provides that emergency rules and regulations must be confirmed at the earliest practical time by Council. This Emergency Ordinance seeks Council’s approval and ratification of Updated Emergency Rule and Regulation No. 2020-17A, replacing Regulation No. 2020-17 and extending Outdoor Expansion Permits to terminate when the declared local emergency ends (rather than September 27, 2020 as currently provided).
The City Charter provides for the adoption of emergency ordinances as immediately necessary, to preserve the public property, health, peace, or safety, and requires that for adoption an emergency ordinance must be approved by an affirmative vote of five Councilmembers.

12. Resolution 2020-088 Authorizing a Conservation Agriculture Lease on Flores del Sol Natural Area to Poudre Valley Community Farms.

The purpose of this item is to consider a 10-year lease to Poudre Valley Community Farms (PVCF) for a conservation agriculture project on Flores del Sol Natural Area. Conservation agriculture on natural areas represents a slight shift in land management for the Natural Areas Department (Department). The approach aligns agricultural management practices with the Department’s conservation mission, while supporting the City’s local, sustainable agriculture goals.

13. Resolution 2020-089 Authorizing the Mayor to Execute a Revised Intergovernmental Agreement with Colorado State University Related to Canvas Stadium.

The purpose of this item is to approve a Resolution authorizing the City Manager to sign the CSU - City of Fort Collins Stadium Operations Intergovernmental Agreement. In 2015, the City and CSU entered into an Intergovernmental Agreement (IGA) to address the construction and opening of the new stadium. The 5-year term of this agreement concluded this year and both parties agreed to a new 5-year IGA. The fundamental structure and intention of the new IGA is the same as the previous version, with the purpose of the original agreement to ensure the stadium experience continues to be of benefit to the community.

14. Resolution 2020-090 Approving and Authorizing the City Manager to Execute, and Amend from Time to Time, an Intergovernmental Agreement with Colorado State University for Purchase of Transportation Services.

The purpose of this item is to approve an Intergovernmental Agreement (“IGA”) between Colorado State University, the Associated Students of Colorado State University (collectively “CSU”), and City of Fort Collins Transfort in which CSU will fund the use of Transfort services by CSU students. CSU supports those efforts and will fund the use of Transfort services by University faculty and staff, as well as the provision by Transfort of additional services for the benefit of the students, CSU and its campuses. The parties will further the goals of public transportation in and for CSU and the City of Fort Collins.

15. Resolution 2020-091 Authorizing a Livestock Grazing Lease, Sublease and Residential Lease on Soapstone Prairie Natural Area with Folsom Grazing Association, LLC.

The purpose of this item is to consider a 10-year grazing lease with Folsom Grazing Association (FGA) at Soapstone Prairie Natural Area (SPNA). The outcome associated with the lease is the cultivation and maintenance of a healthy grassland ecosystem. Grazing is an essential conservation management tool. The current lease agreement between the City and FGA expires in December 2020.

16. Resolution 2020-092 Deferring Payment of the Stormwater Plant Investment Fee for the Poudre R-1 School District’s School Site Located on East Prospect Road.

The purpose of this item is to seek Council’s approval on the deferral of Stormwater Plant Investment Fees for the current development of the Poudre School District Prospect Site pending de-annexation from the City of Fort Collins and annexation into the Town of Timnath.

END CONSENT
• CONSENT CALENDAR FOLLOW-UP

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

• STAFF REPORTS

A. Community Dashboard Metric: Cumulative Lane Miles of Roadway Pavement Improved. (Larry Schneider)

• COUNCILMEMBER REPORTS

• CONSIDERATION OF COUNCIL-PULLED CONSENT ITEMS

Discussion Items

The method of debate for discussion items is as follows:

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

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

17. Public Hearing #2 on the 2021 Recommended Budget for the City of Fort Collins. (staff: Darin Atteberry, Travis Storin, Lawrence Pollack; no presentation; 45 minute discussion)

This is the second public hearing on the City Manager’s 2021 Recommended Budget for the City of Fort Collins. The purpose of this public hearing is to gather public input on the 2021 budget. The first public hearing was conducted at Council’s Tuesday, September 15, 2020, regular meeting. Both hearings were set by Council adoption of Resolution 2020-081 at its September 1, 2020, meeting. The City Manager’s 2021 Recommended Budget can be reviewed at the City Clerk’s Office by appointment only and online at fcgov.com/budget.

On May 19, 2020, Council adopted Ordinance No. 067, 2020, suspending the biennial budget term requirement in Code Section 8-1 for fiscal years 2021 and 2022 in order to allow for a one-year budget term for both years, and to return to the biennial budget term required by Code Section 8-1 beginning with fiscal years 2023 and 2024. Both hearings provided the public the option for in-person comment or remote participation through the online Zoom platform.

18. Consideration of an Appeal of the Hearing Officer Decision Regarding the 613 South Meldrum Carriage House Modifications of Standards. (staff: Clark Mapes, Paul Sizemore; 15 minute presentation; 1 hour discussion)

The purpose of this item is to consider an Appeal of the Hearing Officer Decision, dated July 15, 2020, denying the request for five Modifications of Standards for a “carriage house” (i.e., a single-family detached dwelling) located behind a street-facing dwelling in the Neighborhood Conservation (NCB) zoning district. On July 28, 2020, a Notice of Appeal was filed alleging that the administrative hearing
officer failed to properly interpret and apply relevant provisions of the Land Use Code in rendering a final decision.

• CONSIDERATION OF CITIZEN-PULLED CONSENT ITEMS

• OTHER BUSINESS

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

B. Consider a motion to move the regular Council meeting scheduled for 6:00 pm on Tuesday, November 3, 2020, to 6:00 pm on Wednesday, November 4, 2020, due to the General Election:

"I move that the regular Council meeting scheduled for Tuesday, November 3, 2020, be moved to Wednesday, November 4, 2020, pursuant to City Code Section 2-28(a), because November 3 is the day of the General Election."

• ADJOURNMENT

Every Council meeting will end no later than 10:30 p.m., except that: (1) any item of business commenced before 10:30 p.m. may be concluded before the meeting is adjourned and (2) the City Council may, by majority vote, extend a meeting until no later than 12:00 a.m. for the purpose of considering additional items of business. Any matter which has been commenced and is still pending at the conclusion of the Council meeting, and all matters scheduled for consideration at the meeting which have not yet been considered by the Council, will be continued to the next regular Council meeting and will be placed first on the discussion agenda for such meeting.
Consider a motion to move the regular Council meeting scheduled for 6:00 pm on Tuesday, November 3, 2020, to 6:00 pm on Wednesday, November 4, 2020, due to the General Election:

"I move that the regular Council meeting scheduled for Tuesday, November 3, 2020, be moved to Wednesday, November 4, 2020, pursuant to City Code Section 2-28(a), because November 3 is the day of the General Election."

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PROCLAMATION

WHEREAS, we the citizens of Fort Collins, Colorado, value local control of our community services and have chosen to operate a community-owned, locally controlled, not-for-profit electric utility; and

WHEREAS, Fort Collins Utilities Light and Power is the second largest municipal electric utility in Colorado; and

WHEREAS, Fort Collins Utilities with Platte River Power Authority provide our homes, businesses and schools with safe, reliable, environmentally responsible and cost-effective electricity; and

WHEREAS, Fort Collins was one of the first cities to underground the electric system over 50 years ago and the benefits continue to this day. Service is provided to over 70,500 homes and businesses, over 55+ square miles and is 99% underground.

WHEREAS, Fort Collins Utilities and Platte River Power Authority are valuable community partners that contribute substantially to the well-being of local citizens through energy efficiency, customer service, environmental protection, economic development and safety awareness; and

NOW, THEREFORE, I, Wade Troxell, Mayor of the City of Fort Collins, do hereby proclaim the week of October 4-10, 2020, as

PUBLIC POWER WEEK

in Fort Collins to honor Fort Collins Utilities and Platte River Power Authority’s consumer-owners, policy makers, and employees who work together to provide the best possible electric service to our community.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 6th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:

_________________________________
City Clerk
PROCLAMATION

WHEREAS, energy efficiency continues to be economical and the most beneficial way to meet our 2030 Climate Action Plan goals to reduce utility bills for residential, business and industrial customers; and

WHEREAS, energy efficiency helps make homes and workspaces in Fort Collins more healthy, safe and comfortable during everyday situations and disruptive climate events like wildfires and floods; and

WHEREAS, Fort Collins Utilities efficiency programs and strategies annually save over 2% of the community’s annual usage, which is equivalent to the annual electric use of 4,200 Fort Collins homes; and

WHEREAS, without efficiency programs electricity use in the community would be 14% higher; and

WHEREAS, local efficiency and renewable programs generate over $40 million annually in local economic benefits through reduced utility bills, direct rebates and leveraged investment; and

WHEREAS, Fort Collins municipal buildings have led by example and reduced their energy use which has resulted in a 22% greenhouse gas reduction since 2005 through energy efficient projects and building upgrades; and

WHEREAS, Fort Collins is committed to the energy performance in new buildings by rapid adoption of current International Energy Conservation Codes (IECC), ensuring compliance to code, and by promoting above-code standards using education and incentive-based approaches.

NOW, THEREFORE, I, Wade Troxell, Mayor of the City of Fort Collins, do hereby proclaim October 7, 2020, as

ENERGY EFFICIENCY DAY

in Fort Collins and encourage citizens to join us in supporting our Climate Action Plan goals and moving toward more energy efficient buildings now and in the future.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 6th day of October, A.D. 2020.

_________________________________
Mayor

ATTEST:

_________________________________
City Clerk
PROCLAMATION

WHEREAS, National Cyber Security Awareness Month, celebrated every October, remains a collaborative effort between government and industry to ensure that individually and collectively we have the resources needed to stay safe and remain secure online; and

WHEREAS, National Cyber Security Awareness Month is a time to raise awareness about the importance of cyber security; and to focus on how cyber security is a shared responsibility; and

WHEREAS, the City of Fort Collins recognizes the importance in identifying, responding to and protecting against cyber threats that may have significant impact to our individual and collective security and privacy; and

WHEREAS, critical infrastructure sectors are increasingly reliant on information systems to support financial services, energy, telecommunications, transportation, utilities, health care, and emergency response systems; and

WHEREAS, the 2020 Cyber Security Awareness Month’s focus is: Stay Safe Online and breaks it down into three areas of responsibility: Own It, Secure It and Protect It; and

WHEREAS, maintaining the security of cyberspace is a shared responsibility in which each of us-elected officials, City staff and community members, has a critical role to play.

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

NATIONAL CYBER SECURITY AWARENESS MONTH

and encourage everyone to learn about cyber security and put that knowledge into practice in their homes, schools, workplaces, and businesses.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 6th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
PROCLAMATION

WHEREAS, Colorado law defines domestic violence as: “an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship.” And

WHEREAS, across our state and our nation, one in four women and one in 14 men suffer at the hands of someone who is supposed to love them and more than 15 million children are exposed to domestic violence each year; and

WHEREAS, during National Domestic Violence Awareness Month, we renew our commitment to prevent domestic violence, hold perpetrators accountable for their actions, support survivors and bring hope and healing to those affected by it; and

WHEREAS, in Fort Collins, Crossroads Safehouse shelters over 500 individuals for 16,000 nights of safety and shelter annually. Additionally, over 2,000 men, women and children receive individual and group advocacy and over 3,000 individuals are reached through educational presentations.

WHEREAS, many of our local nonprofit agencies, like Crossroads Safehouse, and their volunteers offer critical assistance and support to victims in need. Victims and their children receive potentially lifesaving crisis intervention and shelter, food, clothing, advocacy and counseling, longer-term housing options, and legal resources, as well as referral and other supportive services to rebuild their lives free from violence and abuse.

NOW, THEREFORE, I, Wade Troxell, Mayor of the City of Fort Collins, do hereby proclaim the month of October as

DOMESTIC VIOLENCE AWARENESS MONTH

in the city of Fort Collins and ask the citizens of this community to help raise awareness about how to prevent, recognize, and stop domestic violence.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 6th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
AGENDA ITEM SUMMARY
City Council

October 6, 2020

STAFF
Delynn Coldiron, City Clerk

SUBJECT
Consideration and Approval of the Minutes of the September 1, 2020 Regular Council Meeting.

EXECUTIVE SUMMARY
The purpose of this item is to approve the minutes from the September 1, 2020 Regular Council Meeting.

ATTACHMENTS
1. September 1, 2020 (PDF)
September 1, 2020

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

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

- ROLL CALL

PRESENT: Pignataro, Gorgol, Gutowsky, Summers, Stephens (6:33 PM), Troxell, Cunniff
STAFF PRESENT: Atteberry, Daggett, Coldiron

- AGENDA REVIEW: CITY MANAGER

City Manager Atteberry stated an item has been added under Other Business: Discussion and possible action to direct staff work regarding a Councilmember-proposed resolution related to support for law enforcement and the right to peacefully assemble.

City Clerk Coldiron outlined the remote participation options.

- PUBLIC COMMENT

Jaya Strasberg opposed the use of single-use plastic bags specifically noting what happens in Fort Collins influences all downstream communities. She proposed a ban on single-use plastic bags and a fee for paper bags.

Rich Stave commented on finding people sleeping partially on trails in the early morning hours. He also stated the Zoom invitation to the public for the last Energy Board meeting was not sent out until just after the meeting started.

Nancy York agreed with Ms. Strasberg's comments and stated the City should be taking climate change more seriously and should not be widening roads for vehicles but only for bus service. She also commented on counting evictions.

Ray Martinez commented on the recent death of a ranger at Horsetooth Reservoir and stated it was tremendous to see the outpouring of emotion during the memorial event. He stated he sees tremendous support for law enforcement in the community.

- PUBLIC COMMENT FOLLOW-UP

Mayor Troxell summarized the citizen comments. He noted there will be an official service area response to Ms. Strasberg.

Councilmember Cunniff noted one of Council's priorities is reduction of plastic pollution which is important to communicate in the service area response. He stated he may consider bringing forth the topic for the April 2021 ballot.

Councilmember Cunniff requested staff follow up with Mr. Stave regarding his topics. City Manager Atteberry replied he would do so.

Councilmember Summers noted the Centers for Disease Control has announced a four-month moratorium on evictions.
Councilmember Pignataro asked if the Council priority regarding plastics is set to come before Council in the next six months. Jackie Kozak-Thiel, Chief Sustainability Officer, replied the topic is scheduled for a work session on October 27th.

- **CONSENT CALENDAR**

| RESULT: | ADOPTED [6 TO 0] |
| MOVER: | Emily Gorgol, District 6 |
| SECONDER: | Ross Cunniff, District 5 |
| AYES: | Pignataro, Gorgol, Gutowsky, Summers, Troxell, Cunniff |
| AWAY: | Stephens |

1. **Consideration and Approval of the Minutes of the July 21, 2020 and August 4, 2020 Regular Council Meetings.** (Adopted)

   The purpose of this item is to approve the minutes from the July 21, 2020 and August 4, 2020 Regular Council Meetings.

2. **Second Reading of Ordinance No. 102, 2020, Appropriating Unanticipated Department of Justice Coronavirus Emergency Grant Revenue in the General Fund for Police Services.** (Adopted)

   This Ordinance, unanimously adopted on First Reading on August 18, 2020, appropriates funds awarded by the Department of Justice (DOJ) for the formula grant FY 2020 Coronavirus Emergency Supplemental Funding Grant. This grant award of $100,818 will defray certain expenses the City has incurred responding to the COVID-19 Pandemic, which includes the purchase of personal protective equipment, cleaning supplies, and communication expenses along with overtime associated with the response.

3. **Second Reading of Ordinance No. 103, 2020, Appropriating Unanticipated Philanthropic Revenue Received by City Give from The Friends of the Gardens on Spring Creek for Transfer to The Gardens on Spring Creek.** (Adopted)

   This Ordinance, which was unanimously adopted on First Reading on August 18, 2020, appropriates $75,000 in philanthropic revenue in the General Fund for transfer to The Gardens on Spring Creek to support general operating costs as designated by the donor, The Friends of the Gardens on Spring Creek. The Friends of the Gardens on Spring Creek is an independent not-for-profit 501(c)(3) organization established in 1988 whose mission is to support The Gardens through advocacy, community engagement, volunteerism and fundraising.

4. **Second Reading of Ordinance No. 104, 2020, Appropriating Unanticipated Philanthropic Revenue Received by City Give from the Urban Agriculture Resilience Program through The Friends of the Gardens on Spring Creek for The Gardens on Spring Creek.** (Adopted)

   This Ordinance, unanimously adopted on First Reading on August 18, 2020, appropriates $15,000 in philanthropic revenue in the General Fund for transfer to The Gardens on Spring Creek. Facilitated by The Friends of the Gardens on Spring Creek, the funding award is made from the Urban Agriculture Resilience Program for the designated purpose of urban agriculture and community gardening.

5. **Second Reading of Ordinance No. 105, 2020, Appropriating Unanticipated Philanthropic Revenue Received by City Give for Transfer to the Recreation Fund for the Fort Collins Senior Center.** (Adopted)
This Ordinance, unanimously adopted on First Reading on August 18, 2020, appropriates $66,652 in philanthropic revenue in the General Fund for transfer to the Fort Collins Senior Center in the Recreation Fund for support of general operations. The charitable funds are the disbursement of revenue from a Designated Endowment held by the Community Foundation of Northern Colorado to benefit the Fort Collins Senior Center.

6. **Second Reading of Ordinance No. 106, 2020, Authorizing the Acquisition by Eminent Domain Proceedings of Certain Lands Necessary to Construct Public Improvements for the Timberline Capital Improvement Project - Stetson Creek Road to Trilby Road.** (Adopted)

This Ordinance, which was unanimously adopted on First Reading on August 18, 2020, requests Council authorization for the use of eminent domain, if deemed necessary, to acquire property interests needed for construction improvements for the Project.

7. **First Reading of Ordinance No. 107, 2020, Appropriating Unanticipated Philanthropic Revenue Received by City Give for Transfer to Social Sustainability in the General Fund for the Equity Indicators Project.** (Adopted)

The purpose of this item is to appropriate $20,000 in philanthropic revenue in the General Fund for transfer to Social Sustainability for the support of the Equity Indicators project as designated by the donor, Bohemian Foundation. In a commitment to advance equitable outcomes, the City has selected CUNY Institute for State and Local Governance (ISLG) to lead an Equity Indicators project which will establish a framework for measuring and understanding the inequities that exist in Fort Collins.

8. **First Reading of Ordinance No. 108, 2020, Amending Chapter 26 of the Code of the City of Fort Collins to Clarify Utility Accounts, Billing and Collections.** (Adopted)

The purpose of this item is to adopt changes to City Code to align with requirements in the 2020-2025 LEAP Vendor Agreement. Under current billing practices, utility bills are treated as a single customer account payment balance, and payments made to an account are applied equally across utility service products on that account. The Code changes will allow for Low-Income Energy Assistance Program (LEAP) payments to be applied only to electric service (as required in the 2020-2025 LEAP Vendor Agreement), even if a customer has other Fort Collins utility services (e.g., water, wastewater, stormwater and/or broadband).

These Code changes will enable Fort Collins Utilities to remain a LEAP Vendor which benefits the 200+ income-qualified customers that receive LEAP in two ways: (1) they get a more accurate benefit amount because Fort Collins Utilities is able to provide Estimated Home Heating Costs (EHHC) from which LEAP bases benefit calculations, and (2) it is more convenient for the customer because LEAP payments are automatically applied to a customer’s utility account.

9. **First Reading of Ordinance No. 109, 2020, Amending the Code of the City of Fort Collins to Modify and Update Requirements and Procedures for City Elections and Campaign Finance in City Elections.** (Adopted)

The purpose of this item is to consider proposed amendments to the City’s election campaign Code provisions.

10. **Resolution 2020-081 Setting the Dates of the Public Hearings on the 2021 Proposed City of Fort Collins Budget.** (Adopted)
The purpose of this item is to set two public hearing dates for the proposed 2021 budget that the City Manager has filed with the City Clerk pursuant to Section 2 of City Charter Article V. Section 3 of City Charter Article V now requires Council to set a date for a public hearing on the proposed budget and to cause notice of the hearing to be published. This Resolution sets two public hearing dates. The first for Council’s regular meeting on September 15, 2020, and the second for its regular meeting on October 6, 2020. The Resolution also directs the City Clerk to publish the notice of these two hearings that is attached as Exhibit “A” to the Resolution.


The purpose of this item is to appoint four individuals to fill vacancies on the Affordable Housing Board, Landmark Preservation Commission, Human Relations Board and the Economic Advisory Board that exist due to the resignation of previous members.

- **END CONSENT**
- **CONSENT CALENDAR FOLLOW-UP**

Councilmember Cunniff noted there was a package of election changes on the Consent Agenda per Item No. 14, *First Reading of Ordinance No. 112, 2020, Amending Section 7-135 of the Code of the City of Fort Collins to Amend Requirements and Procedures Related to Campaigns and Campaign Finance in City Elections.*

- **STAFF REPORTS**

  Staff Report: COVID-19 Update - Discuss women in the workforce related to COVID-19, school choice, and childcare. (Josh Birks)

Josh Birks, Economic Sustainability Director, introduced Jennifer Henderson, TILT Founder and CEO, and Tina Todd, Simply HR, to share their perspectives.

Ms. Henderson stated TILT works with organizations to streamline the employee leave lifecycle. She discussed the fact that access to affordable childcare is a barrier for regional employers and the pandemic has exacerbated that, particularly for working women. One out of four women have reported becoming unemployed during the pandemic because of a lack of childcare, which is twice the rate of men for the same reason.

Ms. Henderson discussed options for addressing childcare needs given remote learning through Poudre School District.

Ms. Todd stated Simply HR is a human resources consulting firm providing support for businesses in Fort Collins and northern Colorado. She discussed participation in the workforce over the past several months noting there was a 9% decrease in labor force participation for women with children. She cited specific examples of women in the workforce leaving their positions to accommodate virtual learning.

Councilmember Summers asked for further clarification about this situation causing a generation-long impact on women in the workforce. Ms. Henderson replied that is in regard to the amplification of downshifting and opting out of the workforce today which has significant repercussions on women in the workforce. Rejoining the workforce at the same level many women are leaving to care for children is unlikely. She stated women who opted out of the workforce pre-COVID for anything more than two years suffer a 30-40% earning reduction over their lifetimes.
Councilmember Pignataro asked if there is anything in the upcoming budget regarding childcare. Jackie Kozak-Thiel, Chief Sustainability Officer, replied the main item related to childcare involves maintaining the level of human service funding knowing that is a direct support for childcare providers in the community.

Councilmember Pignataro suggested possible partnerships in terms of work-study classes through CSU or UNC to provide instructors to help facilitate learning pods.

Councilmember Gorgol noted there is a lack of applicants and space for childcare providers. She asked if there has been work done with community partners to identify solutions. Ms. Henderson replied the options she discussed were a result of crowd-solving ideas spanning the country.

Councilmember Gorgol asked if the City organization is considering providing on-site, off-site, or shared childcare options. City Manager Atteberry noted the City is one of the largest community employers and has worked to provide a great deal of flexibility to its employees in this space. Teresa Roche, Chief Human Resources Officer, replied the City surveyed its 900 essential employees to see if childcare was of interest in the spring, and it was not a large priority. However, the Family Care Connections program has been used by some essential workers and has been completely subsidized. She will continue to survey workers regarding new needs and discussed the new Leader's Toolkit called "Navigating the Impact of Caregiving Challenges During COVID-19."

Mayor Pro Tem Stephens stated affordable childcare has been lacking in the community for years prior to the pandemic and it is time to provide resources. She noted it is not realistic for most families to have one member leave the workforce for even a few months.

● COUNCILMEMBER REPORTS

Mayor Troxell reported he and Councilmember Cunniff participated in the Platte River Power Authority Board meeting during which the Integrated Resource Plan was discussed. He also reported on the recent Urban Renewal Authority Board meeting during which the North College area and desired amenities were discussed.

Mayor Pro Tem Stephens reported the Poudre Fire Authority Chief is retiring and the search process will begin shortly.

Mayor Troxell reported the City has been closely monitoring the Cameron Peak Fire regarding the water supply resources in the area.

● DISCUSSION ITEMS


*The purpose of this item is for Council to consider approving an emergency ordinance to allow a temporary overnight shelter at 1301 Blue Spruce Drive. The number of shelter beds available in Fort Collins has been reduced due to the need for social distancing because of COVID-19. While homeless shelters are a permitted use in the Industrial Zone District where this property is located, this would allow the use to occur immediately rather than undergoing the development review process for the proposed change in use. Emergency ordinances are authorized under the Charter in emergency circumstances and require the affirmative vote of at least five (5) members of the Council for passage.*
City Manager Atteberry stated this emergency ordinance would support temporary overnight emergency shelter for people experiencing homelessness given the capacity gap related to COVID. He stated staff recommends adoption of the ordinance.

Beth Sowder, Social Sustainability Director, stated this emergency ordinance would suspend specific requirements of the Land Use Code to allow a temporary overnight shelter at 1301 Blue Spruce Drive immediately. She indicated the City would enter into a lease with the Food Bank for Larimer County, the property owner, and would then sublease the space to the Fort Collins Rescue Mission to operate the space as a temporary overnight shelter from the end of September through April 2021. She stated the estimated cost to the City is approximately $30,000 per month. CARES Act funding is anticipated to be used for the remainder of 2020 and already allocated CDBG funds are to be used for the 2021 costs. Sowder stated next steps, should Council approve this emergency ordinance, would include finalizing the lease, the sublease, and the funding agreement.

Cheryl Distaso expressed concern about the proposal stating the City recklessly closed the Atzlan shelter and needlessly closed the Heritage Park encampment in April in defiance of CDC recommendations. She stated the Rescue Mission has had to turn away people every night since the Atzlan shelter closed and the 100 beds proposed for this shelter are not enough. She further stated Fort Collins' shelter options are inadequate, unsafe, and dehumanizing and the City should immediately repeal its camping ban.

Rich Stave asked how many people will be served in the facility on a nightly basis and asked what restrictions will be placed on users. He also questioned whether the facility is properly equipped for social distancing.

Nancy York stated Fort Collins inhumanely treats homeless individuals and stated proper encampments should be allowed.

Mayor Pro Tem Stephens asked how many people will be served at the proposed shelter and asked how safety will be addressed. She noted there is no industrial processing that occurs at the facility; it is primarily for food distribution. City Manager Atteberry replied there is no warehouse activity in this portion of the facility. Sowder replied the Rescue Mission tries to provide even more space than is required for social distancing and there is currently enough space for 120 cot spaces with an ability to expand.

Amy Pezzani, Food Bank for Larimer County, stated the portion of the Food Bank that would be leased to the City is just under 15,000 square feet and is completely separate from the Food Bank use of the building.

Seth Forewood, Fort Collins Rescue Mission, stated beds and operations will be appropriately distanced and health screenings will occur. He stated the Larimer County Health Department will be consulting on the space as well.

Mayor Pro Tem Stephens asked if both men and women will be served. Forewood replied he is waiting for guidance from the Health Department on that. He clarified there are no shower facilities, but handwashing and restroom facilities will be available.

Councilmember Pignataro asked if this facility will offer services from various providers. Sowder replied this will be different from the Atzlan shelter in that this will only be an overnight shelter with morning and evening meal service and to-go lunch service. During the day, the Food Bank
will still be using the location for food distribution. She noted the Murphy Center will be extending its day shelter hours as well.

Councilmember Summers asked if construction will be needed at the facility. Forewood replied there will be no major construction, just minor changes to make the space appropriate for food service.

Councilmember Summers asked who would provide beds. Forewood replied the Rescue Mission has some available and is in talks with Larimer County Public Health regarding other options.

Councilmember Summers asked about the plan for ensuring people are not milling around area businesses, particularly given people will need to be going from the overnight shelter to and from the Murphy Center. City Manager Atteberry replied that concern has been heard and expressed by the Food Bank as well. Jackie Kozak-Thiel, Chief Sustainability Officer, replied the overnight shelter and extended day shelter hours are intended to provide security. Additionally, there will be private security on-site. Sowder replied the lease with the Food Bank requires security to be provided during the day, particularly during food distribution hours. She stated security is not necessarily needed at night as people will not be coming and going.

Councilmember Gutowsky asked why other facilities were not sufficient. City Manager Atteberry replied 22 sites were considered, three of which were in the North College area. Some of the difficulties with other sites included building condition.

Councilmember Gutowsky asked why the Fort Ram building was not considered. City Manager Atteberry replied it did not meet the necessary specifications.

Councilmember Gutowsky asked how transportation will be provided for those who need it. Sowder replied this location is very close to the Murphy Center and meetings have been held with Transfort regarding providing other transportation. She noted there are bus stops in front of both the Food Bank and the Murphy Center.

Councilmember Gutowsky stated she has received a request for a 'no parking' zone from businesses near the Murphy Center and asked if this plan will exacerbate the issue. Sowder replied staff and people utilizing the shelter can park there overnight; however, no cars can remain there during the day. Ms. Pezzani replied the street is open parking and once the shelter is open and the pantry not operating, the parking lot will be available for those using the shelter which may improve the parking situation.

Councilmember Gorgol asked if there is a known gap between the number of beds provided in the community and the number of individuals experiencing homelessness. Sowder replied the Rescue Mission typically lacks the ability to serve about 15 to 20 men and there is currently enough capacity for women and families at Catholic Charities.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gorgol, to adopt Emergency Ordinance No. 110, 2020.

Councilmember Cunniff stated he would support the motion as this is clearly a community need that must be addressed.
Councilmember Gorgol stated she would support the motion as well and encouraged better planning for an exit strategy and long-term plan.

Mayor Pro Tem Stephens commended the community partners for their work on this. She acknowledged it is not an ideal situation; however, she stated it is a CDC best practice to have indoor shelter available.

Councilmember Gutowsky stated she will support the motion as this is the right thing to do for the community and homeless citizens. She noted the North College community has worked hard to improve the desirability of the area and has done its share in providing locations for various providers. She will be advocating for consideration of locations in other parts of the city for future services.

Mayor Troxell asked about the participation of Homeward Alliance in this proposal. Kozak-Thiel replied Homeward 2020 has been leading the plan around homelessness being rare, short-lived, and non-recurring and Homeward Alliance manages the Murphy Center and other programs. She indicated both organizations have been key partners in the work through the pandemic and in ongoing work around homelessness.

Mayor Troxell stated he would support the motion and thanked the participating partners and staff.

| RESULT: | EMERGENCY ORDINANCE NO. 110, 2020 ADOPTED [UNANIMOUS] |
| MOVER: | Kristin Stephens, District 4 |
| SECONDER: | Emily Gorgol, District 6 |
| AYES: | Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff |

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


   The purpose of this item is to discuss the proposed adoption of an Ordinance to require remote sellers to collect and remit City sales tax. The Ordinance is based on a model ordinance prepared by a working group of municipal attorneys and municipal finance staff, coordinated by the Colorado Municipal League (CML). With adoption of the Ordinance, the City Manager will enter into an agreement with the Colorado Department of Revenue to allow such taxpayers to remit tax to the City using the Department’s single point of remittance software.

   City Manager Atteberry noted this is a good news item which has previously been heard by the Council Finance Committee.

   Travis Storin, Chief Financial Officer, stated this item would require remote or online sellers to collect and remit City sales tax for shipments made to customers inside City limits. The change will establish a greater level of competitive parity between physical and remote retailers and will allow for the collection of currently unaccounted for sales tax revenues.

   Jennifer Poznanovic, Sales Tax Department Revenue Manager, discussed a 2018 decision by the Supreme Court that an out-of-state retailer does not need physical presence in a state in order for that state to require the retailer to collect and remit sales tax as long as they meet a certain threshold of sales. She detailed the economic nexus information and discussed the way other home-rule municipalities are handling this issue.
Rich Stave stated he has had difficulty in online ordering wherein orders cannot be completed because of a lack of a sales tax license with Fort Collins. He asked about the 200 individual sales number and questioned how this change will provide more efficient delivery of goods and services to Fort Collins citizens. Poznanovic replied the new system will allow all remote sellers to go to one portal to pay sales taxes for any jurisdiction on the system. Ryan Malarkey, Assistant City Attorney, replied the 200 individual sales is based on the past three months and the $100,000 threshold is based on the previous calendar year. Businesses that do not meet that threshold would not be impacted by the collection requirements.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 111, 2020, on First Reading.

Councilmember Cunniff and Mayor Pro Tem Stephens stated they would support the motion citing this as a way to even the playing field for retail sales.

Mayor Troxell commended staff and Colorado Municipal League work on this issue.

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<thead>
<tr>
<th>RESULT:</th>
<th>ORDINANCE NO. 111, 2020, ADOPTED ON FIRST READING [UNANIMOUS]</th>
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<tbody>
<tr>
<td>MOVER:</td>
<td>Kristin Stephens, District 4</td>
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<tr>
<td>SECONDER:</td>
<td>Ross Cunniff, District 5</td>
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<tr>
<td>AYES:</td>
<td>Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff</td>
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14. **First Reading of Ordinance No. 112, 2020, Amending Section 7-135 of the Code of the City of Fort Collins to Modify and Update Requirements and Procedures for Campaigns in City Elections.** (Adopted on First Reading)

The purpose of this item is to consider proposed amendments to the City’s election campaign Code provisions.

City Clerk Coldiron stated the proposed Election Code items align with the City's Strategic Plan through the high-performing government outcome area. She stated the item related to limited liability contributions was brought to the attention of the Election Code Committee by members of the public who requested the local provisions be aligned with state provisions. The state provision requires any contribution by an LLC to be accompanied by a written statement including the names of all of the members of the LLC and their respective allocations. If an individual wishes to make an additional contribution, the LLC allocation must be taken into account.

City Clerk Coldiron stated this proposed change would align the local provisions with those of the state and any candidate or political committee that receives a contribution from an LLC would be required to list the LLC members as part of their financial disclosures. She outlined the committee definitions and maximum contribution limits indicating there are currently no maximum contribution limits for political or issue committees.

City Clerk Coldiron stated members of the public also brought the issue of contribution limits to the Election Code Committee and were seeking alignment between local and state regulations. State provisions currently limit the amount of contributions to $625 per two-year time period. Additionally, the state allows political committees to make direct contributions to candidate and other political committees. The proposed change would limit contributions and contributions-in-kind to political committees to $100, which could be changed by Council.
Robbie Moreland, Representative Fort Collins, supported both proposed changes to the Election Code.

Kathleen Schmidt, League of Women Voters of Larimer County, supported restricting LLC donations to stay within an individual donor's contribution limits.

Michelle Haefele expressed support for aligning the City's Election Code with that of the state.

Jody Deschanes thanked the Election Code Committee members and expressed support for aligning the City's Election Code with that of the state regarding LLC contributions; however, she did not support increasing campaign limits.

Mayor Pro Tem Stephens requested a description of independent expenditures. City Clerk Coldiron replied independent expenditures can be used to support or oppose candidates or ballot issues and there is no requirement as far as a maximum contribution related to independent expenditures. Rita Knoll, Chief Deputy City Clerk, replied independent expenditures are required to be reported within three days of obligating funds and the reporting must clarify which candidate or issue is being supported or opposed.

Ryan Malarkey, Assistant City Attorney, noted independent expenditures are not coordinated with candidates and there is no limit on their amount.

Councilmember Summers commented on the differences between the state and local Election Codes and questioned whether these changes would give special interest groups and independent expenditures groups too much power. He stated there is no equality when it comes to political campaigns and money does not always make the difference. He added a city should not be making radical changes to its Election Code every two years.

Mayor Troxell expressed support for the change related to LLC contributions but expressed concern regarding changes leading to a candidate not having control of his or her own message. He suggested donation limits should be raised to $150 for Council candidates and $200 for Mayoral candidates.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gutowsky, to adopt Ordinance No. 112, 2020, on First Reading.

Councilmember Summers stated he could support LLC contribution limits but opposed limits on political committee donations stating that change does not align with the state.

Councilmember Pignataro thanked staff for their work and stated she would support the motion.

Councilmember Gorgol stated she would support the motion and encouraged the Election Code Committee to examine public financing options.

Mayor Pro Tem Stephens stated she would support the motion stating the current process favors those with more money.

Councilmember Gutowsky stated she would support the motion as the changes will create a more even playing field.

Mayor Troxell stated he would not support the motion as he would like to see the contribution limits increased.
RESULT: ORDINANCE NO. 112, 2020, ADOPTED ON FIRST READING [5 TO 2]
MOVER: Kristin Stephens, District 4
SECONDER: Susan Gutowsky, District 1
AYES: Pignataro, Gorgol, Gutowsky, Stephens, Cunniff
NAYS: Summers, Troxell

● OTHER BUSINESS

A. Consideration of a motion to adjourn the City Council meeting to conduct the General Improvement District No. 1 meeting then return to the regular City Council meeting.

Mayor Pro Tem Stephens made a motion, seconded by Councilmember Gorgol, that Council temporarily adjourn this regular meeting to conduct the General Improvement District No. 1 Board meeting, to be resumed later this evening upon the completion of that GID Board meeting.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Kristin Stephens, District 4
SECONDER: Emily Gorgol, District 6
AYES: Pignataro, Gorgol, Gutowsky, Summers, Stephens, Troxell, Cunniff

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

Councilmember Summers stated he has drafted a resolution showing support for law enforcement and citizens' rights to safely, peacefully demonstrate.

Ray Martinez supported passing such a resolution and stated Council not showing support for law enforcement is negligent.

J.D. (no last name given) stated it is important for Council to proactively show its support for law enforcement.

Councilmember Summers read his drafted resolution.

Mayor Troxell agreed with all aspects of the drafted resolution and expressed support for Police Services. He stated he would like the resolution to include language related to Fort Collins striving to be the safest city in the country and fostering community trust. He also stated he understood this type of resolution to be under the scope of the recently formed ad hoc subcommittee.

Mayor Pro Tem Stephens stated she also understood this type of resolution would go before the subcommittee for input. She expressed support for the police force and the Chief. She stated putting forth this type of resolution at this time could be even more polarizing and opposed a statement that not supporting this type of resolution at this time means a lack of support for law enforcement.

Councilmember Summers clarified his draft resolution does not need a vote as it is written; he suggested it could go through additional wordsmithing.

Councilmember Cunniff expressed support for law enforcement and the Police Chief as well as for maintaining a safe community. He stated sending this through a process will help the final product and disagreed that not acting on it right now shows a lack of support for police. He suggested a reasonably quick examination of the resolution by the ad hoc committee.
Councilmember Pignataro stated she also understood this type of item would go before the ad hoc committee. She thanked Councilmember Summers for his work on the resolution noting it is important for Council to be conscious of the staff workload.

Councilmember Gutowsky supported sending the resolution to the ad hoc committee.

Councilmember Summers asked about the scope of the ad hoc committee and whether this falls under its purview. City Attorney Daggett replied the committee was charged to develop recommendations for ways to enhance and achieve a safe and equitable community for all, examine policy initiatives, police operations, and other municipal programs and services, provide recommendations to Council for the 2021 budget cycle in furtherance of these objectives, and review higher level performance indicators for Police Services and other related programs and services to improve the measurement of success in providing a safe and equitable community for all. It is within Council's purview to interpret and modify the committee's charge.

Councilmembers agreed it is appropriate for this item to go before the ad hoc committee. City Attorney Daggett noted it is important that the three members of the committee will be those who vote though other Councilmembers may attend meetings and comment.

C. Consideration of a motion to adjourn into an executive session to discuss real property acquisition and legal issues related to Hughes Stadium annexation property.

Mayor Pro Tem Stephens stated she would not be participating in the Executive Session due to the ongoing ethics review.

Councilmember Cunniff made a motion, seconded by Councilmember Pignataro, that the City Council go into executive session for the purpose of discussing the Hughes Stadium property with City staff and the City’s attorneys, and particularly to discuss:

1. Real property acquisition and disposition related to the Hughes Stadium property, as permitted under:
   - City Charter Article Roman Numeral Two, Section 11(3),
   - Section 2-31(a)(3) of the City Code and
   - Colorado Revised Statutes Section 24-6-402(4)(a); and

2. Specific legal questions related to potential litigation regarding the Hughes Stadium property and the manner in which the particular policies, practices or regulations of the City related to the acquisition or development of the Hughes Stadium property may be affected by existing or proposed provisions of federal, state or local law, as permitted under:
   - City Charter Article Roman Numeral Two, Section 11(2),
   - City Code Section 2-31(a)(2) and
   - Colorado Revised Statutes Section 24-6-402(4)(b).

Adam Eggleston questioned where funds would come from for the City to purchase the property and discussed the types of housing that could be placed on the property.
RESULT: ADOPTED [6 TO 0]
MOVER: Ross Cunniff, District 5
SECONDER: Julie Pignataro, District 2
AYES: Pignataro, Gorgol, Gutowsky, Summers, Troxell, Cunniff
RECUSED: Stephens

• ADJOURNMENT

The meeting adjourned at 11:48 PM.

______________________________
Mayor

ATTEST:

______________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
October 6, 2020

STAFF

John Phelan, Energy Services Manager
Cyril Vidergar, Legal

SUBJECT


EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on September 15, 2020, appropriates $200,000 in Renewable and Clean Energy Challenge grant funds from the Department of Local Affairs (DOLA) for a project to establish the Northside Aztlan Community Center (Aztlan Center) as a resilience hub. The City has been notified of an award of $200,000 in support of energy and storage measures at the Aztlan Center to improve its function as a resilience hub during community emergencies.

The total project cost is $425,000, which includes an additional $200,000 as a required local match, and $25,000 for non-reimbursable project fees. The structure of the funding for the total project would use the $200,000 in grant proceeds from DOLA, $200,000 for the required local match from the 2020 Energy Services budget (already appropriated in the Light & Power Fund), and $25,000 for the non-reimbursable project fees from the 2020 Municipal Innovation Fund (already appropriated in the Keep Fort Collins Great Fund). The $200,000 for the local match from the 2020 Energy Services budget is available as a result of anticipated underspend due to the COVID-19 pandemic.

STAFF RECOMMENDATION

Staff recommends adoption on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, September 15, 2020 (w/o attachments) (PDF)
2. Ordinance No. 113, 2020 (PDF)
AGENDA ITEM SUMMARY
City Council
September 15, 2020

STAFF
John Phelan, Energy Services Manager
Cyril Vidergar, Legal

SUBJECT
First Reading of Ordinance No. 113, 2020, Making Supplemental Appropriations and Authorizing Transfers of Appropriations for the Northside Aztlan Resilience HUB Project.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate $200,000 in Renewable and Clean Energy Challenge grant funds from the Department of Local Affairs (DOLA) for a project to establish the Northside Aztlan Community Center (Aztlan Center) as a resilience hub. The City has been notified of an award of $200,000 in support of energy and storage measures at the Aztlan Center to improve its function as a resilience hub during community emergencies.

The total project cost is $425,000, which includes an additional $200,000 as a required local match, and $25,000 for non-reimbursable project fees. The structure of the funding for the total project would use the $200,000 in grant proceeds from DOLA, $200,000 for the required local match from the 2020 Energy Services budget (already appropriated in the Light & Power Fund), and $25,000 for the non-reimbursable project fees from the 2020 Municipal Innovation Fund (already appropriated in the Keep Fort Collins Great Fund). The $200,000 for the local match from the 2020 Energy Services budget is available as a result of anticipated underspend due to the COVID-19 pandemic.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

DOLA launched the Renewable/Clean Energy Challenge grant program in the summer of 2019 to spark efforts in reaching Colorado’s 2040 100% renewable energy goal. Projects funded by this initiative should achieve renewable energy, energy efficiency, and energy conservation efforts; support innovations in renewable energy; achieve multiple objectives and/or serve those with the greatest need. Proposed projects were also to respond to needs and opportunities identified by the local government. The grant requires a 50% match.

The City submitted a letter of intent in August 2019 and a complete application in December before the impact of the coronavirus pandemic was felt on our community or facilities. The Aztlan Center has since served as a shelter for vulnerable populations over the last several months. The recent use of the facility has been a demonstration of a resilience hub; the Northside Aztlan Resilience Hub project would add capabilities for operation in emergencies where the electric grid may also be impacted. This highlights the importance of proceeding with projects such as this one, which will also provide active demonstration of additional distributed generation and battery storage on an ongoing basis to minimize operational costs and provide electric grid benefits. The battery storage system would remain a Light & Power-owned asset which can provide ongoing benefits to the ratepayers via this project.

Given the current financial landscape, staff recommends the following approach:
Agenda Item 6

- Proceed with appropriating the full project amount of $425,000, funded from:
  - $200,000 from the DOLA Renewable and Clean Energy Challenge grant, which would reimburse the Light & Power Fund over the course of the project as expenses are incurred.
  - $200,000 in local match funds from the 2020 Utilities Energy Services budget, which is available from anticipated underspend due to the COVID-19 pandemic.
  - $25,000 from the 2020 Municipal Innovation Fund, which is already appropriated in the Keep Fort Collins Great Fund, to cover permit fees for building improvements, Poudre Fire Authority, and bonding required by DOLA. Those costs cannot be covered with DOLA grant funds. Use of the Municipal Innovation Fund accomplishes rapid deployment of the funding to support resilience, the municipal sustainability focus on resilience for 2020, and on a project that benefits the community.

The CAP Executive Team, Utilities Senior Management, and the Executive Leadership Team each reviewed and supported the above funding approach, as detailed in the proposed Ordinance.

- There are several internal project partners necessary to successfully execute this grant project, including Operations Services, Recreation, Emergency Preparedness and Security, Environmental Services, Social Sustainability and Utilities.
- The circumstances presented by COVID-19 have demonstrated the need for and viability of incorporating resilience, efficiency, and innovation in providing services to the community.

**No APP contribution is required.** The project is limited to placement of a battery and associated equipment, including potentially photovoltaic panels, located at, though not affixed to, the Aztlan Center. No structural modification, remodeling or improvement of any building, structure, street, sidewalk, or other public improvement are part of the project. As such, the project does not constitute “construction” under Chapter 23, Art. XII of the City Code for purposes of including contributions to the Art in Public Places Fund in the project budget.

**CITY FINANCIAL IMPACTS**

The proposed appropriation can be funded while still meeting service area and department target reductions for 2020. The Light & Power Enterprise Fund will be reimbursed by the DOLA grant, resulting in no negative impact to the enterprise fund.

**BOARD / COMMISSION RECOMMENDATION**

The Energy Board will receive a staff report on this project at its September 10, 2020 meeting.

**ATTACHMENTS**

1. State Acknowledgement of Application and Grant Award (PDF)
2. Grant Agreement Terms (PDF)
3. Scope of Project (PDF)
ORDINANCE NO. 113, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS
AND AUTHORIZING TRANSFERS OF APPROPRIATIONS
FOR THE NORTHSIDE AZTLAN RESILIENCE HUB PROJECT

WHEREAS, in the summer of 2019, the Colorado Department of Local Affairs (DOLA) launched the Renewable/Clean Energy Challenge grant program to support energy efficiency efforts that align with needs and opportunities identified by local governments and will help the State of Colorado reach its 2040 100% renewable energy goal; and

WHEREAS, DOLA solicited Clean Energy Challenge grant projects with multiple objectives that targeted renewable energy, energy efficiency, and energy conservation efforts; supported innovations in renewable energy, and served populations with the greatest need; and

WHEREAS, in December 2019, before the COVID-19 pandemic impacted Colorado communities and City facilities, the City filed a Clean Energy Challenge grant application detailing a $425,000 project to create a resiliency hub at the Northside Aztlan recreation center by adding off-grid energy storage and management capabilities through battery systems to enable operation in emergencies where the electric grid may be impacted (“Northside Aztlan Resilience Hub project”); and

WHEREAS, throughout 2020 in response to the COVID-19 pandemic, the City used the Northside Aztlan Center property and facilities for waves of community sheltering and resiliency service efforts, through which the City demonstrated the community need and viability of the proposed Northside Aztlan Resilience Hub project; and

WHEREAS, DOLA selected the Northside Aztlan Resilience Hub project for a Clean Energy Challenge grant award of $200,000, conditioned on a $200,000 local fund match by the City, which staff has identified is available in the 2020 Utilities Energy Services budget from anticipated underspending due to the COVID-19 pandemic; and

WHEREAS, accepting the DOLA grant funds and commitment of matching funds, in conjunction with Keep Fort Collins Great monies and other community funding, to complete the Northside Aztlan Resilience Hub project will serve utility ratepayers by enabling installation of energy system features in a community emergency facility that will lower demands on the City’s electric grid and leverage outside funding to reduce the financial impact on the Electric Utility enterprise fund (“Light & Power Fund”) for the project; and

WHEREAS, appropriating the DOLA grant and other matching and complementary financial resources described in this Ordinance to complete the Northside Aztlan Resilience Hub project benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of ensuring more stable standalone operation of the facility as a community emergency resource center ahead of the next pandemic or emergency; and
WHEREAS, Article V, Section 9, of the City Charter permits the City Council, upon recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriations, in combination with all previous appropriations for that fiscal year, does not exceed the current estimate of actual and anticipated revenues to be received during the fiscal year; and

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

WHEREAS, Article V, Section 10, of the City Charter authorizes the City Council, upon recommendation of the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of $25,000 from the Keep Fort Collins Great Fund to the Light & Power Fund for the Northside Aztlan Resilience Hub project and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, the City Manager has recommended the transfer of $200,000 from the Utilities Energy Services operating budget to the Northside Aztlan Resilience Hub project and determined that the proposed transfer is from an account in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance.

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

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

Section 2. That there is hereby appropriated from unanticipated grant revenue in the Light & Power Fund the sum of TWO HUNDRED THOUSAND DOLLARS ($200,000) for expenditure in the Light & Power Fund for the Northside Aztlan Resilience Hub project and appropriated therein.

Section 3. That the unexpended and unencumbered appropriated amount of TWENTY FIVE THOUSAND DOLLARS ($25,000) is hereby authorized for transfer from the Keep Fort Collins Great Fund to the Light & Power Fund for the Northside Aztlan Resilience Hub project and appropriated therein.
Section 4. That the unexpended and unencumbered appropriated amount of TWO HUNDRED THOUSAND DOLLARS ($200,000) is hereby authorized for transfer from the Energy Services operating budget to the Northside Aztlan Resilience Hub project.

Section 5. That the DOLA Renewable/Clean Energy Challenge grant program terms and conditions, as provided to the City, are approved and agreed to as a condition of accepting the grant funds without entering into a separate grant contract or intergovernmental agreement with the State.

Introduced, considered favorably on first reading, and ordered published this 15th day of September, A.D. 2020, and to be presented for final passage on the 6th day of October, A.D. 2020.

Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on the 6th day of October, A.D. 2020.

Mayor

ATTEST:

_______________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
October 6, 2020

STAFF
Richard Anderson, Sr. Manager, Building Devt. and Review
Paul Sizemore, Interim Director, Comm. Devt. & Neighborhood Serv.
Claire Havelda, Legal

SUBJECT

EXECUTIVE SUMMARY
This Ordinance, unanimously adopted on First Reading on September 15, 2020, adopts the most up-to-date electrical code that will align the City and the minimum State allowed Electrical Code. The National Electrical Code (NEC) as Adopted by the State of Colorado Department of Regulatory Agencies (DORA) is the standard for all electrical installations in the State. By aligning our local adoptions with DORA, we will be in line with the minimum life safety requirement for electrical installations and repairs.

STAFF RECOMMENDATION
Staff recommends adoption on Second Reading.

ATTACHMENTS
1. First Reading Agenda Item Summary, September 15, 2020  (PDF)
2. Ordinance No. 114, 2020  (PDF)
AGENDA ITEM SUMMARY
City Council

September 15, 2020

STAFF

Richard Anderson, Sr. Manager, Building Devt. and Review
Paul Sizemore, Interim Director, Comm. Devt. & Neighborhood Serv.
Claire Havelda, Legal

SUBJECT


EXECUTIVE SUMMARY

The purpose of this item is to adopt the most up-to-date electrical code that will align the City and the minimum State allowed Electrical Code. The National Electrical Code (NEC) as Adopted by the State of Colorado Department of Regulatory Agencies (DORA) is the standard for all electrical installations in the State. By aligning our local adoptions with DORA, we will be in line with the minimum life safety requirement for electrical installations and repairs.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Since 1924, the City has periodically reviewed, amended, and adopted the latest nationally recognized building standards available for the times. The City has updated the minimum construction standards sixteen (16) times since 1924.

This Ordinance will replace the 1993 edition of National Electrical Code which was adopted by Ordinance No. 25, 1994 on March 1, 1994. This Code adoption is important for the following reasons:

- In 2018 the Code Adoption Committee recommended to Council an amendment to the International Building Code (IBC) to reference:
  - Electrical. All references to the Electrical Code shall mean the electrical code currently in effect as enacted by the State of Colorado.
- Council Approved this recommendation and this adoption will align our Municipal Code with the intent of the Code Committees amendment to the IBC.
- Maintain the highest Insurance Services Office (ISO) insurance rating which affects homeowner insurance rates in the community. The best score is achieved by adopting the most recent series of Codes within 12 months of issuance.
- DORA has adopted the 2020 NEC effective August 1, 2020, and this will provide consistency and maintain regulations in the region.
- The 2015 City of Fort Collins Energy Policy has committed to adopting the newest International Energy Conservation Code (IECC) Energy Code within 12 months of issuance. The adoption of the NEC will provide code consistency with the rest of the adopted Codes.
- Adopting each 3-year code cycle typically means Code changes are in small steps instead of large, costly ones.
The NEC standards are reviewed and voted on by code officials and construction industry professionals from across the country and are updated and published every three years under the oversight of the National Fire Protection Agency (NFPA). The 2020 NEC represents the latest publication from NFPA for electrical installations and repairs.

Review Process

The implementation of new building standards can have a dramatic impact on the construction industry and the economy of the community. On March 16, 2020, DORA held a stakeholder meeting to discuss this proposed rule change. There was no objection noted during this meeting or the meeting where the adoption was approved.

Updates to the 2020 NEC

The updates in the 2020 NEC adds additional life safety requirements. These minimum requirements are in place to ensure the safety of the Electrical Contractors, Property Owners, Electrical Purveyors, First Responders, and the end user.

Cost Impact to Construction

DORA has mandated the 2020 NEC as the minimum electrical code in the State of Colorado, there will be a construction cost increase across the State for electrical installation, repairs, and maintenance work. Staff is not recommending any amendments that will add any additional construction costs to the current state requirements. Therefore, the construction costs will not increase above what is already incurred due to the adoption of the 2020 NEC by DORA.

Local Amendments Overview

Staff is proposing a few amendments as part of the Ordinance:

Staff is only proposing a few amendments to the NEC as part of the Ordinance.
- Relocating the photovoltaic (PV) ready provision in our local amendment for the International Residential Code (IRC) from part VIII Electrical of the IRC to part 3 Building Planning and Construction. This will maintain these current requirements that Council approved with the adoption of the 2018 IRC.
- The deletion of part VIII of the IRC to only reference the NEC as adopted by DORA for all electrical work performed. Since DORA does not adopt the IRC for electrical work in the state, this will align the City with the State requirement.
- Other amendments to Chapter 5 include:
  - Section 5-81 Short title
    - This is needed as part of the reorganization of this section.
  - Section 5-82
    - To delete reference to the 1993 NEC and now reference the 2020 NEC.
    - Add a section that permits are required and reorganize this section to include provisions previously housed in sections 5-83 and 5-84 regarding electrical standards for signs and penalties for violations.

Background and History

When the City received notification that DORA was adopting the 2020 NEC, staff researched our current Code provisions to see if they were aligned with these new standards. Staff found the last Electrical Code adoption was for the 1993 NEC in 1994. Installations or repairs to electrical systems regulated by this 1993 code do not meet the current minimum life safety requirements in the 2020 NEC. This Ordinance will align the City with industry standards and allow contractors to utilize the 2020 NEC.
Intent of Recommending Local Amendments to the NEC

There are reasons for exploring local amendments to the NEC, including:

- Consideration of the Climate Action plan;
- Maintaining current City specific requirements for:
  - Photovoltaic (PV) ready
  - Electric Vehicles (EV) ready
  - Permitting
  - Appeals process
  - Violation process
  - Electrical Sign materials
- Council approved the Climate Action Plan in 2015, which includes a carbon neutral goal by 2050. Likely steps toward achieving this will be increased renewable energy, energy storage systems, electric vehicle infrastructure and smart grid technology. Adoption of the 2020 NEC provides increased support for the most current technology, safe installation standards and enhanced responder safety. The 2020 NEC will align us with industry standards and will ensure that electrical installation, repairs, and upgrades better support City goals.

CITY FINANCIAL IMPACTS

Alterations to and/or new construction of City-owned properties must comply with the provisions of the 2020 NEC. The scope of work will determine the financial impact to the City. In general, there are no financial impacts expected with the adoption of the 2020 NEC.

Community Development and Neighborhood Services (CDNS) anticipates the following financial impacts which are accommodated by the current CDNS budget:

- Purchase of new NEC books, approximately $2,000. The necessary copies of the 2020 NEC will be purchased for staff.
- Staff training on the 2020 NEC is mostly accomplished in-house. When possible, staff will attend code classes that are offered at various times throughout the year. This additional training cost is expected not to exceed $1,500.
- The anticipated budget impacts are included in budget and will have no negative impact on the Department’s budget.

Triple Bottom Line Scan

The 2020 NEC adoption was not identified as one of the select major projects requiring a triple bottom line scan.

BOARD / COMMISSION RECOMMENDATION

At the August 27, 2020 meeting of the Building Review Board, boardmembers voted unanimously to recommend adoption of the 2020 NEC with local amendments.

ATTACHMENTS

1. Code of Colorado Regulations - Electrical Board  (PDF)
2. Building Review Board Minutes - August 27, 2020  (PDF)
4. Poudre Fire Authority - Letter of Support  (PDF)
5. Fort Collins Energy Services - Letter of Support  (PDF)
6. Public Comment - Northern Colorado Home Builder Association  (PDF)
ORDINANCE NO. 114, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING THE 2020 NATIONAL ELECTRICAL CODE STANDARDS

WHEREAS, on March 1, 1994, City Council adopted the 1993 National Electrical Code in Ordinance No. 25, 1994; and

WHEREAS, the Colorado Department of Regulatory Agencies ("DORA") adopted the updated National Fire Protection Association standard number 70, hereinafter known as the National Electrical Code, 2020 Edition (the "2020 NEC"), effective August 1, 2020; and

WHEREAS, the 2020 NEC was adopted by DORA as the minimum standards governing the "planning, laying out, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electrical light, heat, and power," in the State of Colorado; and

WHEREAS, on August 20, 2019, City Council adopted the International Residential Code ("IRC") through Ordinance No. 095, 2019, which included reference to electrical standards; and

WHEREAS, the electrical standards in the current IRC are not recognized by DORA; and

WHEREAS, City Council wishes to remove most of the IRC electrical standards from the City Code; and

WHEREAS, City Council wishes to retain City Code provisions regarding Electrical Vehicle Ready and Photovoltaic Ready standards currently included in the IRC electrical standards being deleted by this Ordinance by relocating them to other subsections of Section 5-30 of the Code of the City of Fort Collins (which adopts local amendments to the IRC); and

WHEREAS, Section 5-30 of the City Code governs amendments to the City’s adopted IRC and is the place to which the provisions regarding the electrical Vehicle Ready and Photovoltaic Ready standards will be relocated; and

WHEREAS, pursuant to the City Charter II, Section 7, City Council may enact any ordinance which adopts a code by reference in whole or in part provided that before adoption of such ordinance the Council hold a public hearing thereon and that notice of the hearing is published twice in a newspaper of general circulation published in the City, with one of such publications occurring at least eight (8) days preceding the hearing and the other publication occurring at least fifteen (15) days preceding the hearing, which notices have been published as required; and

WHEREAS, the City Council finds it in the best interests of the residents of Fort Collins and is necessary for the public’s health, safety and welfare to update the Fort Collins City Code from the 1993 NEC standards to the updated 2020 NEC standards as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:
Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 5-30 of the Code of the City of Fort Collins is hereby amended by the addition of a new subparagraph (36) which reads in its entirety as follows and all subsequent subparagraphs renumbered accordingly:

(36) **R324.1.1 Photovoltaic Ready.** All new single family dwellings shall be provided with an empty metallic conduit of 3/4 inch (19.05 mm) minimum, installed from the dwellings attic space beneath the roof which most likely would support the majority of installed photovoltaic system, to a junction box located within 12 inches of the dwellings electrical meter or connected directly to the dwellings electrical panel board.

Section 3. That Section 5-30 of the Code of the City of Fort Collins is hereby amended by the addition of a new subparagraph (41) which reads in its entirety as follows and all subsequent subparagraph are hereby renumbered accordingly:

(41) A new **Section R332 Electric Vehicle Ready** is hereby added to read as follows:

**SECTION R332**

**Electrical Vehicle Ready**

**R332.1 General.** All new single family dwellings with an attached garage or carport shall be provided with an empty conduit of 3/4 inch (12.7 mm) minimum, installed from the dwellings electrical panel board to a junction box in readily accessible location in the garage or carport, capable of supporting a 50 ampere 220 volt outlet.

Section 4. That Section 5-30, subparagraph (93) of the Code of the City of Fort Collins is hereby amended to read as follows:

(93) Part VIII - Electrical is hereby deleted in its entirety. All electric work shall be done in accordance with Section 5-80 of this Code.

Section 5. That Section 5-30 of the Code of the City of Fort Collins is hereby amended by the deletion of subparagraph (94) in its entirety and all remaining subparagraphs renumbered accordingly:

Section 6. That Article III, Electric Standards contained in Chapter 5 of the Code of the City of Fort Collins hereby amended to read as follows:
ARTICLE III. - ELECTRICAL STANDARDS*

Sec. 5-80. Adoption of standards.

Pursuant to the power and authority conferred on the City Council by Section 31-16-202, C.R.S., and Article II, Section 7 of the Charter, there is hereby adopted by reference the National Electrical Code, 2020 Edition, as promulgated by the National Fire Protection Association, to have the same force and effect as if fully set forth in this Code in every particular, and its provisions shall be controlling, except as amended in Code § 5-82, within the City for the protection of the public health and safety, and for the purpose of regulating electrical wiring methods and regulating the installation, alteration and repair of electrical systems in the City.

Sec. 5-81. Short title.

The National Electric Code adopted in Code § 5-80 and as amended by Code § 5-82, together with this § 5-81, may be known and cited as the City of Fort Collins Electrical Code.

Sec. 5-82. Amendments to code adopted.

National Electrical Code, 2020 Edition, adopted in Code § 5-80, is hereby amended in the following respects by the addition of the following new Sections:

1) **Section 90.4.1. Permit Required.** Any owner, owner’s authorized agent or contractor who desires to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the code official and obtain the required permit for the work.

2) **Section 90.4.2. Appeals.** Whenever the Administrative Authority disapproves an application or refuses to grant a permit applied for or it is claimed that the provisions of the National Electrical Code do not apply or that the true intent and meaning of the code has been misconstrued or wrongly interpreted, the applicant or party in interest may appeal such decision to the Building Review Board as provided for in Section 5-27(15) of the City Code.

3) **Section 90.4.3. Fees.** The fee for each permit shall be based on the value of the work regulated herein, as set forth in 'Table No. 3-A, Building Permit Fees,' of the Building Code of the City of Fort Collins, except that such fee shall not be less than fifteen dollars ($15.) nor exceed the amount prescribed by Section 12-115-121, C.R.S.

4) **Section 90.4.4. Violation and penalties.** It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use or maintain an electrical system or equipment or cause or permit the same to be done in violation of this Code. Any person, firm or corporation violating any of
the provisions of this Code shall be deemed guilty of a civil infraction and subject to the penalties set forth in Section 1-15 of the City Code.

(5) **Section 600.1.1. Use of approved materials; electric signs.** Where the use of approved materials, equipment or devices is required by the National Electrical Code, adopted in § 5-80, the label of or listing by the Underwriters' Laboratories, Inc., will be accepted as an approval. Alternate materials may be approved by the Building Official. All electrical signs shall be approved before any permit for the installation or erection of such sign is granted.

Introduced, considered favorably on first reading, and ordered published this 15th day of September, A.D. 2020, and to be presented for final passage on the 6th day of October, A.D. 2020.

_____________________________
Mayor

ATTEST:

_____________________________
City Clerk

Passed and adopted on final reading on this 6th day of October, A.D. 2020.

_____________________________
Mayor

ATTEST:

_____________________________
City Clerk
AGENDA ITEM SUMMARY
City Council
October 6, 2020

STAFF

Rebecca Everette, Development Review Manager
Judy Schmidt, Legal

SUBJECT

Second Reading of Ordinance No. 115, 2020, Amending the Zoning Map of the City of Fort Collins and Amending Ordinance No. 177, 2017, by Changing the Zoning Classification for Property Known as the Spring Creek Rezoning REZ170001 – Correction of Map Errors.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on September 15, 2020, makes minor corrections to the legal description for a previously approved rezoning. On January 2, 2018, Council approved a rezoning ordinance for the Spring Creek Rezone with six conditions, following a recommendation of approval from the Planning and Zoning Board. In 2019, staff discovered errors in the legal description related to this rezoning action. The revised Ordinance and attachments correct the errors that have been identified. The City of Fort Collins is the applicant for this item.

STAFF RECOMMENDATION

Staff recommends adoption on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, September 15, 2020 (w/o attachments) (PDF)
2. Ordinance No. 115, 2020 (PDF)
AGENDA ITEM SUMMARY
City Council

September 15, 2020

STAFF

Rebecca Everette, Development Review Manager
Judy Schmidt, Legal

SUBJECT

Public Hearing and First Reading of Ordinance No. 115, 2020, Amending the Zoning Map of the City of Fort Collins and Amending Ordinance No. 177, 2017, by Changing the Zoning Classification for Property Known as the Spring Creek Rezoning REZ170001 – Correction of Map Errors.

EXECUTIVE SUMMARY

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

The purpose of this item is to make minor corrections to the legal description for a previously approved rezoning. On January 2, 2018, Council approved a rezoning ordinance for the Spring Creek Rezone with six conditions, following a recommendation of approval from the Planning and Zoning Board. In 2019, staff discovered errors in the legal description related to this rezoning action. The revised Ordinance and attachments correct the errors that have been identified. The City of Fort Collins is the applicant for this item.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

This request was initiated by City staff to make minor corrections to the legal description and zoning map for a previously approved rezoning. Following initial Council approval of the rezoning, technical errors were discovered by staff, and Council action is required to correct the errors.

The rezoning of this property has already been approved by Council’s adoption of Ordinance No. 177, 2017 on January 2, 2018. The proposed corrections to the legal description and zoning map fully comply with the intent of the rezoning action that occurred in 2018, and the previous analysis and findings related to the rezoning request remain valid for the current request. The changes to the legal description and zoning map are technical in nature and seek to accurately codify Council’s prior action.

ORIGINAL APPROVAL

The original rezoning resulted in adjustments to the location, size and boundary of two zone districts within a 19.55 parcel located at the southeast corner of South Shields Street and Hobbit Street. The Neighborhood Commercial (N-C) zone was shifted south and reduced by 2.88 acres, while the Medium Density Mixed-Use Neighborhood (M-M-N) zone was shifted north and increased by 2.88 acres. As approved, the N-C zone was reduced to 6.42 acres and the M-M-N zone was enlarged to 13.13 acres.
On January 2, 2018, Council approved the Spring Creek Rezone with the following six conditions:

1. Development of the M-M-N parcel, as adjusted and enlarged to 13.13 acres by this Rezoning, shall include two-family dwellings along the entire eastern perimeter, forming a buffer and transition between any multi-family buildings and houses in the adjoining neighborhoods, as generally indicated on the applicant's Concept Plan (attached hereto as Exhibit A) with exceptions made for stormwater facilities, private parks, landscaping and walkways.

2. Multi-family development on the M-M-N parcel, as adjusted and enlarged to 13.13 acres by this Rezoning, shall not contain any dwelling units that feature a rent-by-the-bedroom leasing model.

3. Development of the M-M-N zone district parcel, as adjusted and enlarged to 13.13 acres by this Rezoning, shall be limited to residential permitted uses and accessory uses only.

4. The maximum number of multi-family dwelling units in the M-M-N zone district parcel shall be 365.

5. The maximum allowable building height of the two-family dwellings in both zone district parcels shall be two stories.

6. Development of the N-C zone district parcel, as adjusted and reduced to 6.42 acres by this Rezoning, shall be limited to the primary and supporting uses as envisioned by Principle LIV 36.1 of City Plan and Section 4.23(8) of the Land Use Code, and that residential permitted uses shall be limited to Accessory Uses, Two-Family Dwellings and Mixed-Use Dwellings in accordance with Section 4.23(D)(2) of the Land Use Code.

A Concept Plan was submitted to the City alongside the initial rezoning request, which helped to inform all interested parties of the development potential of the parcel, based on the adjusted zone districts. This Concept Plan informed the staff recommendation and the six conditions of approval. However, it did not constitute a formal development plan application. No formal development plans have been submitted to the City since the rezoning was approved. Staff is aware of development interest in the property and may receive a formal submittal in 2020 or 2021.

REVIEW CRITERIA FOR REZONING ACTIONS

Any amendment to the Zoning Map involving the zoning or rezoning of 640 acres of land or less (quasi-judicial versus legislative) shall be recommended for approval by the Planning and Zoning Board or approved by Council only if the proposed amendment is:

- Consistent with the City’s Comprehensive Plan; and/or
- Warranted by changed conditions within the neighborhood surrounding and including the subject property.

Additional considerations for rezoning parcels less than 640 acres (quasi-judicial):

- Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land;
- Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment; and
- Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

The staff report from the November 16, 2017 Planning and Zoning Board hearing provides an in-depth analysis and findings related to:

- Consistency of the rezoning with City Plan and the West Central Area Plan;
- Changed conditions within and surrounding the rezoned property;
- Compatibility with existing and proposed uses surrounding the subject property;
- Suitability of the proposed zone districts for the subject property;
- Whether and the extent to which the proposed rezoning would result in significant adverse impacts to the natural environment; and
- Whether and the extent to which the proposed rezoning would result in a logical and orderly development pattern.
This 2017 staff report concluded that these criteria for rezoning were met, Council agreed and adopted Ordinance No. 177, 2017, and this rezoning to correct errors in the legal description of the zoned parcels remains consistent with these criteria.

The following links are provided as additional background information on the initial Council approval of the Spring Creek Rezone:

- Original Staff Report for Rezoning - Planning and Zoning Board (November 16, 2017): fcgov.com/cityclerk/planning-zoning
- Agenda Item Summary for City Council First Reading (December 19, 2017) and Second Reading (January 2, 2018): fcgov.com/cityclerk/agendas

**BOARD / COMMISSION RECOMMENDATION**

This item received unanimous recommendation of approval from the Planning and Zoning Board (5-0) at the August 20, 2020, hearing.

**PUBLIC OUTREACH**

No comments have been received related to this item. Any communication received prior to the Council hearing will be forwarded to Council for consideration. All requirements for public notice have been satisfied, as follows:

- **Sign Posting**: March 16, 2020, Sign #538
- **Written Hearing Notice**: Initial notice mailed March 12, 2020, with additional notices sent each time the hearing was cancelled or rescheduled. Notice for the August 20 Planning and Zoning Board hearing and September 15 City Council hearing was mailed August 6, 2020. Notices were mailed to 478 addresses.
- **Published Hearing Notice (Coloradoan)**: August 23, 2020

**ATTACHMENTS**

1. Revised Map and Legal Description (PDF)
2. Planning & Zoning Board Staff Report (PDF)
3. Powerpoint Presentation (PDF)
ORDINANCE NO. 115, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS AND AMENDING ORDINANCE NO. 177, 2017, BY
CHANGING THE ZONING CLASSIFICATION FOR PROPERTY KNOWN AS THE
SPRING CREEK REZONING REZ170001 – CORRECTION OF MAP ERRORS

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

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

WHEREAS, on January 2, 2018, Fort Collins City Council adopted on second reading Ordinance No. 177, 2017, amending the City Zoning Map by changing the zoning classification, with 6 conditions, for certain property known as the Spring Creek Rezoning REZ170001 (the “2017 Rezoning Ordinance”); and

WHEREAS, the 2017 Rezoning Ordinance adjusted the location, size and boundary between two zone districts within a 19.55 acre parcel located at the southeast corner of South Shields Street and Hobbit Street, by shifting the Neighborhood Commercial (N-C) zone south and reducing it by 2.88 acres to 6.42 acres and shifting the Medium Density Mixed-Use Neighborhood (M-M-N) zone north and increasing it by 2.88 acres to 13.13 acres; and

WHEREAS, the 2017 Rezoning Ordinance contained minor typographical errors in the text of the legal descriptions (the “Map Errors”) for the two parcels of the property described therein (collectively, the “Property”) that require correction; and

WHEREAS, correction of the Map Errors will not modify the location, size of or the boundary between the two zone district parcels located within the Property, but will only adjust the written legal description of those parcels to correct errors in the written text of the legal descriptions; and

WHEREAS, the proposed rezoning of the Property to correct the Map Errors does not alter the intent, analysis, findings or conditions related to the 2017 Rezoning Ordinance; and

WHEREAS, no formal development plans have been submitted to the City since the 2017 Rezoning Ordinance was approved, although City staff is aware of development interest in the property and may receive a formal submittal in 2020 so that time is of the essence to correct the Map Errors in the legal description of and zoning map for the Property; and

WHEREAS, the City Council has considered this proposed rezoning of the Property to correct these Map Errors (“Rezoning to Correct Map Errors”), including information, materials, findings of fact and conclusions contained in the Agenda Item Summary and Agenda materials prepared for this hearing, as well as the information, materials, public comment presented at this hearing and Council discussion thereof; and

-1-
WHEREAS, the City Council has found and determined that this proposed Rezoning to Correct Map Errors continues to comply with all applicable Land Use Code requirements, including the requirements established in Section 2.9.4(H)(3) of the Land Use Code; and

WHEREAS, the City Council has also found and determined that this proposed Rezoning to Correct Map Errors remains consistent with the City’s Comprehensive Plan and/or is warranted by changed conditions within the neighborhood surrounding and including the subject property; and

WHEREAS, the City Council has further found that the Conditions included in the 2017 Rezoning Ordinance remain in compliance with the provisions of LUC Section 2.2.9 in that they are necessary to accomplish the purposes and intent of the LUC and have a reasonable nexus to the potential impacts of the proposed rezoning and are roughly proportional in nature and extent to such impacts, and that such Conditions are not impacted or modified by this proposed Rezoning to Correct Map Errors; and

WHEREAS, in accordance with the foregoing, the City Council has considered this Rezoning to Correct Map Errors and has determined that said Property is the subject of this Ordinance should be rezoned to correct the Map Errors as hereinafter provided.

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

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

Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code and as modified by the 2017 Rezoning Ordinance is hereby amended to correct the legal description of the Medium Density Mixed-Use Neighborhood (“M-M-N”) zone district to read as follows:

A tract of land located in the Northwest Quarter of Section 23, Township 7 North, Range 69 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northwest Quarter of Section 23, T7N, R69W as bearing South 00° 19' 01" West and with all bearings contained herein relative thereto:

Commencing at the Northwest corner of Section 23; thence along the West line of the Northwest Quarter of Section 23, South 00° 19' 01" West, 713.81 feet; thence, South 89° 21' 59" East, 50.00 feet to the POINT OF BEGINNING; thence along a curve concave to the southeast having a central angle of 90° 19' 00" with a radius of 25.00 feet, an arc length of 39.41 feet and the chord of which bears North 45° 28' 31" East, 35.45 feet; thence, South 89° 21' 59" East, 456.98 feet; thence along a curve concave to the northwest having a central angle of 25° 59' 21" with a radius of 267.00 feet, an arc length of 121.11 feet and the chord of which bears North 77° 38' 20" East, 120.07 feet; thence, South 89° 21' 59" East, 435.72 feet; thence along a curve concave to the south...
to the north having a central angle of 13° 05' 59" with a radius of 518.12 feet, an arc length
of 118.46 feet and the chord of which bears South 84° 06' 19" West, 118.20 feet; thence, South 10° 06' 09" East, 153.80 feet; thence along a curve concave to the east south having
a central angle of 24° 24' 52" with a radius of 664.52 feet, an arc length of 283.16 feet and
the chord of which bears South 22° 22' 22" East, 281.02 feet; thence, South 55° 47' 39"
West, 20.96 feet; thence, South 07° 14' 10" East, 409.86 feet; thence, South 05° 39' 23"
East, 103.47 feet; thence, North 52° 45' 52" West, 9.39 feet; thence, North 72° 41' 45" West, 13.65 feet; thence, North 52° 45' 08" West, 71.61 feet; thence along a curve concave to the south having a central angle of 35° 29' 52"
with a radius of 400.00 feet, an arc length of 247.82 feet and the chord of which bears North 78° 45' 38" West, 243.88 feet; thence, North 00° 19' 01" East, 284.42 feet; thence, North 89° 40' 59" West, 647.89 feet; thence, North 00° 19' 01" East, 407.00 feet to the
Point of Beginning, containing 571,975 square feet or 13.131 acres more or less.

Section 3. That the Zoning Map adopted by Division 1.3 of the Land Use Code as
modified by the 2017 Rezoning Ordinance is hereby amended to correct the legal description of
the Neighborhood Commercial ("N-C") zone district south to read as follows:

A tract of land located in the Northwest Quarter of Section 23, Township 7 North, Range 69 West of the 6th P.M., City of Fort Collins, County of Larimer, State of Colorado being
more particularly described as follows:

Considering the West line of the Northwest Quarter of Section 23, T7N, R69W, as
bearing South 00° 19' 01" West and with all bearings contained herein relative thereto:

Commencing at the Northwest corner of Section 23; thence along the West line of the
Northwest Quarter of Section 23, South 00° 19' 01" West, , R69W as
713.81687.86 feet; thence, North 89° 21' 59" East, 50.00 feet; thence, South 00° 19' 01" West,
407.00470.00 feet to the POINT OF BEGINNING; thence, South 89° 40' 59" East,
647.89747.89 feet; thence, South 00° 19' 01" West, 284.42 feet; thence along a curve
concave to the south having a central angle of 16° 57' 53" with a radius of 400.00 feet, an
arc length of 118.44 feet and the chord of which bears South 75° 00' 30" West, 118.00 feet;
thence, South 66° 20' 36" West, 227.30 feet; thence, South 68° 21' 24" West, 94.78 feet;
thence South 44° 26' 15" West, 213.35 feet; thence, South 59° 17' 14" West, 104.96 feet;
thence, North 00° 19' 01" East, 650.61 feet to the Point of Beginning, containing 279,656
square feet or 6.420 acres more or less.

Section 4. That this Rezoning to Correct Map Errors shall operate to correct, modify
and supersede the legal descriptions of the parcels described in Ordinance 117, 2017; all other
provisions of Ordinance 17, 2017, shall remain in full force and effect, including the Conditions
set forth therein.

Section 5. That the City Manager is hereby authorized and directed to amend said
Zoning Map in accordance with this Ordinance.
Introduced, considered favorably on first reading, and ordered published this 15th day of September 2020, and to be presented for final passage on the 6th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk

Passed and adopted on final reading on this 6th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
AGENDA ITEM SUMMARY
October 6, 2020

STAFF

Rebecca Everette, Development Review Manager
Paul Sizemore, Interim Director, Comm. Devt. & Neighborhood Serv.
Brad Yatabe, Legal

SUBJECT


EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on September 15, 2020, will exempt certain child care uses from development review and Land Use Code requirements through May 28, 2021. The COVID-19 pandemic has created a need for distributed learning and daycare sites, but the number of buildings already approved for child care in the community is too limited to meet current demands. This Ordinance would allow for child care uses to operate within buildings that have not previously been approved for such use, provided all applicable health and life safety requirements have been met. It would exempt child care centers, as defined in the Land Use Code, from the development review process for a limited timeframe, aligned to the 2020-21 academic school year, to allow for remote learning and daytime care of children. Compliance with building code, fire code, health department requirements, and state licensing would still be required, as applicable.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, September 15, 2020 (w/o attachments) (PDF)
2. Ordinance No. 116, 2020 (PDF)
AGENDA ITEM SUMMARY  
City Council  
September 15, 2020

STAFF

Rebecca Everette, Development Review Manager  
Paul Sizemore, Interim Director, Comm. Devt. & Neighborhood Serv.  
Brad Yatabe, Legal

SUBJECT


EXECUTIVE SUMMARY

The purpose of this item is consideration of an Ordinance exempting certain child care uses from development review and Land Use Code requirements through May 28, 2021. The COVID-19 pandemic has created a need for distributed learning and daycare sites, but the number of buildings already approved for child care in the community is too limited to meet current demands. This Ordinance would allow for child care uses to operate within buildings that have not previously been approved for such use, provided all applicable health and life safety requirements have been met. It would exempt child care centers, as defined in the Land Use Code, from the development review process for a limited timeframe, aligned to the 2020-21 academic school year, to allow for remote learning and daytime care of children. Compliance with building code, fire code, health department requirements, and state licensing would still be required, as applicable.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

PURPOSE AND NEED

As a result of the COVID-19 public health emergency, local school districts have implemented virtual and hybrid learning models, all of which require students to conduct learning away from school buildings for at least part of the school week. Many parents are not able to directly care for their children or supervise virtual learning and are instead seeking child care services during standard school hours. Many families cannot afford child care within their home to facilitate remote learning, and will need support from local child care and education providers.

There is growing interest in the temporary use of churches, vacant commercial spaces, neighborhood clubhouses, and other non-residential buildings to provide space (outside of schools) for education and child care. However, because child care has not been previously approved as a designated land use for many of these sites, a development review process and site improvements would be required in most instances. Site improvements that may be required include: landscaping, changes in parking lot configuration, screening of trash and recycling facilities, sidewalk repair, right-of-way or easement dedications, bicycle parking, lighting upgrades, stormwater management, and utility upgrades.
Support facilities for child care and remote learning are an urgent need in Fort Collins, particularly with the school year already underway. Development review and site construction are lengthy and costly processes that do not support the rapid implementation of temporary child care sites in response to the current need. This Ordinance would allow child care and virtual learning to operate within buildings that have not previously been approved for such use. It would exempt child care operations from the development review process for a limited timeframe, aligned to the 2020-21 academic school year. Because health and life safety are still critically important to protect children and other occupants, compliance with building code, fire code, health department requirements, and state licensing would still be required.

It is anticipated that the public health emergency will be resolved (e.g., as a result of a widely available vaccine) by the end of the 2020-21 academic school year. If current conditions still exist at that time, the timeframe of the Ordinance could be extended to match evolving public health conditions.

PARAMETERS FOR EXEMPTION

Under this temporary Ordinance, the following parameters and limits would apply for any Land Use Code ("LUC") exemptions:

- Applicable to buildings within City limits with existing approvals for the land uses listed below.
- Time-limited exemption to match the 2020-21 academic school year for Poudre School District and Thompson School District (ending on May 28, 2021)
- A temporary certificate of occupancy (TCO) must be issued by the City Building Services Division to ensure health and life safety requirements have been addressed. The end date of the TCO will be no later than May 28, 2021.
  - A building permit and needed improvements may be necessary to address building code requirements prior to occupancy.
  - All applicable state licensing, building code, fire code, Americans with Disabilities Act, and health and safety requirements must still be satisfied
  - Capacity for individual classrooms and/or the building overall will be limited based on building code, fire code, County health, and state licensing requirements.
- This Ordinance would temporarily exempt childcare centers, as defined in the LUC, from the requirement to bring the site into compliance with the LUC during the time period specified by the TCO; however, these improvements may be required through subsequent development review if the use extends beyond the approved timeframe.
- If a child care center desires to extend operations beyond the 2020-21 school year, the property owner or operator must initiate the applicable development review process no later than May 28, 2021.
  - The development review process must be diligently pursued according to the timeframes prescribed in LUC Section 2.2.11 - Step 11: Lapse.
  - At the completion of the development review process, if approved, the property owner or operator must complete all required site and building improvements to satisfy the requirements of the development review process in order to receive a full Certificate of Occupancy (CO).
  - An operator may be allowed to continue operating while they are diligently pursuing the development review process and installation of site/building improvements, at the discretion of the Community Development & Neighborhood Services Director.

Child care centers would be permitted in buildings with the following designated land uses, subject to the parameters described above:

- Adult Day/Respite Care Center
- Clubs and Lodges
- Community Facilities
- Conference/Convention Center
- Entertainment Facilities & Theatres
- Exhibit Halls
- Health & Membership Clubs
- Offices, Financial Services, and Clinics
- Personal & Business Service Shops
- Place of Worship/Assembly
- Public/Private school
- Retail Establishment
- Homeless Shelters
- Day Shelters
Limited Indoor Small Scale Reception Center
Mixed use dwellings (non-residential portion only) Unlimited indoor recreational uses and facilities
Neighborhood support and recreational facilities, including clubhouses

Residential uses are not included in this exemption for the following reasons:

- “Child care center” is defined by the LUC to only include operations serving “seven or more children under the age of sixteen years who are not related to the owner, operator or manager.” This does not include “family child care homes,” as defined by the State of Colorado.
- In-home daycares and homeschooling “pods” generally would not fall under the definition of “child care center” and would not require development review, even without the exemption proposed by this ordinance.

CITY FINANCIAL IMPACTS

This Ordinance could result in a loss of revenue for the City in the form of development review fees and payments associated with development review improvements. However, staff time would not be spent on the tasks that such fees would cover, so the fiscal impact would be negligible.

PUBLIC OUTREACH

Staff has been meeting with child care providers and property owners to understand barriers and discuss alternative locations for virtual learning and child care during the COVID-19 pandemic. This outreach has assisted in identifying the need for LUC exemptions to support the rapid deployment of child care during the current public emergency.
ORDINANCE NO. 116, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUSPENDING CERTAIN PROVISIONS OF THE CITY’S LAND USE CODE
TO PERMIT TEMPORARY USE OF CERTAIN NON-RESIDENTIAL BUILDINGS FOR
CHILD CARE CENTERS IN RESPONSE TO THE COVID-19 PANDEMIC

WHEREAS, the City of Fort Collins is threatened with serious injury and damage, consisting of widespread human and economic impact caused by the Novel Coronavirus 2019 ("COVID-19"); and

WHEREAS, on March 13, 2020, in order to undertake emergency measures to protect the life, health, safety and property of the citizens of the City and persons conducting business therein, and to attempt to minimize the loss of human life and the preservation of property, the City Manager, as the Director of the City’s Office of Emergency Management, proclaimed a “local emergency” in accordance with Section 2-671(a)(1) of the City Code and activated the Emergency Operations Plan established pursuant to Section 2-673 of the City Code; and

WHEREAS, the City Council has, with the adoption of Resolution 2020-030, extended the City Manager’s proclamation of local emergency; and

WHEREAS, the State of Colorado declared its first Emergency Disaster Declaration related to COVID-19 on March 11, 2020, and the declared emergency remains in effect; and

WHEREAS, due to the COVID-19 public health emergency, local school districts have implemented hybrid learning models that require students to participate in remote learning away from school buildings for some or all of the school week; and

WHEREAS, many parents of students are unable to directly care for or supervise their children’s remote learning at home during the school day and cannot afford in-home child care, all of which has created an urgent need for more affordable and available child care centers, as such term is defined in the LUC, to provide child care and to assist with remote learning; and

WHEREAS, there is community interest in the temporary use of churches, vacant commercial spaces, neighborhood clubhouses, and other non-residential buildings as child care centers; and

WHEREAS, approving a child care center use under the City’s Land Use Code (“LUC”) development review procedure can be a lengthy and costly process often times requiring site improvements; and

WHEREAS, in consideration of the urgent need for child care centers and remote learning supervision alternatives for families, the City Council wishes to temporarily suspend certain LUC requirements to allow buildings that have been previously approved for certain uses to be used as child care centers without following the normal development review process; and

-1-
WHEREAS, the temporary suspension will correspond with the 2020-2021 academic school year, after which any child care center allowed to temporarily operate pursuant to this Ordinance that desires to continue operation will need to be approved pursuant to the applicable LUC requirements and development review process; and

WHEREAS, compliance with existing health and safety requirements such as the building code, fire code, health department requirements, and state licensing will continue to be required for buildings temporarily approved for child care centers pursuant to this Ordinance; and

WHEREAS, in order to help address the urgent need for child care centers necessitated by the COVID-19 public health emergency, the City Council finds it is necessary for public health, safety and welfare, and in the best interests of the City and its residents, to temporarily suspend the application of certain LUC requirements to facilitate the operation of child care centers using buildings that have already been approved for certain uses.

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. Any building on a lot that is currently approved for any of the below uses, as such uses are defined in the LUC, is eligible for use as child care center (“Eligible Building”) regardless of whether child care center is a permitted use in the zone district where the building is located:

a. adult day/respite care centers
b. clubs and lodges
c. community facilities
d. convention and conference centers
e. day shelters
f. entertainment facilities and theatres
g. exhibit halls
h. health and membership clubs
i. homeless shelters
j. limited indoor recreation establishments
k. non-residential portion of mixed-use dwellings
l. neighborhood support/recreational facilities (including clubhouses)
m. offices, financial services, and clinics
n. personal and business service shops
o. places of worship or assembly
p. public/private schools
q. retail establishments
r. small scale reception centers
s. unlimited indoor recreational uses and facilities
Section 3. An Eligible Building in which a child care center is proposed to be operated pursuant to this Ordinance is exempt from:

a. LUC requirements to obtain an approved Project Development Plan and Final Plan or amendment to an existing approved development plan;

b. LUC Article 3 General Development Standards; and

c. LUC Article 4 zone district use restrictions on child care centers in certain zones.

Section 4. To operate a child care center pursuant to this Ordinance, the owner or authorized occupant:

a. Must obtain a temporary certificate of occupancy (“TCO”) from the City Building Services Division prior to operating a child care center and possess a valid TCO throughout operation of the child care center;

b. May be required to obtain a building permit to address building code requirements prior to occupancy and to satisfy those requirements before issuance of the TCO for the child care center; and

c. Must comply with all other applicable laws, rules, and regulations, including building and fire codes, City Code, public health orders, state licensing requirements, and the Americans with Disabilities Act prior to commencing and throughout operation of a child care center.

Section 5. All other applicable provisions of the City Code and any other applicable laws, rules, and regulations, including, but not limited to health and safety requirements, will continue to apply to any child care center operating pursuant to this Ordinance.

Section 6. Should a child care center operating pursuant to this Ordinance fail to comply with the terms of the TCO or applicable laws as described in Sections 4 and 5 above, the City Building Official in his or her sole discretion may revoke or temporarily suspend the TCO and the child care center shall not operate until a new TCO is issued or the suspension is lifted.

Section 7. The waiver of LUC requirements pursuant to this Ordinance and any TCO issued to allow the temporary operation of a child care center pursuant to this Ordinance shall automatically terminate on May 28, 2021, and any child care center operating pursuant to this Ordinance shall cease operating unless an extension has been granted pursuant to Section 9.

Section 8. Upon termination of the use of the Eligible Building as a child care center pursuant to this Ordinance, the prior approved use shall remain valid pursuant to the terms of its prior approval, the LUC, and applicable law, rules, and regulations. Use of an Eligible Building as a child care center pursuant to this Ordinance shall not be deemed abandonment of a lawful nonconforming use pursuant to LUC Division 1.5 or Existing Limited Permitted Use pursuant to LUC Division 1.6, however, LUC Sections 1.5.3 and 1.6.7 regarding active utilization of nonconforming and limited permitted uses shall continue to apply.
Section 9. The Director of the Community Development and Neighborhood Services Department ("Director"), in his or her sole discretion and after consultation with the Building Official may temporarily allow any child care center operating pursuant to this Ordinance to continue operating pursuant to the issued TCO provided the owner or authorized occupant has submitted a development application to the City to approve a child care center pursuant to the LUC prior to May 28, 2021, and the applicant diligently pursues seeking approval of its application and the completion of any required development improvements. In deciding whether to allow a child care center to temporarily continue operating while a development application is being reviewed, the Director may consider compliance issues and impacts on the surrounding neighborhood. The Director may, in his or her sole discretion and after consultation with the Building Official, revoke or suspend the temporary permission to continue at any time for reasons including the applicant’s failure to diligently pursue approval of its development application, failure to complete development improvements, or non-compliance with the terms of its TCO.

Section 10. Operation of a child care center pursuant to this Ordinance shall not create any right or expectation that any such child care center shall be able to operate on or after May 28, 2021, and any party operating a child care center pursuant to this Ordinance is deemed to acknowledge the temporary nature of any such child care center.

Introduced, considered favorably on first reading, and ordered published this 15th day of September, A.D. 2020, and to be presented for final passage on the 6th day of October, A.D. 2020.

Mayor

ATTEST:

_______________________________
City Clerk

Passed and adopted on final reading on this 6th day of October, A.D. 2020.

Mayor

ATTEST:

_______________________________
City Clerk
SUBJECT

Items Pertaining to Annual Adjustment Ordinance.

EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 117, 2020, Appropriating Additional Revenue and Authorizing Transfers of Appropriations in Various City Funds.

B. First Reading of Ordinance No. 118, 2020, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations in Various City Funds.

The purpose of these Annual Adjustment Ordinances is to combine dedicated and additional revenues or prior-year reserves that need to be appropriated before the end of the year to cover the related expenses that were not anticipated and, therefore, not included in the 2020 annual budget appropriation. The additional revenue is primarily from fees, charges, rents, contributions, donations and grants that have been paid to City departments to offset specific expenses.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

These Ordinances appropriate additional revenue and prior year reserves in various City funds and authorize the transfer of appropriated amounts between funds and/or projects. The City Charter permits Council to appropriate additional revenue received as a result of rate or fee increases or new revenue sources, such as grants and reimbursements. The City Charter also permits Council to provide, by ordinance, for payment of any expense from prior year reserves. Additionally, it authorizes Council to transfer any unexpended appropriated amounts from one fund to another upon recommendation of the City Manager, provided that the purpose for which the transferred funds are to be expended remains unchanged; the purpose for which they were initially appropriated no longer exists; or the proposed transfer is from a fund or capital project account in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance.

The City Manager is recommending all of the proposed appropriations in these Ordinances and has determined that they are available and previously unappropriated from their respective funds and will not cause the total amount appropriated from such funds to exceed the current estimate of actual and anticipated revenues to be received in each such fund during this fiscal year.
Agenda Item 6

The City Manager is also recommending the proposed transfers in these Ordinances and has determined that the purposes for which these transferred funds are to be expended remains unchanged.

If these appropriations are not approved, the City will have to reduce expenditures even though revenue and reimbursements have been received to cover those expenditures.

The table below is a summary of the expenses in each fund that make up the increase in requested appropriations. Also included are transfers between funds and/or projects which do not increase net appropriations, but per the City Charter, require Council approval to make the transfer. A table with the specific use of prior year reserves appears at the end of this Agenda Item Summary.

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A. GENERAL FUND

1. **Title: Manufacturing Equipment Use Tax Rebates**

Finance requests the appropriation of $291,518 to cover the amount due for the 2019 Manufacturing Equipment Use Tax Rebate program as established in Chapter 25, Article II, Division 5, of the Municipal Code. The rebate program was established to encourage investment in new manufacturing equipment by local firms. Vendors have until December 31st of the following year to file for the rebate. This item appropriates the use tax funds to cover the payment of the rebates.

   FROM: Prior Year Reserves (Manufacturing Use Tax Rebate) $291,518
   FOR: Manufacturing Use Tax Rebates $291,518

2. **Title: Northern Colorado Drug Task Force Rent**

Real Estate Services, part of the Operation Services Department, has a rental agreement with the Northern Colorado Drug Task Force (NCTDF). NCTDF pays $63,748 annually to Real Estate Services, and this revenue is used to pay the mortgage on the building.

   FROM: Additional Revenue (Building Rental) $63,748
   FOR: Building Mortgage $63,748

3. **Title: 212 West Mountain Avenue Insurance Payment for Water Damage**

Operation Services will be receiving an insurance payment for all costs associated with water damage at 212 West Mountain Avenue. This request is to appropriate those funds to cover the expenses of repairs from the water damage.

   FROM: Additional Revenue (Insurance Proceeds) $167,648
   FOR: Water Damage Repair $167,648
4. Parks’ Forestry Division is requesting appropriation of new revenues, as well as prior year reserves. The characteristics of the two funding sources are described below:

a. $32,550 - Forestry Unanticipated Revenue - This request appropriates various additional revenues for the Forestry Division in 2020. These funds will be used for tree plantings.

b. $1,350 - Forestry City Give Donations - This request appropriates the balance of City Give Reserves for Forestry from year end 2019. These funds will be used for tree plantings.

**TOTAL APPROPRIATION**

| FROM: Additional Revenue (Forestry Division) | $ 32,550 |
| FROM: Prior Year Reserves (City give Donations) | $ 1,350 |
| FOR: Tree Plantings | $ 33,900 |

5. Fort Collins Police Services (FCPS) has received additional revenue from various sources. A listing of these items follows:

a. $36,356 - Battle Grant 2020-2021 - The Beat Auto Theft Through Law Enforcement (BATTLE) Grant is a state funded grant for overtime for officers to reduce auto theft and bring those who steal automobiles to justice. This grant pays for overtime on a reimbursable basis. This grant also includes the expenses for the purchase and installation of an automatic license plate reader (ALPR).

b. $750 - Explorers Gift through City Give - The Police Explorers help with many tasks at Santa Cops, and as a thank you, Santa Cops has given a gift for the use of the Explorers.

c. $5,000 - 2020 Click It or Ticket Grant - In 2020, Police Services was awarded a Click it or Ticket Grant from the Colorado Department of Transportation to pay for officers to work overtime to conduct enforcement activities.

d. $19,061 - Police Reimbursement from City of Loveland for CRISP project software - As a part of the Colorado Regional Information Sharing Program (CRISP) upgrade project some additional software for Easy Street needed to be purchased for the City of Loveland. Based on the contracts and agreements in place, Loveland needed additional software, but the City of Fort Collins needed to make the purchase. The City of Loveland has reimbursed the City of Fort Collins for the purchase.

e. $11,745 - HVE Grant 2020-2021 - In 2020, Police Services was awarded a High Visibility Impaired Driving Enforcement grant from the Colorado Department of Transportation to pay for overtime for DUI enforcement during specific holiday time periods.

f. $66,580 - Miscellaneous Police Revenue - FCPS receives revenue from fees related to the costs of records requests along with other miscellaneous revenue.

g. $10,831 - Remittance from Larimer County Court - As a part of the City contribution to the Northern Colorado Drug Taskforce, any Drug Offender Surcharge, or Court Ordered Restitution that is remitted from Larimer County Court to Fort Collins Police, is then passed along to the NCDTF. Any additional restitution that is collected by FCPS is additionally passed along to the NCDTF.

h. $133,490 - Police Overtime Reimbursement - Police Services help schedule security and traffic control for large events. Since these events are staffed by officers outside of their normal duties, officers are paid overtime. The organization who requested officer presence is billed for the costs of the officers’ overtime. FCPS partners with Larimer County to staff events at The Ranch. Police receives reimbursement from Larimer County for officers’ hours worked at Ranch events.

**TOTAL APPROPRIATION**

| FROM: Additional Revenue (Grant) | $ 36,356 |
| FROM: Additional Revenue (City Give Donation) | $ 750 |
| FROM: Additional Revenue (Grant) | $ 5,000 |
| FROM: Additional Revenue (Reimbursement from City of Loveland) | $ 19,061 |
| FROM: Additional Revenue (Grant) | $ 11,745 |
| FROM: Additional Revenue (Miscellaneous Police Revenue) | $ 66,580 |
| FROM: Additional Revenue (Remittance from Larimer County Court) | $ 10,831 |
| FROM: Additional Revenue (Police Overtime Reimbursement) | $133,490 |
6. **Title: For Fort Collins Partnership**

   This is a contribution made through the Midtown Business Improvement District to support the For Fort Collins campaign. In response to the crippling impacts the Coronavirus and stay-at-home orders have had on our local business community, the Economic Health Office in partnership with CPIO, will implement a marketing and public relations campaign to encourage community members to support local, especially the most impacted industries.

   **FROM:** Additional Revenue (Midtown Business Improvement District)  $5,000
   **FOR:** ‘For Fort Collins’ Campaign to Encourage Local Business Support  $5,000

7. **Title: Radon Kits**

   Environmental Services sells radon test kits at cost as part of its program to reduce lung-cancer risk from in-home radon exposure. This appropriation would recover kit-sales for the purpose of restocking radon test kits.

   **FROM:** Additional Revenue (Radon Test Kit Sales)  $1,554
   **FOR:** Radon Test Kit Purchases  $1,554

8. **Title: Urban Sustainability Directors Network - Transforming Climate Planning and Practice Grant**

   In 2019, the City, along with 10 other U.S. cities, was awarded a grant from the Urban Sustainability Directors Network to develop a framework for how to transform climate planning and practice to be centered in equity. While the total grant is $89,500, per the award letter, the majority of the grant was to be paid directly to Arup and Movement Strategy Center for payment of their services for the project. This portion ($8,500) was awarded to the City to fund part of the City’s contractual position’s salary to advance this work through the remainder of 2020. The development of this framework is intended to scale to the over 220 cities and counties across U.S. and Canada who are members of USDN and who are centering their climate efforts in equity. This work is aligned with the City’s Our Climate Future efforts, the combined update to the Energy Policy, Road to Zero Waste, and Climate Action Plans.

   **FROM:** Additional Revenue (Grant)  $8,500
   **FOR:** Portion of Contractual Position to Develop Framework  $8,500

9. **Title: Municipal Industrial Waste Opportunities Analysis**

   Funds for the Municipal Industrial Waste Opportunities Analysis were allocated in 2019 after being recommended by the interdepartmental Waste Innovation Program, but the project would not be completed until 2020. With the restriction on PO carryforwards, we elected to have the allocation return to the reserves to be reallocated in 2020 once the project was completed. This Program has identified current reuse or recycle waste programs that could be at risk, but has also identified opportunities for additional reuse and recycling.

   **FROM:** Prior Year Reserves (Waste Innovation)  $29,155
   **FOR:** Waste Innovation Program  $29,155
10. **Title: Land Bank Operational Expenses**

This request is intended to cover expenses related to the land bank property maintenance needs for 2020. As expenses vary from year-to-year, funding is requested annually mid-year to cover these costs. Expenses for 2020 include general maintenance of properties, raw water and sewer expenses, electricity, and other as applicable.

<table>
<thead>
<tr>
<th>FROM: Prior Year Reserves (Land Bank)</th>
<th>FOR: Land Bank Expenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>$18,600</td>
<td>$18,600</td>
</tr>
</tbody>
</table>

11. **Title: Restorative Justice Services Additional Grant Funding**

Restorative Justice (RJ) Services received $7,800 in additional grant funds to add to an already active grant from CO Dept. of Public Safety, Division of Criminal Justice Juvenile Diversion grant # 2021-DV-21-30008-08. The grant will pay for additional hours for the half-time supervisor of Mediation and Restorative Justice to provide additional support for RJ programming. Providing RJ services virtually is requiring more than 100% more staff time than delivering in person services. This will add an additional 5 hours per week of the supervisor's time from October 2020 through June 2021.

<table>
<thead>
<tr>
<th>FROM: Additional Revenue (Grant)</th>
<th>FOR: Restorative Justice Services Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>$7,800</td>
<td>$7,800</td>
</tr>
</tbody>
</table>

12. **Title: 2020 DTS and Finance Charges**

This item is administrative in nature; it will not increase expenses to the City as expenses exist today. In past years, fees to finance and IT for support services provided to the Development Review Center were not properly classified as expenses to the Development Review Center, but rather as direct revenue from the customer. This practice was out of compliance with Generally Accepted Accounting Principles (GAAP). During 2020, journal entries have been posted monthly to ensure GAAP compliance for revenue/expense. As this was corrected during 2020, no expense budget was in existence for these items. These entries and the needed budget reflect no change in cash flows for the City. In 2021, the budget has been adjusted to ensure appropriate accounting standards are being followed for revenue recognition.

<table>
<thead>
<tr>
<th>FROM: Previously Acknowledged Additional Revenue (Development Review)</th>
<th>FOR: Development Review Center Expenses (IT Support)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$441,000</td>
<td>$350,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FOR: Development Review Center Expenses (Finance Support)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$91,000</td>
</tr>
</tbody>
</table>

13. **Title: Community Economic Development Support - Platte River Power Authority**

Since 1982, Platte River Power Authority (PRPA) has granted funds annually to support municipalities’ economic development efforts. This year, the City will receive $36,226. In accordance with PRPA Resolution No. 32-12, payments will be directed to help support the Small Business Capital Access Loan Program.

<table>
<thead>
<tr>
<th>FROM: Additional Revenue (Grant)</th>
<th>FOR: Small Business Capital Access Loan Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>$36,226</td>
<td>$36,226</td>
</tr>
</tbody>
</table>

**B. CAPITAL PROJECTS FUND**

1. **Title: Gardens on Spring Creek Capital Project donation through City Give**

The Gardens on Spring Creek received an additional $15,800 from the Friends of the Gardens on Spring Creek to help with remaining expenditures from the capital project to complete the Master Plan of the Gardens.

<table>
<thead>
<tr>
<th>FROM: Additional Revenue (City Give Donation)</th>
<th>$15,800</th>
</tr>
</thead>
</table>
Agenda Item 6

2. **Title: Engineering Payment In Lieu for Projects (see item #F4 for additional information)**

 Occasionally, when a development comes into the City, a major capital project is already planned along the development's Right of Way (ROW) frontage. Typically, in the City's process, the developer is required to put in amenities along the ROW (such as curb/gutter/sidewalk). When a major capital project is planned, instead of having the developer build their frontage, the City collects a Payment in Lieu (PIL) and applies that toward the Capital Project. This request appropriates PILs that have previously been collected for 2 projects: One along Laporte Ave and one at the major intersection of College and Trilby.

**FROM:** Transfer from Transportation Services Fund $23,650
**FOR:** College and Trilby Intersection $19,250
**FOR:** Laporte Ave $4,400

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C. **EQUIPMENT FUND**

1. **Title: State CNG vehicle and Electric Charging infrastructure Grants**

 This revenue is from the Alt Fuels Colorado ($330,376) and Charge Ahead ($17,211) grant programs administered by the State Energy Office and the Regional Air Quality Council. Alt Fuels Colorado provides 80% reimbursement on the incremental cost of Natural Gas vehicles, while the Charge Ahead provides infrastructure for vehicle charging stations.

**FROM:** Additional Revenue (Grants) $347,587
**FOR:** Natural Gas Vehicles & Charging Stations $347,587

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D. **KEEP FORT COLLINS GREAT FUND**

1. **Title: KFCG Reserve for Fire (PFA)**

 Requesting the Keep Fort Collins Great Reserve for Fire to pay for two FC911 Dispatch Consoles ($40,000) and for equipment (hydradisruptor pump, chain saw and accessories, and a Stearns ice suit) for the new Heavy Rescue Apparatus ($12,335).

**FROM:** Prior Year Reserves (Fire and Emergency Services) $52,335
**FOR:** Dispatch Consoles and Equipment $52,335

---

E. **TRANSIT SERVICES FUND**

1. **Title: Purchase of Cutaways Hardware to be reimbursed by CSU**

 Purchase of 3 Intelligent Vehicle Network (IVN) Retrofits from Clever Devices for Cutaway Buses. Hardware will provide ridership data for CSU. CSU has agreed to reimburse the City for this purchase.

**FROM:** Additional Revenue (CSU Reimbursement) $53,670
**FOR:** IVN Retrofits for Ridership Data $53,670

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F. **TRANSPORTATION SERVICES FUND**

1. **Title: FC Moves City Give FONDO Foundation Philanthropic donation**

 This is a donation from an organization who normally puts on an event every year to help benefit the Safe Routes to School (SRTS) program. Even though they were not able to put on their event this year, they were still able to raise and provide money to the City to help further the reach of the program. These
dollars go toward supplies and programming costs for the Safe Routes to School work that is done annually.

FROM: Unanticipated Revenue (City Give Donation) $1,843
FOR: Safe Routes to School Program $1,843

2. Title: Snow & Ice Removal

The 2020 snow budget has been consumed due to large snow storms in February and March. The total annual budget is $1.5 million and YTD spending is $1.9 million. Extremely cold temperatures require more deicer material to keep the roads safe, which drives up the cost of snow operations significantly. Ice cutting can be required due to the weather pattern where daytime thawing and nighttime freezing occur. Additional funding of $1.3 million is requested to provide snow removal services from September through December 2020.

FROM: Prior Year Reserves $1,300,000
FOR: Snow and Ice Removal $1,300,000

3. Title: 243 North College Sidewalk Improvements

The previous tenant of 243 North College Avenue never completed their obligated sidewalk improvement work. The City still held the cash escrow from the previous tenant. The building was sold and vacated before work was complete. With the new tenant moving in, additional work was required and the City partnered with the new tenant to complete the sidewalk improvements that were needed. The money the City used was from the prior tenant's escrow (which has already been recognized as revenue). Work was completed in the spring.

FROM: Additional Revenue (Forfeited Escrow) $3,656
FOR: Sidewalk Improvements $3,656

4. Title: Engineering Payment In Lieu for Projects (see item #B2 for additional information)

Occasionally, when a development comes into the City, a major capital project is already planned along the development’s Right of Way (ROW) frontage. Typically, in the City’s process, the developer is required to put in amenities along the ROW (such as curb/gutter/sidewalk). When a major capital project is planned, instead of having the developer build their frontage, the City collects a Payment in Lieu (PIL) and applies that toward the Capital Project. This request appropriates PILs that have previously been collected for two projects: One along Laporte Ave and one at the major intersection of College and Trilby.

FROM: Prior Year Reserves $23,650
FOR: Transfer to Capital Projects Fund $23,650

G. TRANSPORTATION CAPITAL EXPANSION FEE FUND

1. Title: Transportation Capital Expansion Developer Reimbursements (transfer to Non-lapsing)

The Transportation Capital Expansion Fee (TCEF) Program reimburses development for eligible improvements after they are constructed and accepted by the City. In the past, reimbursements were always budgeted in lapsing funds, but this did not adequately portray the financial position of the overall TCEF Fund. For major projects that are under construction, appropriating the estimated reimbursement amounts into non-lapsing business units ensures that the City accounts for the financial liability that has already been incurred.

FROM: Previously Appropriated Expenses (Lapsing Business Unit) $1,400,000
FOR: Transfer to Projects (Non-Lapsing Business Units in TCEF Fund) $1,400,000
FINANCIAL / ECONOMIC IMPACTS

This Ordinance increases total City 2020 appropriations by $3,210,653. Of that amount, this Ordinance increases General Fund 2020 appropriations by $1,388,462, including use of $340,623 in prior-year reserves. Funding for the total increase to City appropriations is $1,470,395 from unanticipated revenue, $1,716,608 from prior-year reserves, and $23,650 from transfers between Funds.

The following is a summary of the items requesting prior-year reserves:

<table>
<thead>
<tr>
<th>Item #</th>
<th>Fund</th>
<th>Use</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1</td>
<td>General</td>
<td>Manufacturing Equipment Use Tax Rebate</td>
<td>291,518</td>
</tr>
<tr>
<td>A4b</td>
<td>General</td>
<td>Forestry City Give Donations</td>
<td>1,350</td>
</tr>
<tr>
<td>A9</td>
<td>General</td>
<td>Municipal Industrial Waste Opportunities Analysis</td>
<td>29,155</td>
</tr>
<tr>
<td>A10</td>
<td>General</td>
<td>Land Bank Operational Expenses</td>
<td>18,600</td>
</tr>
<tr>
<td>D1</td>
<td>KFCG</td>
<td>KFCG Reserve for Fire</td>
<td>52,335</td>
</tr>
<tr>
<td>F2</td>
<td>Transportation Services</td>
<td>Snow &amp; Ice Removal</td>
<td>1,300,000</td>
</tr>
<tr>
<td>F4</td>
<td>Transportation Services</td>
<td>Engineering Payment In Lieu for Projects</td>
<td>23,650</td>
</tr>
</tbody>
</table>

**Total Use of Prior Year Reserves:** $1,716,608
ORDINANCE NO. 117, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING ADDITIONAL REVENUE
AND AUTHORIZING TRANSFERS OF APPROPRIATIONS
IN VARIOUS CITY FUNDS

WHEREAS, the City has received additional revenue this fiscal year; and

WHEREAS, the City has received additional and previously acknowledged revenue that has not been appropriated; and

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

WHEREAS, the City Manager is recommending the appropriations described herein and has determined that these appropriations are available and previously unappropriated from the Funds named within Section 2 of this Ordinance and will not cause the total amount appropriated in each Fund named within Section 2 of this Ordinance to exceed the current estimate of actual and anticipated revenues to be received in each such Fund during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of $1,400,000 from lapsing appropriations in the Transportation Capital Expansion Fee Fund to non-lapsing projects in the Transportation Capital Expansion Fee Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, the City Council finds and determines that the adoption of this Ordinance is necessary for the public’s health, safety and welfare and, therefore, wishes to authorize the expenditures described in this Ordinance.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
Section 2. That there is hereby appropriated from the following Funds the amounts of additional revenue set forth below to be expended for the purposes stated below.

A. **GENERAL FUND**

1. FROM: Additional Revenue (Building Rental) FOR: Building Mortgage
   - FROM: Additional Revenue (Building Rental) FOR: Building Mortgage
   - FROM: Additional Revenue (Insurance Proceeds) FOR: Water Damage Repair
   - FROM: Additional Revenue (Forestry Division) FOR: Tree Plantings
   - FROM: Additional Revenue (Grant) FOR: Police Overtime, Automatic License Plate Reader (ALPR)
   - FROM: Additional Revenue (City Give Donation) FOR: Police Explorers within Community and Special Services
   - FROM: Additional Revenue (Grant) FOR: Police Overtime for Seatbelt Enforcement
   - FROM: Additional Revenue (Reimbursement from City of Loveland) FOR: CRISP Project Software
   - FROM: Additional Revenue (Grant) FOR: Police Overtime for DUI Enforcement
   - FROM: Additional Revenue (Miscellaneous Police Revenue) FOR: Police Administration
   - FROM: Additional Revenue (Remittance from Larimer County Court) FOR: Northern Colorado Drug Task Force Contribution
   - FROM: Additional Revenue (Police Overtime Reimbursement) FOR: Police Services
   - FROM: Additional Revenue (Midtown Business Improvement District Contribution) FOR: “For Fort Collins” Campaign to Encourage Local Business Support

2. FROM: Additional Revenue (Building Rental) FOR: Building Mortgage
   - FROM: Additional Revenue (Insurance Proceeds) FOR: Water Damage Repair
   - FROM: Additional Revenue (Forestry Division) FOR: Tree Plantings
   - FROM: Additional Revenue (Grant) FOR: Police Overtime, Automatic License Plate Reader (ALPR)
   - FROM: Additional Revenue (City Give Donation) FOR: Police Explorers within Community and Special Services
   - FROM: Additional Revenue (Grant) FOR: Police Overtime for Seatbelt Enforcement
   - FROM: Additional Revenue (Reimbursement from City of Loveland) FOR: CRISP Project Software
   - FROM: Additional Revenue (Grant) FOR: Police Overtime for DUI Enforcement
   - FROM: Additional Revenue (Miscellaneous Police Revenue) FOR: Police Administration
   - FROM: Additional Revenue (Remittance from Larimer County Court) FOR: Northern Colorado Drug Task Force Contribution
   - FROM: Additional Revenue (Police Overtime Reimbursement) FOR: Police Services

3. FROM: Additional Revenue (Building Rental) FOR: Building Mortgage
   - FROM: Additional Revenue (Insurance Proceeds) FOR: Water Damage Repair
   - FROM: Additional Revenue (Forestry Division) FOR: Tree Plantings
   - FROM: Additional Revenue (Grant) FOR: Police Overtime, Automatic License Plate Reader (ALPR)
   - FROM: Additional Revenue (City Give Donation) FOR: Police Explorers within Community and Special Services
   - FROM: Additional Revenue (Grant) FOR: Police Overtime for Seatbelt Enforcement
   - FROM: Additional Revenue (Reimbursement from City of Loveland) FOR: CRISP Project Software
   - FROM: Additional Revenue (Grant) FOR: Police Overtime for DUI Enforcement
   - FROM: Additional Revenue (Miscellaneous Police Revenue) FOR: Police Administration
   - FROM: Additional Revenue (Remittance from Larimer County Court) FOR: Northern Colorado Drug Task Force Contribution
   - FROM: Additional Revenue (Police Overtime Reimbursement) FOR: Police Services

4. FROM: Additional Revenue (Building Rental) FOR: Building Mortgage
   - FROM: Additional Revenue (Insurance Proceeds) FOR: Water Damage Repair
   - FROM: Additional Revenue (Forestry Division) FOR: Tree Plantings
   - FROM: Additional Revenue (Grant) FOR: Police Overtime, Automatic License Plate Reader (ALPR)
   - FROM: Additional Revenue (City Give Donation) FOR: Police Explorers within Community and Special Services
   - FROM: Additional Revenue (Grant) FOR: Police Overtime for Seatbelt Enforcement
   - FROM: Additional Revenue (Reimbursement from City of Loveland) FOR: CRISP Project Software
   - FROM: Additional Revenue (Grant) FOR: Police Overtime for DUI Enforcement
   - FROM: Additional Revenue (Miscellaneous Police Revenue) FOR: Police Administration
   - FROM: Additional Revenue (Remittance from Larimer County Court) FOR: Northern Colorado Drug Task Force Contribution
   - FROM: Additional Revenue (Police Overtime Reimbursement) FOR: Police Services

5. FROM: Additional Revenue (Building Rental) FOR: Building Mortgage
   - FROM: Additional Revenue (Insurance Proceeds) FOR: Water Damage Repair
   - FROM: Additional Revenue (Forestry Division) FOR: Tree Plantings
   - FROM: Additional Revenue (Grant) FOR: Police Overtime, Automatic License Plate Reader (ALPR)
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   - FROM: Additional Revenue (Remittance from Larimer County Court) FOR: Northern Colorado Drug Task Force Contribution
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6. FROM: Additional Revenue (Building Rental) FOR: Building Mortgage
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-2-
FOR: Radon Test Kit Purchases $1,554

7. FROM: Additional Revenue (Grant) $8,500
   FOR: Portion of Contractual Position to Develop Framework to
   Transform Climate Planning and Practice to be Centered in Equity
   $8,500

8. FROM: Additional Revenue (Grant) $7,800
   FOR: Restorative Justice Services Program $7,800

9. FROM: Previously Acknowledged Additional Revenue (Development
   Review) $441,000
   FOR: Development Review Center Expenses (IT Support) $350,000
   FOR: Development Review Center Expenses (Finance Support) $91,000

10. FROM: Additional Revenue (Grant) $36,226
    FOR: Small Business Capital Access Loan Program $36,226

B. CAPITAL PROJECTS FUND

1. FROM: Additional Revenue (City Give Donations) $15,800
   FOR: Master Plan of the Gardens on Spring Creek $15,800

C. EQUIPMENT FUND

1. FROM: Additional Revenue (Grants) $347,587
   FOR: Natural Gas Vehicles & Charging Stations $347,587

D. TRANSIT SERVICES FUND

1. FROM: Additional Revenue (CSU Reimbursement) $53,670
   FOR: IVN Retrofits for Ridership Data $53,670

E. TRANSPORTATION SERVICES FUND

1. FROM: Additional Revenue (City Give Donation) $1,843
   FOR: Safe Routes to School Program $1,843

2. FROM: Additional Revenue (Forfeited Escrow) $3,656
   FOR: Sidewalk Improvements $3,656
F. TRANSPORTATION CAPITAL EXPANSION FEE FUND

1. FROM: Previously Appropriated Expenses (Lapsing Business Unit) $1,400,000
   FOR: Transfer to Projects (Non-Lapsing Business Units in TCEF Fund) $1,400,000

Introduced, considered favorably on first reading, and ordered published this 6th day of October, A.D. 2020, and to be presented for final passage on the 20th day of October, A.D. 2020.

_________________________________
Mayor

ATTEST:

_________________________________
City Clerk

Passed and adopted on final reading on the 20th day of October, A.D. 2020.

_________________________________
Mayor

ATTEST:

_________________________________
City Clerk
ORDINANCE NO. 118, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR-YEAR RESERVES
AND AUTHORIZING TRANSFERS OF APPROPRIATIONS IN VARIOUS CITY FUNDS

WHEREAS, the City has prior year-reserves available for appropriation; and

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

WHEREAS, the City Manager is recommending the appropriations described herein and has determined that these appropriations are available and previously unappropriated from the Funds named within Section 2 of this Ordinance and will not cause the total amount appropriated in each Fund named within Section 2 of this Ordinance to exceed the current estimate of actual and anticipated revenues to be received in each such Fund during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of $23,650 from the Transportation Services Fund to the Capital Projects Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, the City Council finds and determines that the adoption of this Ordinance is necessary for the public’s health, safety and welfare and, therefore, wishes to authorize the expenditures described in this Ordinance.

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

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

Section 2: That there is hereby appropriated from the following Funds the amounts of prior year reserves and authorized transfers set forth below to be expended for the purposes stated below.
### A. GENERAL FUND

1. **FROM:** Prior Year Reserves (Manufacturing Use Tax Rebate)  
   **FOR:** Manufacturing Use Tax Rebates  
   $291,518

2. **FROM:** Prior Year Reserves (City Give Donations)  
   **FOR:** Tree Plantings  
   $1,350

3. **FROM:** Prior Year Reserves (Waste Innovation)  
   **FOR:** Waste Innovation Program  
   $29,155

4. **FROM:** Prior Year Reserves (Land Bank)  
   **FOR:** Land Bank Expenses  
   $18,600

### B. CAPITAL PROJECTS FUND

1. **FROM:** Transfer from Transportation Services Fund  
   **FOR:** College Avenue and Trilby Road Intersection  
   $23,650
   **FOR:** Laporte Avenue  
   $4,400

### C. KEEP FORT COLLINS GREAT FUND

1. **FROM:** Prior Year Reserves (Fire and Emergency Services)  
   **FOR:** Dispatch Consoles and Equipment  
   $52,335

### D. TRANSPORTATION SERVICES FUND

1. **FROM:** Prior Year Reserves  
   **FOR:** Snow and Ice Removal  
   $1,300,000

2. **FROM:** Prior Year Reserves  
   **FOR:** Transfer to Capital Projects Fund  
   $23,650
Introduced, considered favorably on first reading, and ordered published this 6th day of October, A.D. 2020, and to be presented for final passage on the 20th day of October, A.D. 2020.

ATTEST:

_________________________________
Mayor

_____________________________
City Clerk

Passed and adopted on final reading on the 20th day of October, A.D. 2020.

ATTEST:

_________________________________
Mayor

_____________________________
City Clerk
AGENDA ITEM SUMMARY
City Council

October 6, 2020

STAFF

Marcy Yoder, Neighborhood Services Senior Manager
Bronwyn Scurlock, Legal

SUBJECT

Items Relating to Control of Animals.

EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 119, 2020, Amending Section 4-94 of the Code of the City of Fort Collins Regarding Animal Disturbance of Peace and Quiet.

B. First Reading of Ordinance No. 120, 2020, Amending Various Sections of Chapter 4 of the Code of the City of Fort Collins Regarding Dangerous and Vicious Animals.

The purpose of this item is to clarify existing City Code language to guide enforcement, prosecution and the Municipal Court regarding violations and penalties for animal disturbance and dangerous animals in the City.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

The City contracts with Larimer Humane Society (LHS) to provide animal protection and control services in Fort Collins. City and LHS staff determined that several City Code sections pertaining to animal noise disturbances and dangerous animals should be updated to reflect current enforcement practices and provide clarification.

Section 4-94 Animal Noise Disturbance

The proposed changes update the existing provisions to define unreasonable noise to include factors for officers to consider such as time of day, duration of noise, and noise level, and adds a provision to protect personal information of the reporting party when a warning is issued from being released until such time a citation is issued.

Section 4-96 Dangerous animals prohibited; permits; impoundment

This section was created in 2009 to give additional options for animal violations so not all aggressive animals would be required to be seized and destroyed as vicious animals. The following are the proposed changes:

- Align with state law to apply to those who have a property interest in such animals, not only persons who may be caring for or harboring the animal.

- It clarifies and simplifies permit conditions and registration requirements of a dangerous animal:
Agenda Item 7

- Clarifies for the court the requirement to order any person convicted to register their animal
- Specifies for law enforcement officers the requirements of a Temporary Dangerous Animal Permit
- Clarifies and expands the requirements of the animal owner for such permits in the interest of public safety
- Clarifies and directs the court regarding the conviction and requirements of sentencing and Permanent Dangerous Animal Permits
- Takes the Humane Society out of the position of having power to remove or change court ordered sentences and remands such actions back to the court
- Clarifies fees
- Specifies a limit on how many Dangerous Animal Permits may be issued to any person/household

Sec 4-97 Vicious Animals Prohibited

The proposed changes to this section align the City Code to state law and apply to those who have a property interest in such animals, not only to persons who may be caring for or harboring the animals.

Sec 4-139 Reclamation of certain animals restricted or prohibited

The proposed change is to remove the requirement that dangerous animals not be released while leaving the restriction that the court must order the animal released with conditions for “vicious” animals.

Sec 4-197 Additional Penalties or requirements for dangerous and vicious animals

The proposed changes to this section include the following:

- Clarification as to which section and violations these penalties and restrictions are to be applied
- Specifies the additional penalties and requirements for the court to order

PUBLIC OUTREACH

Public comment was not sought because the proposed changes are to align with state law and for clarification for better guidance for enforcement, prosecution, the public and the court.
ORDINANCE NO. 119, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 4-94 OF THE CODE OF THE CITY OF FORT COLLINS
REGARDING ANIMAL DISTURBANCE OF PEACE AND QUIET

WHEREAS, over the years, City staff has received numerous complaints regarding the enforceability of City Code Section 4-94 on animal disturbance of peace and quiet; and

WHEREAS, based upon those complaints, and after consulting with the animal control staff at the Larimer Humane Society, staff recommends modifying Section 4-94 to better guide enforcement, prosecution, the public and the Municipal Court in managing the problems created by barking dogs and other animal disturbances; and

WHEREAS, staff recommends modifying the definition of unreasonable noise to include factors to be taken into consideration such as time of day, duration of noise, and noise level when making a determination as to what constitutes unreasonable noise; and

WHEREAS, staff further recommends adding a provision stating a citation will only be issued in the event that the party complaining about noise signs an affidavit or verifies in writing the allegations of the complaint, to put the public on notice that this will be a requirement for enforcement; and

WHEREAS, the City Council has determined the recommended changes are in the best interests of the City and its residents.

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

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

Section 2. That Section 4-94 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 4-94. - Animal disturbance of peace and quiet prohibited.

(a) No owner or keeper of an animal shall permit such animal to make unreasonable noise or disturb the peace and quiet of any person by barking, whining, howling, yowling, squawking or making any other noise in an excessive, continuous or untimely fashion, whether the animal is on or off the owner’s premises.

(b) For purposes of this Section, unreasonable noise shall mean any sound of such level and duration as to be, or tend to be, injurious to human health or welfare, or which would unreasonably interfere with the enjoyment of life or property. The following factors shall be taken into consideration when determining unreasonable noise:
(1) time of day;
(2) duration of noise;
(3) noise level;
(4) any other factors tending to show the magnitude and/or disruptive effect of the noise.

(c) No person owner or keeper shall be deemed guilty of a violation of this Section unless the investigation of such violation was undertaken by the City because of a citizen complaint.

(d) If a complainant requests their identity remain confidential, such identity shall remain confidential to the extent permitted under the Criminal Justice Records Act until a citation for a violation of this Section is issued. A citation will only be issued if the complainant signs an affidavit attesting to the violation or otherwise verifies in writing the allegations of a complaint.

Introduced, considered favorably on first reading, and ordered published this 6th day of October, A.D. 2020, and to be presented for final passage on the 20th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:

______________________________
City Clerk

Passed and adopted on final reading on this 20th day of October, A.D. 2020.

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Mayor

ATTEST:

______________________________
City Clerk
ORDINANCE NO. 120, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING VARIOUS SECTIONS OF CHAPTER 4 OF THE CODE OF THE CITY OF FORT COLLINS REGARDING DANGEROUS AND VICIOUS ANIMALS

WHEREAS, over the years, City staff has received numerous complaints regarding the enforceability of the City Code provisions pertaining to dangerous and vicious animals; and

WHEREAS, based upon those complaints, and after consulting with the animal control staff at the Larimer Humane Society, staff recommends modifying such provisions to better guide enforcement, prosecution, the public and the Municipal Court in managing the problems created by dangerous and vicious animals; and

WHEREAS, staff recommends changes that would align such provisions with current state law and clarify and simplify permit conditions and registration requirements for a dangerous or vicious animal; and

WHEREAS, the City Council has determined the recommended changes are in the best interests of the City and its residents.

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

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

Section 2. That Section 4-96 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 4-96. Dangerous animals prohibited; permits; impoundment.

(a) It shall be unlawful for any person to own, possess, harbor, keep or maintain any dangerous animal within the City any animal for which a dangerous animal citation has been issued by an animal control officer unless a permit has been issued by the Humane Society or the Municipal Judge has issued a permit for such animal consistent with the provisions contained in Subsection (c) below. It shall also be unlawful for any person to fail to comply with the terms and conditions of any such permit or to fail to register a dangerous animal as required herein.

…

(c) Dangerous animal permit.

(1) It shall be unlawful for any person that owns, possesses, harbors, keeps or maintains a dangerous animal to fail to comply with the terms and conditions of any dangerous animal permit or to fail to register a dangerous animal as required herein.
(42) If an animal control officer has reasonable grounds to believe that an animal is dangerous, the animal control officer may issue a summons to the owner or keeper of such animal and, in his or her discretion, may also issue a permit temporarily allowing the continued keeping of the animal within the City pending disposition of the summons so long as the owner or keeper of the animal complies with the requirements set forth in the permit. Said requirements shall include any conditions necessary to ensure that no person or animal is injured by the dangerous animal. Permits shall only be issued for an individual animal. Temporary Permit requirements may shall include, but are not limited to, the following:

a. that the animal wear a special and conspicuous form of identification (such as a blaze orange collar);

b. that the owner or keeper provide the name(s) of the person(s) responsible for animal ownership, and the property location wherein the animal will be residing;

c. that the owner or keeper provide the names and addresses of two (2) additional persons who may be contacted to take responsibility in the case of emergency;

d. that the owner or keeper immediately notify the animal control officer in the event if the animal is loose and unconfined, has attacked or injured a human being or another animal, has been sold or given to another person or has died;

e. that the animal, while on the property of the owner or keeper, be confined indoors or in a securely enclosed and locked structure, suitable to prevent the entry of children and designed to prevent the animal from escaping;

1. confined within a residence and under the control of a person over the age of eighteen (18) years; and

2. when outdoors:

   a) confined in a locked pen or other structure that provides the animal with adequate protection from the elements and that is located at least three (3) feet from any property line and at least fifteen (15) feet from any neighboring dwelling unit, that has secure sides and a secure top and either a floor made of concrete or other impervious surface or, in the absence of such a floor, sides imbedded in the ground to a minimum depth of one (1) foot; or

   b) under the control of a person over the age of eighteen (18) years and securely muzzled and harnessed or leashed on a lead.
not exceeding six (6) feet in length in a manner that prevents the animal from chasing, injuring or biting other animals or humans, as well as preventing damage to public or private property;

def. that the owner or keeper display one (1) or more signs approved or issued by the Humane Society on the owner's property which provide a clear warning that a dangerous animal is present on the property;

e.g. that, while off the owner's or keeper's property, the animal be muzzled, restrained in a particular manner, or both, and be under the control of an adult; is under the control of a person over the age of eighteen (18) years, securely muzzled, and

1. confined within a residence or a locked pen or other structure that meets the requirements of subparagraph e.2.a) above or a locked vehicle; or

2. harnessed or leashed on a lead not exceeding six (6) feet in length in a manner that prevents the animal from chasing, injuring or biting other animals or humans, as well as preventing damage to public or private property; and

f. that the owner attend one (1) or more educational classes on the responsible keeping of dangerous animals; and

gh. that, upon request, the owner or keeper make the animal available for inspection by the animal control officer.

(23) Temporary dangerous animal permits may be made permanent, modified or rescinded only upon order of the court upon disposition of the summons issued. In making such determination, the court may receive evidence from the owner or keeper and the complainant, the animal control officer, a veterinarian, a licensed animal trainer, a Humane Society agent and any person having personal knowledge of the animal's condition. If the court finds that the animal is dangerous but decides that certain requirements set out in the temporary permit are not necessary for the protection of the public and other animals, the court may delete or modify those requirements.

If the court finds that the animal is dangerous and does not order the animal destroyed, the court shall order the animal be registered with a Dangerous Animal Permit and comply with all permit requirements, in addition to any other requirements ordered by the court in accordance with § 4-197 of this Code.

(34) If the owner or keeper of an animal that is the subject of a dangerous animal citation has not been issued a permit to retain the animal under Paragraph (4) of this Section, or if such person fails to comply with any of the requirements imposed under a temporary permit issued under this Section, or if such animal is found at large,
the Humane Society is authorized to impound the animal at the owner’s or keeper’s expense until final disposition of any summons issued.

(45) If the owner of an animal determined by the court to be dangerous who believes that the animal is no longer dangerous or that certain requirements set out in the permit for the animal are no longer necessary for the protection of the public or other animals, the owner may request that the Humane Society rescind the determination that the animal is a dangerous animal or delete or modify those permit requirements; provided, however, that no such request may be made within the first twelve (12) months following the initial determination that the animal is dangerous. After a period of thirty-six (36) consecutive months, and with no further violations of any provisions of this Chapter 4, the registered owner or keeper may make a written request to the court to be released from the requirements of this Section, which the court may grant upon finding that the conditions of the permit have been satisfied for the requisite period. In reviewing the request, the Humane Society court may require the owner to produce the animal for inspection and allow an animal control officer to observe the animal in its natural surroundings, and to submit information pertinent to the dangerousness of the animal. If the Humane Society court determines that the animal still constitutes a dangerous animal but that certain requirements contained in the permit are no longer necessary, the Humane Society court may delete those conditions from the permit or modify them.

(6) Any person to whom a dangerous animal permit has been issued, or who requests that such a permit be modified or rescinded under the provisions of this Section, shall pay a fee to the Humane Society in an amount sufficient to cover the estimated costs of issuing, modifying or rescinding such permit, as applicable. The amount of such fee and the time of payment shall be determined by the Humane Society and are in addition to any other fees authorized under this chapter.

(7) No person or dwelling unit or premises shall be issued more than two (2) dangerous animal permits at any time.

Section 3. That Section 4-97 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 4-97 Vicious animals prohibited.

(a) No person shall own, possess, harbor, keep or maintain within the City any vicious animal except as authorized by the Municipal Judge under Paragraph 4-197(6) of this Chapter. If an animal control officer has reasonable grounds to believe that an animal is vicious, such animal shall be impounded and kept by the Humane Society, at the owner’s or keeper’s expense, until final disposition of the citation issued to the owner or keeper for a violation of this Subsection.

...
Section 4. That Section 139 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 4-139. - Reclamation of certain animals restricted or prohibited.

The following restrictions or prohibitions shall apply to the reclamation of the following impounded animals:

(1) Animals that have been declared vicious or dangerous may not be reclaimed unless and until the court orders the animal released under conditions consistent with Subsection § 4-197(b);

...
c. that the owner or keeper provide the name(s) of the person(s) responsible for animal ownership, and the address of the property location where the animal will be kept;

d. that the owner or keeper provide the names and addresses of two (2) additional persons who may be contacted to take responsibility in the case of emergency;

e. that the owner or keeper shall immediately notify the Humane Society if the animal is loose and unconfined, has attacked or injured a person or another animal, or has died;

f. that the owner or keeper shall immediately notify the Humane Society if the animal has been moved from the last reported location, has been stolen, or has been sold or given to another person, and provide any pertinent information requested;

g. that the animal, while on the property of the owner or keeper, be:

1. confined within a residence and under the control of a person over the age of eighteen (18) years; and

2. when outdoors;

   a) confined in a locked pen or other structure that provides the animal with adequate protection from the elements and that is located at least three (3) feet from any property line and at least fifteen (15) feet from any neighboring dwelling unit, that has secure sides and a secure top and either a floor made of concrete or other impervious surface or, in the absence of such a floor, sides imbedded in the ground to a minimum depth of one (1) foot; or

   b) under the control of a person over the age of eighteen (18) years and securely muzzled and harnessed or leashed on a lead not exceeding six (6) feet in length in a manner that prevents the animal from chasing, injuring or biting other animals or humans, as well as preventing damage to public or private property;

h. that the owner or keeper display one (1) or more signs approved or issued by the Larimer Humane Society on the owner’s property which provides a clear warning that a dangerous animal is present on the property; and

i. that, while off the owner’s or keeper’s property, the animal is under the control of a person over the age of eighteen (18) years, securely muzzled, and
1. confined within a residence or a locked pen or other structure that meets the requirements of subparagraph (2)(a) above or a locked vehicle; or

2. harnessed or leashed on a lead not exceeding six (6) feet in length in a manner that prevents the animal from chasing, injuring or biting other animals or humans, as well as preventing damage to public or private property;

j. that the owner or keeper have a licensed veterinarian implant an electronic identification microchip in the animal and provide the information contained in the microchip to the Larimer Humane Society;

k. that the animal be spayed or neutered within ten days of the Dangerous Animal Permit being made permanent, and documentation provided to the Larimer Humane Society; and

l. that, upon request, the owner or keeper make the animal available for inspection by the animal control officer; and,

m. that the owner or keeper renew each dangerous permit annually, until such time that the animal identified in the permit is no longer in their possession, or is no longer a dangerous animal as determined by the Court.

(b) In addition to the penalties provided in § 1-15, the Municipal Judge may order any animal determined to be dangerous or vicious destroyed by the Humane Society or, if not destroyed, made subject to any such additional conditions the Municipal Judge deems necessary to protect the public and other animals. Such conditions may include, but are not limited to, requirements that the owner or keeper of the animal shall:

(1) within ten (10) days after sentencing, spay or neuter the animal if not already done; attend one (1) or more educational classes on the responsible keeping of dangerous animals or animal training classes or courses;

(2) have a licensed veterinarian implant an electronic identification microchip in the animal and provide the information contained in the microchip to the Humane Society;

(3) notify the Humane Society when the animal is sold, gifted or transferred to another person, in which event the owner shall remain liable for the actions of the animal until formal notification of sale, gift or transfer is given to the Humane Society; ensure that such animal does not damage or destroy public or private property;

(4) not have any animal further violations of this Chapter 4.
(5) ensure that such animal does not damage or destroy public or private property;

(6) notify the Humane Society immediately if the animal is running at large;

(7) ensure that, when such animal is on the property of the owner, such animal is:

   a. confined within a residence and under the control of a person over the age of eighteen (18) years; or

   b. when outdoors:

      1. confined in a locked pen or other structure that provides the animal with adequate protection from the elements and that is located at least three (3) feet from any property line and at least fifteen (15) feet from any neighboring dwelling unit, that has secure sides and a secure top and either a floor made of concrete or other impervious surface or, in the absence of such a floor, sides imbedded in the ground to a minimum depth of one (1) foot; or

      2. under the control of a person over the age of eighteen (18) years and securely muzzled and harnessed or leashed on a lead not exceeding six (6) feet in length in a manner that prevents the animal from chasing, injuring or biting other animals or humans, as well as preventing damage to public or private property.

(8) ensure that, when such animal is off the property of the owner, it is under the control of a person over the age of eighteen (18) years, securely muzzled and:

   a. confined within a residence or a locked pen or other structure that meets the requirements of Subparagraph (7)a.1. above or a locked vehicle; or

   b. harnessed or leashed on a lead not exceeding six (6) feet in length in a manner that prevents the animal from chasing, injuring or biting other animals or humans, as well as preventing damage to public or private property;

(9) post and maintain signs issued or approved by the Humane Society placed at each entrance to the premises where the animal is kept and on the pen or other structure in which the animal is confined; and

(10) agree that failure to comply with any of the conditions shall result in surrender of the animal and impoundment, at the owner’s or keeper’s expense, by the Humane Society for disposition, which disposition may include euthanasia, without further notice or hearing.
Introduced, considered favorably on first reading, and ordered published this 6th day of October, A.D. 2020, and to be presented for final passage on the 20th day of October, A.D. 2020.

______________________________
Mayor

ATTEST:

______________________________
City Clerk

Passed and adopted on final reading on this 20th day of October, A.D. 2020.

______________________________
Mayor

ATTEST:

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City Clerk
AGENDA ITEM SUMMARY
City Council

October 6, 2020

STAFF

Delynn Coldiron, City Clerk
Carrie Daggett, City Attorney

SUBJECT

First Reading of Ordinance No. 121, 2020, Amending the Code of the City of Fort Collins to Correct an Error in Section 7-134 Relating to the Registration of Committees During Election Campaigns.

EXECUTIVE SUMMARY

The purpose of this item is to correct a long-standing error in Section 7-134 relating to the registration of committees prior to accepting any contributions or making any expenditures.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

In November 2000, Council established local election campaign provisions, which were patterned after the language of the Colorado Fair Campaign Practices Act at that time.

One of the local provisions enacted relates to the timely registration of various types of committees engaging in election campaigns. At the time of enactment of the local provision, a typographical error was made, which error still remains in the City Code today.

This Ordinance, if adopted, will correct the error so that it makes clear that committees engaging in election campaign activities must register prior to accepting any contributions or making any expenditures. The current language reads, "…prior to accepting any contributions or making any contributions."

Other provisions of the City Code make it clear that committees are prohibited from making contributions.
ORDINANCE NO. 121, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE CODE OF THE CITY OF FORT COLLINS
TO CORRECT AN ERROR IN SECTION 7-134 RELATING
TO THE REGISTRATION OF COMMITTEES DURING ELECTION CAMPAIGNS

WHEREAS, on November 21, 2000, the City Council adopted Ordinance No. 162, 2000, establishing local election campaign provisions as Article V of Chapter 7 of the City Code; and

WHEREAS, at the time of adoption of Ordinance No. 162, 2000, the local provisions were patterned after the provisions of the Fair Campaign Practices Act; and

WHEREAS, one of the local provisions enacted relates to the timely registration of various types of committees engaging in election campaigns; and

WHEREAS, said provision, currently contained in Section 7-134 of the City Code, contained a typographical error at the time of enactment, which error still remains in the City Code today; and

WHEREAS, the Council believes that the interests of the public are best served by correcting said error.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the first paragraph of Section 7-134(a) is amended to read as follows:

Sec. 7-134. Registration of committees; termination.

(a) All candidate committees, political committees and issue committees shall register with the City Clerk before accepting or making any contributions or making any expenditures. Registration must be on a form provided by the City Clerk and must include the following, together with any other information required to complete the registration form.

...
Introduced, considered favorably on first reading, and ordered published this 6th day of October, A.D., 2020, and to be presented for final passage on the 20th day of October, A.D. 2020.

Mayor

ATTEST:

_____________________________
City Clerk

Passed and adopted on final reading on this 20th day of October, A.D. 2020.

Mayor

ATTEST:

_____________________________
City Clerk
AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
City Council

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City Council

AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
City Council

STAFF
Noah Beals, Senior City Planner/Zoning
Clark Mapes, City Planner
Brad Yatabe, Legal

SUBJECT
Public Hearing and First Reading of Ordinance No. 122, 2020 Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification of that Certain Property Known as the Fischer Rezoning.

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

The purpose of this item is to amend the City’s Zoning Map to change the zoning designation on two existing single family residential properties, 1185 and 1201 Westward Drive, from RL, Low Density Residential, to NCB, Neighborhood Conservation Buffer. 1185 Westward abuts the single family property at the southwest corner of Shields Street and Westward Drive, and 1201 abuts 1185. The rezoning would merge the two properties into a larger NCB-zoned area along South Shields Street that abuts the properties on two sides.

The rezoning request is subject to the criteria in Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Board, which voted 4-2 to recommend approval of the request with one condition as recommended in the staff report with agreement from the petitioner.

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

BACKGROUND / DISCUSSION

PURPOSE OF THE REZONING REQUEST

The purpose of the petitioner’s request is to enable the two subject lots to be assembled with two other abutting properties that are currently zoned NCB and owned by the petitioner. The rezoning and potential subsequent assembly of these properties would make redevelopment for multifamily housing more viable on the assembled properties.

OVERVIEW OF MAIN CONSIDERATIONS

The Planning and Zoning Board Staff Report details the main considerations in this request. (Attachment 1)

Rezonings are governed by five criteria in Land Use Code Subsection 2.9.4(H)(2) and (3). They can be paraphrased as 1) ‘consistent with the comprehensive plan’; 2) ‘warranted by changed conditions’; 3) ‘compatible with surrounding uses’; 4) ‘impacts to the natural environment’; and 5) ‘a logical and orderly development pattern’.

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Agenda Item 9

Staff finds that the most pertinent criterion in this case is consistency with the Comprehensive Plan (City Plan) and that the Fischer Rezoning is consistent with City Plan. The Comprehensive Plan includes the West Central Area Plan as a related element of City Plan and the two plans work in conjunction to guide land use and change in the area.

Policies in these documents recognize the tension and balance between maintaining existing character of stable, established single family neighborhoods, and recognizing the continuum of change and urban evolution with infill and redevelopment in appropriate locations. After considering the body of policy direction, the primary consideration staff finds to tip the balance in staff’s recommendation is the concluding sentence on page 23 of the West Central Area Plan under the heading of Vacant and Under-Utilized Parcels: “Collaboration with surrounding neighbors is expected to result in land uses that are appropriate with a design that is sensitive to the surrounding context.”

Accordingly, the most prominent consideration in staff’s review of the proposal was the neighborhood meeting. The primary topic at that meeting was attendee concerns about parking in the neighborhood generally, and their appreciation of strong statements by the petitioner about a commitment to provide a parking space for every bedroom if a multi-family redevelopment project is ever brought forward under the requested NCB zoning.

The petitioner stated that if the rezoning is approved, he plans to be the developer of a multi-family housing project, and the main reason for requesting the rezoning is to enable more space for generous parking. Assembly of the properties would also enable alternative access other than Shields Street, which would be a goal of the City due to the evolution of Shields as a high-volume arterial.

There was no opposition at the meeting to the rezoning proposal, largely based on the parking commitment of one space per bedroom. In addition, the petitioner is not guaranteed to be the developer but the parking commitment is a condition in staff’s recommendation of approval.

Staff’s understanding is that all of the adjoining and facing single family houses have been rental properties for many years and has heard no opposition from owners or tenants of those properties.

In addition to finding the Fischer Rezoning is consistent with the comprehensive plan, staff also finds that the rezoning is warranted by changed conditions, compatible with surrounding uses, and is a logical and orderly development pattern. The Planning and Zoning Board staff report explains these findings on pages 5-11.

PLANNING BACKGROUND AND CONTEXT

1201 Westward is part of the 1955 Western Heights subdivision, and 1185 Westward is on an older unplatted parcel, as are the residential properties that face Shields in the NCB zone. The properties along Shields were developed as large residential properties generally ranging in size from about ½-acre to over an acre, outside City Limits in the early 1900’s.

NCB zoning was placed on properties along Shields as part of implementing the 1999 West Central Area Plan (WCAP). The WCAP was updated in 2015.

The four parcels under unified ownership wrap around the property at the southwest corner of Westward Drive and Shields Street. The proposal would extend the western boundary of NCB zoning straight northward to incorporate the two subject properties. The current NCB zone boundary did not originally include these two parcels so that facing houses on both sides of Westward Drive are in the RL zone.

CONDITION

Land Use Code Section 2.9.4(I) allows conditions to be imposed upon rezonings. Based upon neighborhood concerns over parking congestion in the area if the properties subject to rezoning are redeveloped, a recommended condition of the rezoning is that at least one parking space be provided for each bedroom if one
or both of the lots being rezoned are redeveloped for residential use. Staff considers this condition to be appropriate for the reasons stated in this AIS and the Planning and Zoning Board Staff Report, and the Planning and Zoning Board recommended approval of the rezoning with the condition. Because this condition will be incorporated into the zoning for this property, it will limit future flexibility in regulating the property with regards to minimum parking requirements. The owner of the properties subject to the Fischer Rezoning has consented to the condition.

CITY FINANCIAL IMPACTS

There are no direct financial impacts associated with the requested zoning.

BOARD / COMMISSION RECOMMENDATION

At its August 20, 2020, Planning and Zoning Board meeting, the Board recommended that Council approve the Fischer Rezoning on a 4-2 vote. The two members who did not support the proposal spoke about appropriateness of the existing RL zoning on the existing single-family properties proposed to be rezoned. A related point was that the loss of the two houses would reduce the supply of housing for families. A second point discussed as being contrary to the proposal was the contradiction in the recommended condition to require more parking in potential future redevelopment than standard requirements—the area is within the Transit Oriented Overlay District which allows for reduced parking requirements based on proximity to convenient transit and CSU.

Members supporting the proposal acknowledged the change that has occurred in the area, appropriateness of extending the NCB zoning line, and the recommended parking condition being a result of collaboration with neighbors. (Attachment 2)

PUBLIC OUTREACH

A neighborhood meeting was held on February 10, 2020. Eight neighbors were in attendance. Discussion of the proposed rezoning centered on increased parking demand if the two houses were redeveloped as multi-family housing. One other topic of discussion was existing traffic on Shields Street and difficulties of left turns in this stretch. (Attachment 3)

A similar conceptual plan was considered in the spring of 2017 including a neighborhood meeting with 26 people in attendance. Notes from that meeting are also attached because they are similar and relevant to the current proposal. The neighborhood concerns were essentially the same, i.e., increased parking and traffic associated with more people residing in the neighborhood. (Attachment 4)

ATTACHMENTS

1. Development Review Staff Report  (PDF)
2. Board Minutes, August 20, 2020  (PDF)
3. Neighborhood Meeting Notes - February 2020  (PDF)
4. Neighborhood Meeting Notes - 2017(PDF)
Summary of Request

This is a request to rezone two existing single family residential properties, 1185 and 1201 Westward Drive, from RL, Low Density Residential, to NCB, Neighborhood Conservation Buffer. The purpose behind the request is to enable the lots to be assembled with other abutting property to the south that is zoned NCB and is under the same ownership. The rezoning and subsequent assembly of these parcels would make the redevelopment of multifamily housing on the property to the south more viable.

Zoning Map

Next Steps

At the Planning and Zoning Board hearing, the Board will make a recommendation to City Council. City Council would then consider a rezoning Ordinance.

Site Location

1185 and 1201 Westward Drive, across Shields Street from CSU. These are adjoining properties located between Shields and Del Mar Streets, on the west side of Shields separated from Shields by one lot.

Petitioner

Erik Fischer
125 S. Howes St.
Fort Collins, CO 80521

Owners

Erik Fischer
125 S. Howes St.
Fort Collins, CO 80521

Bruce A. Hotman
1185 Westward Dr.
Fort Collins, CO, 80521

Staff

Clark Mapes, City Planner

Contents

1. Project Introduction................................. 2
2. Public Outreach ..................................... 3
3. Article 2 – Applicable Standards .............. 4
4. Article 3 - Applicable Standards............... 5
5. Article 4 – Applicable Standards:....... Error!

Recommendation

Approval with one condition.
1. Project Introduction

A. PROJECT DESCRIPTION

The proposed rezoning would enable an assembly of four parcels under the ownership of the petitioners. The four parcels wrap around the property at the corner of Westward Drive and Shields Street, which is zoned NCB. The proposal would extend a portion of the western boundary of NCB zoning straight northward to incorporate the two subject properties, which are currently zoned RL. The boundary of the NCB zoning did not originally include these two parcels in order to keep facing houses on both sides of Westward Drive in the RL zone.

B. BACKGROUND & CONTEXT

1201 Westward is part of the 1955 Western Heights subdivision, and 1185 Westward is an older unplatted parcel, as are the residential properties that face Shields in the NCB zone.

1. Surrounding Zoning and Land Use

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<thead>
<tr>
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<th>North</th>
<th>South</th>
<th>East</th>
<th>West</th>
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<tbody>
<tr>
<td>Zoning</td>
<td>Low Density Residential (RL)</td>
<td>Neighborhood Conservation Buffer (NCB)</td>
<td>Neighborhood Conservation Buffer (NCB)</td>
<td>Neighborhood Conservation Buffer (NCB)</td>
</tr>
<tr>
<td>Land</td>
<td>Single family houses</td>
<td>Single family houses</td>
<td>Single family houses</td>
<td>Single family houses</td>
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</table>

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C. OVERVIEW OF MAIN CONSIDERATIONS

Five criteria govern the review and findings on rezonings. They can be paraphrased as ‘consistent with the comprehensive plan’; ‘warranted by changed conditions’; ‘compatible with surrounding uses’; ‘impacts to the natural environment’; and ‘a logical and orderly development pattern’.

These criteria are explained and evaluated in the staff analysis section of this report. Staff finds that the most pertinent criterion in this case is consistency with the Comprehensive Plan. Pertinent Comprehensive Plan documents are City Plan and the West Central Area Plan, which is a related element of City Plan.

Policies in those documents recognize the tension and balance between maintaining existing character of stable, established neighborhoods, and allowing for change with infill and redevelopment in appropriate locations. After considering the body of policy direction, the primary consideration staff finds to tip the balance in staff’s recommendation is the concluding sentence on page 23 of the West Central Area Plan under the heading Vacant and Under-Utilized Parcels: “Collaboration with surrounding neighbors is expected to result in land uses that are appropriate with a design that is sensitive to the surrounding context.”

Accordingly, the most prominent consideration in staff review of the proposal was the neighborhood meeting. The primary focus at that meeting was attendees’ appreciation of strong statements by the petitioner about their intent. The petitioner stated that if the rezoning is approved, he would be the developer of a multi-family housing project, and that his main reason for requesting the rezoning was to allow space for one parking stall per bedroom (which exceeds standard Land Use Code requirements for multi-bedroom units). There was no opposition at the meeting to the rezoning proposal, largely based on this commitment.

There is no way to assure that the petitioner would be the developer, but the parking commitment is a condition in staff's recommendation of approval.

Staff’s understanding is that all of the adjoining and facing single family houses have been rental houses for some time, and has heard no concerns from owners or tenants of those properties.
2. Public Outreach

A. NEIGHBORHOOD MEETING

Neighborhood meeting notes are attached. The petitioner explained a long personal history in the neighborhood, and his family’s intent to redevelop the subject parcels, along with another adjoining parcel abutting on the west in the RL zone, accessed from Del Mar Street. That parcel would remain in RL zoning and be developed as single family houses.

As previously noted, parking on the streets in the neighborhood was the top issue of discussion, focused on heavy use of street parking. Other topics included the petitioner’s vision and intent, and traffic and left turn conflicts on Shields, which were generally noted as existing challenges.

B. PUBLIC COMMENTS:

No public contacts have been received.

3. Land Use Code Article 2 Procedural Standards

A. PROCEDURAL OVERVIEW

1. Conceptual Review - CDR190012

   A conceptual review meeting was held on December 12, 2019.

2. Petition – REZ200001

   The petition was received on February 26, 2020.

3. Neighborhood Meeting

   A neighborhood meeting was held on February 10, 2020, at Plymouth Congregational Church on West Prospect Road.

4. Notice (Posted, Written and Published)

   Posted Notice: January 28, 2020, Sign # 529

   Written Hearing Notice: April 2, 2020, 425 addresses mailed.

   Published Hearing Notice: April 2, 2020, Coloradoan Confirmation #0003922474
4. Article 2 – Rezoning Standards

A. DIVISION 2.9 – AMENDMENT TO ZONING MAP

<table>
<thead>
<tr>
<th>Applicable Code Standard</th>
<th>Summary of Code Requirement and Analysis</th>
<th>Staff Findings</th>
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<tbody>
<tr>
<td>2.9.4 – Map Amendment Review Procedures</td>
<td>This one Code Section enables City Council to approve a change to the zoning map after receiving a recommendation from the Planning and Zoning Board; and contains the applicable standards governing rezoning of property, as follows: “Any amendment to the Zoning Map involving the rezoning of land shall be recommended for approval by the Planning and Zoning Board or approved by the City Council only if the proposed amendment is:</td>
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<td>• Consistent with the City’s Comprehensive Plan; and/or</td>
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<td>• Warranted by changed conditions within the neighborhood surrounding and including the subject property.</td>
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<td>Additional considerations for rezoning parcels less than 640 acres (quasi-judicial):</td>
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<td>• Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land.</td>
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<td>• Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.</td>
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<td>• Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.</td>
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<td>Petitioners’ Justification: The petitioners’ justification is attached and addresses these criteria in detail.</td>
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<td>Staff Analysis: Staff analysis follows, for each of these criteria.</td>
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Staff Analysis: Is the proposed rezoning “Consistent with the City’s Comprehensive Plan”? |

City Plan: |

City Plan principles and policies juxtapose issues related to maintaining our unique character and sense of place; and issues related to promoting infill and redevelopment as the approach to managing growth. |

For example, Principle LIV 2 on page 40, “Promote infill and redevelopment”, is followed on page 41 with Principle LIV 3, “Maintain and enhance our unique character and sense of place as the community grows.” |

While these two principles may reflect different perspectives, staff finds no tension or conflict in the policies under these principles. Pertinent excerpts are: |

“Policy LIV 2.1 - REVITALIZATION OF UNDERUTILIZED PROPERTIES” |

Support the use of creative strategies to revitalize vacant, blighted or otherwise underutilized structures and buildings, including, but not limited to: |

…Voluntary consolidation and assemblage of properties to coordinate the redevelopment of blocks or segments of corridors where individual property configurations would otherwise limit redevelopment potential.” |

Complies
### Applicable Code Standard

<table>
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<tr>
<th>Summary of Code Requirement and Analysis</th>
<th>Staff Findings</th>
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<tr>
<td><strong>Policy LIV 2.3 - TRANSIT-ORIENTED DEVELOPMENT.</strong>&lt;br&gt; Require higher-density housing and mixed-use development in locations that are currently, or will be, served by BRT and/or high-frequency transit in the future as infill and redevelopment occurs. Promote a variety of housing options for all income levels.”</td>
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<td>The assemblage of property that would be enabled would be consistent with these two policies.</td>
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<td>A policy under Principle LIV 3 is related, but reflects more of a perspective of evolutionary change:</td>
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<td><strong>“Policy LIV 3.4 - DESIGN STANDARDS AND GUIDELINES.</strong>&lt;br&gt; Maintain a robust set of citywide design standards as part of the City’s Land Use Code to ensure a flexible, yet predictable, level of quality for future development that advances the community’s sustainability goals, e.g., climate action. Continue to develop and adopt location-specific standards or guidelines where unique characteristics exist to promote the compatibility of infill redevelopment.”</td>
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<td>The Land Use Code contains standards to implement local goals for compatibility.</td>
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<td>The next page 42 in City Plan juxtaposes Principle LIV 4 “Enhance neighborhood livability”, with Principle LIV 5, “Create more opportunities for housing choices.”</td>
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<td>Again, these principles could be interpreted differently from different perspectives. For some, “enhancing neighborhood livability” could mean limiting and slowing growth and change; while “create more opportunities for housing choices” reflects a whole approach in City Plan to allowing for growth and change.</td>
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<td>With that acknowledgment, staff finds no tension or conflict in the policies under these two principles. Following are some relevant excerpts:</td>
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<td><strong>“Policy LIV 4.2 - COMPATIBILITY OF ADJACENT DEVELOPMENT</strong>&lt;br&gt; Ensure that development that occurs in adjacent districts complements and enhances the positive qualities of existing neighborhoods. Developments that share a property line and/or street frontage with an existing neighborhood should promote compatibility by:</td>
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<td>Continuing established block patterns and streets to improve access to services and amenities from the adjacent neighborhood;</td>
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<td>Incorporating context-sensitive buildings and site features (e.g., similar size, scale and materials); and</td>
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<td>Locating parking and service areas where impacts on existing neighborhoods—such as noise and traffic—will be minimized.”</td>
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<tr>
<td>The assemblage of property that would be enabled would allow for redevelopment of multi-family housing, which would have to comply with Land Use Code requirements addressing these topics. In a Conceptual Review planning discussion, good opportunities were apparent for additional connectivity through the 10-acre block; shaping compatible building programming and design; and landscape buffers.</td>
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<tr>
<td>Applicable Code Standard</td>
<td>Summary of Code Requirement and Analysis</td>
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<td>Policies under Principle LIV 5 reflect a perspective of expanding housing to accommodate the continuum of growth and change:</td>
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<td><strong>Policy LIV 5.1 - HOUSING OPTIONS</strong></td>
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<td>To enhance community health and livability, encourage a variety of housing types and densities, including mixed-used developments that are well served by public transportation and close to employment centers, shopping, services and amenities.</td>
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<td><strong>Policy LIV 5.3 - LAND FOR RESIDENTIAL DEVELOPMENT</strong></td>
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<td>Use density requirements to maximize the use of land for residential development to positively influence housing supply and expand housing choice.</td>
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<td>Another housing policy, on the following page 43, recognizes student housing. The petitioners have stated that their specific intention is not to develop student housing oriented to undergraduates, but rather to design for CSU employees, graduate students, and the community generally. Nevertheless, zoning to enable multi-family housing cannot prescribe the tenants, development across the street from CSU could ultimately result in student housing. Housing for students is generally acknowledged by the following policy:</td>
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<td><strong>Policy LIV 6.3 - STUDENT HOUSING</strong></td>
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<td>Plan for and encourage new housing for students on and near campuses and in areas well-served by public transportation. Coordinate with CSU, Front Range Community College (FRCC) and other educational institutions.</td>
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<td>Finally, regarding City Plan, part of the overall vision is a general shift in the mix of housing in the city toward more housing choices other than single family houses (page 29). In weighing these pertinent policies, staff finds that the proposed rezoning is consistent with overall policy direction in City Plan.</td>
</tr>
<tr>
<td>Staff Analysis: Is the proposed rezoning “Consistent with the City’s Comprehensive Plan”?</td>
<td>West Central Area Plan (WCAP)</td>
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<tr>
<td>West Central Area Plan (WCAP)</td>
<td>The parcels are in the West Central Area Plan (WCAP) area -- a related element of the comprehensive plan. The WCAP tailors citywide goals and policies to specific circumstances in the area.</td>
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<td>Driving issues behind the WCAP have long been the challenges of balancing existing neighborhood character and quality of life with growth and change.</td>
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<td>The WCAP describes the area on a continuum of change, with individual neighborhoods shaped by several forces over time, including:</td>
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<td>• Early agricultural land use</td>
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<td>• Incremental expansion of the city</td>
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<td>• Colorado State University’s growth and changes to its campuses</td>
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<td>• Increased residential, commercial, and institutional development</td>
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<td>• Continued expansion of City services</td>
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<td>City Plan generally emphasizes accommodating growth through infill development rather than outward sprawl. The West Central area has been directly influenced by student and population growth, with increasing demand for rental housing and pressure for more. (pp. 2, 9, 16 in the WCAP).</td>
</tr>
<tr>
<td>Applicable Code Standard</td>
<td>Summary of Code Requirement and Analysis</td>
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<td>The WCAP anticipates significant new development or redevelopment on key vacant or under-utilized parcels, potentially resulting in change of use or intensity. The map below, on p. 25 of the plan, articulates the plan vision for differing degrees of change in different parts of the West Central area. The subject properties are located at the edge of the area shown in orange as ‘Neighborhood Enhancements’, abutting the area shown in maroon along Shields as ‘Significant Redevelopment’, which corresponds to the NCB zone in that location.</td>
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Figure 6. Areas of Stability, Enhancement & Development

The map below designates areas of stability, enhancement and development to depict a vision for where the greatest future change is most likely to occur, where enhancements are needed, and where existing stable areas should be protected and preserved. Developers and decision-makers should refer to the map when considering changes in zoning or additions of permitted use (APU).

Legend

Existing Elements

- West Central Area Boundary
- Arterial Road
- Parks & Open Space
- CSU Property
- Major Trail
- Schools
- Key Destinations

Potential Opportunities

AREAS OF STABILITY & DEVELOPMENT
- Significant New Development/Redevelopment - Significant new development/development anticipated on vacant parcels, potentially resulting in change of use or intensity
- Some New Development/Redevelopment - Some market-driven infill and redevelopment likely to occur
- Neighborhood Enhancements - Some reinvestment in infrastructure and potential addition/alterations
- Areas of Stability - Stable areas unlikely to change significantly, some new programs or services may be appropriate

Potential Key Destinations

- West Elizabeth "Main Street"

Packet Pg. 101
Staff Analysis: Is the proposed rezoning “Consistent with the City’s Comprehensive Plan”? - Conclusion and Condition

Conclusion and Condition:

As noted previously, taking all Comprehensive Plan policies together, staff’s recommendation was ultimately decided by this highlighted language from p. 23 of the West Central Area Plan:

“Various Vacant or Under-Utilized Parcels

These parcels are scattered throughout the plan area and are generally under market pressure to redevelop in a manner greater than would otherwise be allowed by the current parameters of the Low Density Residential (RL) or Neighborhood Conservation Buffer (NCB) zone districts. Such redevelopment will be carefully evaluated so that new uses protect neighborhood character, are well-designed, and mitigate traffic and other external impacts. Collaboration with surrounding neighbors is expected to result in land uses that are appropriate with a design that is sensitive to the surrounding context.

The primary concern of neighbors related to the rezoning was the potential for spillover parking onto neighborhood streets. At the neighborhood meeting, both the petitioner and neighbors strongly stated their observations that while tenants living near CSU may not drive much, most still own vehicles.

In order to implement the 2015 West Central Area Plan overall emphasis on compatibility with existing development, as described on pp 18, 22, 23, 25, and 31, staff recommends a condition of approval of the proposed rezoning:

**Recommended Condition:**

Any development plan involving 1185 and/or 1201 Westward Drive for residential use must provide at least one parking space per bedroom.

Based on this analysis, staff finds that the proposed rezoning is consistent with the Comprehensive Plan.

Staff Analysis: Is the proposed rezoning “Warranted by Changed Conditions Within the Neighborhood Surrounding and Including the Subject Property”?

The current zoning dates to the original West Central Area Plan in 1999. The surroundings of the subject properties have experienced change since then, and since the 2015 West Central Area Plan update.

The 2015 WCAP foresaw change and redevelopment: “The demand for rental housing, driven in part by the recent recession and the trend of “millennials” delaying home ownership, has created pressure for additional apartments, townhome, and single-family rental houses in this area. In addition, CSU houses only a portion of its students on-campus, so the remaining students must find housing elsewhere in the city. This results in the conversion of many single-family dwellings into rental units and short-term occupancy, with associated challenges related to property maintenance, renter behavior, differing lifestyles, and over-occupancy of homes within neighborhoods. Maintaining the affordability and desirability of these neighborhoods for a range of residents, including students and families, has long been a priority for the West Central area.

Discussion at the neighborhood meeting indicated that all abutting and facing houses are rental properties, and that the Western Heights Subdivision is currently made up of more than half rental properties including all adjoining and facing properties.

CSU has continued to increase its influence in the area with major redevelopment projects on campus.

Evidence of change has been the establishment or residential permit parking in the area.

Changes in the neighborhood and at CSU have continuously increased traffic volumes on Shields St.

Staff finds that changed conditions lend additional justification to the proposed rezoning.

Yes
Staff Analysis: "... Compatible with Existing and Proposed Uses... and is the Appropriate Zone District for the Land"

The subject property is at the edge between NCB and RL zoning, with NCB zoning abutting on two sides. If redevelopment occurs under NCB zoning, development would be done in a compatible manner with attention to compatibility with existing houses in the RL zone as required by the Land Use Code.

Staff finds that this additional consideration lends additional justification to the proposed rezoning.

Yes

Staff Analysis: "...Adverse Impacts on the Natural Environment..."

The subject properties comprise existing development with no natural environment issues related to zoning.

NA

Staff Analysis: "...a Logical and Orderly Development Pattern"

The rezoning would be an extension of an existing zoning line. Any development under the proposed NCB zoning would abut NCB zoning on two sides.

Staff finds that the proximity to Shields Street and CSU, and potential assembly with property facing Shields, makes NCB zoning consistent with the pattern in the area and thus staff finds that this additional consideration lends justification.

Yes

5. Findings of Fact/Conclusion

In evaluating the petition for Fischer Rezoning to amend the Zoning Map at 1185 and 1201 Westward Drive, from RL, Low Density Residential, to NCB, Neighborhood Conservation Buffer, Staff finds that the petition complies with the standards in Section 2.9 with one condition.

6. Recommendation

Staff recommends that the Planning and Zoning Board approve a motion to recommend that City Council approve the Fischer Rezoning, #REZ200001, based on the analysis and Findings of Fact in the Staff Report, with the following condition:

Any development plan involving 1185 and/or 1201 Westward Drive for residential use must provide at least one parking space per bedroom.

7. Attachments

1. Petitioners’ Justification Narrative
2. City Plan page 29
3. West Central Area Plan pages
4. Neighborhood Meeting Notes
5. Staff presentation
Regular Hearing
August 20, 2020

Discussion Agenda Item 3 Fischer Rezoning:

Project Description: This is a request to rezone two existing single-family residential properties, 1185 and 1201 Westward Drive, from RL, Low Density Residential, to NCB, Neighborhood Conservation Buffer.

Recommendation: Approval

Secretary Manno reported that there were no citizen emails or letters received.

Staff and Applicant Presentations

Planner Mapes gave a brief verbal/visual introduction to this project.

Sam Coutts, Ripley Design, then provided a verbal/visual presentation representing the owner Erik Fischer.

Mr. Coutts reiterated the location and extent of the proposed rezoning as noted in Planner Mapes’ introduction, which involves two single family house lots. He mentioned the owner’s long family history in the neighborhood and growing up in the house at 1201 Westward. The petitioner’s vision is to develop responsibly and sustainably consistent with core values of the community. The question tonight is why this rezone is being proposed. The answer is to allow for a multiple properties to be combined for a future residential development project. Four properties under unified ownership would be combined. Two of those existing properties are underutilized large lots. The consolidation of the properties allows for access and parking.

He showed a chart of zoning standards for development in the NCB zone which reflect goals for compatibility. He showed the example of a redevelopment one block away on Springfield Drive which has come up in discussion with neighbors. It was developed at a time when the City had no requirements for parking, and it provided .62 spaces per bedroom—58 spaces for 94 bedrooms.

He showed a chart of 11 recent apartment projects in the general area around CSU with their parking ratios, which vary from .25 spaces to .76 spaces per bedroom.
He noted that the petitioner Erik Fischer has committed to provide 1 parking space per bedroom based on his vision that any apartment development would be done right and respect the neighborhood. That commitment of one space per bedroom is a recommended condition on the proposed rezoning.

He explained Land Use Code requirements for rezonings in code Section 2.9.4(H).

He explained how the proposal relates to policies in the Comprehensive Plan, in City Plan and the West Central Area Plan.

Public Input (3 minutes per person)
None

Staff Response

Planner Mapes explained staff’s analysis of the request based on pertinent policy plans adopted by City Council, namely City Plan and the West Central Area Plan. He noted a recommended condition of staff’s recommendation of approval that the rezoning to NCB include a requirement that future redevelopment of the properties for residential use would include one parking space per bedroom based on the neighborhood meeting and agreement from the petitioner.

Board Questions / Deliberation

Member Schneider wanted to know if the residential sign code should also be referenced. Planning Manager Everette responded that in this case the parcels are already within the residential sign district which would not change.

Vice Chair Haefele commented that fewer parking spaces were required for rent-by-the bedroom than for rent by unit in the Land Use Code. What is the rationale for this as it seems the opposite would be true? What are the requirements?

Planner Mapes noted that rent-by-bedroom requirements are part of the Transit Orient Development Overlay (TOD) standards which apply to the NCB zoning in this area. Those rent-by-bedroom requirements are actually higher than would be required for equivalent number of bedrooms in rent by unit development. But in any case, none of the requirements would reach 1 space per bedroom which is being proposed as a commitment and as a condition of this zoning.

Member Katz noted that in the agenda, the applicant is stated as the City of Fort Collins—is this a clerical error? Planning Manager Everette responded yes. The agenda was incorrect and the staff report is correct.

Chair Hansen asked: if the parcels were assembled and then redevelopment occurred on the other two properties along Shields but did not include the subject properties, would they be exempt from that parking condition? Planner Mapes responded that if development were to occur in the existing NCB zoned parcels and not include these new houses, then it would not trigger the one-space per bedroom requirement. The condition only applies to a redevelopment project that incorporates these two lots.

Member Katz asked: if the two properties were to be redeveloped as new single-family houses, would the one space per bedroom condition apply? Planner Mapes and Planning Manager Everette responded no—that scenario would not require a development plan—only a building permit—and would not trigger the requirement.

Vice Chair Haefele wanted to know if the houses were currently vacant. Mr. Coutts responded yes.

Member Hogestad asked what makes this a logical and orderly development? Planner Mapes noted that the question is one that the Board is being asked to evaluate. Staff analysis noted the straight extension of the current zoning line, and findings of consistency with City Plan and West Central Area Plan, as reasons why staff found that the request adequately satisfied the rezoning criteria. Member Hogestad feels that the existing single family residential is logical.
Member Hogestad asked what the changing conditions are. Mr. Coutts responded that one of the biggest changing conditions is the conversion of single-family homes in the RL district from primary residences into student rentals. This is paired with redevelopments and infrastructure happening in the area.

Member Hogestad commented that with the students are gone there isn’t pressure for parking on the street. The parking isn’t because of student rentals, the parking is because of students going to class during the day—they can park and run across the street. He wonders if this was mentioned in that the conversation with the neighborhood.

Chair Hansen followed up asking if this was a residential parking zone and if it is being enforced. Planner Mapes responded yes, it is 2-hour parking in the residential permit program.

Member Hogestad feels that in itself is a problem because it allows somebody to park, go to class, leave, and then somebody else takes that space. What is needed is not some parking restriction as part of this rezone, it’s a comprehensive parking plan for that neighborhood, something more than 2-hour parking.

Planner Mapes responded that at the neighborhood meeting, the neighbors focused on a single issue related to the rezoning which would enable more residential units—parking on the streets. Attendees spoke strongly about the street parking filling up during the day while classes are in session, and also related to construction at CSU, so it’s correct that most of the concern was about nighttime.

But the concerns about the rezoning stemmed from the Springfield Drive apartment redevelopment project one block away on Springfield Drive in a similar situation under NCB zoning where a house was replaced with 94 bedrooms and 58 parking spaces.

Neighbors look at that as an example and are familiar with it on a daily basis, and they feel that it contributes significantly to the pressure generally on parking in the area. Regarding other questions of orderly pattern, loss of two houses, or other considerations, there was no opposition to the rezoning based on any of those other things. The only real concern expressed was increasing the parking pressure, and the applicant suggested the one space per bedroom based his observation that even though students may not drive as much as the rest of us, the do tend to have cars, and friends and visitors with cars. So it was a big topic at the meeting, and what is brought forward here is largely in response to neighbors at the meeting.

Member Hogestad noted that the concern was about a daytime problem which indicated that it’s probably students going to class, so then if there’s other problems with development, is the TOD operating the way it was intended to?

Planner Mapes responded that the answer to that goes way beyond this particular rezoning request but there is a debate on virtually every multi-family project about whether the Land Use Code parking requirements for attached and multi-family development are adequate, both in the TOD and generally throughout the city. The question is a bigger communitywide discussion and policy debate and he cannot answer the question.

Chair Hansen commented that the intent of the TOD is that since it is adjacent to public transportation, they are trying to reduce the parking requirements to encourage individuals to use public transportation. But there’s always the question of whether its accomplishing its intent. It comes up in every project.

Vice Chair Haefele commented that the parking is a problem. The TOD reduced requirement is aspirational trying to create development that does not require cars, but Fort Collins is not there yet. We do not have the transit or the mindset. Almost everyone has a car. On one hand, neighbors are anxious to have more parking in development, but she doesn’t think it will necessarily will address the issues they are seeing. It might prevent MORE spillover parking, but then again it sort of cancels out the intention of the TOD which had a maximum number, not a minimum.

Member Schneider asked what that have to do with this rezone—they’re offering more parking than what the TOD requires. We’re having a conversation about TODs when this is a rezone offering more parking than currently required. We’re not looking at a project plan.
Member Hogestad brought up parking because the applicant and staff brought it up. The suggestion is that somehow this would mitigate something and therefore it's to the advantage to the neighborhood that the rezone happen, and he doesn’t think that's necessarily correct.

Some years ago, he did some design work for an owner of a house on Westward. The owner talked about how you can see the cars driving around looking for parking and it goes up every time there’s a class change. This is what its about—its not about adding additional parking to this project as a promise.

Chair Hansen asked if member Hogestad would propose just sticking with what we have in the Land Use Code rather than offering neighbors false promises?

Member Hogestad answered no, he is concerned about the neighborhood meeting itself and how that became sort of a carrot, and feels that the whole parking conversation was somewhat misguided.

Vice Chair Haefele noted that conversations about parking are often misguided. Its something which people think about with their lizard brain according to a book by Donald Shoup called The High Cost of Free Parking. And its a much bigger issue than rezoning. Its brings you back to the land use there and who is served by replacing single family houses in which families could live regardless of whether they are rent or own, vs. apartment houses which are a totally different set of residents and how does THAT change affect the neighborhood.

If there's 100% parking that’s going to be self-contained, and lets be honest that this is about is building an apartment complex, so it'll be a net zero on street parking vs. a family that might have one driveway spot and two cars on the street. But I don’t think that’s the issue. Its whether they have a house to live in and how many people are DISPLACED when you tear down a house.

Chair Hansen agreed with Vice Chair Haefele that offering to provide one parking space per bedroom is not an attempt to fix their on-street parking issue, it is an offer to ensure that any development does not contribute to it more and make it worse.

Vice Chair Haefele does not think that changing occupied single-family houses from owner occupied to rentals constitutes a change in the condition. A change to a business would be a change in condition. But if they're occupied by people living in them, that’s the same as any other house on the street.

Chair Hansen responded that he recently I moved from a neighborhood that was a high rental occupancy, and they were all single family houses, and while the difference in character was more subtle than if it was a change to a business, it was a different. When you have a house with a family in it vs. a house with three bedrooms and three students it is a different experience. Maybe not as dramatic as a house becoming a business but there is a difference.

Vice Chair Haefele agrees but is saying that the rest of neighborhood will go from have 6 tenants to some much higher number who are going to be of the same lifestyle. Not being one to defend student rental households necessarily, but its not necessarily fair to consider that a change of condition to warrant rezoning of houses.

In all of this we talk about how good that rezone and development would be, but the West Central Area Plan and City Plan speak of neighborhoods being preserved as well, and neighborhood character being preserved. We are running out of low single story somewhat more affordable single family homes. Its evidenced by Avery Park and how that went from being almost unlivable to now mostly owner occupied homes. So that does work, and to say that the social change is such that the only fix is a large apartment building...I just don’t buy it.

Vice Chair Haefele noted that people often speak about the missing middle and that is part of the missing middle—the small affordable single family house. Losing those shuts out a part of the population that doesn’t want to live in multi-family, who might want to live in a house but don’t want a big house on a large lot or new subdivision. So she doesn’t see that this is an improvement. She notes that the policies on the facing pages in the City Plan documents can be read as being inherently incompatible.

Chair Hansen is hearing that the neighborhood may be better served by remaining RL. An argument in favor of the rezoning would be that when the zoning map was drawn, the line was drawn to get properties on Shields into NCB
but did not consider whether they can be developed as NCB. If you add these two parcels, then NCB becomes more viable for development as it is zoned.

An earlier argument was made about the boundary following a logical pattern. He thinks there’s more than one pattern that can work—current and proposed zoning are BOTH examples of a logical and orderly pattern.

Member Hogestad feels that it is not logical to have an apartment building facing one-story single-family homes across the street. The map in the West Central Area Plan talks about this part of the neighborhood being within the area of enhancement, renovations and remodels vs. the area of redevelopment.

Member Katz agreed with Chair Hansen that the proposed plan is also a logical zoning pattern, the board should be careful not to make too many assumptions about development. We don’t know what the development might be, or whether there would be an apartment building facing the street. He also mentioned that property owners have certain rights.

Member Hogestad asked whether a multi-story apartment building across the street from a single story house is logical? Member Katz replied that one block from a major university, yes he thinks it is logical.

Member Hogestad noted that the land use map in the West Central Area Plan shows this in the designation for renovations and remodels and such, to continue the tradition of single family homes and still respond to growing families and such. And that was the thinking that went into that.

Planner Mapes added that for complete discussion, the staff report notes the map and that it’s not a standalone page in the plan, the plan also has language about underutilized properties. If there were to be new apartment buildings, collaboration with neighbors would try to achieve compatible development using land use code standards that would be invoked in any development plan. Specifically in regard to facing houses across the street, staff had comments on a previous conceptual review plan for these properties and in that review, staff commented that new buildings would likely have to step down to more the missing middle housing scale as a transition between the single family and whatever larger building might happen up in the existing NCB portion which is not facing and next door to houses.

Member Schneider asked about the two properties at the corner and whether they went through a development review?

Planner Mapes responded that there’s nothing submitted, however the applicant team and Mr. Fischer brought a previous proposal to conceptual review that included the neighbor to the north or maybe both properties—he didn’t recall whether it was one or both. But that did not move forward because those other owners, according to Mr. Fischer, decided to do their OWN redevelopment project at some point, vs. participating jointly with Mr. Fischer. So it appears likely that they could redevelop. They are large older properties.

Member Schneider noted that changing zoning from single family to higher density could pull students out of houses that could then become owner occupied that families that could move into. And that’s what we’re seeing—students moving into these higher density apartments so you’re seeing more homes opening up for single family use.

Member Hogestad finds the map telling. The NCB properties are from a different time and are much more disorganized than a neighborhood, he is concerned that the rezoning encroaches on a neighborhood, and this is exactly what West Central Plan and City Plan talk about NOT doing. He thinks its pretty clear that preserving neighborhoods is important.

Chair Hansen feels the City and this proposed rezoning is making the neighborhood a more logically and orderly development pattern.

Member Schneider made a motion that the City of Fort Collins Planning and Zoning Board make a recommendation to City Council to approve the Fischer Rezoning REZ20001 based on the analysis, findings of fact and the staff report with the following condition:
• That if any development plan involving 1185 or 1201 Westwood Drive is for residential use, there must be at least one parking space per bedroom.

This also includes materials and information as presented to us in the work session, this hearing and board discussion with this item. Member Katz seconded. Member Schneider commented that rezoning makes sense to him and that if they stay residential uses, there is not a development plan that has to be involved with rezoning or any changes, they could tear down the houses, rebuild single-family homes with no additional parking. Member Hogestad, he will not be supporting the motion as the rezone does not protect the neighborhood character. Member Katz agrees with both Chair Hansen and Member Schneider in that the rezone cleans up the zoning pattern. Chair Hansen cares about the neighborhood but does not feel the rezone is doing anything to significantly affect it. It makes it a more logical development pattern  Vote: 4:2.
Westward Drive Rezoning Proposal

**Neighborhood Meeting Notes**

February 10, 2020 Meeting Date  
Plymouth Congregational Church

*These notes are a summary of the neighborhood meeting discussion and not a verbatim transcript. Please contact staff at any time with any comments or questions:*

*Clark Mapes, City Planner, ph 970.221.6225, cmapes@fcgov.com  
Marcy Yoder, Development Review Liaison, ph 970.221.6076, myoder@fcgov.com*

**Purpose of the Meeting and City Process**

Ms. Yoder introduced the purpose of the meeting and how it fits into the process for prospective development in the City. The meeting purpose is to share information between the prospective developer and interested community members, with City staff supporting as is helpful.

Meeting discussion is intended to be considered by the development team as they decide whether and how to formulate an actual application for submittal to the City for review.

Mr. Mapes showed the City’s zoning map and briefly explained what zoning is, what rezoning is, and the nature of the proposed rezoning -- to rezone two properties from the current zoning of ‘Low Density Residential’, or R-L, to ‘Neighborhood Conservation Buffer’, or N-C-B. R-L zoning essentially permits houses, schools and churches. N-C-B zoning permits multifamily residential development. The process would start with an application explaining the proposal; staff would then review and provide a recommendation on the proposal; the Planning and Zoning Board would then consider the proposal and make a recommendation to City Council in a public hearing, and ultimately City Council would approve or deny the proposal in a public hearing.

Notes from the neighborhood meeting would eventually be provided to P&Z and Council.

**The Proposed Development Project**

*Klara Rossouw, Ripley Design, Inc., Land Planners & Landscape Architects, ph 970.224.5828, klara@ripleydesigninc.com  
Eric Fischer, Owner*

Ms. Rossouw explained the context of the site and preliminary thinking about potential development if the rezoning is approved. The two properties proposed for rezoning would be joined with a property facing Shields to enable multifamily residential redevelopment with access on Westward Drive, and new building construction along both Shields and...
Westward. The properties would also be connected to the larger “pasture” property accessed from Del Mar Street to the west which is under the same ownership and has long been planned for development of single family houses under the existing R-L zoning. That property would remain in the R-L zoning district. There would be buffers between multifamily development and adjacent houses.

Mr. Fischer gave a thorough explanation of his background, growing up in the neighborhood, and his intentions for development which would need the proposed rezoning. His family has lived and invested in these properties over many years and so he knows the neighborhood and many neighbors and the issues.

He had previously discussed a bigger proposal with neighbors a couple of years ago. This is a smaller proposal. The intent is to extend the line of the current N-C-B zone to Westward. Development would be multifamily, with one parking space per bedroom. The main motivation for combining the properties is to allow for that 1:1 ratio of parking, which is much more than the City requires. He does not want to add parking demand that would require parking on the streets.

He is working with neighbors to the north and south for lot line adjustments and emergency access.

**Questions, Responses, and Comments**

*Responses are by the prospective applicant*

Question: Will you scrape the two houses?
Response: Yes. Most of that space would be for access and a buffer along the access.

Q: Traffic won’t come from Delmar?
R: Correct, there will be no access from Delmar. In that pasture property, we would create a cul de sac and build single family houses.

Q: So this is similar to the earlier project, but with less apartments? How many potential units and bedrooms are you thinking?
R: Yes, this is smaller scale. The neighbors to the north who were part of the earlier concept have decided to do their own thing. They want to do something smaller. We are thinking about 100-110 bedrooms. Previously it was 157. It is not certain because design is still not done.

Q: So you’re really looking at a parking space for each bedroom? Look at the project on Springfield. There are 94 units and 50 parking spaces. That’s not enough.
R: Yes. That’s why we are requesting the rezoning.

Comment: I appreciate that.

C: I work from my home office. The two-hour rule has been effective but people still park in front of my house. I can often go get license numbers on cars that sit there longer.

R: We expect that people will not use their cars very much, because biking and walking are convenient, but my experience is that when students live off-campus, they have cars. Also, we are envisioning more “higher-end” apartments, more for professors than students. There’s no pool, not a party spot. Not renting by the bedroom. We envision integration in the neighborhood.
Q: What is the other project that the neighbors on the north are thinking of?
R: They decided they want to keep it in the family. They want to do a smaller project with two smaller units and additional parking. They are thinking about 10-12 units.

Q: Would they have access from Westward?
R: Yes.

Q: Will there be access from Shields?
R: No turn into the project would be allowed from Shields. There might be potential for a right turn out. But more likely would be emergency vehicle access only.

Q: It sounds like you would be the developer?
R: Yes. I've been approached many times to sell, but this is personal. Our intent is to be developer and keep control over the project. Investors are lined up. I would own it and manage it, along with my sister. We own other properties and property management is one of the things we do.

C: I work from my home office. The two-hour rule has been effective but people still park in front of my house.

C: There are lots of parking problems. Parking was challenging during development of stadium and other projects because of construction staff. Construction workers at CSU meet and park in the neighborhood.

Q: Traffic on Westward is already a problem. The northbound left from Shields onto Westward is already a problem. How will traffic increase?
R: A traffic study will need to be done with any development plan. A developer could have certain requirements to address their proportional impact on traffic. In this case, there is probably so much existing background traffic that the proportion from the new development would likely be a small impact. But that would be documented in a traffic study based on an actual plan.

Q: How long will this project take?
R: If rezoning happens, it will happen over the summer. Then design can happen. We would work with the City to meet standards and work with other partners (buffers, access, etc.). That is all probably two years minimum. A neighborhood meeting would happen again during design phase. But this all depends on market and economics.

Q: Will you maintain the pasture?
R: No.

Q: Have you considered for-sale townhomes or condos?
R: Townhomes would not be easy to incorporate. We have considered whether to build the apartments so that in the future they could potentially be sold as condos. Don't know for sure yet. They would be condo style units. We would build it for families, professors, not students partying.

Q: What would a buffer be like?
A: We will work with the City on buffer. It could be a berm, vegetation, potentially fencing. Don’t know until project is designed but its something we know we want to do.

Q: How does it compare to the Springfield project?
R: Similar in size, but with more parking.
Q: Will there be another neighborhood meeting before the rezoning?
R: No, but there would be a notification before a Planning and Zoning Board meeting, and you can contact any of us at any time – email, or call. Both the developer team, and City staff.

Q: Can we give public comment at the P&Z meeting?
R: Yes, and also at City Council.

Q: If this property wasn’t rezoned, how would it be different?
R: Probably less parking for an apartment project along Shields in the N-C-B zone. I want a lot more parking than the City requires. You can only take out so many units and be cost effective.

C (City): If the rezoning were to be supported based on an intent to have a certain parking ratio, there would need to be a condition with the rezoning to make sure it would happen. The City tries to stay away from that, but can happen.

Q: If the rezoning or doesn’t go through, what happens?
R: The houses on Westward would remain as rental properties. Even if it’s rezoned, if economics don’t make sense, nothing will change. If this does all happen, it would be at least a couple of years.

Q: How many houses would go on the cul de sac in the pasture property?
R: Probably 13.

Q: Could you do something like the houses on Bennet?
R: Possibly so. Maybe with the garages in the rear like that, but not sure about that. But that is a good example.

C: Traffic on Shields already should be looked at.
- Left turns on Shields are really tough.
- People coming out on Pitkin turn right and go north to make U-turns at Westward. There is a lot of U-turning like that in general. It’s getting chaotic.
- We are going to see increased speeds on Westward and Springfield.
- Not sure what could be done. Speed bumps like on Bennet...a little median like the one on Springfield...look at the game day example of temporary medians on Shields...have lights at every street...?
R: Those are all examples of things that would be looked at in a traffic study based on a plan. Not all caused by the proportional impact of the proposed development.

Adjourn

7 attendees
2 staff
1215 Shields St. Residential  
Neighborhood Meeting Summary

- Buffer/mitigate impacts of vehicles at entrance
- Concern that units will have more than one student per bedroom and therefore the parking is underestimated
- Traffic concern similar to recent Springfield apartments built
- # of units is too high for a residential area
- Entrance on Westward?
- Traffic a concern along Westward Dr.
- Cannot state enough! The traffic around Shields and Prospect is horrible and will become even worse with more infill/buffer zone, high density housing
- Added traffic a concern for U-turns at Westward off Shields
- Could we add speed bumps along Westward?
- How does this impact the Pitkin bikeway?
  - Opportunity to help mitigate safety issues
- How will construction parking be handled?
  - 2 hours maximum Monday-Friday 8-5, enforcement begins May 22
- Crossing @ Pitkin? Will development help get bikes across the street?
  - HAWK signal being installed
- # of units high for the area
- What is the APU process?
- Any options for a second access point?
- Screening of adjacent properties?
- Height comparable to Carriage House Apartments?
- Will floor area ratio comply with the Land Use Code?
- Don’t bring access off Del Mar Ave.
- High # of U-turns at Shields/Westward intersection
- Another access (to Prospect or future Lakewood) so all traffic is not on Westward
- Shields needs to be expanded due to high traffic volumes presently
- Changing current RL zone properties to NCB seems like a very poor idea and a disturbing precedent. Traffic on Westward is already problematic. Curious if FAR is within City codes.
ORDINANCE NO. 122, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE CITY OF FORT COLLINS
BY CHANGING THE ZONING CLASSIFICATION FOR THAT
CERTAIN PROPERTY KNOWN AS THE FISCHER REZONING

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

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

WHEREAS, the City has received an application for the rezoning of two parcels more particularly described below from Low Density Residential (“R-L”) Zone District to Neighborhood Conservation Buffer (“N-C-B”) Zone District (“Fischer Rezoning”); and

WHEREAS, the Planning and Zoning Board at its August 20, 2020, meeting recommended that City Council approve the Fischer Rezoning with one condition of approval regarding the provision of one parking space per bedroom if the Property is redeveloped for residential uses; and

WHEREAS, City Council finds that the Fischer Rezoning is consistent with City Plan, the City’s comprehensive plan, is warranted by changed conditions within the neighborhood surrounding the Fischer Rezoning, is compatible with the existing and proposed uses surrounding the Fischer Rezoning and is the appropriate zone district, and would result in a logical and orderly development pattern; and

WHEREAS, City Council desires to impose a condition on the Fischer Rezoning to require that residential development provide at least one parking space per bedroom in order to mitigate parking congestion in the area and the owner of the property subject to the Fischer Rezoning has consented to such condition; and

WHEREAS, in accordance with the foregoing, the City Council has considered the rezoning of the property that is the subject of this Ordinance and has determined that said property should be rezoned as hereafter provided.

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

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

Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by changing the zoning classification from Low Density Residential (“R-L”) Zone District, to Neighborhood Conservation, Buffer (“N-C-B”) Zone District, for the following described properties in the City known as the Fischer Rezoning:

-1-
Parcel 1:

Lot 15, The Western Heights Subdivision, recorded at Reception No. 701791, Larimer County Clerk and Recorder.

Parcel 2:

Commencing at a point 29.6 feet South of the Northeast corner of the South Half (S1/2) of the South Half (S1/2) of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section 15, Township 7 North of Range 69 West of the Sixth Principal Meridian; thence West 330 feet; thence South 90 feet; thence East 330 feet; thence North 90 feet to the point of beginning, EXCEPT that parcel as described in deed recorded June 9, 1989 at Reception No. 89025675, County of Larimer, State of Colorado.

Section 3. That the following condition be imposed upon the Fischer Rezoning:

• Any development plan involving 1185 or 1201 Westward Drive, or both, for residential use must provide at least one parking space per bedroom.

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

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

Introduced, considered favorably on first reading, and ordered published this 6th day of October, A.D., 2020, and to be presented for final passage on the 20th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:

______________________________
City Clerk

Passed and adopted on final reading on this 20th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:
City Clerk
AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
October 6, 2020

STAFF
Tawnya Ernst, Real Estate Specialist III
Ingrid Decker, Legal

SUBJECT
First Reading of Ordinance No. 123, 2020, Authorizing the Conveyance of a Permanent Waterline Easement and a Temporary Construction Easement on Meadow Springs Ranch to the Northern Colorado Water Association.

EXECUTIVE SUMMARY
The purpose of this item is to authorize the conveyance of a permanent waterline easement and a temporary construction easement to the Northern Colorado Water Association (NCWA) on Utilities’ Meadow Springs Ranch. The proposed easement area will traverse Meadow Springs Ranch (MSR) over an alignment that City staff previously worked on, and agreed to, with NCWA in 2009. The primary purpose of the pipeline is to provide a redundant transmission main to assist in providing a reliable water supply to NCWA’s existing and future customers.

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

BACKGROUND / DISCUSSION
Northern Colorado Water Association, a Colorado nonprofit corporation, provides potable water service to roughly 1,500 rural customers in northern Larimer County.

NCWA approached the City initially in 2009 with a request to install a 12-inch waterline that will connect between NCWA’s three existing water storage tanks near its well fields west of Carr, Colorado and its existing distribution system near Buckeye, Colorado. NCWA’s tanks are located in an easement on MSR. NCWA’s existing transmission mains (6”/8”) were constructed in 1962 and 1963 and run primarily south across MSR from the tanks south to their connection with the existing distribution system near CR 76 and CR 7. Most notably, these pipes feed most of NCWA’s system and cross several floodplains. In the event a flood renders either of these pipes inoperable (broken, washed out at floodplain crossing, etc.), potable water service would be lost for most of NCWA’s members until adequate repairs could be made.

The proposed pipeline is approximately 11 miles in length, and its primary purpose is to provide a redundant transmission main to improve reliability to NCWA’s membership. The pipeline will cross City property for approximately 1.5 miles. As the City owns the lands surrounding its tanks, NCWA would need to cross City property regardless of the alignment of any new pipeline. The proposed alignment was selected to provide said redundancy through a southwesterly route. As part of the Analysis of Alternatives, a third pipeline along the existing general southerly route was considered but was rejected as it simply replicated the risks the existing pipelines are subject to.

Due to funding constraints, the project languished for more than a decade. Earlier this year, NCWA staff informed City personnel that they intended to refocus their efforts in obtaining the alignment/easement from the
City as described in 2009 that would accommodate construction of the new water main. NCWA has requested a 30'-wide permanent easement and a 30'-wide construction easement. Construction is proposed to be completed with a trencher - arguably one of the least obtrusive pipeline construction methodologies.

The alignment of the proposed waterline crosses MSR in Sections 22, 23, and 27, Township 11 North, Range 67 West of the 6th PM. Utilities purchased the 26,000+-acre property for the beneficial use of municipal sludge disposal. The proposed pipeline will have minimal, if any, impact on existing City operations. The area is leased for cattle grazing.

As required by Section 3.4.1 of the Land Use Code of the City of Fort Collins, NCWA hired Stewart Environmental Consulting in 2009 to complete an ecological characterization study of the potentially affected area. The original author of the report is in the process of updating that study. The 2009 survey found that the proposed project will have minimal environmental impact on the shrub shortgrass steppe community. The affected area is small compared to the vast expanse of this community that includes the Property and adjoining properties. The City would require NCWA to mitigate any impact by reseeding and revegetating the easement areas. The Property is a key nesting area for grassland birds. This potential for impact can be mitigated by the timing of construction activities associated with the proposed project. Construction will be timed to avoid the breeding/nesting/rearing period for grassland birds - approximately April 1 to mid-July. No wetlands were identified on the proposed easement area and therefore, no wetlands delineation will be required.

The proposed transmission line will cross beneath Spottlewood Creek. Although the report identified no wetlands associated with the creek, the creek may fall under jurisdiction of the U.S. Army Corps of Engineers. The timing of construction for crossing beneath Spottlewood Creek should occur when no flow conditions exist and groundwater level beneath the creek bed has fallen. This would likely be in fall and winter.

**Alternative Alignments Analysis**

As briefly discussed above, the City owns the land surrounding NCWA’s potable water storage tanks. NCWA therefore needs a utility easement from the City for any additional pipeline that will connect to its system. NCWA completed an exhaustive analysis of pipeline alignment alternatives to determine the most direct and least impactful route on MSR. The proposed alignment was selected to minimize impacts and follows the route previously supported by City staff and the original environmental study in 2009.

**CITY FINANCIAL IMPACTS**

In accordance with Sec. 23-114 of the Municipal Code, any conveyance of City real property must be for an amount equal to or greater than the fair market value. The estimated market value of the City’s ownership in the requested easements is as follows: $656.28 for the temporary construction easement and $3,285.00 for the permanent easement. The easement fees are based on 10% and 50% (respectively) of the per acre full fair market value of Meadow Springs Ranch. In addition, NCWA will also pay a $6,600.00 vegetation management fee to Utilities for the cost of reseeding and revegetating the easement areas following construction. NCWA will pay all fees associated with this project prior to recording of the easement.

**BOARD / COMMISSION RECOMMENDATION**

At its September 20, 2020 meeting, the Water Board voted unanimously to recommend Council approve the conveyance of the waterline easement to Northern Colorado Water Association. (Attachment 2)

**ATTACHMENTS**

1. Location Map (PDF)
2. Water Board Minutes, August 20, 2020 (PDF)
Excerpt from Unapproved DRAFT MINUTES - WATER BOARD

REGULAR MEETING

August 20, 2020, 5:30 p.m.
Online via Zoom

Regular Items
(Attachments available upon request)

Waterline Easement Request Across Meadow Springs Ranch (MSR)
Water Reclamation & Biosolids Manager Jason Graham introduced Technical Services Specialist Jennifer Ward and Real Estate Senior Specialist Tawnya Ernst. Ms. Ward presented a summary of the project. Northern Colorado Water Association (NCWA) requested a waterline easement on Meadow Springs Ranch. Context and reasoning include similar utility easements approved in the past, compensation paid to City; MSR operations will not be impacted.

Discussion Highlights
No questions. Board members commented on Meadow Springs Ranch as part of Water Reclamation and Biosolids, for the benefit of new Water Board members; solid waste from the plant is spread on the property, which is 26,000 acres just south of the Wyoming border.

Board Member Jim Kuiken moved that the Water Board recommend City Council approve conveyance of a waterline easement and temporary construction easement to Northern Colorado Water Association on Meadow Springs Ranch.

Board Member Nicole Ng seconded the motion.

Vote on the Motion: it passed unanimously, 10-0
ORDINANCE NO. 123, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CONVEYANCE OF A PERMANENT WATERLINE EASEMENT AND A TEMPORARY CONSTRUCTION EASEMENT ON MEADOW SPRINGS RANCH TO THE NORTHERN COLORADO WATER ASSOCIATION

WHEREAS, the City is the owner of real property located north of Fort Collins in Larimer County and Weld County known as Meadow Springs Ranch (the “City Property”); and

WHEREAS, the Property is managed by the City’s Wastewater Utility as a site for land application of biosolids, and is also a working cattle ranch; and

WHEREAS, the Northern Colorado Water Association (“NCWA”) owns three water storage tanks located in an easement on the Larimer County portion of the City Property in Section 23, Township 11N, Range 68W of the 6th P.M. west of Carr, Colorado that connect to its existing distribution system through water transmission mains constructed in the early 1960s; and

WHEREAS, NCWA first contacted the City in 2009 about obtaining an easement to install a redundant transmission main, a portion of which would cross the City Property, to improve reliability to NCWA’s members, as its existing transmission mains cross several floodplains and are vulnerable to damage; and

WHEREAS, because NCWA’s infrastructure is surrounded by the City Property, NCWA cannot build a new, safer waterline without crossing the City Property in some location; and

WHEREAS, the location of the proposed waterline easement is shown and described on Exhibit “A”, attached and incorporated herein by reference (the “Easement”); and

WHEREAS, NCWA is also requesting a temporary construction easement through December, 2021, to allow construction of the new waterline, as shown and described on Exhibit “B”, attached and incorporated herein by reference (the “TCE”); and

WHEREAS, NCWA would pay the City fair market value of $656.28 for the TCE and $3285 for the Easement, plus a $6,600 vegetation management fee for the cost of reseeding and revegetating the easement areas following construction of the waterline; and

WHEREAS, Section 23-111 of the City Code authorizes the City Council to sell, convey or otherwise dispose of any interests in real property owned by the City, provided the City Council first finds, by ordinance, that such sale or other disposition is in the best interests of the City and, for real property that is part of a City utility system, that the disposition will not materially impair the viability of that utility system as a whole, and will be for the benefit of the citizens of the City; and

WHEREAS, at its regular meeting on September 20, 2020, the Water Board voted to recommend City Council approve the conveyance of the Easement.
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

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

Section 2. That the City Council hereby finds that the conveyance of the Easement and TCE to NCWA as provided herein is in the best interests of the City, will not materially impair the viability of the City’s Wastewater Utility as a whole, and will be for the benefit of the citizens of the City.

Section 3. That the Mayor is hereby authorized to execute such documents as are necessary to convey the Easement and TCE to NCWA on terms and conditions consistent with this Ordinance, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City or effectuate the purposes of this Ordinance, including any necessary corrections to the legal descriptions of the Easement or TCE, as long as such changes to not materially increase the size or change the purpose of the interests to be conveyed.

Introduced, considered favorably on first reading, and ordered published this 6th day of October, A.D. 2020 and to be presented for final passage on the 20th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk

Passed and adopted on final reading on this 20th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
DESCRIPTION

A PORTION OF THE LAND DESCRIBED AT RECEIPT NO. 93091867 AND 91006161, ON FILE AT THE LARIMER COUNTY CLERK AND RECORDER, LOCATED IN SECTION 22, 23 AND 27, TOWNSHIP 11 NORTH, RANGE 68 WEST, OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, BEING A STRIP OF LAND 30 FEET WIDE LYING 15 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

CONSIDERING THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 11 NORTH, RANGE 68 WEST OF THE 6TH P.M. AS BEARING NORTH 89°18'04" EAST AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22, THENCE ALONG THE WEST LINE OF SAID SECTION 23 NORTH 00°00'00" WEST, 15.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°18'04" EAST, 150 FEET; THENCE SOUTH 82°32'29" EAST, 2351.49 FEET; THENCE NORTH 41°11'12" EAST, 405.60 FEET; THENCE NORTH 51°19'58" EAST, 195.84 FEET; THENCE NORTH 46°24'10" EAST, 221.55 FEET; THENCE NORTH 48°22'01" EAST, 184.05 FEET; THENCE NORTH 44°59'56" EAST, 216.00 FEET; THENCE NORTH 45°58'43" EAST, 209.02 FEET; THENCE NORTH 50°49'11" EAST, 177.53 FEET; THENCE NORTH 48°21'46" EAST, 214.72 FEET; THENCE NORTH 41°10'54" EAST, 243.35 FEET; THENCE NORTH 43°31'53" EAST, 210.62 FEET; THENCE NORTH 49°05'00" EAST, 202.29 FEET; THENCE NORTH 46°43'56" EAST, 178.34 FEET; THENCE NORTH 82°25'35" EAST, 642.65 FEET; THENCE SOUTH 87°40'39" EAST, 218.81 FEET; THENCE NORTH 89°39'17" EAST, 119.37 FEET; THENCE SOUTH 80°58'49" EAST, 249.10 FEET; THENCE NORTH 89°39'50" EAST, 215.04 FEET; THENCE NORTH 89°39'48" EAST, 192.04 FEET; THENCE NORTH 86°58'04" EAST, 215.31 FEET; THENCE NORTH 76°45'09" EAST, 181.24 FEET; THENCE NORTH 71°25'24" EAST, 129.38 FEET; THENCE NORTH 80°39'42" EAST, 238.10 FEET; THENCE NORTH 89°39'40 EAST, 215.07 FEET; THENCE NORTH 76°11'04" EAST, 173.76 FEET TO THE TERMINUS OF SAID LINE, SAID TERMINUS POINT BEARS SOUTH 48°45'57" WEST, 2574.39 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 22.

THE SIDELINES OF THE STRIP ARE LENGTHENED OR FORESHORTENED TO MEET THE WEST LINE OF SAID SECTION 22.

THE ABOVE DESCRIBED STRIP OF LAND CONTAINS 238,511 S.F. (5.476 AC.) MORE OR LESS AND IS SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY NOW ON RECORD OR EXISTING.

MICHAEL DAVID LANG, PLS
COLORADO REGISTRATION NO. 37053
RIDGETOP ENGINEERING AND SURVEYING
DESCRIPTION EXHIBIT

SEC. 22 & 23, T11N, R68W, 6TH P.M.
COUNTY OF LARIMER STATE OF COLORADO

NOTE: THIS EXHIBIT IS NOT A LAND SURVEY PLAT, OR AN IMPROVEMENT SURVEY PLAT. THE DRAWING IS ONLY INTENDED TO GRAPHICALLY REPRESENT THE WRITTEN DESCRIPTION.
DESCRIPTION

A PORTION OF THE LAND DESCRIBED AT RECEIPT NO. 93091867 AND 91006151, ON FILE AT THE LARIMER COUNTY CLERK AND RECORDER, LOCATED IN SECTION 22, 23 AND 27, TOWNSHIP 11 NORTH, RANGE 6B WEST, OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, BEING A STRIP OF LAND 30 FEET WIDE, LYING 15 FEET TO THE LEFT AND 45 FEET TO THE LEFT AS MEASURED IN THE DIRECTION OF THE THE FOLLOWING DESCRIBED LINE:

CONSIDERING THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 11 NORTH, RANGE 6B WEST OF THE 6TH P.M. AS BEARING NORTH 89'18"04' EAST AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22, THENCE ALONG THE WEST LINE OF SAID SECTION 23 NORTH 00'00"00' WEST, 15.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89'18"04' EAST, 150 FEET; THENCE SOUTH 82'32"29' EAST, 2351.49 FEET; THENCE NORTH 41'11"12' EAST, 405.60 FEET; THENCE NORTH 51'19"58' EAST, 195.84 FEET; THENCE NORTH 46'24"10' EAST, 221.55 FEET; THENCE NORTH 48'22"01' EAST, 184.05 FEET; THENCE NORTH 44'59"56' EAST, 216.00 FEET; THENCE NORTH 46'58"43' EAST, 209.02 FEET; THENCE NORTH 50'49"11' EAST, 177.53 FEET; THENCE NORTH 48'21"46' EAST, 214.72 FEET; THENCE NORTH 41'10"54' EAST, 243.35 FEET; THENCE NORTH 43'31"53' EAST, 210.62 FEET; THENCE NORTH 49'05"00' EAST, 202.29 FEET; THENCE NORTH 46'43"56' EAST, 178.34 FEET; THENCE NORTH 82'25"35' EAST, 642.65 FEET; THENCE SOUTH 87'40"39' EAST, 218.81 FEET; THENCE NORTH 89'39"17' EAST, 119.37 FEET; THENCE SOUTH 80'58"49' EAST, 249.10 FEET; THENCE NORTH 89'39"50' EAST, 215.04 FEET; THENCE NORTH 89'39"48' EAST, 192.04 FEET; THENCE NORTH 86'58"04' EAST, 215.31 FEET; THENCE NORTH 76'45"09' EAST, 181.24 FEET; THENCE NORTH 71'25"24' EAST, 129.38 FEET; THENCE NORTH 89'39"42' EAST, 238.10 FEET; THENCE NORTH 89'39"40' EAST, 215.07 FEET; THENCE NORTH 76'11"04' EAST, 173.76 FEET TO THE TERMINUS OF SAID LINE, SAID TERMINUS POINT BEARS SOUTH 48'45"57" WEST, 2574.39 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 22.

THE SIDELINES OF THE STRIP ARE LENGTHENED OR FORESHORTENED TO MEET THE WEST LINE OF SAID SECTION 22.

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Michael David Lang, PLS
COLORADO REGISTRATION NO. 37053
RIDGETOP ENGINEERING AND SURVEYING

LEGAL DESCRIPTION
SEC. 22 & 23, T11N, R68W, 6TH P.M.
COUNTY OF LARIMER STATE OF COLORADO
NOTE: THIS EXHIBIT IS NOT A LAND SURVEY PLAT, OR AN IMPROVEMENT SURVEY PLAT. THE DRAWING IS ONLY INTENDED TO GRAPHICALLY REPRESENT THE WRITTEN DESCRIPTION.
AGENDA ITEM SUMMARY
City Council

October 6, 2020

STAFF

Chad Crager, PDT Interim Deputy Director
Claire Havelda, Legal

SUBJECT

Emergency Ordinance No. 124, 2020, Approving Updated Emergency Rule and Regulation No. 2020-17A Regarding Temporary Outdoor Expansion Permits.

EXECUTIVE SUMMARY

The purpose of this item is to update Emergency Rule and Regulation No. 2020-17 enacted by the City Manager on May 28, 2020, in response to the COVID-19 emergency. Section 2-671(a)(6)a. of the City Code provides that emergency rules and regulations must be confirmed at the earliest practical time by Council. This Emergency Ordinance seeks Council's approval and ratification of Updated Emergency Rule and Regulation No. 2020-17A, replacing Regulation No. 2020-17 and extending Outdoor Expansion Permits to terminate when the declared local emergency ends (rather than September 27, 2020 as currently provided).

The City Charter provides for the adoption of emergency ordinances as immediately necessary, to preserve the public property, health, peace, or safety, and requires that for adoption an emergency ordinance must be approved by an affirmative vote of five Councilmembers.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance.

BACKGROUND / DISCUSSION

The City continues to be threatened with serious injury and damage, consisting of widespread human and economic impact caused by the Novel Coronavirus 2019 (COVID-19). On March 13, 2020, in order to undertake emergency measures to protect the life, health, safety and property of the citizens of the City and persons conducting business therein, and in order to attempt to minimize the loss of human life and the preservation of property, the City Manager, as the Director of the City’s Office of Emergency Management, proclaimed a “local emergency” in accordance with Section 2-671(a)(1) of the City Code and activated the Emergency Operations Plan established pursuant to Section 2-673 of the City Code. Council extended the local emergency until such time as the City Manager determines in writing that the conditions justifying the local emergency no longer exist, with the adoption of Resolution 2020-030 on March 20, 2020.

Council has since adopted Emergency Regulation No. 2020-017, authorizing the City Engineer to approve temporary outdoor expansion permits for fixed eating, drinking and retail establishments, on public and private property, subject to certain conditions. Staff proposes to amend the end date of this emergency regulation to coincide with the termination of the declared local emergency by the City. Additional amendments include a provision relating to the winterization of the outdoor spaces, including weather protection barriers and heating elements and authorizing the City Engineer to set closing times for outdoor space consistent with other legal requirements (like State liquor licensing requirements). (Attachment 1-2)
Extension of Emergency Outdoor Permits was requested by the majority of local business owners currently utilizing the program. This Emergency Regulation has been a vital component in supporting local business owners during the COVID-19 pandemic.

ATTACHMENTS

1. Emergency Regulation 2020-17A - Redline Comparison (PDF)
2. Exhibit A - Redline Comparison (PDF)
UPDATED EMERGENCY RULES AND REGULATIONS
No. 2020-17A
Regarding Temporary Outdoor Expansion Permits

To all persons take notice:

That for the protection of life, health, safety and property as affected by reason of the Novel Coronavirus 2019 (COVID-19), which resulted in my declaration of a “local emergency” under the authority of Chapter 2, Article IX of the Code of the City of Fort Collins, (the “City”) and which declaration of local emergency was filed with the City Clerk and with the Colorado Division of Emergency Management on March 13, 2020, and extended by City Council adoption of Resolution 2020-030 on March 20, 2020, I have hereby established, under the authority of City Code Section 2-671(a)(6)a, the following rules and regulations:

1. The purpose of this Emergency Regulation is to authorize the City Engineer to approve temporary outdoor expansion permits (“Outdoor Expansion Permit” or “Permit”) to fixed restaurants, liquor licensed establishments, and retail establishments within the Fort Collins City limits that otherwise meet all applicable Colorado (“State”), Larimer County (“County”), and City requirements for operation and are authorized to be open for public service (with or without a Permit) (“Eligible Establishments”), subject to certain requirements. Neither food trucks nor outdoor vendors qualify as Eligible Establishments since they have no fixed location.

2. The purpose of the Permit is to allow Eligible Establishments to temporarily expand their existing premises into a defined area (the “Expansion Area”) on City or private property adjacent to or in the immediate vicinity of their fixed location, thereby facilitating the ability of the Establishment to conduct business while maintaining required physical or social distancing and safety for the public when an Eligible Establishment resumes public service and operates as permitted by State and County public health regulations. City property available for an Expansion Area is limited to City rights-of-way, including sidewalks, streets, and parking spaces or lots.
3. Applicants for the Outdoor Expansion Permits must comply with all current and applicable State, County, and local regulations to be considered for approval. Such regulations include, but are not limited to:
   a. State Emergency Regulations 47-302 1 C.C.R. 203-2 which allows for on-premises liquor licenses to temporarily expand their licensed premises into sidewalks, streets, and parking lots to increase social distancing measures;
   b. State and County Public Health Orders, State Executive Orders and other State and County emergency orders in effect from time to time; and
   c. Other local rules and regulations.

4. A City Outdoor Expansion Permit issued under this Emergency Regulation does not authorize or license the service of alcohol in the Expansion Area. Applicants wishing to serve alcohol in an Expansion Area are responsible for obtaining from the local and State liquor licensing authority approval for any modification to an existing liquor license necessary to permit liquor service in the Expansion Area.

5. An Outdoor Expansion Permit issued under this Emergency Regulation is expressly subject to all Terms, Conditions and Procedural Requirements set forth on [the Updated] Exhibit A attached hereto.

6. An Outdoor Expansion Permit issued under this Emergency Regulation shall be effective only when the Eligible Establishment is otherwise permitted to be open to the public under applicable State, County, and City regulations.

7. Outdoor Expansion Permit applications shall be submitted and processed as follows:
   b. The permit application will also require verification by the applicant satisfactory to the City Engineer that the proposed operation is in compliance with all applicable State and County regulations for operation of the Eligible Establishment and has obtained or prior to operation will obtain all State and County approvals or permits required for operation of the Eligible Establishment. Applicants will be notified of the issuance or denial of a Permit at and any issued Permit shall be delivered by email to the email address set forth on the application.
   c. Receipt of an email from the City Engineer initially approving the map and set-up reflected in the application will permit the applicant to set up the Expansion Area as shown on the application. Before operating in the Expansion Area, the applicant must email one or more photos of the completed set-up to the City Engineer to verify it complies with proposed set-up in application and plans. The City Engineer or their
designee may inspect the Expansion Area in person at any time, in their discretion, to verify compliance. Upon the City Engineer’s approval and issuance of Permit, the applicant may then occupy the Expansion Space.

8. Outdoor Expansion Permit applications will be reviewed by relevant City Departments and ultimately approved or denied by the City Engineer in consultation with Poudre Fire Authority. In order to approve an application, the City Engineer must determine that granting an application would not be detrimental to the public good and that:
   a. The Eligible Establishment meets all applicable City requirements for operating.
   b. Any requested closure of a public right-of-way or publicly accessible portions of private property such as sidewalks, parking spaces and drive aisles to accommodate the expansion of an establishment can be done in a manner that:
      i. Ensures the closure is safe;
      ii. Sufficiently mitigates impacts to the public’s ability to safely and conveniently bypass the proposed closure; and
      iii. Complies with all applicable laws including, but not limited to, the American with Disabilities Act (ADA).
   c. Any requested expansion into the public right-of-way or onto private property:
      i. Maintains adequate emergency access to the Eligible Establishment and other properties in the vicinity; and
      ii. Is compatible with the activities, whether commercial, industrial, or residential, being conducted on properties in the vicinity of the establishment.

9. The City Engineer’s decision to issue or deny a requested Permit is final and not subject to any administrative or other appeal to the City. If a Permit is denied the applicant may reapply based on the comments provided by the City Engineer. There will likely be some instances where the City will not be able to approve a proposed Expansion Area based on safety and/or compatibility issues.

10. Outdoor Expansion Permits will be issued to an Eligible Establishment on an individual basis and are non-transferable and site specific. The City Engineer has the discretion to impose site specific conditions on any Outdoor Expansion Permit in order to assure compliance with the requirements set forth above and to protect public safety.

11. Outdoor Expansion Permits are revocable and subject to the following provisions regarding termination:
   a. All Outdoor Expansion Permits will terminate on the earlier of the termination of the declared local emergency...
a-b. Eligible establishments wishing to erect weather protection barriers, heating equipment or any additions to their currently permitted Outdoor Expansion Area must submit an updated plan to the City Engineer which must be approved prior to the addition of such items. All furniture, fixtures and equipment ("FF&E") shall be removed and damaged repaired by the Eligible Establishment on or before October 4, 2020, unless terminated sooner—within two weeks of the termination of this Emergency Regulation.

b-c. Permits are revocable at any time by the City Engineer prior to the date above in the discretion of the City Engineer with or without cause after ten (10) days’ notice, except that the City Engineer may summarily suspend or terminate any Permit without ten (10) days’ advance notice in the interest of public health or safety.

i. Any notice of revocation of the Permit will be sent by email to the Establishment’s email address on the Permit application.

ii. The Eligible Establishment shall terminate operation in the Expansion Area immediately after receipt of notice revoking the Permit and remove all FF&E from and repair all damage to the Expansion Area within 48 hours of receipt of such notice.

12. Approved An approved Outdoor Expansion Permits are intended to be a stand-alone permit for the Expansion Area and will temporarily supersede conflicting provisions of the Municipal Code and Land Use Code requiring other permits or approvals for the use of the Expansion Area on public or private property expressly authorized by a Permit, including but not limited to:

a. City Code Chapter 5 - Buildings and Building Regulation.


c. City Code Chapter 23 - Public Property: Article III: Section 23 Obstructions and Encroachments, Divisions 1 (General), 2 (Obstructions) and 3(Encroachments).

d. City Code Chapter 23 - Public Property: Article IV: Section 23 Disposition of Property, Division 2 – Real Property.

e. City Code Chapter 24 Streets and Sidewalks: Article II: Section 24 – Sidewalk, Division 2 – Sidewalks, Curbs, Gutters; Article II: Section 24 Streets, Article IV: Section 24 Portable Signs.

f. City of Fort Collins Land Use Code Articles 3 and 4.

13. I find that this emergency rule and regulation No. 2020-17A is reasonable and necessary to promote public safety and support economic recovery caused by the COVID-19 Pandemic. This emergency rule and
regulation promotes the health, safety and welfare of the public because it will provide an expedited way for the City’s economy to recover, bolster the economic health of residents, and ensure public health and safety concerns are prioritized.

Pursuant to Section 2-671(e) of the City Code, the rules and regulations set forth herein shall be disseminated to local radio and television stations and to a newspaper having a general circulation within the City. A knowing violation of these rules and regulations shall be a misdemeanor punishable under Section 1-15 of the City Code.

DATED this ____ day of May, 2020.

______________________________
Darin A. Atteberry, City Manager
Outdoor Expansion Permit Applications must include:

1. A map with of the proposed Expansion Area showing specific areas, defined boundaries, dimensions and distances from the Eligible Establishment’s existing premises, and the location of all furniture, fixtures, and equipment to be located within the Expansion Area. All seating shall be at least six (6) feet apart and accommodate not more than eight (8) people at a single table.
2. Where applicable, written approval signed by the owner of private property included in any proposed Expansion Area.
3. A certificate of insurance naming the City as an additional insured with respect to the Eligible Establishment’s use of City property, including comprehensive general and where applicable liquor liability insurance in an amount not less than $1M per occurrence.
4. A verification satisfactory to the City Engineer by the applicant that it is in compliance with all applicable State and County for operation of the Eligible Establishment and has obtained or prior to operation will obtain all State and County approvals or permits required for operation of the Establishment.

Terms & Conditions of Operation

1. Receipt of an email from the City Engineer initially approving the map and set-up reflected in the application will permit the applicant to set up the Expansion Area as shown on the application. Before operating in the Expansion Area, the applicant must email one or more photos of the completed set-up to the City Engineer to verify it complies with proposed set-up in application and plans. The City Engineer or their designee may inspect the Expansion Area in person at any time, in their discretion, to verify compliance. Upon the City Engineer’s approval and issuance of Permit, the applicant may then occupy the Expansion Space.
2. The City Engineer must approve any changes to the site plan before the Eligible Establishment makes the proposed modifications. This includes, but is not limited to, modifications that provide heat and shelter.
3. The City shall be responsible for placing barriers on City rights-of-way between the Expansion Area and streets open for City traffic.
4. The Eligible Establishment shall be responsible for providing all temporary, free-standing and movable furniture fixtures and equipment (FF&E) and temporary fencing or other boundary makings and/or controls necessary for use of the Expansion Area. No permanent or affixed FF&E is allowed. All FF&E and other personal property placed in the Expansion Area shall remain the sole property of the Eligible Establishment and the Eligible Establishment shall place such property on City Expansion Area at its own risk. The City shall have no liability for loss or damage to such property and the Eligible Establishment waives all claims against the City for such loss or damage.
5. The Eligible Establishment must staff, monitor, and maintain the Expansion Area, including keeping the Expansion Area free of snow, trash and food scraps, clean, sanitized and adequately maintained in compliance with all applicable State, County and City regulations.
6. Electrical, building or fire permits may be required as reflected on the issued Permit.
7. The Eligible Establishment shall not permit the Expansion Area to be used for: a) standing areas that encourage people to congregate; b) outdoor entertainment; or c) pets except service animals per ADA.
8. The City Engineer will determine when Eligible Establishment must close the Expansion Area no later 11 p.m., in consideration of, and compliance with, table service ending at 10 p.m., State, County, and City regulations. The City Engineer will
7. **provide reasonable notice of relevant closing times.** The Eligible Establishment may set other hours for permanent portions of the business (indoor and existing permanent patios) as permitted by State, County and City regulations.

8.9. The Establishment shall comply with all other provisions of Emergency Regulation No. 2020-1717A.
EMERGENCY ORDINANCE NO. 124, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING UPDATED EMERGENCY RULE AND REGULATION NO. 2020-17A
REGARDING TEMPORARY OUTDOOR EXPANSION PERMITS

WHEREAS, the City of Fort Collins is threatened with serious injury and damage, consisting of widespread human and economic impact caused by the Novel Coronavirus 2019 (COVID-19); and

WHEREAS, the City and the Larimer County Department of Public Health and Environment, state officials, Colorado State University and the Poudre School District are cooperatively working to limit community spread and slow the transmission of COVID-19; and

WHEREAS, on March 13, 2020, in order to undertake emergency measures to protect the life, health, safety and property of the citizens of the City and persons conducting business therein, and in order to attempt to minimize the loss of human life and the preservation of property, the City Manager, as the Director of the City’s Office of Emergency Management, proclaimed a “local emergency” in accordance with Section 2-671(a)(1) of the City Code and activated the Emergency Operations Plan established pursuant to Section 2-673 of the City Code; and

WHEREAS, the City Council has, with its adoption of Resolution 2020-030 extended the City Manager the local emergency until such time as the City Manager determines in writing that the conditions justifying the local emergency no longer exist; and

WHEREAS, on May 28, 2020, through Emergency Rule and Regulation No. 2020-17 (Regulation 2020-17), the City Manager authorized Temporary Outdoor Expansion Permits allowing local businesses to temporarily expand their business footprint onto City or private property adjacent to or in the immediate vicinity of their fixed location to accommodate greater social distancing at their establishments and providing that such Permits expire on the earlier of September 27, 2020, or termination of the declared local emergency by the City; and

WHEREAS, the prevention and management of exposure to COVID-19 and mitigation of related impacts of all kinds continue to require emergency action by the City and continued social distancing to reduce its transmission; and

WHEREAS, Updated Emergency Rule and Regulation 2020-17A (Regulation 2020-17A) will extend Outdoor Expansion Permits through the termination of the declared local emergency by the City and make other amendments related to winterization of these outdoor spaces if the City Engineer approves additional weather protection barriers and heating elements; and

WHEREAS, Regulation 2020-17 had a significant positive impact in supporting the local economy while maintaining social distancing during the pandemic; and

WHEREAS, City Council finds it in the best interests of the Fort Collins residents to approve Regulation No. 2020-17A that modifies the terms of the original regulation to include
weather barriers and heating components, and extends the termination of Outdoor Expansion Permits until termination of the declared local emergency by the City; and

WHEREAS, Article II, Section 6 of the City Charter authorizes the Council to adopt emergency ordinances, which shall be finally passed on first reading by the affirmative vote of at least five members of the Council and which shall contain a specific statement of the nature of the emergency.

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

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above and finds that an emergency exists for the immediate adoption of this Ordinance under Article II, Section 6 of the City Charter to approve Emergency Regulation 2020-17A (attached hereto). The COVID-19 emergency continues to pose a threat to human life (requiring social distancing), property and the economic health of the community and requires mitigation.

Section 2. That the City Clerk is hereby directed to cause the publication of this Emergency Ordinance in accordance with the Fort Collins City Charter.

Introduced, considered favorably by at least five (5) members of the Council of the City of Fort Collins and finally passed as an emergency ordinance and ordered published this 6th day of October 2020.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
UPDATED EMERGENCY RULES AND REGULATIONS No. 2020-17A
Regarding Temporary Outdoor Expansion Permits

To all persons take notice:

That for the protection of life, health, safety and property as affected by reason of the Novel Coronavirus 2019 (COVID-19), which resulted in my declaration of a “local emergency” under the authority of Chapter 2, Article IX of the Code of the City of Fort Collins, (the “City”) and which declaration of local emergency was filed with the City Clerk and with the Colorado Division of Emergency Management on March 13, 2020, and extended by City Council adoption of Resolution 2020-030 on March 20, 2020, I have hereby established, under the authority of City Code Section 2-671(a)(6)a, the following rules and regulations:

1. The purpose of this Updated Emergency Regulation is to replace Emergency Rule and Regulation No. 2020-17 (“Regulation No. 2020-17”), signed on May 28, 2020. This Updated Emergency Regulation No. 2020-17A will become effective on signature and shall govern all “Outdoor Expansion Permits” whether issued under Regulation No. 2020-17 or this Updated Emergency Regulation No. 2020-17A. The City Engineer is hereby authorized to approve temporary outdoor expansion permits (“Outdoor Expansion Permit” or “Permit”) to fixed restaurants, liquor licensed establishments, and retail establishments within the Fort Collins City limits that otherwise meet all applicable Colorado (“State”), Larimer County (“County”), and City requirements for operation and are authorized to be open for public service (with or without a Permit) (“Eligible Establishments”), subject to certain requirements. Neither food trucks nor outdoor vendors qualify as Eligible Establishments since they have no fixed location.

2. The purpose of the Permit is to allow Eligible Establishments to temporarily expand their existing premises into a defined area (the “Expansion Area”) on City or private property adjacent to or in the immediate vicinity of their fixed location, thereby facilitating the ability of the Establishment to conduct business while maintaining required physical or social distancing and safety for the public when an Eligible Establishment resumes public service and operates as permitted by State and County public health regulations. City property available for an Expansion Area is limited to City rights-of-way, including sidewalks, streets, and parking spaces or lots.

3. Applicants for the Outdoor Expansion Permits must comply with all current and applicable State, County, and local regulations to be considered for approval. Such regulations include, but are not limited to:
a. State Emergency Regulations 47-302 1 C.C.R. 203-2 which allows for on-premises liquor licenses to temporarily expand their licensed premises into sidewalks, streets, and parking lots to increase social distancing measures;

b. State and County Public Health Orders, State Executive Orders and other State and County emergency orders in effect from time to time; and

c. Other local rules and regulations.

4. A City Outdoor Expansion Permit does not authorize or license the service of alcohol in the Expansion Area. Applicants wishing to serve alcohol in an Expansion Area are responsible for obtaining from the local and State liquor licensing authority approval for any modification to an existing liquor license necessary to permit liquor service in the Expansion Area.

5. An Outdoor Expansion Permit is expressly subject to all Terms, Conditions and Procedural Requirements set forth on the Updated Exhibit A attached hereto.

6. An Outdoor Expansion Permit shall be effective only when the Eligible Establishment is otherwise permitted to be open to the public under applicable State, County, and City regulations.

7. Outdoor Expansion Permit applications shall be submitted and processed as follows:


b. The permit application will also require verification by the applicant satisfactory to the City Engineer that the proposed operation is in compliance with all applicable State and County regulations for operation of the Eligible Establishment and has obtained or prior to operation will obtain all State and County approvals or permits required for operation of the Eligible Establishment. Applicants will be notified of the issuance or denial of a Permit at and any issued Permit shall be delivered by email to the email address set forth on the application.

c. Receipt of an email from the City Engineer initially approving the map and set-up reflected in the application will permit the applicant to set up the Expansion Area as shown on the application. Before operating in the Expansion Area, the applicant must email one or more photos of the completed set-up to the City Engineer to verify it complies with proposed set-up in application and plans. The City Engineer or their designee may inspect the Expansion Area in person at any time, in their discretion, to verify compliance. Upon the City Engineer’s approval and issuance of Permit, the applicant may then occupy the Expansion Space.

8. Outdoor Expansion Permit applications will be reviewed by relevant City Departments and ultimately approved or denied by the City Engineer in consultation with Poudre Fire Authority.
In order to approve an application, the City Engineer must determine that granting an application would not be detrimental to the public good and that:

a. The Eligible Establishment meets all applicable City requirements for operating.

b. Any requested closure of a public right-of-way or publicly accessible portions of private property such as sidewalks, parking spaces and drive aisles to accommodate the expansion of an establishment can be done in a manner that:
   i. Ensures the closure is safe;
   ii. Sufficiently mitigates impacts to the public’s ability to safely and conveniently bypass the proposed closure; and
   iii. Complies with all applicable laws including, but not limited to, the American with Disabilities Act (ADA).

c. Any requested expansion into the public right-of-way or onto private property:
   i. Maintains adequate emergency access to the Eligible Establishment and other properties in the vicinity; and
   ii. Is compatible with the activities, whether commercial, industrial, or residential, being conducted on properties in the vicinity of the establishment.

9. The City Engineer’s decision to issue or deny a requested Permit is final and not subject to any administrative or other appeal to the City. If a Permit is denied the applicant may reapply based on the comments provided by the City Engineer. There will likely be some instances where the City will not be able to approve a proposed Expansion Area based on safety and/or compatibility issues.

10. Outdoor Expansion Permits will be issued to an Eligible Establishment on an individual basis and are non-transferable and site specific. The City Engineer has the discretion to impose site specific conditions on any Outdoor Expansion Permit in order to assure compliance with the requirements set forth above and to protect public safety.

11. Outdoor Expansion Permits are revocable and subject to the following provisions:
   a. All Outdoor Expansion Permits will terminate at the termination of the declared local emergency.
   b. Eligible establishments wishing to erect weather protection barriers, heating equipment or any additions to their currently permitted Outdoor Expansion Area must submit an updated plan to the City Engineer which must be approved prior to the addition of such items. All furniture, fixtures and equipment (“FF&E”) shall be removed and damaged repaired by the Eligible Establishment within two-weeks of the termination of this Emergency Regulation.
   c. Permits are revocable at any time by the City Engineer prior to the date above in the discretion of the City Engineer with or without cause after ten (10) days’ notice, except that the City Engineer may summarily suspend or terminate any Permit without ten (10) days’ advance notice in the interest of public health or safety.
i. Any notice of revocation of the Permit will be sent by email to the Establishment’s email address on the Permit application.

ii. The Eligible Establishment shall terminate operation in the Expansion Area immediately after receipt of notice revoking the Permit and remove all FF&E from and repair all damage to the Expansion Area within 48 hours of receipt of such notice.

12. An approved Outdoor Expansion Permit is intended to be stand-alone permit for the Expansion Area and will temporarily supersede conflicting provisions of the Municipal Code and Land Use Code requiring other permits or approvals for the use of the Expansion Area on public or private property expressly authorized by a Permit, including but not limited to:
   a. City Code Chapter 5 - Buildings and Building Regulation.
   c. City Code Chapter 23 - Public Property: Article III: Section 23 Obstructions and Encroachments, Divisions 1 (General), 2 (Obstructions) and 3 (Encroachments).
   d. City Code Chapter 23 - Public Property: Article IV: Section 23 Disposition of Property, Division 2 – Real Property.
   e. City Code Chapter 24 Streets and Sidewalks: Article II: Section 24 – Sidewalk, Division 2 – Sidewalks, Curbs, Gutters; Article II: Section 24 Streets, Article IV: Section 24 Portable Signs.
   f. City of Fort Collins Land Use Code Articles 3 and 4.

13. I find that this Updated Emergency Rule and Regulation No. 2020-17A is reasonable and necessary to promote public safety and support economic recovery caused by the COVID-19 Pandemic. This Emergency Rule and Regulation promotes the health, safety and welfare of the public because it will provide an expedited way for the City’s economy to recover, bolster the economic health of residents, and ensure public health and safety concerns are prioritized.

Pursuant to Section 2-671(e) of the City Code, the rules and regulations set forth herein shall be disseminated to local radio and television stations and to a newspaper having a general circulation within the City. A knowing violation of these rules and regulations shall be a misdemeanor punishable under Section 1-15 of the City Code.

DATED this ___ day of September, A.D. 2020.

________________________________________
Darin A. Atteberry, City Manager
Emergency Regulation 2020-17A
Exhibit A

Procedural Requirements

Outdoor Expansion Permit Applications must include:

1. A map with of the proposed Expansion Area showing specific areas, defined boundaries, dimensions and distances from the Eligible Establishment’s existing premises, and the location of all furniture, fixtures, and equipment to be located within the Expansion Area. All seating shall be at least six (6) feet apart and accommodate not more than eight (8) people at a single table.
2. Where applicable, written approval signed by the owner of private property included in any proposed Expansion Area.
3. A certificate of insurance naming the City as an additional insured with respect to the Eligible Establishment’s use of City property, including comprehensive general and where applicable liquor liability insurance in an amount not less than $1M per occurrence.
4. A verification satisfactory to the City Engineer by the applicant that it is in compliance with all applicable State and County for operation of the Eligible Establishment and has obtained or prior to operation will obtain all State and County approvals or permits required for operation of the Establishment.

Terms & Conditions of Operation

1. Receipt of an email from the City Engineer initially approving the map and set-up reflected in the application will permit the applicant to set up the Expansion Area as shown on the application. Before operating in the Expansion Area, the applicant must email one or more photos of the completed set-up to the City Engineer to verify it complies with proposed set-up in application and plans. The City Engineer or their designee may inspect the Expansion Area in person at any time, in their discretion, to verify compliance. Upon the City Engineer’s approval and issuance of Permit, the applicant may then occupy the Expansion Space.
2. The City Engineer must approve any changes to the site plan before the Eligible Establishment makes the proposed modifications. This includes, but is not limited to, modifications that provide heat and shelter.
3. The City shall be responsible for placing barriers on City rights-of-way between the Expansion Area and streets open for City traffic.
4. The Eligible Establishment shall be responsible for providing all temporary, free-standing and movable furniture fixtures and equipment (FF&E) and temporary fencing or other boundary makings and/or controls necessary for use of the Expansion Area. No permanent or affixed FF&E is allowed. All FF&E and other personal property placed in the Expansion Area shall remain the sole property of the Eligible Establishment and the Eligible Establishment shall place such property on City Expansion Area at its own risk. The City shall have no liability for loss or damage to such property and the Eligible Establishment waives all claims against the City for such loss or damage.
5. The Eligible Establishment must staff, monitor, and maintain the Expansion Area, including keeping the Expansion Area free of snow, trash and food scraps, clean, sanitized and adequately maintained in compliance with all applicable State, County and City regulations.
6. Electrical, building or fire permits may be required as reflected on the issued Permit.
7. The Eligible Establishment shall not permit the Expansion Area to be used for: a) standing areas that encourage people to congregate; b) outdoor entertainment; or c) pets except service animals per ADA.
8. The City Engineer will determine when Eligible Establishments must close the Expansion Area in consideration of, and compliance with, State, County, and City regulations. The City Engineer will
provide reasonable notice of relevant closing times. The Eligible Establishment may set other hours
for permanent portions of the business (indoor and existing permanent patios) as permitted by State,
County and City regulations.
9. The Establishment shall comply with all other provisions of Emergency Regulation No. 2020-17A.
AGENDA ITEM SUMMARY
City Council

October 6, 2020

STAFF
Julia Feder, Environmental Planning Manager
John Stokes, Natural Resources Director
Ingrid Decker, Legal

SUBJECT
Resolution 2020-088 Authorizing a Conservation Agriculture Lease on Flores del Sol Natural Area to Poudre Valley Community Farms.

EXECUTIVE SUMMARY
The purpose of this item is to consider a 10-year lease to Poudre Valley Community Farms (PVCF) for a conservation agriculture project on Flores del Sol Natural Area. Conservation agriculture on natural areas represents a slight shift in land management for the Natural Areas Department (Department). The approach aligns agricultural management practices with the Department’s conservation mission, while supporting the City’s local, sustainable agriculture goals.

STAFF RECOMMENDATION
Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION
Through a competitive Request for Proposals process, PVCF was selected as the conservation agriculture managing tenant on up to 130 acres within the 152-acre Flores del Sol Natural Area. As a land cooperative, with a vision of affordable access to community-supported farmland, PVCF will be a valuable partner as Natural Areas seeks to increase conservation outcomes on the site, while continuing to manage vegetation through agriculture. PVCF will sublease various size plots of the farmland to local farmers that share the same vision.

The Department uses agriculture to manage select properties that are not a restoration priority. These efforts help preserve the agriculture, pastoral views of the landscape, and open space, while minimizing Natural Areas’ cost of stewarding the land. Conservation agriculture is a small shift in land management practices that better aligns with the Department’s conservation focus.

The Department maintains a 10-year restoration schedule by evaluating priorities annually. Flores del Sol, an agricultural property purchased in 2016, ranks as a low restoration priority, meaning it will not be scheduled for grassland restoration work within the next 10 years, or longer.

If circumstances were to change that this or another property managed through conservation agriculture became a restoration priority, the lease with PVCF allows for either party to cancel the agreement by giving 180 days’ notice. The Department intends to manage Flores del Sol through conservation agriculture for the term of this lease, if not longer. However, as requested by Council in the July 28th Work Session, the Department has identified an exit strategy. The 180 days’ notice of termination allows time for both partners to facilitate the change, including the needs of community members and organizations that may benefit from the food production on the site.
In support of the Department’s mission, the lease agreement with PVCF details the expected conservation outcomes and provides a framework for documenting partners’ progress toward meeting these goals:

1. Shift from current monoculture to diversified plantings.
2. Integrate native seed mixes into grazed and not actively farmed areas.
3. Conserve water with innovative irrigation techniques.
4. Rebuild the soil body with improved nutrient composition.
5. Integrate native plantings throughout farmed area to benefit wildlife including pollinators, birds, and small mammals.

Measurement of conservation outcomes will be a shared responsibility between the Department and PVCF. The Department will conduct assessments of biodiversity (variety of life present) and PVCF will report on the following metrics annually:

- Biodiversity enhancements
- Number of community members served
- Number of partnerships formed and/or continued to serve traditionally underrepresented members of the community
- Emerging farmers engaged

In addition to the conservation goals, the Department anticipates increasing local food production and related social and economic sustainability goals, as detailed in the 2019 City Plan. PVCF estimates that more than 3,500 community members may be engaged through the sale of food, working on the farm, and visiting the farm.

In the coming years, conservation agriculture will remain a minor land management strategy. With the following criteria as a guide, the Department will determine if additional properties present reasonable opportunities on a case-by-case basis.

1. Property is not identified as a restoration priority within the Department’s 10-year restoration plan.
2. The site is currently managed by agricultural practices.
3. Water for irrigation is available to the site.
4. The property’s location supports thoughtful community access and engagement.

2560 West Vine Street Lease

In the near-term, the Department anticipates conservation agriculture will be applied as a vegetation management strategy on one additional property in 2021. In August 2020, the Department released a Request for Proposals for conservation agriculture on the 2560 West Vine Street property. The site meets the criteria above and is a reasonable opportunity for a second conservation agriculture project. The property’s vegetation is currently managed through a haying lease, it is not a near-term restoration priority, and it has associated water for irrigation. The Department intends to establish a shorter-term lease for this property with one-year terms, renewable up to five years. This timeline will allow the Department to undertake a management planning process and identify long term goals for the site. During this period, conservation agriculture will support vegetation management on the property in alignment with Natural Areas goals. Given the proposed lease term and the timeline for proposal submission and review, the Department will bring a lease to the City Manager for review and approval by mid-October.

CITY FINANCIAL IMPACTS

The anticipated lease to PVCF on Flores del Sol will allow diversified agriculture production on 130 acres. The lease rate will be $5,000 per year. The lease includes the option to use the currently unoccupied structures on nearby natural areas properties for an additional lease rate that will be delayed until the fifth anniversary of the lease agreement. The lease rate for these structures will be $3,600 per year beginning on the fifth anniversary.
of the agreement. Delayed fees for renting the structures account for the significant repairs and investment PVCF will need to make for these structures to be operable. Additionally, the annual lease rate will increase or decrease, beginning on the fifth anniversary of the lease agreement and each year after, in accordance with the rate of inflation for Colorado. The yearly lease, commencing on November 1, 2020, will automatically renew annually for up to 10 years with a termination date of October 31, 2030.

The City will maintain existing water rights at Flores del Sol through payment of associated annual fees. While significant staff time has been dedicated to development of conservation agriculture as a management strategy, minimal City resources will be required to support this project moving forward, estimated at less than 5 Percent of a Full Time Equivalent employee.

Conservation agriculture lease rates are set to account for the Department’s costs. Additionally, a conservation agriculture partnership positively impacts the City by deferring vegetation management costs until the Department can prioritize the cost for restoration and long-term maintenance.

**BOARD / COMMISSION RECOMMENDATION**

At its September 10, 2020, meeting, the Land Conservation and Stewardship Board voted unanimously to recommend that Council approve the lease.

**ATTACHMENTS**

1. Work Session Summary  (PDF)
2. Land Conservation and Stewardship Board Minutes  (PDF)
3. Vicinity Map(PDF)
MEMORANDUM

Date: July 31, 2020
To: Mayor and City Councilmembers
Through: Darin Atteberry, City Manager
           John Stokes, Interim Community Services Director
From: Julia Feder, Environmental Program Manager
       Zoe Shark, Interim Natural Areas Director
Re: July 28, 2020 Work Session Summary – Natural Areas and Local Agriculture

Summary of Discussion

At the July 28 Work Session, Mayor Troxell, Mayor Pro Tem Stephens, Councilmembers Cunniff, Gorgol, Gutowsky, Pignataro, and Summers reflected on the Natural Areas Department proposal to shift to a conservation agriculture land management strategy on two natural areas (Flores del Sol and West Vine Property). There was consensus that the conservation agriculture approach described by staff is appropriate and that leases could be brought forward for Council consideration. Staff will return in October for Council consideration of the agreements.

Follow Up Items

Council requested additional information on the following points. Staff will submit additional information to Council in the coming weeks, ahead of lease review later this fall.

- Request to further describe the long-term outlook for each property.
- Request to draft a conservation agriculture exit strategy which would be implemented when the properties become a restoration priority.
- Request for an analysis of resource allocations.
- Request for an analysis of the volume of people that might be served.
Flores del Sol Natural Areas Conservation Agriculture Lease

Natural Areas Department staff submitted a memo to the Land Conservation & Stewardship Board with information on the proposed ten-year conservation agriculture lease on Flores Del Sol Natural Area (FDS). The existing lease for haying ends in October 2020. The new lease to Poudre Valley Community Farms (PVCF) will be considered by City Council in October and is anticipated to be on the consent agenda.

Through a competitive Request for Proposals process, PVCF was selected as the conservation agriculture managing tenant on up to 130 acres within the 152-acre natural area. If circumstances were to change such that this or another property managed through conservation agriculture became a restoration priority, the lease with PVCF allows for either party to cancel the lease with 180-days notice.

The Board expressed appreciation that the proposed lease incorporates feedback the group provided at the June 10 2020, LCSB meeting, including a clear rubric for evaluating future conservation agriculture opportunities and the 180-day notification for either party to cancel the agreement. There were comments cautioning the Natural Areas Department from allowing conservation agriculture to distract from the core conservation mission.

Joe Piesman made a motion that City Council adopt a resolution conveying the 10-year lease, on Flores del Sol Natural Area, to Poudre Valley Community Farms. Alycia Crall seconded the motion. The motion was unanimously approved 7-0.
CONSERVATION AGRICULTURE ON CITY OF FORT COLLINS NATURAL AREAS

Vicinity Map for Flores del Sol Natural Area
RESOLUTION 2020-088
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING A CONSERVATION AGRICULTURE LEASE ON
FLORES DEL SOL NATURAL AREA TO POUDRE VALLEY COMMUNITY FARMS

WHEREAS, the City owns a 152-acre property in southeast Fort Collins known as Flores Del Sol Natural Area (the “Property”); and

WHEREAS, before the City’s Natural Areas Department (NAD) purchased the Property in 2016 it was used for agricultural purposes, and NAD does not anticipate scheduling it for grassland restoration work within the next ten years; and

WHEREAS, in the meantime, NAD staff is proposing using the property for conservation agriculture to help manage and preserve the Property until such time as NAD is prepared to actively restore it; and

WHEREAS, conservation agriculture will allow NAD to manage vegetation on the Property through agriculture, including shifting to more diversified plantings, integrating native plantings to create more wildlife habitat, and rebuilding the soil with improved nutrient composition, which conserves the land while minimizing NAD’s stewardship costs; and

WHEREAS, this approach will also increase local food production, helping to meet related social and economic sustainability goals as detailed in the 2019 City Plan; and

WHEREAS, through a request for proposals process the City selected Poudre Valley Community Farms (“Tenant”) as a potential tenant for a 130-acre portion of the Property under a 10-year lease at an initial rate of $5,000 per year, which staff has determined is a fair market rent; and

WHEREAS, a copy of the proposed lease agreement is attached and incorporated herein as Exhibit “A” (the “Lease”); and

WHEREAS, the Lease includes an option for the Tenant to use two pole barns located on nearby City properties: the Cole Pole Barn at 2500 E. County Road 30, and the Soaring Vista Pole Barn located at 4200 E. County Road 30 (the “Barns”); and

WHEREAS, if the Tenant chooses to use one or both of the Barns, in recognition of the investment the Tenant would need to make repairing them, resulting in a direct benefit to the City, the Tenant would not pay rent for the Barns until the fifth year of the Lease, after which the rent would be $1200 per year for the Cole Pole Barn and $2400 per year for the Soaring Vista Pole Barn; and

WHEREAS, at its regular meeting on September 10, 2020, the Land Conservation and Stewardship Board voted to recommend that the City Council approve the Lease; and

-1-
WHEREAS, Section 23-113(b)(1) of the City Code authorizes the City Council to lease any and all interests in real property owned in the name of the City if the City Council first finds that the lease is in the best interests of the City, with such approval being by resolution unless the proposed term of the lease exceeds twenty years.

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

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

Section 2. That the City Council hereby finds that the proposed Lease of a portion of the Property to the Tenant as provided herein is in the best interests of the City.

Section 3. That the City Manager is hereby authorized to execute the Lease in substantially the form attached hereto as Exhibit “A”, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney determines are necessary and appropriate to protect the interests of the City, including, but not limited to, any necessary changes to the legal description of the parcel to be leased, as long as such changes do not materially increase the size or change the character of the property to be leased.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day of October, A.D. 2020.

________________________________________
Mayor

ATTEST:

________________________________________
City Clerk
FLORES DEL SOL NATURAL AREA
CONSERVATION AGRICULTURE LEASE AGREEMENT

THIS CONSERVATION AGRICULTURE LEASE AGREEMENT ("Lease"), is made and entered into this day of ____, 20____, by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (hereinafter referred to as the “Lessor”), and Poudre Valley Community Farms, A Land Cooperative LTD., a Colorado limited cooperative association (hereinafter referred to as the “Lessee”).

WITNESSETH

WHEREAS, the Lessor is the owner of that certain real property, together with any improvements located thereon, situated in the County of Larimer, State of Colorado, consisting of approximately 153 acres of land, commonly known as the Flores del Sol Natural Area, the legal description of which is set forth in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "Leased Premises"); and

WHEREAS, the Lessor desires to lease the Leased Premises to the Lessee for conservation agriculture purposes as described by this Lease, and the Lessee desires to lease the Leased Premises from the Lessor for conservation agriculture purposes as described by this lease.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties do hereby covenant, promise, and agree to and with each other as follows:

Article I. Lease of the Leased Premises.

1.1 The Lessor does hereby lease, demise, and let unto the Lessee, and the Lessee does hereby hire and take from the Lessor the Leased Premises.

1.2 This Lease includes all the agriculture-related improvements located upon the Leased Premises including, but not limited to raw land and irrigation ditch lateral infrastructure. Lessee must ensure that its officers and employee(s) working or residing on the Leased Premises, their dependents, and any guests, strictly comply with the requirements and restrictions set forth in this Lease Agreement, and with all applicable laws, regulations and other legal requirements, in connection with the use or occupation of the Leased Premises.

1.3 Lessee may, but is not required to, lease two Pole Barns ("Barns") located offsite, subject to additional lease terms, attached hereto in exhibit “B” and incorporated herein by reference. Any that are checked are incorporated into this agreement:

- [X] Cole Pole Barn: Located at 2500 E County Road 30, Fort Collins. Approximately 1,400SF Pole Barn as described in exhibit “B”.

Conservation Agriculture Lease – Poudre Valley Community Farms
2020 Flores del Sol Natural Area Agriculture Lease
Soaring Vista Pole Barn: Located at 4200 E. County Road 30, Fort Collins. Approximately 2,400SF Pole Barn as described in exhibit “B”. Lessee acknowledges the receipt of two (2) keys to the premises.

1.3.1 Lessor reserves the right to reject Lessee’s proposed use of the Barns if the Lessor, in its sole discretion believes the use does not comply with the intended use.

1.3.2 If at any time Lessee does not lease the Barns, Lessor reserves the right to utilize the Barns for its sole use. Lessor will notify the Lessee if such action is taken.

Article II. Term.

2.1 The term of this Lease is for a period of Ten (10) years, commencing on the 1st day of November 2020. The term of the Lease shall automatically renew for an additional Five (5) years, terminating at midnight on October 31, 2035, unless terminated early by operation of law or as otherwise provided in this Lease Agreement. Either party may cancel this Lease at any time upon one hundred eighty (180) days advanced written notice to the other.

Article III. Rent.

3.1 Rental Payment by Lessee. Upon commencement of this lease, Lessee shall pay a yearly rent to Lessor in the amount of Five Thousand Dollars ($5,000). Payment will be due in advance each year on the anniversary date of this lease. Monthly or quarterly payment may be scheduled in advance with written approval by the City.

Lessee will make all payments of rent at such place as the Lessor may, from time to time, designate in writing. For the present, the Lessor designates City of Fort Collins Natural Areas Department, Attn: Natural Areas Financial Coordinator, P.O. Box 580, Fort Collins, Colorado 80522, as the place for the making of rental payments. Credit/Debit Card payments may also be made over the phone by calling the Natural Areas Department Main Office at (970) 416-2815. All such rent must be paid in current legal tender of the United States as the same is then by law constituted. If Lessor extends the time for the payment of any installment of rent or accepts any money other than of the kind herein specified, Lessor by doing so does not waive its right to insist on having all other payments of rent made in the manner and at the time herein specified.

3.1.1 Cole Pole Barn: If checked above in section “1.3”. Upon commencement of this lease, Lessee shall pay a yearly rent to Lessor in the amount of Zero Dollars ($0.00). Payment will be due in advance each year on the anniversary date of this lease.

3.1.2 Soaring Vista Pole Barn: If checked above in section “1.3”. Upon commencement of this lease, Lessee shall pay a yearly rent to Lessor in the amount of Zero
Dollars ($0.00). Payment will be due in advance each year on the anniversary date of this lease.

3.2 The yearly rent will remain as follows for the first Five (5) years. Flores del Sol at Five Thousand Dollars ($5,000); Cole Pole Barn (if checked) at Zero Dollars ($0.00); Soaring Vista Pole Barn (if checked) at Zero Dollars ($0.00).

3.2.1 Flores del Sol. Beginning on the fifth-year anniversary of the Lease Commencement Date (defined above), and on each anniversary thereafter, the amount of rent due for the Premises shall increase and or decrease in accordance with the Denver-Boulder-Greeley CPI-U. Lessor shall give written notice to Lessee not less than fifteen (15) days prior to each such anniversary of the amount of the adjustment of the rent in accordance with the Denver-Boulder-Greeley CPI-U.

3.2.2 Cole Pole Barn. If Lessee is renting this barn, beginning on the fifth-year anniversary of the Lease Commencement Date (defined above), Lessee shall pay a yearly rent to Lessor for the barn in the amount of One Thousand Two Hundred Dollars ($1,200), and on each anniversary thereafter the amount of rent due for the Premises shall increase and or decrease in accordance with the Denver-Boulder-Greeley CPI-U. Lessor shall give written notice to Lessee not less than fifteen (15) days prior to each such anniversary of the amount of the adjustment of the rent in accordance with the Denver-Boulder-Greeley CPI-U.

3.2.3 Soaring Vista Pole Barn. If Lessee is renting this barn, beginning on the fifth-year anniversary of the Lease Commencement Date (defined above), Lessee shall pay a yearly rent to Lessor for the barn in the amount of Two Thousand Four Hundred Dollars ($2,400) and on each anniversary thereafter, the amount of rent due for the Premises shall increase and or decrease in accordance with the Denver-Boulder-Greeley CPI-U. Lessor shall give written notice to Lessee not less than fifteen (15) days prior to each such anniversary of the amount of the adjustment of the rent in accordance with the Denver-Boulder-Greeley CPI-U.

3.3 Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from terminating this Agreement as provided herein. Payment of rental specified herein is subject to a late payment charge of one and one-half percent (1.5%) per month (18% per annum), on balance past due over thirty (30) days.

3.4 The above rental amount is in addition to Lessee’s obligations to pay real and personal property taxes, insurance premiums, utilities, and maintenance of the Premises.

Article IV. Use of Leased Premises.

4.1 The Lessee may use the Leased Premises for conservation agriculture purposes only, as outlined in Exhibit "C" attached hereto and incorporated herein by reference (hereinafter referred to as “Scope of Work”); except as otherwise provided in this Lease. The Lease
does not allow for private or commercial recreational rights, hunting, shooting, trapping or poisoning of wildlife of any kind. All pets must be on a leash, caged or fenced.

4.2 Wildlife management may be conducted during the regular course of business by the Lessee with prior written approval from the Lessor.

4.3 Only licensed vehicles involved in farming activities are allowed beyond designated parking areas. Unlicensed vehicles are prohibited except that farming equipment and ATVs used for farming activities may be used.

4.4 Lessee and Lessor will annually work together in a collaborative effort to develop a “Grazing Plan” for the Leased Premise, which plan includes stocking rates, grazing initiation and ending dates, animal unit months for each pasture, and grazing rotation plans. If the parties have not developed a Grazing Plan for each year’s grazing season by May 1 of that year, Lessor will determine the Grazing Plan for that year, and Lessee agrees to comply with it.

4.5 The Lessor reserves the right to perform management activities at any time during the year. Any management activity will be coordinated with the Lessee.

4.6 Lessee acknowledges that the Leased Premises is a City of Fort Collins Natural Area that portions may be open to the public. The Lessor will coordinate open public areas with the Lessee.

4.7 The Lessee must not use the Leased Premises in any way that violates any applicable law, statute, ordinance, rule, or regulation of any governmental entity or body.

4.8 All livestock moved into Colorado from any other state or country must strictly adhere to all Colorado Department of Agriculture and U.S. Department of Agriculture regulations for animal movement into and within Colorado.

4.9 The Lessee must not permit or suffer the use of, or presence on, the Leased Premises by: (1) the general public, except for members of the public using the Flores del Sol Natural Area in accordance with the City of Fort Collins Code and Natural Areas regulations and policies, or by (2) any persons other than Lessee’s employees or agents, who are permitted to occupy or use the Leased Premises only to the extent required to carry out the purposes of the Lease.

4.10 The Lessee is responsible for security activities on the Leased Premises, including but not limited to the following:

- Answer visitors’ questions about the natural area and natural areas rules and regulations if Lessee’s employees are approached on Flores del Sol Natural Area.

- Call for emergency response when necessary.
• Inspect fencing, gates, water infrastructure, and other structures or areas prone to security breaches.

• Report suspicious activity including suspicious vehicles, persons or activities on site, in prohibited areas.

• Communicate promptly with appropriate authorities to request assistance or to report an incident when suspicious and/or illegal activity or security breach has occurred. This may include Natural Areas Rangers or other Natural Areas personnel, Larimer County Sheriff, Colorado Division of Wildlife or other appropriate authorities. Lessee’s employees or agents may be required to complete a written statement.

• Perform other related duties as requested on an occasional basis.

ARTICLE V. Maintenance and Repairs.

The Lessee must maintain and keep in orderly condition and in a good state of repair all of the Leased Premises and all agriculture-related improvements located thereon, whether existing as of the date of this Lease or added thereafter, including, but not limited to: boundary and interior fences and gates; all water infrastructure including but not limited to ditches, head gates, irrigation ponds, pumps; and any buildings Lessee uses constituting two off site pole barns, and all infrastructure installed by the Lessee including but not limited to sheds, hoop houses, and lean to sheds. The Lessee is not responsible for maintenance or repair of public Natural Areas facilities.

5.1 All maintenance and repairs to the Leased Premises required of the Lessee must be made promptly and when necessary. In addition, all such maintenance and repairs must be done in a good and workmanlike manner and in compliance with all applicable laws, statutes, ordinances, rules, orders, regulations, and requirements of all federal, state, and county governments and the appropriate departments, commissions, boards, and officers thereof.

5.2 The Lessee must keep the Leased Premises clean and in good sanitary condition, as required by the statutes, ordinances, resolutions, and health, sanitary, and police regulations of the County of Larimer and State of Colorado. Any equipment, materials or supplies that Lessee brings onto the Leased Premises must be kept under cover (except large equipment such as vehicles and trailers) in a location acceptable to the Lessor and removed from the Leased Premises when no longer needed. Any trash, junked equipment or waste materials generated by the Lessee’s activities on the Leased Premises must be stored under cover or removed promptly from the Leased Premises. The Lessee must neither permit nor suffer a disorderly noise or nuisance whatsoever about the Leased Premises having any tendency to annoy or disturb any persons occupying adjacent land. The Lessee shall neither hold nor attempt to hold the Lessor liable for any injury or damage, either approximate or remote, occasioned through or caused by any maintenance, alterations, or repairs made by the Lessee upon or to the
Leased Premises or the improvements located thereon.

5.3 If the Lessee fails to perform any maintenance or make any repairs it is required to make under this Lease, the Lessor may, but is not required to, make such maintenance and repairs on the Lessee's account, and the Lessor may add its costs and expenses for such repairs or replacements as additional rent due to the Lessor under this Lease. Lessee will then pay such amount to the Lessor within thirty (30) days after receiving written notice from the Lessor of the costs and expenses paid by the Lessor for such maintenance and repairs.

ARTICLE VI. Alterations and Improvements.

6.1 The Lessee must not make alterations, additions, improvements or changes to the Leased Premises, or the improvements located thereon, without the prior written approval of the Lessor. Any such alterations, additions, improvements, or changes approved by the Lessor must be done by the Lessee in a good and workmanlike manner and in compliance with all applicable building and zoning laws, and all other applicable laws, statutes, ordinances, orders, rules, regulations, and requirements of all federal, state, and county governments and the appropriate departments, commissions, boards, and officers thereof.

6.2 If the Lessee wishes to make additions or improvements to the Leased Premises beyond what is required for maintenance and repair as described in Article V, the Lessee will be responsible for the cost of such additions and improvements unless the parties agree to a cost-sharing arrangement; including but not limited to temporary or permanent structures, fencing, gas, electric, water, and sewer.

6.3 The Lessee hereby indemnifies and agrees to hold the Lessor harmless from all liens, claims, or charges on account of any alterations, additions, improvements, or changes made to the Leased Premises or the improvements located thereon by the Lessee.

6.4 The Lessee is responsible for construction and maintenance of any temporary fencing necessary to exclude livestock from an area to facilitate rotational grazing. The Lessee is responsible for the costs of constructing and maintaining temporary fencing for rotational grazing, and ownership of such fencing.

6.5 The Lessor reserves the right, from time to time (without invalidating or modifying this Lease) to make alterations, changes and additions to the land and improvements that constitute the Leased Premises.

6.6 The Lessee, with written approval from the Lessor, may construct an irrigation pond on the Leased Premises. The Lessee will cost share the expense with the Lessor as follows; the Lessee will be responsible for the cost of design and construction of an irrigation pond that meets all state and local laws and regulations and Ditch Company approval. The Lessor will be responsible for the cost of design and construction of any enhancements to the pond to meet the Lessor's aesthetic and wildlife goals without
detriment to the irrigation function of the pond. The Lessee and Lessor will work together to achieve these goals.

6.7 At the end of the term of this Lease, all fixtures, equipment, additions and alterations will remain the property of the Lessor, except as otherwise provided under the terms of this Lease. However, the Lessor may require the Lessee to remove any or all such fixtures, equipment, additions and alterations and restore the Leased Premises to the condition that existed immediately prior to such change and installation, normal wear and tear excepted, all at the Lessee's cost and expense. All such work must be done in a good and workmanlike manner and consist of new materials unless otherwise agreed to by the Lessor.

ARTICLE VII Covenant of Title and Quiet Enjoyment

7.1 The Lessor covenants that it is well seized of and has good title to lease the Leased Premises and does warrant the title thereto except and subject to the following: All easements, covenants, reservations, restrictions, rights-of-way, and prescriptive or adverse rights, in place or of record;

b. Any restrictions, reservations, or exceptions contained in any United States or State of Colorado patents of record;

c. All zoning and other governmental rules and regulations; and

d. All oil, gas or other mineral reservations or exceptions of record.

ARTICLE VIII Insurance

8.1 The Lessee, at its sole cost and expense, must procure, pay for, and keep in full force and effect workers compensation insurance for all of its employees to be engaged in work on the Leased Premises under this Lease.

8.2 The Lessee, at its sole cost and expense, "procure, pay for, and keep in full force and effect a comprehensive policy of general liability insurance covering the Leased Premises and insuring the Lessee in an amount not less than One Million Dollars ($1,000,000.00) covering bodily injury, including death to persons, personal injury, and property damage liability arising out of a single occurrence. Such coverage must include, without limitation, the insured's' liability for property damage, bodily injuries, and death of persons in connection with the operation, maintenance, or use of the Leased Premises (including acts or omissions of the Lessee or of its officers, employees, or agents), liability arising out of lawsuits related to employment contracts of the Lessee, and protection against liability for non-owned and hired automobiles. Such coverage must also include comprehensive automobile liability insurance and coverage for such other risks as are customarily required by private institutional mortgage lenders with regard to property similar in construction, location, and use as the Leased Premises under this Lease Agreement.
8.3 All policies of insurance carried by the Lessee must name the Lessee as an insured and name the Lessor as an additional insured on the policy. The policy or policies must contain a provision that the policy or policies cannot be canceled or materially altered either by the insured or the insurance company until fifteen (15) days prior written notice thereof is given to the Lessor. Upon issuance or renewal of any such insurance policy, the Lessee must furnish a certified copy or duplicate original of such policy or renewal thereof with proof of premium payment to the Lessor. Any such policy must contain waivers of subrogation and waivers of any defense based on invalidity arising from any act or omission of any assignees or subleases of the Lessee.

8.4 No policy of insurance required by this Article VIII can include a deductible clause in an amount greater than Ten Thousand Dollars ($10,000.00). Any insurance policy purchased by the Lessee must be written by an insurance carrier which has a current rating by Best's Insurance Reports of "A" (Excellent) or better and a financial rating of "X" or better or such equivalent classification as may hereinafter be required customarily for properties similarly situated and it must be approved by the Lessee and the insurance carrier must be authorized by law to do business in the State of Colorado. The Lessee must not obtain any policy which, under the terms of the carrier's charter, by-laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members. All insurance policies carried by the Lessee may be reviewed at least annually by the Lessor to ascertain that the coverage provided by such policy adequately covers those risks required by this Article VIII to be insured by the Lessee. In case of the breach of any provision of this Article VIII, the Lessor, at its option, may take out and maintain, at the expense of the Lessee, such insurance as the Lessor may deem proper and may bill the costs for such insurance directly to the Lessee. When so billed, the Lessee must reimburse the Lessor for the costs of such insurance within thirty (30) days of being billed.

ARTICLE IX. Utilities.

Lessee is responsible for all utilities, including, but not limited to, water, gas, electricity, propane, trash services, cable or satellite TV or internet services and phone services used on the Leased Premises.

9.1 Flores del Sol. No utilities are currently installed on the Lease Premises.

The Lessor will provide one (1) uninsalled Fort Collins Loveland Water District (FCLWD) ¾” water tap. The Lessee, at its sole cost and expense, may install the FCLWD water tap on the premises in accordance with requirements set forth in Article VI of this Lease.

The Lessee, at its sole cost and expense with written approval from the Lessor, may install additional utility services, including but not limited to electric, gas, sewer, trash, and propane, on the Leased Premises in accordance with requirements set forth in Article VI of this Lease.
9.2 **Cole Pole Barn (applies only if checked in section 1.3).** One (1) FCLWD ¾” water tap is currently installed on the Leased Premises. The Lessor at its sole cost and expense will install one (1) Poudre Valley REA (PVREA) electric meter upon lessee’s request.

Electric from the meter to the Pole Barn must be reconstructed prior to use. Water infrastructure from FCLWD is unknow and may need to be reconstructed.

The Lessee, at its sole cost and expense, may install new water lines and new electric from the water tap and electric meter on the premises in accordance with requirements set forth in Article VI of this Lease.

9.3 **Soaring Vista Pole Barn (applies only if checked in section 1.3).** One (1) FCLWD ¾” water tap and one (1) PVREA electric meter are currently installed on the Leased Premises.

Electric from the meter to the Pole Barn must be reconstructed prior to use. Water infrastructure from FCLWD is unknow and may need to be reconstructed.

The Lessee, at its sole cost and expense, may install new water lines and new electric from the water tap and electric meter on the premises in accordance with requirements set forth in Article VI of this Lease.

9.4 **Raw Water Ditch Shares.** The Lessor owns multiple shares in certain Ditch Companies available for use on Flores del Sol by the Lessee as described in exhibit “C”. Lessee must adhere to federal, state, county, city laws pertaining to the use of irrigation water. Lessee must work directly with the Ditch Companies and their Ditch Ryders and must adhere to Ditch Company bylaws and rules.

9.4.1 **Raw Water Assessments.** Lessor shall pay yearly assessments put forth by the associated Ditch Companies for water shares anticipated to be used by the Lessee. The specific number of shares will be agreed upon by the Lessor and Lessee by March 1st each year.

9.4.2 **Additional Water.** Throughout each season the Lessee may rent additional water above the agreed amount from the Lessor at the rate of assessment plus 10%, if available. Lessee may also rent water from available sources at their own cost and expense.

**ARTICLE X. Signs.**

10.1 **The Lessee must not affix, erect, or maintain on the Leased Premises any sign or placard without obtaining the Lessor’s prior written approval.** The costs of erection and maintenance of such sign or placard are the sole responsibility of the Lessee. In addition, any sign or placard approved by the Lessor must comply with all state, county, and city laws, rules, and regulations.

10.2 The Lessor reserves the right to affix, erect, or maintain on the Leased Premises any
sign or placard, including but not limited to information signs, trail signs, and kiosks.

ARTICLE XI. Subletting and Assignment.

11.1 The Lessee may not assign this Lease, any interest or a part thereof, any right or privilege appurtenant thereto, nor mortgage or hypothecate the leasehold without the prior written consent of the Lessor. Lessor’s consent to one assignment or hypothecation shall not be construed as a consent to any subsequent assignment or hypothecation; and it is hereby mutually covenanted and agreed that, unless such written consent has been obtained, any assignment or transfer or attempted assignment or transfer of this Lease or any interest therein or hypothecation either by the voluntary or the involuntary act of the Lessee or by operation of law or otherwise, shall, at the option of the Lessor, terminate this Lease; and any such purported assignment or transfer without such consent will be null and void. The Lessor's consent to any such assignment does not relieve the Lessee from any obligation under this Lease unless the Lessor expressly agrees in writing to relieve the Lessee from such obligation.

11.2 If Lessee assigns this Lease or sublets or allows anyone other than the Lessee to occupy the Leased Premises or any part thereof without the prior written consent of the Lessor as required in paragraph 11.1 above, the Lessor may terminate this Lease, or may collect rent from the assignee, subtenant, or occupant, and employ the net amount collected to the rent herein reserved; and no such collection shall be deemed a release of the Lessee from the complete performance of its obligations under this Lease.

11.3 The above notwithstanding, Lessee is responsible for arranging agriculture subleases or contracts with persons acceptable to Lessor that are capable of providing conservation agriculture services on the Leased Premises (Ag. Contractor).

11.3.1 The Lessee and Ag. Contractor(s) will enter into a sublease agreement or services contract in a form acceptable to the Lessor (the "Sublease or Contract"). The Sublease or Contract must require the Ag. Contractor to comply with and be bound by the following provisions of this Lease:

• Sections 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9 regarding use of the Leased Premises;

• Article V regarding maintenance of the premises;

• Article VI regarding alterations and improvements;

• Article VIII regarding insurance;

• Article X regarding signs;

• Article XII regarding mechanics liens;
• Article XIII regarding condemnation;
• Article XIV regarding total or partial destruction;
• Article XVIII regarding holding the Lessor harmless;
• Article XX regarding Hazardous Materials;
• Article XXII regarding access and use by Lessor;
• Article XXIV regarding the "as-is" nature of the Leased Premises.

ARTICLE XII. Mechanic's Liens.

12.1 The Lessee agrees to pay or cause to be paid promptly all bills and charges for material, labor, or otherwise in connection with or arising out of any alterations, additions, maintenance, repairs, or changes made by the Lessee or its agents or subtenants to the Leased Premises; and the Lessee agrees to hold the Lessor free and harmless against all liens and claims of liens for such labor and materials, or either of them, filed against the Leased Premises or any part thereof and from and against any expense and liability in connection therewith. The Lessee further agrees to discharge (either by payment or by filing the necessary bond) any mechanic's, materialman's, or other liens against the Leased Premises arising out of any payment due or alleged to be due for any work, labor, services, materials, or supplies claimed to have been furnished at the Lessee's request in, on, or about the Leased Premises and to indemnify the Lessor against any lien or claim of lien attached to or upon the Leased Premises or any part thereof by reason of any act or omission on the Lessee's part. The Lessee does, however, have the right to contest any mechanic's lien or claims filed against the Leased Premises, provided the Lessee diligently prosecutes any such contest and at all times effectively stays or prevents any sale of the Leased Premises under execution or otherwise and pays or otherwise satisfies any final judgment adjudging or enforcing such contested liens and thereafter procures record satisfaction of the release thereof. The Lessee also agrees in any such contest, at the Lessee's cost and expense, to defend the same on behalf of the Lessor.

ARTICLE XIII. Condemnation

13.1 If, as a result of any exercise of the power of eminent domain (hereinafter referred to as "proceedings"), either of the following happen: (a) the title to the whole or substantially all of the Leased Premises is taken; or (b) the Leased Premises are deprived of adequate ingress or egress to or from all public streets and highways abutting the Leased Premises, and the Lessee cannot reasonably, operate upon the remainder of the Leased Premises at the time of such taking, then this Lease will terminate as of the date of such taking pursuant to such Proceedings. For the purpose of construing the provisions of this Article, "proceedings" includes any negotiated settlement of any matter involved in a
condemnation; and a "taking" is deemed to occur when title to the Leased Premises or possession thereof is acquired by another governmental authority, whichever first occurs.

13.2 If, during the term of this Lease, title to less than the whole or title to less than substantially all of the Leased Premises is taken in any such Proceedings and the Lessee can reasonably operate on the remainder of the Leased Premises at the time of such taking, this Lease will not terminate. However, the Lessee's obligation to pay rent as provided in Article III. above, will be adjusted accordingly.

13.3 All damages awarded for any taking described in this Article are the property of the Lessor.

ARTICLE XIV. Total or Partial Destruction.

14.1 If, during the term of this Lease, the Leased Premises or a substantial part thereof is destroyed or so damaged by fire or other casualties so as to become unusable for conservation agriculture purposes, then, at Lessee's option, the term hereby created will cease; and this Lease will become null and void from the date of such damage or destruction; and the Lessee must immediately surrender the Leased Premises and its interest therein to the Lessor. The Lessee must exercise such option to terminate this Lease by notice in writing delivered to the Lessor within thirty (30) days after such damage or destruction. The Lessee will continue to be liable to the Lessor for all rent accruing up to the date of termination of this Lease. If the Lessee does not elect to terminate this Lease, this Lease will continue in full force and effect.

ARTICLE XV. Holding Over.

15.1 Any holding over after the expiration of the term of this Lease Agreement or any extended term thereof, with the written consent of the Lessor, will be construed as a tenancy from month-to-month on the same terms and conditions herein specified and at the same rental provided for herein.

ARTICLE XVI. Default of Lessee.

16.1 If any one or more of the following events (hereinafter referred to as "an event of default") happens:

(a) The Lessee defaults in the due and punctual payment of the rent or any other amounts required to be paid hereunder and such default continues for three (3) business days after the receipt of written notice from the Lessor; or

(b) The Lessee neglects or fails to perform or observe any of Lessee's obligations hereunder and the Lessee fails to remedy the same within five (5) business days after the Lessee receives written notice from the Lessor specifying such neglect or failure (or Lessee fails to begin such cure within said five (5) days and proceed with due diligence to complete said cure when the default if it is of such a nature that it cannot
be cured within said five (5) day period); or

(c) The Lessee: (i) is adjudicated as bankrupt or insolvent; (ii) files a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Act (as now constituted or in the future amended); or (iii) makes an assignment of its property for the benefit of its creditors; or

(d) The Lessee neglects or fails to perform or observe any of Lessee's obligations under this Lease within one hundred and eighty (180) days after prior notice of any such neglect or failure, whether or not such prior neglect or failure was remedied within the time period provided in subparagraph (a) or (b), above.

Then, and in any one or more such events of default, the Lessor has the right, at its election and while any such event of default continues, to give the Lessee written notice of its intention to terminate this Lease on the date of such given notice or any later date specified therein; and on such specified date, the Lessee's right to possession of the Leased Premises will cease; and this Lease will thereupon be terminated. The Lessor may then re-enter and take exclusive possession of the Leased Premises or any part thereof and repossess the same as the Lessor's former estate and expel the Lessee and those claiming through or under the Lessee and remove the property and effects of both or either (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrearages of rent or preceding breaches of covenants.

A. Alternatively, the Lessor may elect if an event of default occurs not to terminate this Lease, but the Lessor will still have the right to elect to retake exclusive possession of the Leased Premises by evicting the Lessee if the Lessee has not otherwise abandoned the Leased Premises. In the event the Lessor elects to so take exclusive possession, the Lessee will not be relieved of its obligations and liabilities under the Lease, all of which will survive such repossession. In the event of such repossession, the Lessee must pay to the Lessor as current liquidated damages: the then value of the rent and other sums as herein provided which would be payable if such repossession had not occurred; less

B. The net proceeds, if any, of any reletting of the Leased Premises after deducting all of the Lessor’s expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys fees, expenses of employees, and necessary alteration costs and expenses in preparation of such reletting.

The Lessee must pay such damages to the Lessor within thirty (30) days after receiving written notice from the Lessor of such damages. If the Lessor must commence any action or proceeding to collect the foregoing amounts, or to enforce any other obligation of the Lessee under this Lease, the Lessor will be entitled to reimbursement for all costs and expenses and legal fees incurred in said matter,
including reasonable attorney's fees.

ARTICLE XVII. Attorney’s Fees.

17.1 The Lessee agrees to pay and indemnify the Lessor against all legal costs and charges, including attorney’s fees, lawfully and reasonably incurred in obtaining possession of the Leased Premises after default of the Lessee or termination of this Lease, incurred in enforcing any covenant of the Lessee herein contained or any right granted to the Lessor, and incurred in collecting any rent, monies, or other damages owed by the Lessee to the Lessor under this Lease.

ARTICLE XVIII. Lessee to Save Lessor Harmless.

18.1 The Lessee covenants that it will indemnify, release and hold the Lessor, and its officers and employees, harmless from all claims, demands, judgments, costs, and expenses, including attorney’s fees, arising out of any accident or occurrence causing injury to any person or property whomsoever or whatsoever due directly or indirectly to the use or neglect of the Leased Premises or any part thereof by the Lessee and its officers, agents, employees, licensees, and invitees or any entity or person (and their officers, agents, employees, licensees, and invitees) holding under the Lessee, unless such accident or occurrence results solely from the tortious misconduct or negligent act or omission on the part of the Lessor, or its officers and employees; and the Lessee will indemnify and hold harmless the Lessor, and its officers and employees, from all damages and all penalties arising out of any failure of the Lessee, in any respect, to comply with all of the requirements and provisions of this Lease Agreement; and the Lessee covenants that the Lessee will keep and save the Lessor, its officers and employees, and the Lessor's interest in and unto the Leased Premises forever harmless from any penalty, damage, or charge imposed by any violation of any laws, whether occasioned by an act or omission of the Lessee, or by another or others in the Leased Premises holding under or through the Lessee. In addition, the Lessor, and its officers and employees, will not be liable to the Lessee for any livestock injuries or deaths, regardless of cause, incurred in connection with such livestock grazing upon the Leased Premises under this Lease Agreement, unless such injuries or deaths result from a negligent act or omission of the Lessor. However, any liability of the Lessor, or of its officers and employees, to the Lessee is subject to all the defenses, immunities, and limitations of the Colorado Governmental Immunity Act (Section 24-10-101, et seq.) and to any other defenses, immunities, and limitations to liability available to the Lessor, and its officers and employees, under the law.

ARTICLE XIX. Notices.

19.1 Any notice or other communication given by either party to the other relating to this Lease Agreement must be hand-delivered or sent by registered or certified mail, return receipt requested, or by overnight commercial courier, addressed to such other party at its respective addresses set forth below; and such notice or other communication will be
deemed given when so hand-delivered or three (3) business days after so mailed, or the next business day after being deposited with an overnight commercial courier:

If to the Lessor:

City of Fort Collins Natural Areas Department  
Attn: Dave Myers, Land Conservation Manager  
P.O. Box 580  
Fort Collins, CO 80522

With a copy to:

City of Fort Collins – Real Estate Services  
Attn: Real Estate Manager  
P.O. Box 580  
Fort Collins, CO 80522

If to the Lessee:

Poudre Valley Community Farms  
Attn: Clinton Wilson, Executive Director  
PO Box 26  
Laporte, CO 80535

ARTICLE XX. Hazardous Material.

20.1 As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Colorado or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is: (i) defined as a "hazardous substance" under applicable state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1321); (v) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. Section 6991).

20.2 The Lessee must not cause or permit any Hazardous Materials to be brought upon, kept, or used in or about the Leased Premises by the Lessee, its officers, agents, employees, contractors, licensees, or invitees, without the prior written consent of the Lessor (which the Lessor will not unreasonably withhold as long as the Lessee demonstrates to the Lessor's reasonable satisfaction that such Hazardous Material is necessary or useful to the Lessee's operation; that it will be used, kept, and stored in a manner that complies
with all laws regulating any such Hazardous Material and will protect and preserve the
Leased Premises and any other property in a safe and environmentally sound condition;
and that the Hazardous Material will not materially interfere with the Lessor's use of the
Leased Premises or cause damage to said Leased Premises.) If the Lessee breaches
the obligation stated in the preceding sentence, or if the presence of Hazardous Material
on the Leased Premises caused or permitted by the Lessee results in contamination of
the Leased Premises or if contamination of the Leased Premises by Hazardous Material
otherwise occurs for which the Lessee is legally liable to the Lessor for damage resulting
therefrom, then the Lessee will indemnify, defend, and hold the Lessor, and its officers
and employees, harmless from any and all claims, judgments, damages, penalties, fines,
costs, liabilities, or losses (including, without limitation, diminution in value of the Leased
Premises, damages for the loss or restriction on use of the Leased Premises, and sums
paid in settlement of claims, attorneys fees, consulting fees, and expert fees), which arise
during or after the Lease term as a result of such contamination. Lessee's indemnification
of the Lessor includes, without limitation, any costs incurred in connection with any
investigation of site conditions or any clean-up, remedial, removal, or restoration work
required by any federal, state, or local governmental agency or political subdivision
because of Hazardous Material present in the soil or ground water on or under the
Leased Premises. Without limiting the foregoing, if the presence of any Hazardous
Material on the Leased Premises caused or permitted by the Lessee results in any
contamination of the Leased Premises, the Lessee must promptly take all actions at its
sole expense as are necessary to return to the Leased Premises to the condition existing
prior to the introduction of any such Hazardous Material to the Leased Premises;
provided that Lessee will first obtain the Lessor's written approval of such action, which
approval will not be unreasonably withheld so long as such action would not potentially
have any material adverse effect on the Leased Premises or the Lessor's use of the
Leased Premises.

ARTICLE XXI. Time of the Essence.

21.1 Time is of the essence of this Lease Agreement and each and every provision hereof.

ARTICLE XXII. Access and Use By Lessor.

22.1 The Lessor, and its officers, employees, and any other person properly authorized by
the Lessor, shall at all times retain the right to enter upon the Leased Premises with prior
reasonable notice.

22.2 The Lessor retains the right to use the Leased Premises so long as such use does not
interfere with the Lessee's continuing use of the Leased Premises as provided in this
Lease Agreement.

ARTICLE XXIII. Education.

23.1 The Lessee or appropriate employee of the Lessee will participate in education and
outreach programs regularly as described in exhibit “C”.

ARTICLE XXIV. “AS-IS” Nature of Leased Premises.

24.1 The Lessee acknowledges and agrees that the Lessor has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guarantees of any kind or character whatsoever, whether expressed or implied, oral or written, past, present, or future, of, as to, concerning or with respect to the Leased Premises and; (a) the value, nature, quality, or condition of the Leased Premises, including, without limitation, the water, soil, and geology of the Leased Premises; (b) the income to be derived from the Leased Premises; (c) the suitability of the Leased Premises for any and all activities and uses which the Lessee may conduct thereon including conservation agriculture (crops and livestock); (d) the compliance or by the Leased Premises or its operation with any laws, rules, ordinances, regulations of any applicable governmental authority or body; € the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Leased Premises; (f) the manner or quality of the construction or materials, if any, incorporated into the improvements located on the Leased Premises; (g) the manner, quality, state of repair or lack of repair of the improvements located on the Leased Premises; or (h) any other matter with respect to the Leased Premises and the improvements located thereon, and specifically, that the Lessor has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution, or land use laws, rules, regulations, orders, or requirements, including solid waste, as defined by the U.S. Environmental Protection Agency regulated at 40 C.F.R., Part 261, or the disposal or existence, in or on the Leased Premises, of any hazardous substance, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The Lessee further acknowledges and agrees that having been given the opportunity to inspect the Leased Premises, and the improvements located thereon, the Lessee is relying solely on its own investigation of the Leased Premises and not on any information provided or to be provided by the Lessor. The Lessee further acknowledges and agrees that any information provided or to be provided with respect to the Leased Premises was obtained from a variety of sources and that the Lessor has ‘hot made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. The Lessee agrees that the Lessor is not liable or bound in any manner by any verbal or written statements or representations, or information pertaining to the Leased Premises, or the improvements located thereon, or the operation thereof, furnished by any real estate broker, agent, employee, servant, or other person. The Lessee further acknowledges and agrees that to the maximum extent permitted by law, the lease of the Leased Premises as provided herein is made on an “AS-IS” condition and basis with all faults. It is understood and agreed that the rent provided for under this Lease Agreement and any other consideration provided by the Lessee under this Lease Agreement has been adjusted and taken into consideration by the Lessee to reflect that all of the Leased Premises is being leased by the Lessee from the Lessor subject to the foregoing.
ARTICLE XXV. General Provisions.

25.1 Words of the masculine gender include the feminine and neuter gender; and when the sentence so indicates, words of the neuter gender refer to any gender. Words in the singular include the plural and vice versa.

25.2 This Lease Agreement is to be construed according to its fair meaning and as if prepared by both parties hereto and is deemed to be and contain the entire understanding and agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this Lease Agreement unless set forth in writing and signed by both of the parties hereto.

25.3 The Article headings used herein are for convenience of reference only and in no way define or limit the scope or intent of any provision under this Lease Agreement.

25.4 Subject to the provisions hereof, the benefits of this Lease Agreement and the burdens hereunder inure to and are binding upon the parties hereto and their respective heirs, administrators, successors, agents and permitted assigns.

25.5 This Lease will be governed by and its terms construed under the laws of the State of Colorado. Any judicial proceedings commenced by either party to enforce any of the obligations, covenants, and agreements contained herein, must be commenced in the Larimer County District or County Courts.

25.6 Nothing contained herein is deemed or should be construed by the parties nor by any third party as creating the relationship of principle and agent, a partnership or a joint venture between the parties, or an employment relationship between the parties, it being agreed that none of the provisions set forth herein nor any acts of the parties will be deemed to create a relationship between the parties other than the relationship of lessor and lessee.

25.7 Failure of the Lessor to exercise any right or rights accruing to it by virtue of the Lessee's breach of any covenant, condition, or agreement herein does not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by the Lessee, nor will the Lessee be relieved thereby from its obligations under the terms of this Lease Agreement.

25.8 This Lease Agreement is made for the sole and exclusive benefit of the Lessor and the Lessee, their successors and assigns, and it is not made for the benefit of any third party.

25.9 The remedies of the Lessor under this Lease are cumulative; no one of them should be construed as exclusive of any other or of any other remedy provided by law.

25.10 The Lessor reserves the right to grant to any third party such easements and rights-of-way as it desires over, across, and under portions of the Leased Premises and to lease
all or any portion of the Leased Premises to any other third party so long as such
easements, rights-of-way, and leases do not unreasonably interfere with the Lessee's
continuing use of the Leased Premises as provided in this Lease Agreement.

25.11 No act or thing done by the Lessor or the Lessor's officers or employees during the term
hereof will be considered as an acceptance of the surrender of the Leased Premises,
and no agreement to accept such surrender will be valid unless in writing signed by the
Lessor.

25.12 The Lessee, upon the expiration or termination of this Lease, either by lapse of term or
otherwise, agrees to peacefully surrender to the Lessor the Leased Premises, including
the improvements located thereon together with any alterations, additions, and changes
made to such improvements by the Lessee during the term of this Lease Agreement, in
good repair, as hereinabove provided, except for acts of God, ordinary wear, and
damage by fire or other casualty not caused by the negligence of the Lessee or anyone
under the Lessee's control.

25.13 The Lessee acknowledges and agrees that the Lessee has not relied upon any
statements, representations, agreements, or warranties except such as they are
expressed herein.

25.14 If any covenant, condition, or provision of this Lease Agreement is held to be invalid by
final judgment of any court of competent jurisdiction, the invalidity of such a covenant,
condition, or provision will not in any way affect any of the other covenants, conditions,
or provisions of this Agreement, provided that the invalidity of any such covenant,
condition, or provision does not materially prejudice either the Lessee or the Lessor in
their respective rights and obligations under the valid covenants, conditions, and
provisions of this Lease Agreement.

25.15 To the extent necessary to carry out all of the terms and provisions hereof, the said
terms, obligations, and rights set forth herein survive and will not be affected by the
expiration or termination of this Lease Agreement.

25.16 The parties acknowledge that certain items of personal property may now be located on
the Leased Premises. The Lessor makes no representations or warranties regarding its
ownership of any such items of personal property or regarding the condition of such
items. The parties hereto acknowledge that the said items of personal property located
on the Leased Premises and within the improvements located on the Leased Premises
may belong to third parties. The Lessee agrees to indemnify and hold harmless the
Lessor, and its officers and employees, from and against any liability for any improper
use or disposition by the Lessee of any items of personal property belonging to third
parties.

25.17 Neither the Lessor nor the Lessee will be deemed in violation of this Lease Agreement if
prevented from performing any of their respective obligations hereunder by reason of
strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of public enemies, acts of superior governmental authorities, weather conditions, rights, rebellions, sabotage, or any other circumstances for which they are not responsible or that are not within their control.

25.18 This Lease Agreement will not be recorded. However, at the request of the Lessee, the Lessor and the Lessee will execute a memorandum of lease for recording, containing the names of the parties, the legal description of the Leased Premises, the term of the Lease and such other information as the parties mutually agreed upon.

25.19 The obligations of the Lessor to commit or expend funds after calendar year 2020 are subject to and conditioned upon the annual appropriation of funds sufficient and intended to carry out said obligations by Lessor's City Council, in its sole discretion. If the City Council does not appropriate funds necessary to carry out any such obligations, the Lessor will notify the Lessee promptly of such non-appropriation. If such non-appropriation results in a material impairment of Lessee's right hereunder, the Lessee may terminate the lease, with no further recourse against the Lessor, by providing thirty (30) days written notice to Lessor. If Lessee does not exercise this termination right within sixty (60) days of receiving Lessor's notice of said non-appropriation, then Lessee waives its right to terminate the Lease pursuant to this section.
IN WITNESS WHEREOF the parties hereto have caused this Lease Agreement to be executed the day and year first above written.

THE CITY OF FORT COLLINS, COLORADO,
A Municipal Corporation

By: _____________________________
    Darin A. Atteberry, City Manager

ATTEST:

_________________________
City Clerk

_________________________
[Print name]

APPROVED AS TO FORM:

_________________________
Assistant City Attorney

_________________________
[Print name]

Poudre Valley Community Farms, A Land Cooperative Ltd.
A Colorado limited cooperative association

By: _____________________________

Printed: ___________________________

Title: _____________________________
EXHIBIT "A"

Legal Description of the Property

The N 1/2 of the SE 1/4 of Section 19, Township 6 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado.

Excepting Therefrom that part conveyed to the Board of County Commissioners in deed of dedication recorded May 4, 1994 at Reception No. 94039129.

AND

The S 1/2 of the NE 1/4 of Section 19, Township 6 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado.

Excluding those parcels as described in deeds recorded November 4, 1971 Book 1482 at Page 68 and January 27, 1994 at Reception No. 94008704.
EXHIBIT "B"

OPTIONAL POLE BARNs

**Cole Pole Barn**: 2500 E. County Road 30, Fort Collins
- Approximately 1,400 square feet.
- Uninsulated wood pole frame; metal siding and roof; partial concrete floor.

**Soaring Vista Pole Barn**: 4200 E. County Road 30, Fort Collins
- Approximately 2,400 square feet.
- Uninsulated wood pole frame; metal siding and roof; partial concrete floor.

**POLE BARNs – VICINITY MAP**

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Conservation Agriculture Lease – Poudre Valley Community Farms

Flores del Sol Natural Area Agriculture Lease

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Attachment: Exhibit A (9523 : Flores del Sol RESO)
EXHIBIT "C"

SCOPE OF WORK

Conservation Agriculture. Conservation agriculture takes a broad systems approach and includes principles from other methods, such as organic farming. What sets it apart, however, is a focus on protecting and enhancing natural resources. Conservation agriculture recognizes that production relies on well-functioning ecosystem services such as biodiversity enhancement, as well as water and soil conservation.

The Food and Agriculture Organization of the United Nations (FAO) defines conservation agriculture through a focus on the following practices:

1. Protect and enhance biodiversity
2. Provide environmental services (e.g. pollination, carbon sequestration, stormwater regulation)
3. Promote soil health
4. Conserve water and prevent pollution of waterways
5. Reduce the need for fertilizer or chemical inputs
6. Prepare for/adapt to climate change

The FAO further describes conservation agriculture as, “A farming system that can prevent losses of arable land while regenerating degraded lands. It promotes maintenance of a permanent soil cover, minimum soil disturbance, and diversification of plant species. It enhances biodiversity and natural biological processes above and below the ground surface, which contribute to increased water and nutrient use efficiency and to improved and sustained crop production.” Meta studies on conservation agriculture (e.g. Kessam et al., 2009) assert these practices result in improved ecosystem function and services, reduced greenhouse gas emissions, better adaptation to climate change and reduced vulnerability, and increased stability in production yields and incomes for farmers.

Desired Outcomes. As with the Lessor’s current agricultural management efforts, application of conservation agriculture efforts on natural areas will rely on partnerships with established agricultural experts and lease agreements that outline clear expectations for all parties. The Lessor does not want to be prescriptive in how an agricultural partner may manage a site. However, there is a need to establish an understanding of specific, expected outcomes and document partners’ progress toward meeting those goals. Expected outcome for conservation agriculture efforts on natural areas include:

- Shift from current monoculture to diversified plantings
- Integrate native seed mixes into grazed and not actively farmed areas
- Apply irrigation techniques that achieve greater water savings
- Employ practices to rebuild soil body for improved nutrient composition
- Integrate native plantings throughout farmed area to benefit wildlife including pollinators, birds, and small mammals; this may include establishment of Natural Areas Department-led, small scale restoration projects on portions of total acreage for a site

The Lessor will conduct annual assessments to document progress towards these stated outcomes which may include but not limited to:

- Bird and butterfly surveys
- Small mammal assessments
- Water use measurements
- Floristic quality surveys
- Soil assessments, including carbon capture analysis

The Lessor recommends implementing conservation agriculture farming practices on 85% of Flores del Sol. The remaining 15% (approximately 20-25 acres) will be conserved and enhanced through planting of native, pollinator-friendly grasses, shrubs, and forbs. Among the 120 acres dedicated to conservation agriculture, initially 25 acres will be dedicated to diversified vegetable farming. This will include crop beds of varying size and content, and related infrastructure. Lessee and Lessor will review and agree upon an annual plan for integrated pollinator habitat. Approximately 90 acres will initially support grazing and flexible use, which will allow for expansion of the diversified vegetable farming in the future. Grazed portions will integrate native species into seed mixes, to the greatest extent possible. This space will also feature innovative approaches to building habitat for insects, birds, and small mammals, while supporting intensive, rotational grazing that can be a model for other regional conservation agriculture projects.

The Lessor will work closely with the Lessee to establish financial contributions and design for additional habitat patches both surrounding and within agriculture fields. For example, larger shade trees may be planted, serving the dual purpose of creating a windbreak for agriculture operations while creating habitat for birds and small mammals. Additionally, the Lessor and Lessee will work together to plan for community engagement to help residents connect to nature in new ways. This may include connecting the property to the adjacent Colorado Front Range Trail and potential partnerships with the neighboring church. Any trail construction for the purposes of public engagement will be designed and constructed by the Lessor, with input from the Lessee. Other improvements to foster engagement or further the missions of either the Lessee or the Lessor (i.e. outdoor classroom space) will be discussed and planned accordingly.

The Lessee will maintain a portion of the site as “incubator fields.” These smaller sections of farmland (1-2 acres) will be used for training purposes and available to emerging farmers looking to establish independent operations in the region.

The Lessee will be responsible for providing Lessor with an annual report summarizing activities related to extending the environmental, social, and economic benefits of the conservation agriculture project to the community; including but not limited to:

- Biodiversity enhancements
- Number of community members served
- Number of partnerships formed and/or continued to serve underrepresented members of the community
- Emerging farmers engaged
CONCEPTUAL FARM LAYOUT

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Flores del Sol Natural Area Agriculture Lease
AGENDA ITEM SUMMARY
City Council

AGENDA ITEM SUMMARY
City Council

October 6, 2020

STAFF

Caryn Champine, Director of PDT
Ingrid Decker, Legal

SUBJECT

Resolution 2020-089 Authorizing the Mayor to Execute a Revised Intergovernmental Agreement with Colorado State University Related to Canvas Stadium.

EXECUTIVE SUMMARY

The purpose of this item is to approve a Resolution authorizing the City Manager to sign the CSU - City of Fort Collins Stadium Operations Intergovernmental Agreement.

In 2015, the City and CSU entered into an Intergovernmental Agreement (IGA) to address the construction and opening of the new stadium. The 5-year term of this agreement concluded this year and both parties agreed to a new 5-year IGA. The fundamental structure and intention of the new IGA is the same as the previous version, with the purpose of the original agreement to ensure the stadium experience continues to be of benefit to the community.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

In 2015, the City and CSU entered into an Intergovernmental Agreement (IGA) to address the construction and opening of the new on-campus stadium. The original IGA went before Council during a work session on October 27, 2015. The purpose of the IGA is to set a framework for more detailed operational agreements and plans for game day services including Police, Traffic, Parking, and Transport. The 5-year term of that agreement concluded this year and both parties agreed to a new 5-year IGA.

The revision process included virtual brainstorming, wordsmithing and research into other college towns with stadiums, resulting in multiple iterations of the IGA. These drafts were reviewed with engagement from other City departments including Transport, Parking, Traffic Operations, Police Services and Neighborhood Services. Multiple reviews and refinement of the draft IGA have taken place by both CSU and the City. Council has been provided with memos regarding the progress of the CSU IGA revisions in August and September of 2020.

CSU and the City both agree to a continued partnership to ensure mutually beneficial outcomes during major events, such as home football games. Most of the updates are to reflect post-construction of the stadium and existing operation agreements and coordination efforts between CSU and City departments and neighborhoods. Key changes made to the IGA include:

- **Public Transportation Services:** CSU and the City will continue the annual partnership supporting public transportation services for major events at the stadium. The primary change is there will be an annual assessment of demands and deeper conversation on the best approach to resource those changing needs. Previous practice has been to renew a separate IGA that provides details on service and pricing.
We plan to continue to apply that approach moving forward, as needed. For the 2020/2021 major event season, we will not deploy additional buses to our normal routes in light of the current pandemic.

- **Stadium Advisory Group (SAG):** SAG was put in place to maintain neighborhood coordination during the construction and opening of the stadium. All stakeholders agree this group served its purpose during the stadium’s opening and can conclude. A formal letter is being sent to the SAG to notify them of this change. Many other established services and agreements are successfully addressing potential neighborhood impacts such as parking, trash, noise, and lighting. The agreement includes a provision to convene CSU and City leadership if issues escalate.

- **Good Neighbor Fund:** The Good Neighbor Fund was intended to provide a funding source to address neighborhood impacts. This fund was utilized at the opening of the stadium on two different occasions. Since then, CSU has not received any applications for this funding, even with significant advertising initiatives. The City and CSU both agree this fund can be discontinued. Existing neighborhood coordination efforts remain in place to support future concerns.

**CITY FINANCIAL IMPACTS**

The revised IGA does not require any financial resources from the City. There is a separate IGA in place with detailed transportation plans and cost to CSU. The City will continue to meet with CSU annually to assess the current demands and negotiate the most financially feasible options. In the 2020/2021 season specifically, CSU and the City have agreed that Transfort will not deploy additional buses to the normal routes given the current COVID-19 pandemic.

**PUBLIC OUTREACH**

A formal letter is being sent to the Stadium Advisory Group communicating that this group will be dissolved and thanking them for their service. The City and CSU will continue to use existing methods to connect with community members to address any future issues regarding the stadium and manage impact to surrounding neighborhoods.
RESOLUTION 2020-089
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE A REVISED
INTERGOVERNMENTAL AGREEMENT WITH
COLORADO STATE UNIVERSITY RELATED TO CANVAS STADIUM

WHEREAS, on December 2, 2014, the City Council adopted Resolution 2014-109 approving a mitigation report for an on-campus stadium at Colorado State University (CSU) and indicating the City’s desire to enter into an intergovernmental agreement with CSU identifying key impacts that could be caused by an on-campus stadium and mitigation strategies to lessen the impact of event day operations at an on-campus stadium; and

WHEREAS, the City Council also expressed a desire to, in such intergovernmental agreement, determine responsibilities for costs that might be incurred in addressing mitigation measures; and

WHEREAS, on March 17, 2015, the City Council adopted Resolution 2015-037 approving an intergovernmental agreement that addressed stadium impacts and mitigation, identified key stadium-related infrastructure improvements and CSU’s financial responsibility for them, and also noted additional projects for which future shared responsibility could be considered (the “2015 IGA”); and

WHEREAS, CSU broke ground on Canvas stadium in September 2015, and the stadium opened in August 2017; and

WHEREAS, on May 16, 2017, the City Council adopted Resolution 2017-047 authorizing a first addendum to the 2015 IGA to update the details and costs of several infrastructure improvement projects related to the stadium; and

WHEREAS, since then the infrastructure improvements have been completed, and the 2015 IGA expired earlier this year; and

WHEREAS, CSU and the City wish to enter into a new, updated intergovernmental agreement (the “2020 IGA”) to continue the established partnership related to managing the impacts of major events at the stadium; and

WHEREAS, the proposed 2020 IGA is attached hereto and incorporated herein as Exhibit “A”; and

WHEREAS, the revised IGA, which would be for an initial term of five years, does not require any financial contribution from the City.

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

-1-
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 authorizes the Mayor to execute the 2020 IGA in substantially the form attached hereto as Exhibit “A”, together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City, provided such changes are materially consistent with the terms of this Resolution and the intended purpose of the 2020 IGA.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day of October, A.D. 2020.

_________________________________
Mayor

ATTEST:

_______________________________
City Clerk
AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
RELATED TO THE ON-CAMPUS STADIUM

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (“Agreement”), dated ____________, 2020, is entered into by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (“City”), and THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, ACTING BY AND THROUGH COLORADO STATE UNIVERSITY (“CSU”). The City and CSU are referred to herein individually as a “Party” and collectively as the “Parties.”

A. On April 13, 2015, the Parties entered into an Intergovernmental Agreement, as later amended by a First Addendum dated June 22, 2017 (the “2015 IGA”).

B. The purpose of the 2015 IGA was to document plans and agreements developed by the Parties to identify and mitigate the impacts related to CSU’s construction and operation of an on-campus stadium facility at the CSU campus, including but not limited to operational planning, infrastructure improvements, transit operations, parking and traffic issues, law enforcement and security services and neighborhood relationships.

C. The Parties jointly identified the need and responsibility to evaluate and manage the existing pedestrian and bicycle traffic entering, exiting, and traversing campus, as well as the increase in such traffic created by the use of the stadium. The Parties also acknowledged the mutual goal of promoting bike and pedestrian safety both on- and off-campus. This responsibility, in conjunction with the Parties’ mutual commitment to reducing vehicle traffic, was achieved by the improvement of access points around campus, including both grade-separated crossings and same-grade crossings. The safety and management of pedestrian and bicycle traffic is further achieved by a multi-modal approach to event operations. By emphasizing public transit, as well as implementing best efforts to disperse and spread out peak arrival and departure flows, the Parties can avoid unnecessary infrastructure costs while maximizing the stadium’s benefit to CSU and the City.

D. Now that the major infrastructure improvements contemplated by the 2015 IGA have been completed, and the stadium has been operational for several seasons, the Parties wish to update the 2015 IGA with an amended agreement that reflects that Parties present intentions regarding stadium operations.

E. The precise impact of the use of the stadium on the surrounding campus, neighborhoods and public services and infrastructure cannot always be perfectly predicted. The Parties agree to continue to work together in good faith to identify impacts and common needs, and to develop plans for mitigating such impacts going forward.

F. For the purposes of this Agreement the Parties have deemed the terms “campus” and “main campus” to mean generally the area bounded by Laurel Street, Shields Street, Prospect Road and College Avenue that is owed and used by CSU for academic purposes, administrative purposes and...
other programs and activities associated with CSU. The terms “campus’ and “main campus” are not intended to have a particular legal or interpretive significance as used in this Agreement.

G. As set forth in this Agreement, the City and CSU agree to take specific steps to mitigate the impacts of the on-campus multi-use stadium facility and, by continuing the 2015 IGA in this updated and restated form, agree to continue to collaborate and coordinate together in order to advance these objectives.

NOW, THEREFORE, the Parties agree as follows:

1. **Term.** The term of this Agreement will begin on the date it is fully executed by the Parties (the "Effective Date") and shall continue until June 30, 2025, provided that the Agreement shall be automatically extended for successive five (5) year terms until either party gives written notice to the other of its intent to terminate this Agreement at the end of its then-current term. Such notice shall be given at least sixty (60) days prior to the end of the then-current term. The Parties have agreed to review and update this Agreement as needed through the adoption of addenda, as more specifically described below.

2. **Use of the Stadium.**

   A. **Uses.** CSU uses the on-campus stadium facility (the "Stadium") for several purposes, including but not limited to football practices and games, other CSU NCAA sports, club sports practices and games, intramural practices and games, band and cheerleading practices, athletic camps, as well as special events such as welcome and orientation events, graduation ceremonies, distinguished speakers, and occasional concerts, and various academic and student support purposes, many of which already occur in other CSU locations, including on the main campus.

   B. **Major Events.** For purposes of this Agreement, a "Major External Event" is defined as a ticketed event, for which tickets are offered for sale to the public, featuring a performance external to CSU, at which attendance is anticipated to exceed 12,000 persons. For purposes of this Agreement, a "Major CSU Event" shall mean any event held at the Stadium that is expected to take place (and ultimately does take place) in the Stadium that, based on past experience, advance ticket sales or other reasonably accurate and publicly available information, is reasonably expected to attract 12,000 or more attendees who are primarily CSU students, faculty, staff, alumni, donors, or supporters and their respective family members and guests, including but not limited to CSU football games, commencement, or new student orientation.

   CSU agrees not to hold more than three (3) Major External Events in any calendar year. CSU agrees to give the City notice of at least sixty (60) days prior to any Major External Event at the Stadium, and to review each Major External Event with the City, both before and after it occurs. If significant problems are discovered through good faith discussions, CSU agrees to discuss with the City a possible limit on the number or extent of future Major External Events.
3. **Stadium Event Management.**

   A. **Regular Coordination.** CSU agrees to continue communicating and coordinating with the City and Larimer County and other relevant agencies for all Major CSU Events and Major External Events held at the Stadium (either referred to as a Major Event"). In addition, CSU has developed a Major Event Coordination and Operations Plan ("the Plan") to provide a framework for management of Major Events, based upon the size, nature and timing of such events. The Plan is intended to assist CSU and the City in establishing a framework for planning and coordinating other events that are not considered Major Events but are anticipated to alter the pattern or volume of pedestrian, transit or other traffic flows, or otherwise impact the public facilities serving the CSU campus. The Parties agree to work cooperatively to review and update the Plan from time to time in coordination to reflect the information developed through experience with events and operation of the Stadium. The Plan also identifies a process and mechanism for a game-day communications plan to provide for communication of game-day concerns and coordination, and generally identifies costs of operations expected to be incurred by the City and required in connection with Major Events, to facilitate discussion of and planning for reimbursement of those expenses by CSU.

   B. **Law Enforcement and Security.** Consistent with Section 2(B) above, CSU will provide sixty (60) days’ notice and will coordinate the provision of law enforcement and other security for Major Events at the Stadium. CSU agrees to be responsible for additional costs, if any, that are directly associated with the provision of law enforcement and security for Major Events, as set forth in writing for each specific Major Event. In addition, CSU agrees to consult with local law enforcement agencies about entering into a Special Event Mutual Assistance Agreement or other agreement intended to coordinate and arrange for cooperation in connection with Major Events at the Stadium or other events anticipated to result in significant law enforcement and security needs which exceed CSU’s ability or desire to solely provide. In planning for and responding to emergencies on campus, including at the stadium, CSU utilizes a comprehensive Emergency Response Plan, which incorporates the National Incident Management System ("NIMS"), and coordinates with all other appropriate law enforcement agencies.

   C. **Traffic and Parking.** CSU and the City agree to encourage multi-modal methods of transportation, such as walking, bicycles, buses, and shuttles, as well as vehicles, to the Stadium for Major Events. CSU has developed a traffic management and campus parking plan for Major Events at the Stadium (the "Traffic/Parking Plan"), and CSU agrees to confer with the City about any amendments, additions or replacements of or to said Plan. The Parties agree to work together in good faith, in continuation of the spirit of current practices, regarding such approvals and such a Plan. The Parties acknowledge that any Traffic/Parking Plan will likely require modifications over time, depending upon attendance, traffic patterns, and the availability of public transportation, as well as the evaluation of impacts based on experience with events at the Stadium. The Parties agree to review and develop plans to address costs associated with heightened or special parking
enforcement in areas around the campus on Major Event days on an ongoing basis.

D.  City Public Transportation Services.

(1) On the days of Major Events during the 2020-21 school year (August 24, 2020 to May 14, 2021) City will provide the level of Transfort service that is standard for that day of the week at no cost to CSU.

(2) For future school years, CSU and the City agree to assess and discuss on an annual basis what supplemental transportation services the City may expect to provide for Major Events at the Stadium (particularly additional services from Transfort, including MAX bus rapid transit service), to assist with managing the flow of people to and from such events, and how the costs for such supplemental services will be managed by the parties, taking into account any applicable legal or regulatory limits or requirements. As part of that assessment CSU and the City agree to also discuss financially feasible resource options for both parties.

E.  Game-Day Activities. CSU has established and supports the ongoing efforts of the Game Day Agency Coordination Team (the “Coordination Team”): a working group comprised of CSU and City staff representatives in areas such as traffic, parking, transportation and public safety, as well as representatives from other emergency services providers such as fire and ambulance services. The Coordination Team evaluates and develops plans for the conduct of game-day events and activities, including tailgating, which CSU intends to encourage and provide opportunities for on the campus (rather than in adjacent neighborhoods). CSU agrees to convene the Coordination Team in the week before a game day. The Coordination Team will consult with the City regarding matters of shared interest and concern, and CSU will share plans for the conduct of game-day events and activities with the City and integrate those plans into the Major Event Coordination and Operations Plan.

4. Neighborhood Relationships. CSU and the City will work together in good faith to examine and respond to community impacts and interactions, especially in neighborhoods surrounding the CSU campus, related to use of the Stadium for Major Events. Relevant issues may include, but are not limited to, trash and litter, noise, intrusive lighting, traffic, and parking issues that may occur related to Major Events or other kinds of events at the Stadium. CSU is committed to working with the City and neighborhoods in the vicinity of the campus to identify and address such issues. In particular, CSU agrees to employ to the extent reasonably practicable, best practices and available technology concerning the mitigation of noise and lighting impacts, and agrees to strive to meet the City’s noise ordinances in connection with non-football game events at the Stadium.

5. Utilities. As agreed by CSU and the City, the City furnishes certain utility services to the Stadium and related improvements subject to compliance with all terms and conditions for utility service, payment of all applicable rates, fees and charges, and construction of any required infrastructure in accordance with applicable City standards and specifications.
6. **Review Procedures and Updates.** The Parties agree to meet in good faith for a periodic review of this Agreement and any procedures attendant thereto, at a time and place to be mutually agreed upon. Although the Parties agree to discuss any proposed amendments to the Agreement as part of any periodic review, neither Party is obligated to agree to any subsequent amendment to the Agreement and its provisions.

7. **Existing Rights and Agreements.** Nothing in this Agreement shall act to amend, modify, or supersede any annexations, any related agreements or any other agreements, rights, or legal positions by and between the City and CSU external to this Agreement, or to alter in any way their recourse under the same.

8. **Liability.** Only to the extent permitted by applicable law, each party will be responsible for its own negligent acts or omissions and that of its officers, employees, agents and contractors. Any liability of the City, CSU, or their officers and employees is subject to all the defenses, immunities, and limitations of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended (the “CGIA”), and to any other defenses, immunities, and limitations to liability available under the law. It is expressly understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by CSU or the City of its governmental and sovereign immunities, as an express or implied acceptance by CSU or the City of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the CGIA, as a pledge of the full faith and credit the State of Colorado, or as the assumption by any of the Parties of a debt, contract or liability of each other in violation of Article XI, Section 1 of the Constitution of Colorado.

9. **Default; Dispute Resolution.** If any party defaults in its obligations under the terms of this Agreement, a non-defaulting party may give the defaulting party written notice specifying the nature of the default. If the defaulting party has not cured the default within thirty (30) days, or, for a default reasonably requiring more than thirty (30) days to effect a cure, has not commenced a cure within thirty (30) days and pursued it with diligence, the non-defaulting party may terminate this Agreement, provided that, if there is any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, the parties agree to attempt to resolve the dispute informally before terminating the Agreement. Accordingly, the Parties will first elevate the disputed issues to senior administration, and if the matters are not resolved, the Parties may then engage in mediation or other non-binding dispute resolution methods. The Parties agree that in the event of a breach of this Agreement by either party, except for any breach of the obligations set forth in Section 5(B) herein, the sole remedy of the non-breaching party shall be termination of this Agreement as set forth herein, and neither party shall be liable to the other for any money damages, expenses, costs or attorneys’ fees, and neither party shall be entitled to seek and both Parties agree to waive the right to pursue any equitable remedies, including but not limited to injunctive relief or specific performance.

10. **Notices.** Any notice or other communication given by any party to another relating to this Agreement must be hand-delivered or sent by registered or certified mail, return receipt requested, or by overnight commercial courier, addressed to such other party at its respective addresses set forth below; and such notice or other communication will be deemed given when so hand-delivered or three (3) business days after so mailed, or the next business day after being deposited with an overnight commercial courier:
If to the City:

City Manager
City of Fort Collins
Attn: Darin A. Atteberry
P.O. Box 580
Fort Collins, CO 80522

With a copy to:

City Attorney's Office
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

If to CSU:

Office of the President
Colorado State University
Attn: President Joyce McConnell
0100 Campus Delivery
Fort Collins, CO 80523-0100

With a copy to:
Office of the General Counsel
Colorado State University System
01 Administration Building
0006 Campus Delivery
Fort Collins, CO 80523-0006

11. **Obligations Subject to Appropriation.** The obligations of CSU and the City to commit or expend funds in any subsequent fiscal year are subject to and conditioned upon the annual appropriation of funds sufficient and intended to carry out said obligations by the Fort Collins City Council and the Board of Governors of the Colorado State University System, respectively, in the City and CSU’s sole discretion. If the City Council or the Board of Governors does not appropriate funds necessary to carry out any such obligations, the City or CSU will notify the other party promptly of such non-appropriation. If such non-appropriation results in a material impairment of the City’s or CSU’s rights hereunder, such party may terminate the Agreement, with no further recourse against the other party, by providing thirty (30) days written notice.

A. Words of the masculine gender include the feminine and neuter gender; and when the sentence so indicates, words of the neuter gender refer to any gender. Words in the singular include the plural and vice-versa.

B. This Agreement is to be construed according to its fair meaning and as if prepared by both Parties and is deemed to be and contain the entire understanding and agreement between the Parties. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this Agreement unless set forth in writing and signed by the Parties.

C. This Agreement cannot be modified or assigned except in writing signed by all parties.

D. Subject to the provisions hereof, the benefits of this Agreement and the burdens hereunder inure to and are binding upon the parties hereto and their respective heirs, administrators, successors, agents and permitted assigns.

E. This Agreement will be governed by and its terms construed under the laws of the State of Colorado. Any judicial proceedings commenced by a party to enforce any of the obligations, covenants, and agreements contained herein, must be commenced in the Larimer County District Court located in Fort Collins, Colorado.

F. Nothing contained herein is deemed or should be construed by the Parties nor by any third party as creating the relationship of principle and agent, a partnership or a joint venture between the Parties, or any employment relationship between the Parties.

G. This Agreement is made for the sole and exclusive benefit of the City and CSU, and it is not made for the benefit of any third party.

H. If any term or condition of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such a term or condition, will not in any way affect any of the other terms or conditions of this Agreement, provided that the invalidity of any such term or condition does not materially prejudice any party in their respective rights and obligations under the valid terms and conditions of this Agreement.

I. No party will be deemed in violation of this Agreement if prevented from performing any of its respective obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of public enemies, acts of superior governmental authorities, weather conditions, rights, rebellions, sabotage, or any other circumstances for which it is not responsible or that are not within its control.
THE CITY OF FORT COLLINS, COLORADO
a Municipal Corporation

Date: ___________________  By: ______________________________

ATTEST:

________________________________
City Clerk

(Print name)

APPROVED AS TO FORM:

________________________________
City Attorney

(Print name)

THE BOARD OF GOVERNORS
OF THE COLORADO STATE UNIVERSITY
SYSTEM, ACTING BY AND THROUGH
COLORADO STATE UNIVERSITY

Date: ___________________  By: __________________________________

Joyce McConnell, President

Legal Review:

Date: ___________________  By: ______________________________

Colorado State University System
AGENDA ITEM SUMMARY
City Council
October 6, 2020

STAFF

Drew Brooks, Director of Transit
Claire Havelda, Legal

SUBJECT

Resolution 2020-090 Approving and Authorizing the City Manager to Execute, and Amend from Time to Time, an Intergovernmental Agreement with Colorado State University for Purchase of Transportation Services.

EXECUTIVE SUMMARY

The purpose of this item is to approve an Intergovernmental Agreement ("IGA") between Colorado State University, the Associated Students of Colorado State University (collectively "CSU"), and City of Fort Collins Transfort in which CSU will fund the use of Transfort services by CSU students. CSU supports those efforts and will fund the use of Transfort services by University faculty and staff, as well as the provision by Transfort of additional services for the benefit of the students, CSU and its campuses. The parties will further the goals of public transportation in and for CSU and the City of Fort Collins.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Since 2014, the City has entered into an agreement with CSU for the purchase of Transfort transportation services. These transportation services include:

- Contribution toward the operation and access for all students and faculty to ride the Transfort system with a valid RamCard student or faculty identification card.
- Operation of the HORN campus circulator and complementary paratransit service.
- Standard and expanded Foothills Campus Shuttle service.
- Enhanced service on West Elizabeth.
- Operation of the Gold Route.
- 365 weekend and holiday service.
- Flex Route.
- Greeley-operated Poudre Express service.

CSU will also provide a one-time payment for the implementation of real-time on-bus technology on two of the buses used for contracted fixed route service.

CSU will pay a total of $2,403,611 to the City. $2,349,611 will be paid in two semi-annual payments of $1,174,805 (to take place September 2020 and March 2021), plus a one-time payment of $54,000 for the real-time technology. The funds for the expenditure and reimbursement for transit services were appropriated previously through the BFO process. Therefore, no appropriations are required for this action.

The agreement allows for concurrent execution and will allow small changes or amendments to the final IGA after approval by Council, if approved by both the City Manager's office and the City Attorney's office. The City
Manager is authorized to amend the IGA as contemplated by its terms. The ability to make such changes to the IGA allows the parties to make adjustments periodically to timely react to the COVID-19 pandemic and resulting ridership fluctuations. The term of this agreement extends through June 30, 2021.

**CITY FINANCIAL IMPACTS**

There are no financial impacts as this agreement provides for expenditures on services to be reimbursed by CSU and was previously accounted for in the Budgeting for Outcomes process.
RESOLUTION 2020-090
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE, AND AMEND FROM TIME TO TIME, AN INTERGOVERNMENTAL AGREEMENT WITH COLORADO STATE UNIVERSITY FOR PURCHASE OF TRANSPORTATION SERVICES

WHEREAS, since 2014, the City has entered into an intergovernmental agreement with Colorado State University (“CSU”) to provide transportation services to CSU; and

WHEREAS, the transportation services have included access for students and faculty to ride the City’s Transfort fixed-route bus system, including but not limited to the HORN campus circulator and complementary paratransit service; standard and expanded Foothills Campus Shuttle Service; enhanced service on West Elizabeth; Operation of the Gold Route; 365 day a year service; Flex Route; and Greeley-operated Poudre Express Service all of which are open to and serve all residents of the City; and

WHEREAS, City Council wishes to continue to offer these services to CSU; and

WHEREAS, for the remainder of 2020 through June 30, 2021, CSU will pay a total of $2,1403,611.30 in two semi-annual installments of $1,174,805.65 plus an additional one-time payment of $54,000 for real-time technology (to be documented in a separate IGA) for these services; and

WHEREAS, the funds for the expenditure and reimbursement for transit services for 2020 were appropriated previously through the City’s Budget for Outcomes Process and the City’s obligation to provide the transportation services in future years is subject to appropriations; thus no appropriation action is required with this item; and

WHEREAS, this Resolution comes before City Council to authorize the attached Intergovernmental Agreement for Transportation Services Between the City of Fort Collins and Colorado State University substantially in the form attached hereto as Exhibit “A” and incorporated herein by this reference (the “IGA”); and

WHEREAS, City Council wishes to authorize the execution of the IGA, finding it in the best interests of the City.

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

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

Section 2. That the City Council hereby authorizes the City Manager to execute the IGA in substantially the form attached hereto as Exhibit “A”, together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this
Resolution; provided such changes are materially consistent with the terms of this Resolution and the intended purpose of the IGA.

Section 3. That during the term of the IGA the City Manager, in consultation with the City Attorney, is also authorized to approve and execute amendments to the IGA as described therein and consistent with this Resolution so long as the City Manager determines such amendments: (a) are reasonably necessary and appropriate to protect the City’s interests or provide a benefit to the City; (b) effectuate the purposes of this Resolution; and (c) limit the City’s financial obligation to expenditure of funds already appropriated and approved by Council or conditioned upon such appropriation.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day of October, A.D. 2020.

_________________________________________
Mayor

ATTEST:

_________________________________________
City Clerk
INTERGOVERNMENTAL AGREEMENT FOR TRANSPORTATION SERVICES BETWEEN THE CITY OF FORT COLLINS AND COLORADO STATE UNIVERSITY

This Intergovernmental Agreement for Transportation Services ("Agreement") is made and entered into by and between the City of Fort Collins ("City") and the Board of Governors of the Colorado State University System, acting by and through Colorado State University ("University") for its use and benefit as well as the use and benefit of the Associated Students of Colorado State University ("ASCSU").

RECITALS

A. ASCSU represents various interests of the students at the University ("Students"), including public transportation and its goals in reducing traffic congestion, improving air quality, decreasing parking needs, and increasing transportation convenience and safety and has entered into a prior intergovernmental agreement with the City for the provision of Transfort services to the Students (the "Prior IGA");

B. The University represents the interests of its faculty, staff and students and shares the same goals concerning public transportation, access, parking, reducing traffic congestion, and improving air quality, and supports ASCSU in its efforts to increase transportation convenience and safety;

C. The City provides public transportation services by its Transfort system over established routes during published hours and at published frequencies that serve the transportation needs of many Students, as well as the University's faculty and staff;

D. The Parties desire to enter into an agreement whereby ASCSU will fund the use of Transfort services by University students and the University will also support those efforts and will fund the use of Transfort services by University faculty and staff, as well as the provision by Transfort of additional services for the benefit of the Students, the University and its campuses, and the parties will further the goals of public transportation in and for the University and the City of Fort Collins.

E. This Agreement is entered into pursuant to the authority of section 29-1-203, C.R.S. 2019, which allows for the cooperation or contracting of government entities.

1. Term

The term of this Agreement shall be effective on the date that it is fully executed (the "Effective Date") and shall terminate on June 30, 2025, unless sooner terminated in accordance with the provisions herein, or extended by mutual written agreement of the parties. The period from the Effective Date to June 30, 2021 shall be referred to herein as the "first contract year," and each twelve-month period from July 1st through June 30th thereafter during the term of this Agreement shall, individually, be a "contract year."
2. Fees for Services
   a. Fees for Services Procured by ASCSU and the University. In consideration of the services set forth in detail in Attachments 1-4 herein, including the use by the Students and the University's faculty and staff of the entire Transfort system as depicted in Attachment 1, Transfort fixed-route service levels as shown in Attachment 2, the enhanced transit services to the University as shown in Attachment 3, and the Gold schedule set forth in Attachment 4, the University shall pay the City the sum of $2,444,773.80 for the first contract year (the "Initial Payment") payable after invoice, in two installments on the dates shown below. Transfort shall invoice the University for the initial Payment as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 15, 2020</td>
<td>$1,174,805.65</td>
</tr>
<tr>
<td>February 15, 2021</td>
<td>$1,174,805.65</td>
</tr>
<tr>
<td>Total</td>
<td>$2,349,611.30</td>
</tr>
</tbody>
</table>

This sum is inclusive of Transfort services depicted in Attachments 1-4.

Invoices from the City should include an itemized cost breakdown for the specific services provided under this Agreement, as follows:

<table>
<thead>
<tr>
<th>2021 Operating Dates</th>
<th>Service</th>
<th>2020 Amount</th>
<th>2019 CPI Increase</th>
<th>2021 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>07/01/2020 - 06/30/2021</td>
<td>Horn Shuttle</td>
<td>$764,439.00</td>
<td>1.92%</td>
<td>$779,146.81</td>
</tr>
<tr>
<td>07/01/2020 - 06/30/2021</td>
<td>Horn Paratransit</td>
<td>$3,000.00</td>
<td>1.92%</td>
<td>$3,057.72</td>
</tr>
<tr>
<td>07/01/2020 - 06/30/2021</td>
<td>Transport System Access for Students and Employees</td>
<td>$626,275.00</td>
<td>1.92%</td>
<td>$638,324.53</td>
</tr>
<tr>
<td>07/01/2020 - 06/30/2021</td>
<td>Foothills Campus Shuttle</td>
<td>$150,070.00</td>
<td>1.92%</td>
<td>$152,957.35</td>
</tr>
<tr>
<td>07/01/2020 - 06/30/2021</td>
<td>West Elizabeth Enhanced Service</td>
<td>$353,060.00</td>
<td>1.92%</td>
<td>$359,852.87</td>
</tr>
<tr>
<td>07/01/2020 - 06/30/2021</td>
<td>Gold Route</td>
<td>$20,841.00</td>
<td>1.92%</td>
<td>$21,241.98</td>
</tr>
<tr>
<td>07/01/2020 - 06/30/2021</td>
<td>365 Service</td>
<td>$222,207.00</td>
<td>1.92%</td>
<td>$226,482.26</td>
</tr>
<tr>
<td>Period</td>
<td>Service</td>
<td>Amount</td>
<td>Interest</td>
<td>Total</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------------------</td>
<td>------------</td>
<td>----------</td>
<td>-----------</td>
</tr>
<tr>
<td>07/01/2020 - 06/30/2021</td>
<td>Flex Service</td>
<td>$62,000.00</td>
<td>1.92%</td>
<td>$63,192.88</td>
</tr>
<tr>
<td>07/01/2020 - 06/30/2021</td>
<td>Poudre Xpress</td>
<td>$10,000.00</td>
<td>1.92%</td>
<td>$10,192.40</td>
</tr>
<tr>
<td>01/19/2021 - 06/30/2021</td>
<td>Expanded Foothills Campus Shuttle</td>
<td>$95,162.50</td>
<td>N/A - new</td>
<td>$95,162.50</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2021 Total</td>
<td></td>
<td></td>
<td></td>
<td>$2,349,611.30</td>
</tr>
<tr>
<td>Each 1/2 year payment</td>
<td></td>
<td></td>
<td></td>
<td>$1,174,805.65</td>
</tr>
</tbody>
</table>

| One-time cost        | Real-Time On-Bus Technology | To be invoiced separately | $54,000.00 |

b. **Annual Payments: Adjustments of Services and Payments; CPI Adjustment.**

For the first contract year (July 1, 2020 through June 30, 2021), and each successive contract year, if any, the University shall pay to Transfort the annual sum of **$2,349,611.30**, subject to any material changes in the services to the Horn or Foothills Campus shuttle as provided for herein. The parties acknowledge and agree that ASCSU and the University may modify the services detailed in Attachment 3, depending upon the demands and needs of the University's campuses or as proposed by Transfort to achieve and maintain service levels. Services and the resulting annual payments may be modified two times a year, once between January 1st and June 30th, and once between July 1st and December 31st by written agreement of the Parties. For the avoidance of doubt, such semiannual changes to the services do not include any as-needed modifications to the reallocation of services proposed and implemented by Transfort to maintain or achieve required service levels.

No later than April 1 of any contract year, the parties shall meet and confer to review any changes to the services to be provided by Transfort to ASCSU and the University, and any corresponding adjustments to the annual payment amount. Further, the parties acknowledge that the additional services to be provided by Transfort, including the enhanced transit services set forth in Attachment 3, may need to be adjusted during the initial contract year or subsequent contract years. If, either Party, upon review of route usage, wishes to reallocate services, they will notify the other Party. These adjustments may include necessary changes resulting from an inability to meet agreed upon service levels, in which case Transfort will be responsible for reallocating and proposing modifications to restore such service levels. The parties agree to meet and confer about making any such adjustment and shall make such adjustments, as needed, and shall negotiate in good faith any corresponding adjustments in the fees to be paid to the City, if any. The parties
shall memorialize in a written document signed by at least one representative of each party any such changes in services and fees. These representatives are the contract managers for each party, currently Aaron Fodge for the University and Kaley Zeisel for the City.

In addition, subsequent annual payments shall be increased (but not decreased) in accordance with the most recent full year Denver-Aurora-Lakewood, Colorado, Price Index (CPI-U) as reported by the US Bureau of Labor Statistics, but not to exceed 3% annually. By way of example, if the published CPI-U for Denver-Aurora-Lakewood, Colorado for the second half of 2020 is reported on Jan 31, 2021 to have increased 3.6% over the second half of 2020, then the increase in the annual payment for the contract year commencing July 1, 2021 will be 3.0%. Provided, however, that if CSU student ridership has decreased for the period from July 1 through March 31 of the then-current contract year, as determined using the onboard fare tracking system then no annual CPI-U adjustment shall be made and the annual payment will remain the same as the prior contract year. In the subsequent contract year, any increase based on the CPI-U shall be calculated from the unchanged base price carried over from the previous year.

c. Payment Upon Invoice. Payments shall be remitted to Transfort within 30 days after invoice dated September 15 and February 15 of each contract year is received and accepted by the University. If any amount invoiced is disputed, the University shall remit payment of the undisputed amount, together with a statement of the nature and amount of the dispute. The parties shall cooperate in good faith to resolve the dispute, and failing such, the dispute shall be elevated by each party to its senior administrator for further attempts at resolution.

d. Monthly Reports. During the term of this Agreement, Transfort shall submit regular, monthly ridership reports by route, percentage of trips on-time by route report, and capacity threshold exceeded by stop by route to ASCSU and the University, in Excel spreadsheet or any other format that is agreed upon by the parties, no later than twenty-one (21) calendar days following the end of the prior month for review and discussion with the University. In addition, the City will timely provide or make available to the University the ridership data that it reports to the public and/or to the Federal Transit Administration. CSU retains rights to boarding and deboarding passenger counts collected by location for Transfort transit routes to include Around the Horn and Foothills Campus Shuttles. Transfort will establish a mechanism to share data files on a scheduled basis for the purpose of evaluating ridership and delay by route. No later than April 1 of each contract year, the parties shall meet and confer to review ridership. Throughout the year, Parties will review ridership data and request additional meetings with the University and ASCSU if such data reasonably shows a gap in service regarding occupancy loads and on-time arrivals.

Ridership data by fare category is not available for certain Transfort routes, including MAX, the on-campus shuttle, and Green and Gold service. For these routes, the City shall conduct periodic surveys to collect data on ridership categories and document feedback. Such information shall be shared with University.

e. Ram Cards. Use of Transfort Services by Eligible RamCard Holders. The University's faculty, staff and Students are issued RamCard identification and all current University faculty, staff
and students are deemed eligible RamCard holders. Eligible RamCard users, including full-time and part-time students, will be able to use Transfort services throughout the fixed-route system, as well as the services to be provided by Transfort under this Agreement, without charge and without limit as to the number of times the Transfort services may be used during the given academic term.

The University will upload current eligible RamCard data onto the card portal website. RamCards will be active upon successful data transfer onto the card portal website. Upon request by the City, the University will also provide Transfort with an "eligible" list of RamCard holders to be compared against the ineligible list.

For purposes of this Agreement, the academic terms are based upon the academic calendar of the University published on its official website as of January 1st of the year prior. Any changes made after the 1st of the year prior will require a written modification of this agreement as approved by the City.

• Fall Semester - starts one week prior to commencement of classes and ends five (5) days before beginning of Spring semester
• Spring semester - starts January 1 of each year and ends May 31 each year
• Summer semester - starts June 1 of each year and ends five days before beginning of Fall semester.

The City agrees to provide an adequate number of Transfort service route schedules for distribution to Students.

f. Changes in Transit Service. During routine reporting, if ridership data indicates a significant variation in occupancy loads or on-time arrival trends, either Party may notify the other of a requested change in service levels. Transfort shall propose a service change as agreed upon by both parties to maintain consistent service levels. Service improvement proposals will include alternatives allowing parties to maintain current fee structures as well as changes that may require adjustments to fee structures. Improvements may include but are not limited to additional buses and/or modified routes or schedules. All parties agree to review service changes and associated fee adjustments. If the City is not meeting service levels under this IGA, but has resources in its staffing and vehicle inventory to do so, it will reallocate resources to ensure that CSU service levels are met to the degree practicable. In addition to any changes to the services to be provided by Transfort to ASCSU and the University under this Agreement, the parties also recognize that there may be changes in transit service from time to time in response to changing needs of the Transfort System, direction of the City Council, and requests from ASCSU or the University. Any such changes in service or changes in fare to the Transfort system will comply with Title VI of the Civil Rights Act of 1964. Transfort will at all times use its best efforts to advise ASCSU's leadership (President and Vice President) and University leadership of anticipated route and service changes, to involve the University in discussions and planning for changes that affect service to the University, and to avoid changes that would substantially reduce the level of service provided. As part of this cooperative effort, the City shall notify the ASCSU President and the University Vice President for University Operations of all major issues regarding
Transfort services not less than seven (7) days in advance of any scheduled public hearing or City Council action on such issues. The ASCSU and the University reserve the right to terminate this Agreement at the end of any contract year if route or service changes are proposed by Transfort for the following year that appear to be unacceptable to ASCSU or the University.

g. **Force Majeure.** Regardless of foreseeability, should circumstances beyond the control of either party impact the ability of a party to perform its obligations hereunder or frustrate a party’s purpose for entering into this Agreement, the party so affected shall be excused from performance to the degree hindered by such a force majeure event; however, the one-time fixed costs which are the subject of a separate IGA are excluded. Such circumstances include but are not limited to laws, regulations, orders, or directives of any government or governmental authority, as well as acts of God, fire, flood, weather, epidemics, quarantines, or civil unrest. In such event, the affected party shall have the right to reasonably suspend performance to the degree so impacted, including the temporary suspension of some or all transportation services. Should any services be suspended pursuant to this section, the suspending party will give the other party official written notice. In the event either Party gives notice of suspension to Transfort for Around the Horn or Foothills Campus Shuttle services pursuant to this paragraph, University will remain obligated to pay for fifty percent of Transfort’s fixed, non-cancelable costs during the time of such suspension; these costs include bus operator salaries and administrative costs. These fixed costs do not include maintenance and fuel, which are variable. Transfort will make best efforts to mitigate and limit such costs. The parties will meet within fourteen (14) days of any such suspension to discuss and agree upon the contents of such fixed costs. During such suspension, if desirable for logistical or other reasons, Transfort may continue to operate Around the Horn or Foothills Campus Shuttle services with University’s consent, but the University will have no further responsibility for payment. In the event Transfort gives notice of suspension to University, University will have no financial responsibility for such suspended services (other than the fixed costs described above) beyond the last date of services rendered. All payments impacted by or modified under this section shall be calculated on a pro rata basis from actual reductions in transportation services.

h. **Around the Horn and Foothills Shuttle.** ASCSU and the University will work with Transfort to review Around the Horn and Foothills Campus Shuttle ridership data annually, including the reports outlined herein, and establish acceptable service levels. Such annual review process will include any proposed changes to the route in order to support forecasted University ridership changes. Throughout the year the Parties will utilize ridership data and request additional meetings with one another as needed to address identified gaps in service related to occupancy loads and on-time arrivals. Transfort will work with all parties to propose solutions to maintain service standards.

i. **Gold Fare.** In addition to the above described consideration and such other consideration as the City may independently identify, the City will not charge patrons using the Gold a fare. A fare shall not be implemented without express written agreement by the University.
The University acknowledges that the City provides its Poudre Express Service through a third-party Intergovernmental Agreement by and between the City, Greeley and Windsor (“GW IGA”). The University understands that terms of the GW IGA relating to that portion of service are subject to the rights and responsibilities held by the GW IGA Parties. As such, the University acknowledges that this Agreement is subordinate to the GW IGA previously entered into by the City in 2019.

3. Representatives & Notices

The parties hereby designate the following representatives for purposes of determining service levels and managing daily operations of this Agreement and receiving notices hereunder. A party may change its designated representative(s) at any time by service of notice in the same manner as any other notice. Any notice required or desired to be given under this Agreement shall be deemed received when hand-delivered to the other party or sent by certified mail, return receipt requested, to such party at the following addresses:

<table>
<thead>
<tr>
<th>FOR THE UNIVERSITY:</th>
<th>FOR THE CITY:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASCSU President</td>
<td>Transfort General Manager</td>
</tr>
<tr>
<td>Associated Students of Colorado</td>
<td>6570 Portner Road</td>
</tr>
<tr>
<td>State University</td>
<td>Fort Collins, CO 80525</td>
</tr>
<tr>
<td>Lory Student Center</td>
<td></td>
</tr>
<tr>
<td>8033 Campus Delivery</td>
<td></td>
</tr>
<tr>
<td>Collins, CO 80523-8033</td>
<td></td>
</tr>
<tr>
<td>Vice President for University Operations</td>
<td>Office of the City Manager</td>
</tr>
<tr>
<td>318 Administration</td>
<td>City of Fort Collins</td>
</tr>
<tr>
<td>Colorado State University</td>
<td>PO Box 580</td>
</tr>
<tr>
<td>Fort Collins, CO 80523</td>
<td>Fort Collins, CO 80522</td>
</tr>
<tr>
<td>Office of General Counsel</td>
<td></td>
</tr>
<tr>
<td>Colorado State University</td>
<td></td>
</tr>
<tr>
<td>0006 Campus Delivery</td>
<td></td>
</tr>
<tr>
<td>Fort Collins, CO 80523-6010</td>
<td></td>
</tr>
</tbody>
</table>

Proof of service of any notice in accordance with this provision may be required.

4. Termination. This Agreement may be terminated as follows:

a. Termination for Default. A party will be considered in default of its obligations under this Agreement if such party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement. The non-defaulting party shall provide written notice to the defaulting party of any such default. The defaulting party shall have 30 days after receipt of such notice to remedy said default. During the 30-day period in which the defaulting party may cure the default, the parties will make reasonable attempts to resolve the claimed default. If the default is not
cured by the end of this 30-day period, the non-defaulting party may declare this Agreement terminated, but shall not be relieved of its obligations incurred prior to the date of termination.

b. **Termination for Convenience.** The University and the City each have the right to terminate this Agreement for any or no reason upon not less than thirty (30) days' advance written notice to the other party, and upon such termination for convenience the University shall receive a pro-rata refund of any amount paid in advance for services that would have been provided by the City under this Agreement.

5. **Miscellaneous Provisions**

   a. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes any previous contracts, understandings, or agreements of the parties, whether verbal or written, concerning the subject matter of this Agreement. Any amendment to this Agreement must be in writing and must be signed by the parties.

   b. **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.

   c. **Severability.** If any provision of this Agreement is held unenforceable for any reason, the remaining portions of this Agreement shall remain in full force and effect.

   d. **Assignment.** No assignment of this Agreement or the rights and obligations thereunder shall be valid without the specific written consent of both parties hereto.

   e. **Appropriations.** Financial obligations of the University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

      **Appropriations.** To the extent that this Agreement or any provision in it constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation by City Council as required in Article V, Section 8(b) of the City Charter, City Code Section 8-186, and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year for which no such supporting appropriation has been made.

   f. **Independent Contractors.** Each party and its governing board, officers, directors, employees, and agents are independent contractors in relation to the other party with respect to all matters arising under this Agreement. This Agreement shall not be construed to create any partnership, joint venture, nor other agency relationship between the parties, who are independent of one another. The City and its employees shall not be considered employees of the University for any purpose whatsoever and are not entitled or eligible for any employment benefit or compensation from the University, for example, medical benefits, retirement benefits, or worker’s compensation coverage.
g. **Choice of Law.** This Agreement shall be governed by the laws of the State of Colorado, without regard to the conflict of laws provision thereof. Venue shall be district court in Larimer County, Colorado.

h. **Third Party Beneficiaries.** Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the City and the University, ASCSU being a constituent element of the University. Any services or benefits that third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

i. **Controller’s Approval.** C.R.S. § 24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State University Controller or designee.

j. **Fund Availability.** C.R.S. § 24-30-202(5.5). Financial obligations of the Parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

k. **Governmental Immunity/Liability.** Each governmental party shall be solely responsible for its actions, including the actions of its employees or authorized volunteers. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, by either party of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., as applicable now or hereafter amended.

l. **Employee Financial Interest / Conflict of Interest.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. The City has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the City's services and the City shall not employ any person having such known interests.

m. The transportation services described in this Agreement are part of the City's fixed-route bus system and available for use by the public on the same terms as CSU faculty, staff and students.

[**SIGNATURE PAGE FOLLOWS**]
IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT:

CITY OF FORT COLLINS, COLORADO

______________________________  
Darin Atteberry, City Manager

Date: __________________________  

ATTEST:

______________________________  
City Clerk

APPROVED AS TO FORM:

______________________________  
Assistant City Attorney
COLORADO STATE UNIVERSITY

Board of Governors of the Colorado State University System,
Acting by and through Colorado State University

By: ________________________________

Lynn Johnson
Vice President for University Operations

Date: ________________________________

APPROVED:

By: ________________________________

Ben Admundson
President, ASCSU

LEGAL REVIEW:

By: ________________________________

Grant Calhoun
Associate Legal Counsel

CSU CONTROLLER:

By: ________________________________

David Ryan
Controller
Attachment 1: Transport System
<table>
<thead>
<tr>
<th>Route</th>
<th>Days</th>
<th>Peak Frequency</th>
<th>Hours</th>
<th>Season</th>
<th>Area served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Route 2</td>
<td>Mon-Sun</td>
<td>30 minutes</td>
<td>6:23 a.m. - 10:09 p.m., Sun: 8:15 a.m. - 7:09 p.m.</td>
<td>year-round</td>
<td>CSU campus and West Fort Collins</td>
</tr>
<tr>
<td>Route 3</td>
<td>Mon-Sun</td>
<td>15 minutes/30 minutes</td>
<td>6:53 a.m. - 6:15 p.m., Sun: 8:05 a.m. - 7:15 p.m.</td>
<td>CSU in session/CSU out session</td>
<td>CSU campus and West Elizabeth Road</td>
</tr>
<tr>
<td>Route 5</td>
<td>Mon-Sat</td>
<td>60 minutes</td>
<td>6:05 a.m. - 7:15 p.m.</td>
<td>year-round</td>
<td>The Foothills Mall, Poudre Valley Hospital and Downtown</td>
</tr>
<tr>
<td>Route 6</td>
<td>Mon-Sat</td>
<td>60 minutes</td>
<td>6:11 a.m. - 10:08 p.m.</td>
<td>year-round</td>
<td>West Fort Collins from the CSU Transit Center to the Foothills shopping center</td>
</tr>
<tr>
<td>Route 7</td>
<td>Mon-Sat</td>
<td>30 minutes</td>
<td>6:40 a.m. - 10:29 p.m.</td>
<td>year-round</td>
<td>CSU campus, Senior Center, Drake Road, and Rigden Farm</td>
</tr>
<tr>
<td>Route 8</td>
<td>Mon-Sun</td>
<td>30 minutes</td>
<td>6:22 a.m. - 10:38 p.m., Sun: 8:22 a.m. - 7:11 p.m.</td>
<td>year-round</td>
<td>North Fort Collins and the Larimer County Department of Human Services</td>
</tr>
<tr>
<td>Route 9</td>
<td>Mon-Sat</td>
<td>60 minutes</td>
<td>6:15 a.m. - 6:38 p.m.</td>
<td>year-round</td>
<td>Northwest Fort Collins, Overland Trail, and Laporte</td>
</tr>
<tr>
<td>Route 10</td>
<td>Mon-Sat</td>
<td>60 minutes</td>
<td>6:45 a.m. - 7:08 p.m.</td>
<td>year-round</td>
<td>Downtown, City Park and CSU</td>
</tr>
<tr>
<td>Route 11</td>
<td>Mon-Sat</td>
<td>60 minutes</td>
<td>7:00 a.m. - 10:25 p.m.</td>
<td>year-round</td>
<td>West Harmony Road, Front Range Community College, Horsetooth Road, and Fort Collins High School</td>
</tr>
<tr>
<td>Route 12</td>
<td>Mon-Sat</td>
<td>60 minutes</td>
<td>6:26 a.m. - 9:54 p.m.</td>
<td>year-round</td>
<td>East Horsetooth Road, Fort Collins High School, Foothills Mall, and JFK Parkway</td>
</tr>
<tr>
<td>Route 14</td>
<td>Mon-Sun</td>
<td>60 minutes</td>
<td>6:10 a.m. - 6:47 p.m., Sun: 8:10 a.m. - 6:47 p.m.</td>
<td>year-round</td>
<td>East Mulberry Street, and portions of northwest Fort Collins</td>
</tr>
<tr>
<td>Route 16</td>
<td>Mon-Sun</td>
<td>30 minutes</td>
<td>5:45 a.m. - 10:33 p.m., Sat: 6:15 a.m. - 10:33 p.m., Sun: 7:45 a.m. - 6:22 p.m.</td>
<td>year-round</td>
<td>East Harmony Road to Fossil Ridge High School and Harmony Transfer Center</td>
</tr>
<tr>
<td>Route 18</td>
<td>Mon-Sat</td>
<td>60 minutes</td>
<td>6:31 a.m. - 7:30 p.m.</td>
<td>year-round</td>
<td>Eastside neighborhoods, Prospect Road, and the Midpoint area</td>
</tr>
<tr>
<td>Route</td>
<td>Days</td>
<td>Frequency</td>
<td>Time</td>
<td>Details</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
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<td>------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Route 19</td>
<td>Mon-Fri</td>
<td>30 minutes</td>
<td>6:45 a.m. - 7:36 p.m.</td>
<td>CSU or PSD in session/CSU or PSD out session, CSU, Rocky Mountain High School and Front Range Community College along Shields Street</td>
<td></td>
</tr>
<tr>
<td>Route 31</td>
<td>Mon-Fri</td>
<td>10 minutes</td>
<td>6:58 a.m. - 6:26 p.m.</td>
<td>CSU in session, CSU campus and Campus West</td>
<td></td>
</tr>
<tr>
<td>Route 32</td>
<td>Mon-Fri</td>
<td>30 minutes</td>
<td>6:45 a.m. - 10:40 p.m.</td>
<td>CSU in session, CSU campus and West Fort Collins</td>
<td></td>
</tr>
<tr>
<td>Route 33:</td>
<td>Mon-Fri</td>
<td>15 minutes</td>
<td>7:22 a.m. - 7:02 p.m.</td>
<td>CSU in session, CSU Foothills Campus</td>
<td></td>
</tr>
<tr>
<td>Foothills Campus Shuttle</td>
<td></td>
<td></td>
<td></td>
<td>North Fort Collins and the Larimer County Department of Human Services</td>
<td></td>
</tr>
<tr>
<td>Route 81</td>
<td>Mon-Fri</td>
<td>30 minutes</td>
<td>6:37 a.m. - 6:54 p.m.</td>
<td>year-round, Poudre High School and Downtown</td>
<td></td>
</tr>
<tr>
<td>Route 92</td>
<td>Mon-Fri</td>
<td>1 trip</td>
<td>4:04 p.m. - 4:22 p.m.</td>
<td>PSD in session, stops between Fort Collins, Loveland, Berthoud, Longmont, and Boulder</td>
<td></td>
</tr>
<tr>
<td>FLEX:</td>
<td>Mon-Sat</td>
<td>Varies</td>
<td>5:14 a.m. - 9:02 p.m., Sat: 6:24 a.m. - 8:19 p.m.</td>
<td>year-round, Gold Route departs at Mountain Avenue and Remington Street, serves Downtown, Laurel, CSU campus including South Residence Halls and Vet Teaching Hospital</td>
<td></td>
</tr>
<tr>
<td>Regional Service</td>
<td></td>
<td></td>
<td></td>
<td>CSU campus including South Residence Halls and Vet Teaching Hospital</td>
<td></td>
</tr>
<tr>
<td>HORN:</td>
<td>Mon-Sat</td>
<td>10 minutes</td>
<td>6:42 a.m. - 6:42 p.m., (8:34 p.m. 8/24/20-11/20/20), Sat: 6:52 a.m. - 6:32 p.m.</td>
<td>year-round, Mason Corridor, Major activity and employment centers throughout our community including</td>
<td></td>
</tr>
<tr>
<td>Around the Horn Campus Shuttle</td>
<td></td>
<td>20 minutes</td>
<td></td>
<td>CSU campus including South Residence Halls and Vet Teaching Hospital</td>
<td></td>
</tr>
<tr>
<td>MAX:</td>
<td>Mon-Sun</td>
<td>10 minutes</td>
<td>5:10 a.m. - 1:16 a.m., Sat: 5:48 a.m. - 1:16 a.m., Sun: 8:03 a.m. - 7:26 p.m.</td>
<td>year-round, Mason Corridor, Major activity and employment centers throughout our community including</td>
<td></td>
</tr>
</tbody>
</table>
### Transit Service – CSU In Session

<table>
<thead>
<tr>
<th>Route Peak Frequency</th>
<th>Start Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Around the Horn Campus Shuttle</td>
<td>10 Minutes</td>
</tr>
<tr>
<td>Foothills Campus Shuttle</td>
<td>60 Minutes</td>
</tr>
<tr>
<td>Foothills Campus Shuttle</td>
<td>15 Minutes</td>
</tr>
<tr>
<td>Enhanced West Elizabeth Service</td>
<td>10 Minutes</td>
</tr>
</tbody>
</table>

### Transit Service – CSU Out of Session

<table>
<thead>
<tr>
<th>Route Peak Frequency</th>
<th>Start Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Around the Horn Campus Shuttle</td>
<td>20 Minutes</td>
</tr>
<tr>
<td>Foothills Campus Shuttle</td>
<td>15 Minutes</td>
</tr>
</tbody>
</table>
STAFF

Matt Parker, Crew Chief
Ingrid Decker, Legal

SUBJECT

Resolution 2020-091 Authorizing a Livestock Grazing Lease, Sublease and Residential Lease on Soapstone Prairie Natural Area with Folsom Grazing Association, LLC.

EXECUTIVE SUMMARY

The purpose of this item is to consider a 10-year grazing lease with Folsom Grazing Association (FGA) at Soapstone Prairie Natural Area (SPNA). The outcome associated with the lease is the cultivation and maintenance of a healthy grassland ecosystem. Grazing is an essential conservation management tool. The current lease agreement between the City and FGA expires in December 2020.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Through a competitive Request for Proposals process, FGA was selected as the primary grazing tenant on up to 22,497 acres of SPNA. FGA has proven to be a valuable partner in the grassland management of SPNA and has been awarded two previous long-term leases based on its demonstration of collaboration and a commitment to conservation values.

The Soapstone Prairie Natural Areas Management Plan (adopted 2007) identifies “conservation targets,” or natural and cultural resources of highest conservation value. Many of the natural conservation targets depend upon, or are strongly influenced by, continued grazing for their survival and success. Shortgrass prairie, the largest conservation target by acreage, evolved with three primary ecological drivers: grazing, climate, and fire. Historically, large ungulates such as bison, elk, deer, bighorn sheep and pronghorn grazed the shortgrass prairie system. However, current wildlife densities are not sufficient to provide the same effects as historic grazers, so proper management of domestic livestock grazing is used as a best alternative. While staff have worked with Colorado State University to graze bison on a portion of SPNA, it is not feasible at this time to extend bison grazing across the entire property, for numerous reasons including feasibility, wildlife considerations and visitor safety.

The past ten years of managing Soapstone Prairie’s grasslands has been a collaborative effort between various agencies and entities including; Bird Conservancy of the Rockies, Colorado Parks and Wildlife, U.S. Fish and Wildlife, USDA - Natural Resources Conservation Service, CSU’s Animal Reproduction and Biotechnical Laboratory, Larimer County Open Lands, and Folsom Grazing Association. The Natural Areas Department has collaborated with these partners to realize the following ecological improvements to Soapstone Prairie:

- Re-introduction of black-footed ferrets
- Re-introduction of American bison
• Enhanced habitat for ground nesting birds
• Enhanced habitat for prairie dogs
• Improved survivability for prairie dogs and all wildlife associated with prairie dogs
• Protected riparian areas through the installation of exclosure fencing
• Protected raptor nests through the installation of exclosure cribs
• Improved grassland health by increasing livestock water sources and improving reliability of water sources for livestock

Key features of the lease include:

• A lease term of one year, renewing automatically each year for nine additional years, unless either party terminates it sooner.

• FGA may house an employee on site in the existing ranch house, with FGA responsible for all utilities and general maintenance for the residence.

• The City and FGA will establish and operate a Range Management Advisory Committee to enhance communication and collaboration on range management and conservation matters, including development of an annual grazing plan.

• The lease requires FGA to also arrange, through a sublease agreement or services contract, for a “Grazing Contractor” to graze an additional 100-200 “animal units” on the property in addition to FGA’s animal units.

CITY FINANCIAL IMPACTS

The annual lease payment is based upon the number animals allowed to graze on SPNA for that year, which depends on factors such as precipitation, forage (grass) conditions, water availability, status of conservation targets, etc. This lease is expected to generate approximately $50,000 to $80,000 per year. Grazing fees will be based on a sliding scale of $16 per animal unit per month (AUM) for up to seven hundred and fifty AUM’s, $17 per AUM for the next 150 AUM’s, and $18 per AUM for any AUM’s over 900. Each year the dollar amounts per AUM will be increased by 2.0%. This revenue will be placed into the Natural Areas Department fund for land acquisition and restoration.

Grazing lease rates in the area vary depending on the landowner, number of acres, number of animal units included in the lease, forage quality and quantity, market demand, etc. Rates range from $1.35/AUM for federal land rates (Bureau of Land Management and Forest Service 2019 rate), to $20.20/AUM for Colorado State Land Board leases (2020 data), and $17.53/AUM average for private grazing leases statewide in Colorado (2016 data).

BOARD / COMMISSION RECOMMENDATION

At its August 5, 2020, meeting, the Land Conservation and Stewardship Board voted unanimously to recommend Council approve the lease.

ATTACHMENTS

1. Land Conservation and Stewardship Board - Excerpt August 5, 2020 (PDF)
Land Conservation & Stewardship Board  
Regular Meeting  
August 12, 2020  
08/12/2018 – MINUTES Page 1

1. CALL TO ORDER  
5:30 p.m.

2. ROLL CALL: Andrea Elson, Vicky McLane, Alycia Crall, Kelly Ohlson, Joe Piesman, Mike Weber, Raymond Watts, David Tweedale  
   NAD Staff: Mark Sears, Zoe Shark, Tawnya Ernst, Dave Myers  
   Other: Dan Woodward, City Engineering Department; Kelly Smith, Community Development and Neighborhood Services; Cassie Archuleta, Environmental Services; Meegan Flenniken and Charlie Johnson, Larimer County Department of Natural Resources

Unfinished Business:  
   Soapstone Prairie Natural Area Grazing Lease Update

  There were some concerns during the July meeting regarding the discussed terms of the proposed grazing lease. Mark Sears reported that staff had renegotiated the lease to include a 2% annual lease rate escalator and brought to the Board’s attention that the lease had a termination clause that would allow the lease to be terminated at any time with a 180 day notification. After some discussion Board members agreed that most of their concerns had been resolved.

  Andrea Elson made a motion that the Land Conservation & Stewardship Board would like to amend the recommendation the Board made in July, since many of their issues have been resolved. The LCSB support the recently re-negotiated grazing lease with Folsom Grazing Association, for ten years of grazing rights on portions of Soapstone Prairie Natural Area. David Tweedale seconded the motion. The motion was unanimously approved 8-0.
WHEREAS, the City is the owner of approximately 21,900 acres of land known as Soapstone Prairie Natural Area in northern Larimer County (the “City Property); and

WHEREAS, in 2005, in order to continue grazing as a habitat management tool while the management plan for the City Property was being completed, City staff proposed leasing portions of the City Property to a local grazing association; and

WHEREAS, on December 20, 2005, the City Council approved Ordinance No. 160, 2005, authorizing a grazing lease with Folsom Grazing Association (“Folsom”) on portions of the City property from January 2006 through December 2008 (the “2006 Lease”); and

WHEREAS, on December 2, 2008, the City Council approved Resolution 2008-116 extending the 2006 Lease through December 2010 and placing new limits on the number of animals and the area that Folsom could graze; and

WHEREAS, on September 21, 2010, following a competitive process to select a tenant for a new grazing lease, the City Council approved Ordinance No. 097, 2010, authorizing a new lease with Folsom through December 2020; and

WHEREAS, with the current lease about to expire, City staff conducted a competitive process to select a tenant for a new 10-year grazing lease, and through that process Folsom was again selected as the tenant; and

WHEREAS, a copy of the proposed grazing lease agreement is attached hereto and incorporated herein as Exhibit “A” (the “Lease”); and

WHEREAS, the portion of the property that would be subject to the Lease is described in Exhibit A to the Lease; and

WHEREAS, the Soapstone shortgrass prairie was historically grazed by large ungulates such as bison, elk, deer, bighorn sheep and pronghorn, whose current population numbers are not sufficient to maintain the health of that ecosystem; and

WHEREAS, managed grazing on the City Property is an essential conservation management tool, helping to enhance wildlife habitat for species such as black-footed ferrets, ground nesting birds and prairie dogs; and

WHEREAS, City staff expects the Lease to generate an annual revenue of approximately $50,000 to $80,000 per year depending on how many animals are grazed and for how long each year; and
WHEREAS, the City Property includes a residence (the “Ranch House”) that would be available to Folsom at no additional rent as housing for an employee, and if Folsom chooses not to use the Ranch House the City reserves the right to lease it to a third party tenant; and

WHEREAS, the Lease also requires Folsom to arrange, through a sublease agreement or services contract, for a grazing contractor to graze an additional 100 to 200 “animal units” on the property in addition to Folsom’s animal units; and

WHEREAS, Section 23-113(b)(1) of the City Code authorizes the City Council to lease any and all interests in real property owned in the name of the City if the City Council first finds that the lease is in the best interests of the City, with such approval being by resolution unless the proposed term of the lease exceeds twenty years; and

WHEREAS, at its regular meeting on August 5, 2020, the Land Conservation and Stewardship Board voted to recommend that the City Council approve the Lease.

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

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

Section 2. That the City Council hereby authorizes the City Manager to enter into a grazing lease agreement with Folsom Grazing Association in substantially the form of the Lease attached hereto as Exhibit “A”, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary or appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Section 3. That as part of the Lease, and consistent with the terms of the Lease, Folsom is hereby authorized to enter into a sublease agreement or services contract with a grazing contractor, and to authorize an employee to occupy the Ranch House during the term of the Lease.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day of October, A.D. 2020.

__________________________________
Mayor

ATTEST:

_____________________________
City Clerk
SOAPSTONE PRAIRIE NATURAL AREA
GRAZING LEASE AGREEMENT

THIS GRAZING LEASE AGREEMENT ("Lease"), is made and entered into this _____ day of _____, 20___, by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (hereinafter referred to as the “Lessor”), and FOLSOM GRAZING ASSOCIATION, LLC, a Colorado limited liability company (hereinafter referred to as the “Lessee”).

RECITALS

A. The Lessor is the owner of that certain real property, together with any improvements located thereon, situated in the County of Larimer, State of Colorado, consisting of approximately 22,497 acres of land, commonly known as the Soapstone Prairie Natural Area (the "Leased Premises"), the legal description of which is set forth in Exhibit "A" attached hereto and incorporated herein by reference, which Exhibit includes the following Attachments:

1. Vicinity Map
2. Soapstone Natural Area Map
3. Residence Map
4. Leased Premises Overview
5. Leased Premises Pasture Descriptions

B. The Lessor desires to lease the Leased Premises to the Lessee for livestock grazing purposes only, and the Lessee desires to lease the Leased Premises from the Lessor for livestock grazing purposes only.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties do hereby covenant, promise, and agree to and with each other as follows:

Article I. Lease of the Leased Premises.

1.1 The Lessor does hereby lease, demise, and let unto the Lessee, and the Lessee does hereby hire and take from the Lessor the Leased Premises.

1.1.1 The actual acres grazed may be less than the total leased premises acreage, and the actual acres grazed may periodically change.

1.2 This Lease includes all the grazing-related improvements located upon the Leased Premises including, but not limited to, the ranch headquarters facilities. Lessee must ensure that its officers and employee(s) working or residing on the Leased Premises, their dependents, and any guests, strictly comply with the requirements and restrictions set forth in this Lease Agreement, and with all applicable laws, regulations and other legal requirements, in connection with the use or occupation of the Leased Premises.
1.2.1 Lessee may, but is not required to, authorize an employee of Lessee who is assigned to work on the Leased Premises to occupy the ranch headquarters residence ("Residence") at no additional rent, subject to the Residence Lease terms listed in Exhibit "B", attached hereto and incorporated herein by reference. Lessee will notify Lessor at the commencement of this Lease whether Lessee intends to allow an employee to occupy the Residence, who that employee will be, and must provide notification to the Lessor 30 days prior to a change in the occupancy of the Residence.

1.2.2 Lessor reserves the right to reject Lessee's proposed employee occupant of the Residence if the Lessor, in its sole discretion believes the employee will not be a suitable occupant. Any proposed occupant of the Residence must be willing to consent to a criminal background check.

1.2.3 If at any time Lessee has not designated an employee to live in the Residence, Lessor reserves the right to lease the Residence, for a time period in Lessor's discretion, to another tenant suitable to Lessor, which tenant will have access to the Residence on and across the Leased Premises via a route designated by Lessor. Lessor will notify Lessee of any such lease of the Residence.

Article II. Term.

2.1 The term of this Lease is for a period of one (1) year, commencing on the 1st day of January 2021. The term of the Lease shall automatically renew each year for each of nine (9) additional successive years continuing until the 31st day of December 2030, unless terminated by operation of law or as otherwise provided in this Lease Agreement. Either party may cancel this Lease at any time upon one hundred eighty (180) days advanced written notice to the other.

Article III. Rent.

3.1 Except as otherwise provided in this Lease, the Lessee will pay to the Lessor rent calculated each year based upon the formula of a pre-determined dollar amount for each animal unit grazed each month upon the Leased Premises (animal unit month or AUM) per year. The dollar amount for each AUM will be based on the total number of animal units (AUs) grazed on the property, as defined in Section 3.2, below. The AUM fee will be adjusted upward as the total number of AUs increases. For the first one-year term of this Lease, the amount of rent will be as follows:

- $16.00 per AUM for 600 AUs to 750 AUs
- $17.00 per AUM for 751 AUs to 900 AUs
- $18.00 per AUM for 901+ AUs

As an example, if Lessee grazes 1000 AUs for four months, rent would be calculated as follows:
In addition, upon each annual renewal of this Lease, the dollar amounts per AUM shall be increased by 2.0%. The allowable length of time to graze the property will be determined annually as outlined in Article IV. The parties will determine the number of AUMs and the amount of rent for each one year term of the lease as part of the development of the Grazing Plan described in Section 4.3, below. Lessee will pay the total annual rental for each one-year term of this Lease, without demand or notice, as follows: thirty percent (30%) of the total due and payable on May 15 and seventy percent (70%) on December 1 of each year.

3.2 For purposes of this Lease, an animal unit (AU) shall be defined as follows:

1. A cow and un-weaned calf pair shall constitute one (1) animal unit.

2. A mature bull shall constitute one and one-half (1.5) animal units.

3. A 1,000-pound yearling shall constitute one (1) animal unit, but if the yearling weighs less than 1,000 pounds, then the animal unit value assigned to that yearling shall be based upon the percentage that the yearling’s weight is to a 1,000 pounds weight. (For example, if the yearling weighs 600 pounds, then it shall constitute .6 of an animal unit.) The weights for yearlings shall be confirmed by certified scale receipts at the time of delivery of the animal upon the Leased Premises, or by any technique mutually agreeable to the Lessor and the Lessee.

4. A horse shall constitute one and one-half (1.5) animal units.

5. Five (5) sheep or goats shall constitute one (1) animal unit.

6. A bison cow shall constitute one (1) animal unit.

7. A bison bull shall constitute one and one-half (1.5) animal units.

8. AU equivalent for any other animal type will be determined by Lessor.

3.3 Lessee will make all payments of rent at such place as the Lessor may, from time to time, designate in writing. For the present, the Lessor designates City of Fort Collins Natural Areas Department, Attn: Natural Areas Financial Coordinator, P.O. Box 580, Fort Collins, Colorado 80522, as the place for the making of rental payments. All such rent must be paid in current legal tender of the United States as the same is then by law constituted. If Lessor extends the time for the payment of any installment of rent or accepts any money other than of the kind herein specified, Lessor by doing so does not waive its right to insist on having all other payments of rent made in the manner and at the time herein specified.

3.4 Notwithstanding the foregoing provisions of this Article III, the Lessee agrees that if the Lessor determines that the grazing conditions of the Leased Premises warrant it, whether
such conditions are caused by drought, pestilence, insect infestation or any other circumstance beyond Lessor's control, the Lessor may reduce the agreed upon number of AUMs per year to that number that Lessor determines is appropriate under the then-existing grazing conditions. In such event, Lessor agrees that Lessee's rental payment due in May or December shall be reduced in proportion to the reduction in AUMs per year. If favorable grazing conditions exist, and the Lessor determines that conservation objectives will not be negatively impacted by additional grazing, the Lessor may increase the numbers of AUMs per year to a number that Lessor determines is appropriate under the then-existing grazing conditions. In such event, Lessee agrees that Lessee's rental payment due in May or December shall be increased in proportion to the increase in AUMs per year.

3.5 If Lessee fails to pay when due any rental payment required under this Lease, the unpaid rental amount shall accrue interest at the rate of eighteen percent (18%) per annum from the due date until paid.

ARTICLE IV. Range Management Advisory Committee and Conservation Programs.

4.1 The Lessor and the Lessee agree to establish and operate a Range Management Advisory Committee (hereinafter referred to as “the Committee”) for the purpose of enhancing communications between the Lessor and the Lessee in connection with their respective performance under this Lease Agreement and to provide assistance and recommendations concerning matters arising under this Lease Agreement. The Committee will review and make recommendations regarding range management and conservation matters, including, but not be limited to: (a) development of an annual “Grazing Plan”; (b) recommendations to Lessor on grazing related issues; (c) assistance in creating a ranch improvement plan and schedule to help the Lessor address long-range planning issues; (d) assistance in development of land management practices in the areas of vegetative diversity, conservation of threatened and endangered species and noxious plant management; and (e) working with the Colorado Division of Wildlife to help maintain wildlife populations at sustainable levels to match existing forage conditions, and other conservation plans and programs.

4.2 The Lessor reserves the right to identify additional conservation values that warrant additional management actions, e.g. using fence to control access to riparian areas, exclusion of or controlled access to areas of unique vegetation, or the permissance of prairie dog colonies to expand. Impacts of such management actions on the AUMs available to the Lessee will be identified via the Committee and adjustments made to total AUMs with Lessor reserving the right to make final decisions.

4.3 Lessee and Lessor will annually work together in a collaborative effort to develop a "Grazing Plan" for the Leased Premise, which plan includes stocking rates, grazing initiation and ending dates, animal unit months for each pasture, and grazing rotation plans. If the parties have not developed a Grazing Plan for each year's grazing season by May 1 of that year, Lessor will determine the Grazing Plan for that year, and Lessee
agrees to comply with it.

4.4 The Lessee agrees to cooperate with the Lessor in connection with the development of the Grazing Plan for the Leased Premises, as described in Section 4.3, for the purpose of research and evaluation related to range management and restoration and conservation of plant and animal species and resource protection, during the term of this Lease Agreement.

4.5 To support range management evaluation and research efforts, and to provide consulting expertise to Lessee in connection with Lessee's development of the Grazing Plan, monitoring and management of range conditions and the time and pattern of grazing rotations based on range and weather conditions, the Lessee may hire, at the Lessee's cost, a range management expert.

4.6 To support range management and conservation efforts, the Lessor will hire at the Lessor’s cost a range management specialist. The Lessor reserves the right to have final say on amount of AU's permitted on Soapstone Prairie and length of grazing season annually.

4.7 Prior to commencing livestock grazing on the Leased Premises, the Lessor’s range management expert shall submit a written report to the Lessee evaluating current range conditions and recommending a date to initiate livestock grazing (but not before May 15), and a draft Grazing Plan for Lessee’s review. Further written evaluations to the Lessee from said expert shall be due on July 15 and September 15 of each year of the term of this Lease. The September 15 evaluation shall include a recommended date for the cessation of livestock grazing for that grazing season.

4.8 On or before December 31 of each year of the term of this Lease, the Lessor shall submit a preliminary report to the Lessee on the outcomes and results of the recommended Grazing Plan and the condition of grazing range, and other property conditions that have resulted from the implementation of the Grazing Plan during the annual term of the Lease (a “Range Report”). The final Range Report regarding each grazing season under this Lease Agreement shall be due to the Lessee no later than March 1 of the succeeding year.

Article V. Use of Leased Premises.

5.1 The Lessee may use the Leased Premises for livestock grazing purposes only, as outlined in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "Scope of Work"); except as otherwise provided in this Lease. This Lease does not allow for feeding of livestock outside of the corrals, private or commercial recreational rights, hunting, shooting, trapping or poisoning of wildlife of any kind, or control of prairie dogs. All pets must be on a leash, caged or fenced, with the exception of two spayed cats, which may roam freely around the ranch headquarters to control mice, and dogs owned or controlled by the Lessee and used for ranching activities such as the herding of...
livestock. Only licensed vehicles involved in ranching activities are allowed beyond the ranch headquarters and are to remain on existing established roads, identified by the Lessor as open for grazing-related access. Unlicensed vehicles are prohibited except that ATVs used for ranching activities may be used on or off established roads, but only with Lessor’s express written permission. Even with such permission, Lessee must keep off road ATV use to an absolute minimum. Lessor will provide to Lessee on an annual basis maps and documents identifying the acceptable roads and routes that Lessee may use for travel with vehicles and ATVs. Lessor may update these maps and documents from time to time at Lessor’s sole discretion, and any such updates shall be effective when delivered to the Lessee's President and/or the Ranch Manager in the manner described in Article XX.

5.2 Grazing may begin with certain restrictions on June 1 of each year, and must end by November 15, unless moisture conditions and forage availability allow or require modification of time, dates, or stocking rates. If Lessor believes modification is necessary, the Lessor, in consultation with the Lessee, will determine modified grazing dates and stocking rates. The Lessor reserves the right to make the final decision in accordance with the terms of this Agreement.

5.3 Lessee and Lessor will work in a collaborative effort to develop grant proposals to implement the grazing plan. Grant efforts may include payment or reimbursement for infrastructure costs, marketing programs, ecosystem service studies and/or other grazing related management activities.

5.4 The Lessor reserves the right to perform management activities at any time during the year including the grazing season. Any management activity that has the potential to influence stocking rates or grazing dates will be coordinated with the Lessee.

5.5 Lessee acknowledges that the Leased Premises is a City of Fort Collins Natural Area that is open to the public annually from March 1 through November 30. The Lessor reserves the right to open or close any portion of the Leased Premises to public use at any time during this Lease. Lessor will coordinate any modification to stocking rates, grazing dates, and grazing rotations with the Lessee.

5.6 The Lessee must not use the Leased Premises in any way that violates any applicable law, statute, ordinance, rule, or regulation of any governmental entity or body. All cattle moved into Colorado from any other state or country must strictly adhere to all Colorado Department of Agriculture and U.S. Department of Agriculture regulations for animal movement into and within Colorado.

5.7 The Lessee must not permit or suffer the use of, or presence on, the Leased Premises by: (1) the general public, except for members of the public using the Soapstone Prairie Natural Area in accordance with the City of Fort Collins Code and Natural Areas regulations and policies, or by (2) any persons other than Lessee’s employees or agents, who are permitted to occupy or use the Leased Premises only to the extent required to
carry out the purposes of the Lease.

5.8 The Lessee is responsible for security activities on the Leased Premises, including but not limited to the following:

- Answer visitors' questions about the natural area and natural areas rules and regulations if Lessee's employees are approached on Soapstone Prairie Natural Area.
- Call for emergency response when necessary.
- Inspect fencing, gates, Roman House, Gate Station and other structures or areas prone to security breaches.
- Report suspicious activity including suspicious vehicles, persons or activities on site, in prohibited areas or near site boundary (e.g., access roads).
- If Lessee has an employee living in the Ranch Residence on the Leased Premises, provide after-hours contact and response to Fort Collins dispatch and emergency personnel.
- If Lessee has an employee living in the Ranch Residence on the Leased Premises, provide surveillance of site including parking lots, gate security after hours on an occasional basis or as requested by staff.
- Communicate promptly with appropriate authorities to request assistance or to report an incident when suspicious and/or illegal activity or security breech has occurred. This may include Natural Areas Rangers or other Natural Areas personnel, Larimer County Sheriff, Colorado Division of Wildlife or other appropriate authorities. Lessee's employees or agents may be required to complete a written statement.
- Perform other related duties as requested on an occasional basis.

ARTICLE VI. Maintenance and Repairs.

The Lessee must maintain and keep in orderly condition and in a good state of repair all of the Leased Premises and all grazing-related improvements located thereon, whether existing as of the date of this Lease or added thereafter, including, but not limited to: boundary and interior fences and gates; all livestock watering facilities including but not limited to stock tanks, corrals; and any buildings Lessee uses constituting part of the ranch headquarters.

6.1 Maintenance of watering facilities includes filling stock tanks prior to grazing activities and draining them, along with other water system infrastructure, upon completion of the grazing season. Lessee and Lessor will share maintenance responsibilities for buried water pipes and pumps as described in Section 6.3 below. The Lessee is not responsible for maintenance or repair of public Natural Areas facilities.
6.2 The Lessee is only responsible for maintenance and repairs on cattle fences in pastures used by Lessee. The Lessee is not responsible for upkeep of infrastructure related to the bison herd unless separate compensation is agreed upon by the City of Fort Collins or CSU. The Lessee is only responsible for repairs that are ordinary and routine in nature and are within the skillset of the Cattle Ranch Manager. Lessee will promptly notify Lessor of needed maintenance and repairs to the Leased premises that are extraordinary or major in nature. (see also Article VII. Alterations and Improvements).

The following repairs are considered extraordinary or major in nature:

- Windmill Repair
- Solar panel repair/replacement
- Submersible pump repair
- Installation of poured concrete
- Digging to a depth greater than 4 feet
- Installing spring collectors or permanent stock tanks
- Any work that is considered a skilled trade such as electrical, carpentry, interior plumbing.
- Building new fence any distance greater than 100 yards.

The following repairs are considered routine in nature:

- Stock tank plumbing repair and install including poly, steel, PVC pipes and associated couplers, joints, valves.
- Mixing ready-made concrete for posts.
- All facets of fence repair/construction including building H-braces, driving t-posts, stretching wire, hammering nails etc.
- Hanging steel gates
- Building wire ranch gates

6.3 The Lessor is responsible for the reasonable cost of all materials necessary for both routine and extraordinary maintenance and repairs. Lessee is responsible for the costs of all labor for routine maintenance and repairs unless otherwise agreed upon with the Lessor. For maintenance and repairs to the Leased Premises that are necessary and are extraordinary or major in nature, the Lessee is responsible for up to One Thousand
Dollars ($1,000.00) in labor per month unless waived by the Lessor. This is calculated at a rate of $25 an/hour per person provided by the Lessee. Any additional labor is the Lessor's responsibility.

6.4 All maintenance and repairs to the Leased Premises required of the Lessee must be made promptly and when necessary. In addition, all such maintenance and repairs must be done in a good and workmanlike manner and in compliance with all applicable laws, statutes, ordinances, rules, orders, regulations, and requirements of all federal, state, and county governments and the appropriate departments, commissions, boards, and officers thereof.

6.5 The Lessee must keep the Leased Premises clean and in good sanitary condition, as required by the statutes, ordinances, resolutions, and health, sanitary, and police regulations of the County of Larimer and State of Colorado. Any equipment, materials or supplies that Lessee brings onto the Leased Premises must be kept under cover (except large equipment such as vehicles and trailers) in a location acceptable to the Lessor and removed from the Leased Premises when no longer needed. Any trash, junked equipment or waste materials generated from Lessee's maintenance and repair activities on the Leased Premises must be stored under cover or removed promptly from the Leased Premises. The Lessee must neither permit nor suffer a disorderly noise or nuisance whatsoever about the Leased Premises having any tendency to annoy or disturb any persons occupying adjacent land. The Lessee shall neither hold nor attempt to hold the Lessor liable for any injury or damage, either approximate or remote, occasioned through or caused by any maintenance, alterations, or repairs made by the Lessee upon or to the Leased Premises or the improvements located thereon.

6.6 If the Lessee fails to perform any maintenance or make any repairs required of it to be made under this Lease, the Lessor may, but is not required to, make such maintenance and repairs on the Lessee's account, and the Lessor may add its costs and expenses for such repairs or replacements as additional rent due to the Lessor under this Lease. Lessee will then pay such amount to the Lessor within thirty (30) days after receiving written notice from the Lessor of the costs and expenses paid by the Lessor for such maintenance and repairs.

ARTICLE VII. Alterations and Improvements.

7.1 The Lessee must not make alterations, additions, improvements or changes to the Leased Premises, or the improvements located thereon, without the prior written approval of the Lessor. Any such alterations, additions, improvements, or changes approved by the Lessor must be done by the Lessee in a good and workmanlike manner and in compliance with all applicable building and zoning laws, and all other applicable laws, statutes, ordinances, orders, rules, regulations, and requirements of all federal, state, and county governments and the appropriate departments, commissions, boards, and officers thereof. If the Lessee wishes to make additions or improvements to the Leased Premises beyond what is required for maintenance and repair as described in
Article VI, the Lessee will be responsible for the cost of such additions and improvements unless the parties agree to a cost-sharing arrangement.

7.2 The Lessee hereby indemnifies and agrees to hold the Lessor harmless from all liens, claims, or charges on account of any alterations, additions, improvements, or changes made to the Leased Premises or the improvements located thereon by the Lessee.

7.3 The Lessee is responsible for construction and maintenance of any temporary fencing necessary to exclude livestock from an area to facilitate rotational grazing. Unless otherwise agreed by the parties in writing, Lessor will provide all materials necessary for the construction and maintenance of grazing enclosures, and such enclosures will be Lessor's property. Responsibility for the costs of constructing and maintaining temporary fencing for rotational grazing, and ownership of such fencing, will be determined between the parties on a case-by-case basis.

7.4 The Lessor reserves the right, from time to time (without invalidating or modifying this Lease) to make alterations, changes and additions to the land and improvements that constitute the Leased Premises.

7.5 At the end of the term of this Lease, all fixtures, equipment, additions and alterations will remain the property of the Lessor, except as otherwise provided under the terms of this Lease. However, the Lessor may require the Lessee to remove any or all such fixtures, equipment, additions and alterations and restore the Leased Premises to the condition that existed immediately prior to such change and installation, normal wear and tear excepted, all at the Lessee's cost and expense. All such work must be done in a good and workmanlike manner and consist of new materials unless otherwise agreed to by the Lessor.

ARTICLE VIII Covenant of Title and Quiet Enjoyment.

8.1 The Lessor covenants that it is well seized of and has good title to lease the Leased Premises and does warrant the title thereto except and subject to the following:

a. All easements, covenants, reservations, restrictions, rights-of-way, and prescriptive or adverse rights, in place or of record;

b. Any restrictions, reservations, or exceptions contained in any United States or State of Colorado patents of record;

c. All zoning and other governmental rules and regulations; and

d. All oil, gas or other mineral reservations or exceptions of record.

ARTICLE IX. Insurance.

9.1 The Lessee, at its sole cost and expense, must procure, pay for, and keep in full force
and effect workers compensation insurance for all of its employees to be engaged in
work on the Leased Premises under this Lease.

9.2 The Lessee, at its sole cost and expense, procure, pay for, and keep in full force and
effect a comprehensive policy of general liability insurance covering the Leased
Premises and insuring the Lessee in an amount not less than One Million Dollars
($1,000,000.00) covering bodily injury, including death to persons, personal injury, and
property damage liability arising out of a single occurrence. Such coverage must
include, without limitation, the insured's' liability for property damage, bodily injuries,
and death of persons in connection with the operation, maintenance, or use of the
Leased Premises (including acts or omissions of the Lessee or of its officers,
employees, or agents), liability arising out of lawsuits related to employment contracts
of the Lessee, and protection against liability for non-owned and hired automobiles.
Such coverage must also include comprehensive automobile liability insurance and
coverage for such other risks as are customarily required by private institutional
mortgage lenders with regard to property similar in construction, location, and use as
the Leased Premises under this Lease Agreement.

9.3 All policies of insurance carried by the Lessee must name the Lessee as an insured
and name the Lessor as an additional insured on the policy. The policy or policies must
contain a provision that the policy or policies cannot be canceled or materially altered
either by the insured or the insurance company until fifteen (15) days prior written
notice thereof is given to the Lessor. Upon issuance or renewal of any such insurance
policy, the Lessee must furnish a certified copy or duplicate original of such policy or
renewal thereof with proof of premium payment to the Lessor. Any such policy must
contain waivers of subrogation and waivers of any defense based on invalidity arising
from any act or omission of any assignees or subleases of the Lessee.

9.4 No policy of insurance required by this Article IX can include a deductible clause in an
amount greater than Ten Thousand Dollars ($10,000.00). Any insurance policy
purchased by the Lessee must be written by an insurance carrier which has a current
rating by Best's Insurance Reports of "A" (Excellent) or better and a financial rating of
"X" or better or such equivalent classification as may hereinafter be required
customarily for properties similarly situated and it must be approved by the Lessee and
the insurance carrier must be authorized by law to do business in the State of Colorado.
The Lessee must not obtain any policy which, under the terms of the carrier's charter,
by-laws, or policy, loss payments are contingent upon action by the carrier's board of
directors, policy holders, or members. All insurance policies carried by the Lessee may
be reviewed at least annually by the Lessor to ascertain that the coverage provided by
such policy adequately covers those risks required by this Article IX to be insured by
the Lessee. In case of the breach of any provision of this Article IX, the Lessor, at its
option, may take out and maintain, at the expense of the Lessee, such insurance as the
Lessor may deem proper and may bill the costs for such insurance directly to the
Lessee. When so billed, the Lessee must reimburse the Lessor for the costs of such
insurance within thirty (30) days of being billed.
ARTICLE X. Utilities.

[This Article intentionally omitted.]

ARTICLE XI. Signs.

11.1 The Lessee must not affix, erect, or maintain on the Leased Premises any sign or placard without obtaining the Lessor’s prior written approval. The costs of erection and maintenance of such sign or placard are the sole responsibility of the Lessee. In addition, any sign or placard approved by the Lessor must comply with all state and county laws, rules, and regulations.

ARTICLE XII. Subletting and Assignment.

12.1 Except for the use of the Residence by an employee of Lessee, the Lessee may not assign this Lease, any interest or a part thereof, any right or privilege appurtenant thereto, nor mortgage or hypothecate the leasehold without the prior written consent of the Lessor. Lessor's consent to one assignment or hypothecation shall not be construed as a consent to any subsequent assignment or hypothecation; and it is hereby mutually covenanted and agreed that, unless such written consent has been obtained, any assignment or transfer or attempted assignment or transfer of this Lease or any interest therein or hypothecation either by the voluntary or the involuntary act of the Lessee or by operation of law or otherwise, shall, at the option of the Lessor, terminate this Lease; and any such purported assignment or transfer without such consent will be null and void. The Lessor’s consent to any such assignment does not relieve the Lessee from any obligation under this Lease unless the Lessor expressly agrees in writing to relieve the Lessee from such obligation.

12.2 If Lessee assigns this Lease or sublets or allows anyone other than the Lessee to occupy the Leased Premises or any part thereof without the prior written consent of the Lessor as required in Section 12.1 above, the Lessor may terminate this Lease, or may collect rent from the assignee, subtenant, or occupant, and employ the net amount collected to the rent herein reserved; and no such collection shall be deemed a release of the Lessee from the complete performance of its obligations under this Lease.

12.3 The above notwithstanding, Lessee is responsible for arranging either a grazing sublease or grazing services contract with a firm acceptable to Lessor that is capable of providing grazing on the Leased Premises (the "Grazing Contractor").

12.3.1 The Lessee and Grazing Contractor will enter into a sublease agreement or services contract in a form acceptable to the Lessor (the "Sublease or Contract"). The Sublease or Contract must require the Grazing Contractor to comply with and be bound by the following provisions of this Lease:

- Sections 5.1, 5.5, 5.6, 5.7 and 5.8 regarding use of the Leased Premises;
• Section 6.4 and 6.5 regarding maintenance of the premises;
• Sections 7.1, 7.2, and 7.4 regarding alterations and improvements;
• Article IX regarding insurance;
• Article XI regarding signs;
• Article XIII regarding mechanics liens;
• Article XV regarding total or partial destruction;
• Article XIX regarding holding the Lessor harmless;
• Article XXI regarding Hazardous Materials;
• Article XXIII regarding access and use by Lessor;
• Article XXV regarding the "as-is" nature of the Leased Premises.

12.3.2 The Grazing Contractor must graze a minimum of 100 AUs but no more than 200 AUs unless otherwise agreed by the Lessor. The AUs grazed by the Grazing Contractor will not count towards the Lessee's AUs. The Lessee will not charge rent for contracted or sublet grazing pursuant to the Sublease or Contract unless otherwise directed or agreed to by the Lessor. The "Grazing Plan" outlined in paragraph 4.3 above will include objectives and requirements for the Grazing Contractor.

ARTICLE XIII. Mechanic's Liens.

13.1 The Lessee agrees to pay or cause to be paid promptly all bills and charges for material, labor, or otherwise in connection with or arising out of any alterations, additions, maintenance, repairs, or changes made by the Lessee or its agents or subtenants to the Leased Premises; and the Lessee agrees to hold the Lessor free and harmless against all liens and claims of liens for such labor and materials, or either of them, filed against the Leased Premises or any part thereof and from and against any expense and liability in connection therewith. The Lessee further agrees to discharge (either by payment or by filing the necessary bond) any mechanic's, materialman's, or other liens against the Leased Premises arising out of any payment due or alleged to be due for any work, labor, services, materials, or supplies claimed to have been furnished at the Lessee's request in, on, or about the Leased Premises and to indemnify the Lessor against any lien or claim of lien attached to or upon the Leased Premises or any part thereof by reason of any act or omission on the Lessee's part. The Lessee does, however, have the right to contest any mechanic's lien or claims filed against the Leased Premises, provided the Lessee diligently prosecutes any such contest and at all times effectively stays or prevents any sale of the Leased Premises under execution or otherwise and pays or
otherwise satisfies any final judgment adjudging or enforcing such contested liens and thereafter procures record satisfaction of the release thereof. The Lessee also agrees in any such contest, at the Lessee's cost and expense, to defend the same on behalf of the Lessor.

ARTICLE XIV. Condemnation

14.1 If, as a result of any exercise of the power of eminent domain (hereinafter referred to as "proceedings"), either of the following happen: (a) the title to the whole or substantially all of the Leased Premises is taken; or (b) the Leased Premises are deprived of adequate ingress or egress to or from all public streets and highways abutting the Leased Premises, and the Lessee cannot reasonably, operate upon the remainder of the Leased Premises at the time of such taking, then this Lease will terminate as of the date of such taking pursuant to such Proceedings. For the purpose of construing the provisions of this Article, Proceedings" includes any negotiated settlement of any matter involved in a condemnation; and a "taking" is deemed to occur when title to the Leased Premises or possession thereof is acquired by another governmental authority, whichever first occurs.

14.2 If, during the term of this Lease, title to less than the whole or title to less than substantially all of the Leased Premises is taken in any such Proceedings and the Lessee can reasonably operate on the remainder of the Leased Premises at the time of such taking, this Lease will not terminate. However, the Lessee's obligation to pay rent as provided in Article III. above, will be adjusted accordingly.

14.3 All damages awarded for any taking described in this Article are the property of the Lessor.

ARTICLE XV. Total or Partial Destruction.

15.1 If, during the term of this Lease, the Leased Premises or a substantial part thereof is destroyed or so damaged by fire or other casualties so as to become unusable for livestock grazing purposes, then, at Lessee's option, the term hereby created will cease; and this Lease will become null and void from the date of such damage or destruction; and the Lessee must immediately surrender the Leased Premises and its interest therein to the Lessor. The Lessee must exercise such option to terminate this Lease by notice in writing delivered to the Lessor within thirty (30) days after such damage or destruction. The Lessee will continue to be liable to the Lessor for all rent accruing up to the date of termination of this Lease. If the Lessee does not elect to terminate this Lease, this Lease will continue in full force and effect.

15.2 If the Leased Premises are only slightly injured by fire or the elements so as not to render the same unusable for livestock grazing purposes, then the Lessor will repair the same with all reasonable speed. Lessee is not entitled to any compensation or off-set from or claim against the Lessor for any inconvenience or annoyance arising from the necessity of repairing any portion of the Leased Premises, however the necessity may occur.
ARTICLE XVI. Holding Over.

16.1 Any holding over after the expiration of the term of this Lease Agreement or any extended term thereof, with the written consent of the Lessor, will be construed as a tenancy from month-to-month on the same terms and conditions herein specified and at the same rental provided for herein.

ARTICLE XVII. Default of Lessee.

17.1 If any one or more of the following events (hereinafter referred to as "an event of default") happens:

(a) The Lessee defaults in the due and punctual payment of the rent or any other amounts required to be paid hereunder and such default continues for three (3) business days after the receipt of written notice from the Lessor; or

(b) The Lessee neglects or fails to perform or observe any of Lessee's obligations hereunder and the Lessee fails to remedy the same within five (5) business days after the Lessee receives written notice from the Lessor specifying such neglect or failure (or Lessee fails to begin such cure within said five (5) days and proceed with due diligence to complete said cure when the default if it is of such a nature that it cannot be cured within said five (5) day period); or

(c) The Lessee: (i) is adjudicated as bankrupt or insolvent; (ii) files a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Act (as now constituted or in the future amended); or (iii) makes an assignment of its property for the benefit of its creditors; or

(d) The Lessee neglects or fails to perform or observe any of Lessee's obligations under this Lease within one hundred and eighty (180) days after prior notice of any such neglect or failure, whether or not such prior neglect or failure was remedied within the time period provided in subparagraph (a) or (b), above.

Then, and in any one or more such events of default, the Lessor has the right, at its election and while any such event of default continues, to give the Lessee written notice of its intention to terminate this Lease on the date of such given notice or any later date specified therein; and on such specified date, the Lessee's right to possession of the Leased Premises will cease; and this Lease will thereupon be terminated. The Lessor may then re-enter and take exclusive possession of the Leased Premises or any part thereof and repossess the same as the Lessor's former estate and expel the Lessee and those claiming through or under the Lessee and remove the property and effects of both or either (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrearages of rent or preceding breaches of covenants.

A. Alternatively, the Lessor may elect if an event of default occurs not to terminate
this Lease, but the Lessor will still have the right to elect to retake exclusive
possession of the Leased Premises by evicting the Lessee if the Lessee has not
otherwise abandoned the Leased Premises. In the event the Lessor elects to so
take exclusive possession, the Lessee will not be relieved of its obligations and
liabilities under the Lease, all of which will survive such repossession. In the event
of such repossession, the Lessee must pay to the Lessor as current liquidated
damages: the then value of the rent and other sums as herein provided which
would be payable if such repossession had not occurred; less

B. The net proceeds, if any, of any reletting of the Leased Premises after deducting
all of the Lessor’s expenses in connection with such reletting, including, without
limitation, all repossession costs, brokerage commissions, legal expenses,
attorneys fees, expenses of employees, and necessary alteration costs and
expenses in preparation of such reletting.

The Lessee must pay such damages to the Lessor within thirty (30) days after
receiving written notice from the Lessor of such damages. If the Lessor must
commence any action or proceeding to collect the foregoing amounts, or to enforce
any other obligation of the Lessee under this Lease, the Lessor will be entitled to
reimbursement for all costs and expenses and legal fees incurred in said matter,
including reasonable attorney’s fees.

ARTICLE XVIII. Attorney’s Fees.

18.1 The Lessee agrees to pay and indemnify the Lessor against all legal costs and charges,
including attorney’s fees, lawfully and reasonably incurred in obtaining possession of the
Leased Premises after default of the Lessee or termination of this Lease, incurred in
enforcing any covenant of the Lessee herein contained or any right granted to the Lessor,
and incurred in collecting any rent, monies, or other damages owed by the Lessee to the
Lessor under this Lease.

ARTICLE XIX. Lessee to Save Lessor Harmless.

19.1 The Lessee covenants that it will indemnify, release and hold the Lessor, and its officers
and employees, harmless from all claims, demands, judgments, costs, and expenses,
including attorney’s fees, arising out of any accident or occurrence causing injury to any
person or property whomsoever or whatsoever due directly or indirectly to the use or
neglect of the Leased Premises or any part thereof by the Lessee and its officers, agents,
employees, licensees, and invitees or any entity or person (and their officers, agents,
employees, licensees, and invitees) holding under the Lessee, unless such accident or
occurrence results solely from the tortious misconduct or negligent act or omission on
the part of the Lessor, or its officers and employees; and the Lessee will indemnify and
hold harmless the Lessor, and its officers and employees, from all damages and all
penalties arising out of any failure of the Lessee, in any respect, to comply with all of the
requirements and provisions of this Lease Agreement; and the Lessee covenants that
the Lessee will keep and save the Lessor, and its officers and employees, and the Lessor’s interest in and unto the Leased Premises forever harmless from any penalty, damage, or charge imposed by any violation of any laws, whether occasioned by an act or omission of the Lessee, or by another or others in the Leased Premises holding under or through the Lessee. In addition, the Lessor, and its officers and employees, will not be liable to the Lessee for any livestock injuries or deaths, regardless of cause, incurred in connection with such livestock grazing upon the Leased Premises under this Lease Agreement, unless such injuries or deaths result from a negligent act or omission of the Lessor. However, any liability of the Lessor, or of its officers and employees, to the Lessee is subject to all the defenses, immunities, and limitations of the Colorado Governmental Immunity Act (Section 24-10-101, et seq.) and to any other defenses, immunities, and limitations to liability available to the Lessor, and its officers and employees, under the law.

ARTICLE XX. Notices.

20.1 Any notice or other communication given by either party to the other relating to this Lease Agreement must be hand-delivered or sent by registered or certified mail, return receipt requested, or by overnight commercial courier, addressed to such other party at its respective addresses set forth below; and such notice or other communication will be deemed given when so hand-delivered or three (3) business days after so mailed, or the next business day after being deposited with an overnight commercial courier:

If to the Lessor:

City of Fort Collins Natural Areas Department
Attn: Matt Parker, Resource Management Supervisor
P.O. Box 580
Fort Collins, CO 80522

With a copy to:

City of Fort Collins – Real Estate Department
Attn: Real Estate Manager
P.O. Box 580
Fort Collins, CO 80522

If to the Lessee:

Folsom Grazing Association, LLC
Attn: William Altenburg, Board President
570 East County Road 64
Fort Collins, CO 80524

ARTICLE XXI. Hazardous Material.
21.1 As used herein, the term “Hazardous Material” means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Colorado or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is: (i) defined as a "hazardous substance" under applicable state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1321); (v) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. Section 6991).

21.2 The Lessee must not cause or permit any Hazardous Materials to be brought upon, kept, or used in or about the Leased Premises by the Lessee, its officers, agents, employees, contractors, licensees, or invitees, without the prior written consent of the Lessor (which the Lessor will not unreasonably withhold as long as the Lessee demonstrates to the Lessor’s reasonable satisfaction that such Hazardous Material is necessary or useful to the Lessee’s operation; that it will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Material and will protect and preserve the Leased Premises and any other property in a safe and environmentally sound condition; and that the Hazardous Material will not materially interfere with the Lessor’s use of the Leased Premises or cause damage to said Leased Premises.) If the Lessee breaches the obligation stated in the preceding sentence, or if the presence of Hazardous Material on the Leased Premises caused or permitted by the Lessee results in contamination of the Leased Premises or if contamination of the Leased Premises by Hazardous Material otherwise occurs for which the Lessee is legally liable to the Lessor for damage resulting therefrom, then the Lessee will indemnify, defend, and hold the Lessor, and its officers and employees, harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Leased Premises, damages for the loss or restriction on use of the Leased Premises, and sums paid in settlement of claims, attorneys fees, consulting fees, and expert fees), which arise during or after the Lease term as a result of such contamination. Lessee's indemnification of the Lessor includes, without limitation, any costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Leased Premises. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Premises caused or permitted by the Lessee results in any contamination of the Leased Premises, the Lessee must promptly take all actions at its sole expense as are necessary to return to the Leased Premises to the condition existing prior to the introduction of any such Hazardous Material to the Leased Premises; provided that Lessee will first obtain the Lessor's written approval of such action, which
approval will not be unreasonably withheld so long as such action would not potentially have any material adverse effect on the Leased Premises or the Lessor's use of the Leased Premises.

ARTICLE XXII. Time of the Essence.

22.1 Time is of the essence of this Lease Agreement and each and every provision hereof.

ARTICLE XXIII. Access and Use By Lessor.

23.1 The Lessor, and its officers, employees, and any other person properly authorized by the Lessor, including members of the public, shall at all times retain the right to enter upon and use the Leased Premises for any purpose. Lessee understands and agrees that genetically pure and brucellosis-free bison are located on a portion of the Leased Premises. Lessor will coordinate bison-grazing activity with Lessee through development of the Grazing Plan, and Lessee shall have no responsibility or liability for activities or costs associated with such bison grazing unless otherwise agreed to by the parties.

ARTICLE XXIV. Education.

24.1 The Lessee or appropriate employee of the Lessee will participate in occasional education and outreach programs on an annual basis. The Lessee's participation will include discussions of ranching heritage, ranch management, and ecological services provided by ranches and livestock.

ARTICLE XXV. "AS-IS" Nature of Leased Premises.

25.1 The Lessee acknowledges and agrees that the Lessor has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guarantees of any kind or character whatsoever, whether expressed or implied, oral or written, past, present, or future, of, as to, concerning or with respect to the Leased Premises and; (a) the value, nature, quality, or condition of the Leased Premises, including, without limitation, the water, soil, and geology of the Leased Premises; (b) the income to be derived from the Leased Premises; (c) the suitability of the Leased Premises for any and all activities and uses which the Lessee may conduct thereon including the grazing of livestock; (d) the compliance of or by the Leased Premises or its operation with any laws, rules, ordinances, regulations of any applicable governmental authority or body; (e) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Leased Premises; (f) the manner or quality of the construction or materials, if any, incorporated into the improvements located on the Leased Premises; (g) the manner, quality, state of repair or lack of repair of the improvements located on the Leased Premises; or (h) any other matter with respect to the Leased Premises and the improvements located thereon, and specifically, that the Lessor has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution, or land use laws, rules, regulations, orders, or requirements, including solid waste, as
defined by the U.S. Environmental Protection Agency regulated at 40 C.F.R., Part 261, or the disposal or existence, in or on the Leased Premises, of any hazardous substance, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The Lessee further acknowledges and agrees that having been given the opportunity to inspect the Leased Premises, and the improvements located thereon, the Lessee is relying solely on its own investigation of the Leased Premises and not on any information provided or to be provided by the Lessor. The Lessee further acknowledges and agrees that any information provided or to be provided with respect to the Leased Premises was obtained from a variety of sources and that the Lessor has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. The Lessee agrees that the Lessor is not liable or bound in any manner by any verbal or written statements or representations, or information pertaining to the Leased Premises, or the improvements located thereon, or the operation thereof, furnished by any real estate broker, agent, employee, servant, or other person. The Lessee further acknowledges and agrees that to the maximum extent permitted by law, the lease of the Leased Premises as provided herein is made on an "AS-IS" condition and basis with all faults. It is understood and agreed that the rent provided for under this Lease Agreement and any other consideration provided by the Lessee under this Lease Agreement has been adjusted and taken into consideration by the Lessee to reflect that all of the Leased Premises is being leased by the Lessee from the Lessor subject to the foregoing.

ARTICLE XXVI. General Provisions.

26.1 Words of the masculine gender include the feminine and neuter gender; and when the sentence so indicates, words of the neuter gender refer to any gender. Words in the singular include the plural and vice versa.

26.2 This Lease Agreement is to be construed according to its fair meaning and as if prepared by both parties hereto and is deemed to be and contain the entire understanding and agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this Lease Agreement unless set forth in writing and signed by both of the parties hereto.

26.3 The Article headings used herein are for convenience of reference only and in no way define or limit the scope or intent of any provision under this Lease Agreement.

26.4 Subject to the provisions hereof, the benefits of this Lease Agreement and the burdens hereunder inure to and are binding upon the parties hereto and their respective heirs, administrators, successors, agents and permitted assigns.

26.5 This Lease will be governed by and its terms construed under the laws of the State of Colorado. Any judicial proceedings commenced by either party to enforce any of the
obligations, covenants, and agreements contained herein, must be commenced in the Larimer County District or County Courts.

26.6 Nothing contained herein is deemed or should be construed by the parties nor by any third party as creating the relationship of principle and agent, a partnership or a joint venture between the parties, or an employment relationship between the parties, it being agreed that none of the provisions set forth herein nor any acts of the parties will be deemed to create a relationship between the parties other than the relationship of lessor and lessee.

26.7 Failure of the Lessor to exercise any right or rights accruing to it by virtue of the Lessee's breach of any covenant, condition, or agreement herein does not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by the Lessee, nor will the Lessee be relieved thereby from its obligations under the terms of this Lease Agreement.

26.8 This Lease Agreement is made for the sole and exclusive benefit of the Lessor and the Lessee, their successors and assigns, and it is not made for the benefit of any third party.

26.9 The remedies of the Lessor under this Lease are cumulative; no one of them should be construed as exclusive of any other or of any other remedy provided by law.

26.10 The Lessor reserves the right to grant to any third party such easements and rights-of-way as it desires over, across, and under portions of the Leased Premises and to lease all or any portion of the Leased Premises to any other third party so long as such easements, rights-of-way, and leases do not unreasonably interfere with the Lessee's continuing use of the Leased Premises as provided in this Lease Agreement.

26.11 No act or thing done by the Lessor or the Lessor's officers or employees during the term hereof will be considered as an acceptance of the surrender of the Leased Premises, and no agreement to accept such surrender will be valid unless in writing signed by the Lessor.

26.12 The Lessee, upon the expiration or termination of this Lease, either by lapse of term or otherwise, agrees to peacefully surrender to the Lessor the Leased Premises, including the improvements located thereon together with any alterations, additions, and changes made to such improvements by the Lessee during the term of this Lease Agreement, in good repair, as hereinabove provided, except for acts of God, ordinary wear, and damage by fire or other casualty not caused by the negligence of the Lessee or anyone under the Lessee's control.

26.13 The Lessee acknowledges and agrees that the Lessee has not relied upon any statements, representations, agreements, or warranties except such as they are expressed herein.

26.14 If any covenant, condition, or provision of this Lease Agreement is held to be invalid by
26.15 To the extent necessary to carry out all of the terms and provisions hereof, the said terms, obligations, and rights set forth herein survive and will not be affected by the expiration or termination of this Lease Agreement.

26.16 The parties acknowledge that certain items of personal property may now be located on the Leased Premises. The Lessor makes no representations or warranties regarding its ownership of any such items of personal property or regarding the condition of such items. The parties hereto acknowledge that the said items of personal property located on the Leased Premises and within the improvements located on the Leased Premises may belong to third parties. The Lessee agrees to indemnify and hold harmless the Lessor, and its officers and employees, from and against any liability for any improper use or disposition by the Lessee of any items of personal property belonging to third parties.

26.17 Neither the Lessor nor the Lessee will be deemed in violation of this Lease Agreement if prevented from performing any of their respective obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of public enemies, acts of superior governmental authorities, weather conditions, rights, rebellions, sabotage, or any other circumstances for which they are not responsible or that are not within their control.

26.18 This Lease Agreement will not be recorded. However, at the request of the Lessee, the Lessor and the Lessee will execute a memorandum of lease for recording, containing the names of the parties, the legal description of the Leased Premises, the term of the Lease and such other information as the parties mutually agreed upon.

26.19 The obligations of the Lessor to commit or expend funds after calendar year 2010 are subject to and conditioned upon the annual appropriation of funds sufficient and intended to carry out said obligations by Lessor's City Council, in its sole discretion. If the City Council does not appropriate funds necessary to carry out any such obligations, the Lessor will notify the Lessee promptly of such non-appropriation. If such non-appropriation results in a material impairment of Lessee's right hereunder, the Lessee may terminate the lease, with no further recourse against the Lessor, by providing thirty (30) days written notice to Lessor. If Lessee does not exercise this termination right within sixty (60) days of receiving Lessor's notice of said non-appropriation, then Lessee waives its right to terminate the Lease pursuant to this section.
IN WITNESS WHEREOF the parties hereto have caused this Lease Agreement to be executed the day and year first above written.

THE CITY OF FORT COLLINS, COLORADO,
A municipal corporation

By: __________________________________________
   Darin A. Atteberry, City Manager

ATTEST:

_________________________
City Clerk

_________________________
(Print name)

APPROVED AS TO FORM:

_________________________
Assistant City Attorney

_________________________
(Print name)

LESSEE:  FOLSOM GRAZING ASSOCIATION LLC
A Colorado limited liability company

By: __________________________________________

Printed: __________________________________
Member/Manager
EXHIBIT "A"

Legal Description of Leased Premises on Soapstone Prairie Natural Area Township 11 North, Range 68 West of the 6th P.M., Larimer County, CO
Section 4: ALL
Section 5: ALL
Section 6: ALL
Section 19: ALL

Township 12 North, Range 68 West of the 6th P.M., Larimer County, CO Section 19: All in State of Colorado
Section 20: All in State of Colorado Section 21: All in State of Colorado Section 28: ALL
Section 29: ALL
Section 30: ALL
Section 31: ALL
Section 32: ALL
Section 33: ALL

Township 11 North, Range 69 West of the 6th P.M., Larimer County, CO Section 1: ALL
Section 2: ALL
Section 3: ALL
Section 4: SW ¼ of NW ¼, S ½, NE ¼ Section 10: ALL
CURVE, BEING 530.00 FEET, THE CENTRAL ANGLE OF SAID CURVE BEING 11° 05’ 14”,
THE CHORD OF SAID CURVE BEARS N 06° 55’ 33” WA DISTANCE OF 102.40 FEET,
THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 102.56 FEET TO A POINT;
THENCE N 12° 28’ 10” W, A DISTANCE OF 270.73 FEET TO THE BEGINNING OF A CURVE
TO THE LEFT, THE RADIUS OF SAID CURVE BEING 530.00 FEET, THE CENTRAL ANGLE
OF SAID CURVE BEING 04° 44’ 56”, THE CHORD OF SAID CURVE BEARS N 14° 50’ ’38”
WA DISTANCE OF 43.92 FEET, THENCE ALONG THE ARC OF SAID CURVE A DISTANCE
OF 43.93 FEET TO A POINT ON THE NORTH LINE OF THE E 1/2 OF THE NE 1/4 OF
SECTION 11; THENCE WESTERLY ALONG SAID NORTH LINE 618 FEET, MORE OR LESS,
TO THE NW CORNER OF THEE 1/2 OF THE NE 1/4 OF SAID SECTION 11; THENCE
SOUTHERLY ALONG THE WEST LINE OF THE E 1/2 OF THE NE 1/4 OF SAID SECTION
11, 2676 FEET, MORE OR LESS, TO THE SW CORNER OF THE E 1/2 OF THE NE 1/4 OF
SAID SECTION 11; THENCE EASTERLY ALONG THE SOUTH LINE OF THEE 1/2 OF THE NE 1/4
OF SAID SECTION 11, 1320 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.
Section 13: NE ¼, SE ¼, SW ¼, West ½ of NW ¼
Section 14: NW ¼, NE ¼, SE ¼
Section 15: NE ¼, North ¼ of NW ¼
Section 23: NE ¼, N ½ of SE ¼
Section 24: East ½ of NW ¼, NE ¼, N ½ of SE ¼, NE ¼ of SW ¼

Township 12 North, Range 69 West of the 6th P.M., Larimer County, CO
Section 20: All in State of Colorado
Section 21: All in State of Colorado
Section 22: All in State of Colorado
Section 23: All in State of Colorado
Section 24: All in State of Colorado
Section 25: ALL
Section 26: ALL
Section 27: ALL
Section 28: ALL
Section 29: ALL
Section 32: ALL
Section 33: ALL
Section 34: ALL
Section 35: ALL
Section 36: ALL
ATTACHMENT 1 TO EXHIBIT A
VICINITY MAP – SOAPSTONE NATURAL AREA
ATTACHMENT 4 TO EXHIBIT A
LEASED PREMISES OVERVIEW

Soapstone Prairie Natural Area (SPNA) is a City-owned property at the northern boundary of Larimer County, Colorado (see Attachment A – Vicinity Map). The entire property comprises approximately 22,500 acres of land. The City of Fort Collins Natural Areas Department (NAD) owns the property and operates under the following mission:

*The mission of the Natural Areas Department is to protect and enhance lands with existing or potential natural areas values, lands that serve as community separators, agricultural lands, and lands with scenic values. Protection of natural habitats and features is the highest priority, while providing for education and recreation for the Fort Collins community.*

More specific management of SPNA is guided by the *Soapstone Prairie Natural Area Management Plan* (available online at http://fcgov.com/naturalareas/pdf/soapstone-management-plan.pdf). The plan identifies “conservation targets,” or natural and cultural resources of the highest conservation value. This plan will be updated, likely in 2021, but will not substantially change in its direction or mission.

The NAD believes that livestock grazing is a necessary and effective tool to aid in managing for conservation targets and is looking for a cooperator to manage grazing operations on the property. To date, under management of the NAD, grazing utilization has been capped at roughly 50%. Grazing will continue to be managed conservatively to ensure its use as a tool for improving conservation targets. Five of NAD’s conservation targets are directly related to, and influenced by, grazing management on the property. These conservation targets and grazing-related management goals are listed below (“Rare and threatened plants” conservation target changed to “Rare, endangered, and threatened species” in anticipation of upcoming change to management plan):

- **Shortgrass prairie**
  - *Natural Areas Department goal:* Provide high quality habitat for grassland birds, black-tailed prairie dog communities, pronghorn and swift fox.
  - *Grazing role:* Livestock grazing can help the shortgrass prairie system by providing a diversity of grass structure, increasing health and vigor of plants, and helping incorporate seeds into the soil through hoof action. Providing a habitat mosaic, with patches of heavily grazed grasslands and patches of lightly grazed or un-grazed habitat, is essential for grassland wildlife species success. Over time, important components of the shortgrass plant community have been removed or reduced, such as four-wing saltbush, winterfat, and needlegrasses. Timing and duration of grazing can help these species return.

- **Wetlands/Riparian systems**
  - *Natural Areas Department goal:* Maintain or restore functioning riparian systems in order to provide high quality habitat for northern leopard frog, native fish, and birds of prey (see Birds of prey).
  - *Grazing role:* The wetlands and riparian areas on the ranch are highly productive and good sources of forage for livestock. They can benefit from livestock grazing by increasing plant vigor and helping open soils for seed germination (also see comments under Rare and threatened plants, below). However, there is also the potential that livestock can over-use riparian areas. Wetlands and riparian areas are key areas for management of Soapstone Prairie, and the Natural Areas staff
would like to work with the Lessee to ensure that livestock do not over-use and degrade these areas.

- **Rare, endangered, and threatened species**
  - *Natural Areas Department goal:* Improve habitat for, and/or maintain or reintroduce appropriate rare, endangered, and threatened species.
    - Colorado butterfly and Rocky Mountain blazing star
    - *Black-Footed Ferret* – The NAD partnered with the US Fish and Wildlife Service (USFWS) and Colorado Parks and Wildlife (CPW) to reintroduce black-footed ferret to the Laramie Foothills ecosystem in 2014. Since then, NAD and USFWS have released additional ferrets and conducted annual population monitoring.
    - *Fish* – NAD has partnered with the Colorado Parks and Wildlife to reintroduce Northern Redbelly Dace and Plains Topminnow to Spottlewood Creek. NAD is continuing to acquire and document instream flows to support additional fish reintroductions.
    - *American Bison partnership* - The NAD partners with Colorado State University (CSU) and Larimer County Department of Natural Resources to provide grazing for and support of the Laramie Foothills Conservation Bison Herd (LFCBH). The LFCB herd is managed through the Animal Reproduction and Biotechnology Laboratory within CSU’s College of Veterinary Medicine & Biomedical Sciences. The herd is comprised of genetically valuable bison from the Greater Yellowstone ecosystem and is an important global natural resource. The herd currently utilizes 2,700 acres in 3 pastures in the southwest area of SPNA.
  - *Grazing role:* We believe these rare plants, which exist in wet meadows on SPNA, exist because of the historic grazing system where the meadows were grazed in late spring and/or fall. Grazing may be necessary to help create open soils for seed germination. Grazing, coupled with prescribed fire, can also be used to expand the extent of prairie dog colonies, therefore providing additional habitat for black-footed ferret. Additionally, appropriately managed grazing systems can provide conditions that promote invertebrate diversity along stream and creek edges, improving larval feeding resources for native fishes.

- **Foothills shrublands system**
  - *Natural Areas Department goal:* Maintain high quality of foothills shrubland system.
  - *Grazing role:* The mountain mahogany shrublands with a mixed grass understory can benefit from grazing through weed management efforts. While the NAD does extensive chemical, biological and mechanical weed control on the property, the timing and type of grazing can help reduce weeds. Dalmatian toadflax is a particular concern in this area.

- **Birds of prey**
  - *Natural Areas Department goal:* Provide future nest locations for birds of prey.
  - *Grazing role:* Soapstone Prairie Natural Area is home to many raptors including golden eagles, ferruginous hawks, Swainson’s hawks, red-tailed hawks, prairie
falcions and American kestrels. Big cottonwoods along riparian areas often serve as nest sites for these birds. Appropriate grazing management can help ensure recruitment of tree and shrub species to provide future nest locations for birds of prey.

A. Resources

- **Land**

  This property lies just east of the boundary between the plains and the Front Range. Moderately rugged hills and shallow canyons associated with the complex geology of this boundary are present in the western part of Soapstone Prairie, with the remainder consisting of the more subdued and generally eastward-sloping grasslands. Elevations range from approximately 5,820 feet on the southeast portion of the Round Butte Pasture to 7,201 feet at the summit of a ridge along the northwestern edge.

- **Vegetation**

  Soapstone contains several high value vegetation complexes, which are generally associated with the area’s topography. The hills and canyon areas of the west side contain mountain mahogany shrublands with a mixed grass understory while the gentler eastern side supports shortgrass prairie, with blue grama being the most dominant forage species. Additionally, several wetland and riparian systems are present on the property, including wet meadows that contain populations of rare and threatened plants (Colorado butterfly plant, Rocky Mountain blazing star and pale blue-eyed grass). National Resource Conservation Service range health assessments indicate fair to good condition of the rangeland.

  The NAD will manage both vegetation and wildlife habitat with prescribed fire. Prescribed fires are typically 500-1500 acres in size (though it is possible larger fires may be conducted) and are timed to influence positive changes in vegetation composition or improve wildlife habitat. Natural Areas staff will communicate plans for prescribed burns with Lessee.

- **Water**

  A 2009 decree documents rights on Graves Creek Spring (northwest, northeast, and south), Spottlewood South Spring, Stateline East Spring, Brannigan, Central, Rawhide (south and central), Round Butte East, Mountain Dam Spring, Canyon West Spring, as well as Bear House Spring. Additionally, a series of wells are also adjudicated. All rights identify the beneficial use as watering of livestock.

- **Wildlife**

  These properties support a diverse array of wildlife species. Currently, approximately 1,000 acres of prairie dog colonies are present on the property. The grazing Lessee should recognize that the NAD intends to manage prairie dog colonies as a critical component of a functioning grassland ecosystem. Prairie dog colonies and shortgrass prairie support a diverse bird community which includes a number of Species of Greatest Conservation Need, as identified by the Colorado Division of Wildlife. In 2014 the NAD, in cooperation with Colorado Parks and Wildlife, and the U.S. Fish and Wildlife Service reintroduced Black-footed ferret to Soapstone Prairie. Swift foxes have also been documented on the property. The entire eastern portion of the property provides excellent pronghorn habitat, and the western portion
supports elk and mule deer. Several riparian and wetland systems provide extensive habitat, and numerous intermittent and ephemeral drainages also occur on the property.

**Public Recreation**

Lessees must be aware that grazing management needs to be accomplished with public use of the property in mind. Soapstone Prairie Natural Area opened to public recreation in the summer of 2009; the property contains two parking lots with associated picnic shelters and restrooms, trails and other visitor facilities. Visitor use is significantly higher on weekends and may fluctuate seasonally. Use is generally greater on the western portion of the property. Recreational uses include hiking, biking and horseback riding on designated trails only. Soapstone Prairie is open to hunting opportunities in the fall via a special permit application process. Recreational hunts will be managed to ensure limited impact to livestock. Visitors are not allowed to use motorized vehicles off the main access road between the parking lots. Dogs are not permitted on the property, with an exception for the grazing lessee as defined in the grazing lease contract.

**Research**

Natural Areas staff and researchers from other organizations will continue to use the property extensively for research and educational purposes. The NAD expects the grazing Lessee, and representatives of the Lessee, to interact positively and professionally with visitors and encourages Lessee to actively participate in public education. Opportunities for volunteer involvement in ranching operations are also viewed positively by NAD.

**Infrastructure**

Fencing has been significantly modified or removed in the central and western portions of the property to accommodate public recreation including trails. In these areas historic pastures no longer exist, leaving one large pasture over 5,500 acres in size. The NAD is continually interested in opportunities to improve grazing management via improvements in fencing. Historic pastures remain intact on the remainder of the property and range in size from 200 acres to nearly 4,000 acres. Fence is generally barbed wire, with much of the fencing conforming to NRCS “wildlife-friendly” standards. Lessee may propose new fence location, either temporary or permanent, or other methods of livestock distribution.

Pastures use a combination of surface water, solar-powered tanks, windmills, and spring tanks. See Attachment B for a map depicting location of fences and water infrastructure.

The headquarters in the northeast corner of the property contain corrals and holding pens. A second set of corrals is located at Soapstone Springs, in the central portion of the property. A third set of corrals are located in the eastern section of the Round Butte Pasture.

**House/ Caretaker**

A house is available for use by the grazing Lessee at the headquarters in the northeast corner of the property per the terms of the Lease. Primary site security responsibility of the caretaker/ranch manager is awareness of prohibited activities and notification of Natural Areas Rangers and/or the Larimer County Sheriff.
A second house, known as the “Roman House” is located in the central portion of the property and is used by the NAD as a maintenance facility. This house is not available for use by the grazing Lessee.

Access
Public access to SPNA is from Rawhide Flats Road, the northern extension of County Road 15. There is also an eastern access from the I-25 frontage road via Soapstone Ranch Road. However, this is a private access only, and if this access is used by Lessee it should be for ranch related access only. Large stock trucks traveling to the majority of the property should access from the east. Public access to the headquarters is limited by one or more gates.

Grazing Management
Soapstone Prairie Natural Area has historically been grazed by both sheep and cattle. Most recently it has been grazed by cow-calf pairs on the eastern and southern portions in a simple rotation system from June through November, and first year heifers in the Round Butte Pasture for the same period. Sheep had been historically grazed in the west/northwest portions from June through September. If a proposal includes the grazing of sheep in the west/northwest portions, it is advisable to discuss potential disease communication mitigation efforts between domestic and wild sheep. Sheep and goats also present concern for disease transmission with the CSU managed bison herd grazing in adjacent or proximal pastures; a proposal of sheep and/or goats should address these concerns. Grazing animals can include cattle, sheep, bison, goats, and/or any other animal type that Lessee demonstrates can effectively be managed to achieve conservation targets (combinations of grazing animals will be considered and are encouraged).
## ATTACHMENT 5 TO EXHIBIT A
### LEASED PREMISES PASTURE DESCRIPTIONS

<table>
<thead>
<tr>
<th>PASTURE (ACRES)</th>
<th>WATER RESOURCES</th>
<th>MAX AUM</th>
<th>GRAZING CONSIDERATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jack Springs (3882 acres)</td>
<td>One tank, surface water</td>
<td>1,391</td>
<td>• Grazing pressure must be heavy in areas to provide short structure grass for nesting grassland birds (e.g., Mountain plover).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• General focus should be on providing habitat mosaic (areas of heavy grazing as well as areas of light grazing).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Large prairie dog colonies may exist in this pasture (currently plagued out but likely to return and expand).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• A portion of Spottlewood Creek is fenced with a 3-strand high tensile electric fence. It includes access points for livestock at 6 locations. This riparian pasture may be grazed as appropriate.</td>
</tr>
<tr>
<td>Brannigan (3757 acres)</td>
<td>Three spring tanks, surface water</td>
<td>1,006</td>
<td>• General focus should be on providing habitat mosaic (areas of heavy grazing as well as areas of light grazing).</td>
</tr>
<tr>
<td>Meadow (693 acres)</td>
<td>Surface water</td>
<td>198</td>
<td>• Rare plants exist in this pasture which must be grazed in spring or fall but not during bulk of growing season.</td>
</tr>
<tr>
<td>State Line (613 acres)</td>
<td>Tank</td>
<td>168</td>
<td>• General focus should be on providing habitat mosaic (areas of heavy grazing as well as areas of light grazing).</td>
</tr>
<tr>
<td>HQ (217 acres)</td>
<td>Springs/Surface water</td>
<td>111</td>
<td>• Rare plants exist in this pasture which must be grazed in spring or fall but not during bulk of growing season.</td>
</tr>
<tr>
<td>LR/ East &amp; West Canyon (8569 acres)</td>
<td>18 tanks (2 are windmill, rest are springs or piped from Cedar Canyon)</td>
<td>1,543</td>
<td>• The traditional pasture boundaries and fences have been extensively modified or removed to accommodate trails for public recreation. If your proposed grazing animal in this area requires additional fencing, include this information in proposal.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Grazing will need to avoid damage to public facilities (restrooms, picnic shelters, etc.).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• General focus in the shortgrass should be on providing habitat mosaic (areas of heavy grazing as well as areas of light grazing).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Focus of grazing in the mountain mahogany shrublands should be on weed control, especially for Dalmatian toadflax.</td>
</tr>
<tr>
<td>Location</td>
<td>Windmills</td>
<td>Area (Acres)</td>
<td>Notes</td>
</tr>
<tr>
<td>------------------------</td>
<td>-----------</td>
<td>--------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>South Roman (720 acres)</td>
<td>Two</td>
<td>150</td>
<td>General focus should be on providing habitat mosaic (areas of heavy grazing as well as areas of light grazing).</td>
</tr>
<tr>
<td>Tree (343 acres)</td>
<td>One</td>
<td>70</td>
<td>General focus should be on providing habitat mosaic (areas of heavy grazing as well as areas of light grazing).</td>
</tr>
<tr>
<td>Bernard (1760 acres)</td>
<td>One, surface springs</td>
<td>420</td>
<td>General focus should be on providing habitat mosaic (areas of heavy grazing as well as areas of light grazing).</td>
</tr>
<tr>
<td>* Round Butte (1349 acres)</td>
<td>No reliable water source; in the past Lessee has hauled water</td>
<td>130</td>
<td>General focus should be on providing habitat mosaic (areas of heavy grazing as well as areas of light grazing).</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>5,187</strong></td>
<td></td>
</tr>
</tbody>
</table>

*Note: The SE portion of the Round Butte Pasture is not included in this Grazing Lease as it is subject to a separate grazing lease with another Lessee.
EXHIBIT B

Lease Provisions for Employee Occupancy of Ranch Residence

Should Lessee choose to allow an employee of Lessee to occupy the Ranch Residence located on the Leased Premises, the following terms and conditions will apply.

1. Definitions. As used in this Exhibit B, “Residence” refers to the house and any associated facilities located on the Leased Premises, as shown on Attachment 3 to Exhibit 1. “Occupant” refers to an employee of Lessee authorized by Lessee to occupy the Residence.

2. Occupancy Contingent on Employment. Occupant’s right to live in the Residence is contingent upon Occupant’s continued employment as an agent of the Lessee assigned to Soapstone Prairie. Lessee will require Occupant to vacate the Residence if Occupant is no longer in this designated employment position, for whatever reason, within thirty (30) days from the date of the change in employment status.

3. Termination. Upon termination of occupancy of the Residence for any reason, Lessee must remove or ensure that Occupant removes all personal property or improvements not owned by Lessor. If Lessee fails to remove said personal property before vacating the Residence, the Lessee hereby grants the Lessor the absolute right to keep, convey, destroy, or otherwise dispose of such property in any manner Lessor chooses, and Lessee agrees to pay any net costs incurred by Lessor in doing so, within ten (10) days of receipt of Lessor’s statement of costs therefor.

4. Permissible Use of Residence. Lessee agrees to use and occupy the Residence only for the purpose of residential housing and for no other purpose whatsoever without the prior written consent of the Lessor.

5. Repairs and Maintenance.
   
   (a) The Lessee must, during any term of occupancy by an Occupant and at its sole expense, keep the Residence in a clean, orderly and safe condition, and free of litter, debris, and any unsightly or dangerous condition as required by the ordinances, resolutions, statutes and health, sanitary and police regulations of Larimer County and the State of Colorado, and applicable laws and policies of the City of Port Collins. Lessee must not store or permit the storage of any inoperable vehicles outside of the buildings on the Leased Premises.

   (b) The Lessor, during the term of the Lease, shall keep and maintain the Residence, including without limitation, the structural support, roof, plumbing/electrical, kitchen range, refrigerator, windows, and exterior walls in good condition, working order and repair. The Lessor is responsible for heating system maintenance and repair. Any repairs, other than normal wear and tear, required because of damage caused by the Lessee or Occupant will be the responsibility of the Lessee.
(c) The Lessee must, upon termination of any occupancy by an Occupant, restore the Residence to as good or better condition as it was in at the time the Occupant first occupied the Residence.

6. Conduct.

(a) Pets: Occupant is allowed to keep the following pets.

- Dogs: Occupant is allowed to keep up to four (4) dogs at the Residence, so long as those dogs are working animals that assist Occupant in his work for Lessee and are not allowed to roam at-large on the surrounding Soapstone Prairie Natural Area. Occupant is only allowed to keep up two dogs if they are considered Pets. All Dogs must be on a leash or under voice command if they are to be allowed outside of a fenced yard. All dogs must have current Rabies and Distemper Vaccinations. Dogs found to be aggressive or otherwise dangerous to visitors will not be permitted.

- Cats: No more than two (2) cats may be kept as barn cats, which must be spayed or neutered. Cat are not allowed to be kept inside the residence.

- Horses: Occupant may keep up to four (4) horses in the corrals adjacent to the Residence, provided such horses are working animals used in Lessee's work on the Leased Premises.

- Cows: up to six (6) pairs. Additional cows can be discussed with the Lessor.

- Any additional pets or working animals require the prior written consent of the Lessor. Since these pets are kept in conjunction with the Occupant's responsibilities as an employee of the Lessee, Lessee may determine the extent to which the Occupant may make use of facilities (barns, outbuildings, corrals, etc.) on the Leased Premises that are not part of the Residence for housing such pets. Animals not belonging to Lessee or Occupant may not be kept or boarded at the Residence. Dogs, cats and horses may not be bred on the Leased Premises. If hay is to be fed to animals, Occupant must feed certified weed free hay.

(b) Smoking: The Residence is rented as smoke-free and Lessee agrees not to permit smoking in or near the Residence and to ensure that Occupant's guests adhere to the non-smoking policy.

(c) Marijuana: The possession, consumption or cultivation of marijuana plants or products, including hydroponic cultivation, is prohibited on the Leased Premises.

7. Utilities. The Lessee is responsible for ensuring the payment of all utilities, including, but not limited to, electricity, water, sewer, trash services, cable services and phone services occasioned by Occupant's use of the Residence. Under no circumstances may anyone bum trash on the Premises.

8. Right of Inspection. The Lessor has the right at all reasonable times to enter the Residence for the purpose of inspecting the Residence and all buildings, grounds and improvements thereof. The Lessor will notify the Lessee orally or in writing in any reasonable manner at
least twenty-four (24) hours prior to such visit. This notice requirement does not apply in the event of an emergency reasonably requiring Lessor access to the Residence.

9. **Total or Partial Destruction.** If the Residence or any part thereof is destroyed or so damaged by fire or other casualty as to become untenable, then, at the option of the Lessor, Lessee's right to use the Residence will cease; and the Lessee must immediately surrender the Residence and its interest therein to the Lessor; provided, however, that the Lessor must exercise such option to so terminate Lessee's right to use the Residence by notice in writing delivered to the Lessee within thirty (30) days after such damage or destruction. Or, the Lessor may elect to repair the Residence, in which case Lessor will do so with all reasonable speed, placing the same in as good a condition as it was at the time of the damage or destruction and for that purpose may enter upon the Residence. In either event, the Lessee must remove all rubbish, debris, furniture, furnishings, equipment and other items of personal property within five (5) days after request being made by the Lessor. If the Residence is only slightly injured by fire or the elements so as to not render the same untenable and unfit for occupancy, then the Lessor will repair the same with all reasonable speed. The Lessee and any Occupant of the Residence through Lessee will have no claim for compensation or otherwise against the Lessor because of any inconvenience or annoyance arising from the necessity of repairing any portion of the Residence, however the necessity may occur.

10. **Insurance.** Lessee may provide or ensure that any Occupant of the Residence procures, pays for and keeps in full force and effect a policy of renter's property insurance covering all of the Lessee's and Occupant's equipment, appliances, furniture, furnishings and personal property from time to time in, on or at the Residence. If neither Lessee nor Occupant procures renter's insurance as described above, the City will not be responsible for any uninsured loss of property belonging to Lessee or Occupant and kept at the residence, and Lessee will indemnify and hold the City harmless against any claims for such loss.

11. **Indemnification.** Lessee agrees to indemnify and hold harmless the Lessor against all damages, claims, liabilities for injury or damage to person, property or whenever and by whomever brought and causes of action arising from or in any way relating to the Occupant's possession or use of the Residence.

**Attachments:**
1. Lead-Based Paint Disclosure
2. Occupancy Limits Disclosure
Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor’s Disclosure
(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
   (i) ____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).
   ____________________________________________________________________________________________________________
   ____________________________________________________________________________________________________________
   (ii) ___X__ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):
   (i) ____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).
   ____________________________________________________________________________________________________________
   ____________________________________________________________________________________________________________
   (ii) __X__ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee’s Acknowledgment (initials)
(c)_____ Lessee has received copies of all information listed above.
(d)_____ Lessee has received the pamphlet Protect Your Family from Lead in Your Home.

Agent’s Acknowledgment (initials)
(e) ____ Agent has informed the lessor of the lessor’s obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Lessor: CITY OF FORT COLLINS, a Municipal Corporation

By: ________________________________ Date
    Keith Hanson, Real Estate Services Manager

Lessee

Date

Lessee

Date

Lessee

Date

Ranch House Residential Lease – Folsom Grazing Association
9042 Soapstone Prairie Natural Area Grazing Lease
OCCUPANCY LIMITS DISCLOSURE STATEMENT FOR PROPERTY LEASE

The City of Fort Collins Code requires that any person selling or leasing a home, apartment or other dwelling unit must inform the buyer or renter about the maximum number of people who, by law, are allowed to occupy that home. All parties must sign where indicated below.

The maximum permissible occupancy of this dwelling unit is:

1. One (1) family (related by blood, marriage, adoption) and not more than one (1) additional person; or
2. Two (2) adults and their dependents, if any, and not more than one (1) additional person.
3. Up to four (4) unrelated persons in a dwelling unit located in an apartment complex containing units which were approved by the City to house four unrelated persons.

Actual signatures are required on this form. *It is required that this form be verified by electronic means OR notarize, attached to your lease, and a copy kept at the leased property or on-site management office. The shaded areas are for notary use. If the form is not notarized, the shaded areas should be left blank.

PROPERTY ADDRESS: ________________________________

**TENANT 1**
Name: __________________________________  Signature: _______________________________  Date:__________

Subscribed to and affirmed before me on __/__/20__ by _________________________
Notary Public: ________________________________ State of Colorado
County of Larimer       My Commission expires: _______________________

**TENANT 2**
Name: __________________________________  Signature: _______________________________  Date:__________

Subscribed to and affirmed before me on __/__/20__ by _________________________
Notary Public: ________________________________ State of Colorado
County of Larimer       My Commission expires: _______________________

**TENANT 3**
Name: __________________________________  Signature: _______________________________  Date:__________

Subscribed to and affirmed before me on __/__/20__ by _________________________
Notary Public: ________________________________ State of Colorado
County of Larimer       My Commission expires: _______________________

Property Owner:  CITY OF FORT COLLINS, P.O. Box 580, Fort Collins, CO 80522-0580
Owner/Manager: Keith Hanson, Real Estate Services Manager, City of Fort Collins

Signature: __________________________________  Date: __________________________

If requested by the City, you are required to provide this fully executed disclosure statement to the City pursuant to City Code Section 5-265(b). Failure to properly execute and retain this statement is a civil infraction punishable by a fine of not more than $1000, in addition to any costs, fees or surcharges assessed by a court or referee. Fines may be assessed to the owner, manager, and/or tenant(s).
AGENDA ITEM SUMMARY
City Council
October 6, 2020

STAFF
Shane Boyle, Civil Engineer III
Ken Sampley, Director, Stormwater Eng/Dev Review
Eric Potyondy, Legal

SUBJECT
Resolution 2020-092 Deferring Payment of the Stormwater Plant Investment Fee for the Poudre R-1 School District’s School Site Located on East Prospect Road.

EXECUTIVE SUMMARY
The purpose of this item is to seek Council’s approval on the deferral of Stormwater Plant Investment Fees for the current development of the Poudre School District Prospect Site pending de-annexation from the City of Fort Collins and annexation into the Town of Timnath.

STAFF RECOMMENDATION
Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION
Fort Collins Utilities requires a Stormwater Plant Investment Fee (PIF) for all development creating impervious surfaces within the Fort Collins City limits. Poudre School District (PSD) is in the process of developing a new school site at the northwest corner of County Road 5 and Prospect Road, which is currently within Fort Collins’ City limits. The new school site is part of an Intergovernmental Agreement (IGA) between the City of Fort Collins and Town of Timnath allowing the site to be disconnected (“de-annexed”) from Fort Collins and annexed into Timnath. (Attachment 1)

City Code Section 26-511(c) states that the Stormwater PIF must be paid prior to the issuance of a full building permit. However, this section of City Code also provides that Council may defer all or any portion of the Stormwater PIF by resolution.

The proposed Resolution is to defer the Stormwater PIF for this PSD development until December 31, 2021. In the event this parcel is de-annexed before then, no Stormwater PIF would be due. In the event this parcel is still within the City of Fort Collins’ boundary at that time, the Stormwater PIF would be due.

CITY FINANCIAL IMPACTS
There are no City financial impacts as this site will be located in the Town of Timnath and will not be served by Fort Collins.

BOARD / COMMISSION RECOMMENDATION
The proposed Resolution was presented to Water Board on August 20, 2020. Water Board voted unanimously to recommend that Council adopt the proposed Resolution. (Attachment 2)
ATTACHMENTS

1. Property Description and Map (PDF)
2. Water Board Minutes - Excerpt August 20, 2020 (PDF)
3. Powerpoint Presentation (PDF)
EXHIBIT A

PROPERTY DESCRIPTION
Poudre R-1 Parcel

A parcel of land being part of the South Half (S1/2) of Section Fifteen (15), Township Seven North (T.7N.), Range Sixty-eight (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

BEGINNING at the Southeast Corner of said Section 15 and assuming the South line of the Southeast Quarter (SE1/4) of said Section 15 as bearing North 89°56'23" West, as determined by a GPS observation, a distance of 2638.04 feet with all other bearings contained herein relative thereto:

THENCE North 89°56'23" West a distance of 2638.04 feet to the South Quarter Corner of said Section 15;
THENCE North 89°56'38" West along the South line of the Southwest Quarter (SW1/4) of said Section 15 a distance of 635.26 feet;
THENCE North 00°03'22" East a distance of 468.93 feet to the Southerly line of that strip of land as described in that Warranty Deed as recorded November 30, 1972 in Book 1531 on Page 759 of the records of the Larimer County Clerk and Recorder (LCCR);
Thence along said Southerly line by the following Two (2) courses and distances:
THENCE South 54°55'30" East (Rec. S. 55°01' E.) a distance of 764.90 feet;
THENCE South 89°53'30" East (Rec. S. 89°59' E.) a distance of 8.89 feet to the East line of said SW1/4;
THENCE North 00°09'39" East along said East line a distance of 54.76 feet to the Northerly line of the aforesaid parcel of land;
THENCE North 54°55'30" West (Rec. S. 55°01' E.) along said Northerly line a distance of 775.87 feet;
THENCE North 00°03'22" East a distance of 804.25 feet to the North line of the South Half of the Southwest Quarter (S1/2 SW1/4) of said Section 15;
THENCE South 89°47'03" East along said North line a distance of 637.70 feet to the Northeast Corner of said S1/2 SW1/4;
THENCE South 89°48'01" East along the North line of the South Half of the Southeast Quarter (S1/2 SE1/4) a distance of 2639.15 feet to the Northeast Corner of said S1/2 SE1/4;
THENCE South 00°12'32" West along the East line of said S1/2 SE1/4 a distance of 1326.04 feet to the POINT OF BEGINNING.
**Regular Items**

*Attachments available upon request*

**Poudre School District (PSD) Prospect Site**  
**Stormwater Plant Investment Fee (PIF) Deferral Request**

Dan Mogen, Development Review Engineer/Water Utilities Engineering, summarized the project and staff request. He and Shane Boyle, Development Review Manager/Water Utilities Engineering, answered questions.

Poudre School District is in the process of planning/building a new school at the northwest corner of County Road 5 and Prospect Road. This site is currently in Fort Collins, but it is anticipated the site will deannex from Fort Collins and annex into Timnath. PSD is pursuing a deferral/waiver of Stormwater Plant Investment Fee. The deferral sunsets in December 2021.

Staff requests the Water Board recommend Council adopt the proposed resolution “DEFERRING PAYMENT OF THE STORMWATER PLANT INVESTMENT FEE FOR THE POUDRE R-1 SCHOOL DISTRICT’S SCHOOL SITE LOCATED ON EAST PROSPECT ROAD”

**Discussion Highlights**

Board members commented on and inquired about various related topics including whether development review fees are still being collected for the project (yes); reason for PSD’s plans (regional school to be build first, then PSD will complete deannexation process); the existing Intergovernmental Agreement (IGA) approves deannexation plans; this staff request is merely procedural.

**Board Member Greg Steed moved** that the Water Board recommend City Council adopt the proposed resolution on first reading.

**Board Member Randy Kenyon seconded the motion.**

**Vote on the Motion:** it passed unanimously, 10-0
PSD Prospect School Site Map

[Map of PSD Prospect School Site with boundaries highlighted.]
Staff recommends City Council adopt the proposed resolution on first reading.
RESOLUTION 2020-092
OF THE COUNCIL OF THE CITY OF FORT COLLINS
DEFERRING PAYMENT OF THE STORMWATER PLANT INVESTMENT FEE FOR THE
POUDRE R-1 SCHOOL DISTRICT’S SCHOOL SITE
LOCATED ON EAST PROSPECT ROAD

WHEREAS, the City owns and operates Fort Collins Utilities, which includes a Stormwater Utility; and

WHEREAS, there is a stormwater plant investment fee (“PIF”) established by City Code Section 26-512 that is imposed on each and every lot or parcel of land within Fort Collins with respect to which any improvement creates an impervious surface covering more than three hundred fifty (350) square feet of the lot or parcel, and the owners thereof; and

WHEREAS, pursuant to City Code Section 26-511(c), the PIF may be paid at any time after the approval of the plat of a subdivision or, in the case of unplatted property, upon the issuance of a building permit and not before; provided, however, that such fee shall be paid prior to the issuance of a full building permit, or if no building permit is required, upon commencement of construction except to the extent that the deferral of all or any portion of such payment has been approved by the City Council by resolution; and

WHEREAS, the Poudre School District R-1, a Colorado statutory school district (“School District”) owns a parcel of land along the north side of East Prospect Road in the S1/2 of Section 15, T7N, R68W of the 6th P.M., the approximate location of which is depicted on Exhibit “A” attached hereto and incorporated herein by reference (“Subject Parcel”); and

WHEREAS, the Subject Parcel was annexed into Fort Collins through Ordinance No. 131, 1990 (adopted on second reading on January 15, 1991) and is thus subject to the PIF; and

WHEREAS, pursuant to the Seventh Amendment to Intergovernmental Agreement (Regarding Cooperation on Annexation, Growth Management and Related Issues) between the City and the Town of Timnath (which City Council approved in Ordinance No. 113, 2014), the City and the Town of Timnath have agreed that the Subject Parcel be disconnected (commonly known as, “de-annexed”) from Fort Collins and annexed into Timnath, subject to the completion of the various requirements for those processes; and

WHEREAS, if the disconnection is completed, the Subject Parcel would not be in Fort Collins and would not be subject to the PIF; and

WHEREAS, in the unique facts of this situation, City Council determines that it is appropriate to defer the payment of the PIFs for the Subject Parcel as set forth in this Resolution to provide the opportunity for the School District to complete disconnection of Subject Parcel.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:
Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the stormwater plant investment fees for the Subject Parcel are hereby deferred until December 31, 2021, provided that no such fees shall be due on that date if the Subject Parcel has been disconnected from the City of Fort Collins and annexed into Timnath on or before that date.

Section 3. If the Subject Parcel is not disconnected from the City of Fort Collins and annexed into Timnath on or before December 31, 2021, the City reserves all rights regarding this matter and will take any and all appropriate action including: enforcing any relevant agreements in law and equity; and recovering the stormwater plant investment fees for the Subject Parcel pursuant to City Code and other relevant authority.

Passed and adopted on at a regular meeting of the Council of the City of Fort Collins this 6th day of October, A.D. 2020.

__________________________________________________________
Mayor

ATTEST:

__________________________________________________________
City Clerk
EXHIBIT A

PROPERTY DESCRIPTION
Poudre R-1 Parcel

A parcel of land being part of the South Half (S1/2) of Section Fifteen (15), Township Seven North (T.7N.), Range Sixty-eight (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Larimer, State of Colorado and being more particularly described as follows:

BEGINNING at the Southeast Corner of said Section 15 and assuming the South line of the Southeast Quarter (SE1/4) of said Section 15 as bearing North 89°56'23" West, as determined by a GPS observation, a distance of 2638.04 feet with all other bearings contained herein relative thereto:

THENCE North 89°56'23" West a distance of 2638.04 feet to the South Quarter Corner of said Section 15;
THENCE North 89°56'38" West along the South line of the Southwest Quarter (SW1/4) of said Section 15 a distance of 635.26 feet;
THENCE North 00°03'22" East a distance of 468.93 feet to the Southerly line of that strip of land as described in that Warranty Deed as recorded November 30, 1972 in Book 1531 on Page 759 of the records of the Larimer County Clerk and Recorder (LCCR);
Thence along said Southerly line by the following Two (2) courses and distances:
THENCE South 54°55'30" East (Rec. S. 55°01' E.) a distance of 764.90 feet;
THENCE South 89°53'30" East (Rec. S. 89°59' E.) a distance of 8.89 feet to the East line of said SW1/4;
THENCE North 00°09'39" East along said East line a distance of 54.76 feet to the Northerly line of the aforesaid parcel of land;
THENCE North 54°55'30" West (Rec. S. 55°01' E.) along said Northerly line a distance of 775.87 feet;
THENCE North 00°03'22" East a distance of 804.25 feet to the North line of the South Half of the Southwest Quarter (S1/2 SW1/4) of said Section 15;
THENCE South 89°47'03" East along said North line a distance of 637.70 feet to the Northeast Corner of said S1/2 SW1/4;
THENCE South 89°48'01" East along the North line of the South Half of the Southeast Quarter (S1/2 SE1/4) a distance of 2639.15 feet to the Northeast Corner of said S1/2 SE1/4;
THENCE South 00°12'32" West along the East line of said S1/2 SE1/4 a distance of 1326.04 feet to the POINT OF BEGINNING.
Community Dashboard Metric
Cumulative Lane Miles

Staff Report
Larry Schneider
West Harmony Road
AGENDA ITEM SUMMARY  
City Council  

STAFF  
Darin Atteberry, City Manager  
Travis Storin, Interim Chief Finance Officer  
Lawrence Pollack, Budget Director  
John Duval, Legal  

SUBJECT  
Public Hearing #2 on the 2021 Recommended Budget for the City of Fort Collins.  

EXECUTIVE SUMMARY  
This is the second public hearing on the City Manager’s 2021 Recommended Budget for the City of Fort Collins. The purpose of this public hearing is to gather public input on the 2021 budget. The first public hearing was conducted at Council’s Tuesday, September 15, 2020, regular meeting. Both hearings were set by Council adoption of Resolution 2020-081 at its September 1, 2020, meeting. The City Manager’s 2021 Recommended Budget can be reviewed at the City Clerk’s Office by appointment only and online at fcgov.com/budget.  

On May 19, 2020, Council adopted Ordinance No. 067, 2020, suspending the biennial budget term requirement in Code Section 8-1 for fiscal years 2021 and 2022 in order to allow for a one-year budget term for both years, and to return to the biennial budget term required by Code Section 8-1 beginning with fiscal years 2023 and 2024. Both hearings provided the public the option for in-person comment or remote participation through the online Zoom platform.
AGENDA ITEM SUMMARY
City Council
October 6, 2020

STAFF

Clark Mapes, City Planner
Paul Sizemore, Interim Director, Comm. Devt. & Neighborhood Serv.
Brad Yatabe, Legal

SUBJECT

Consideration of an Appeal of Hearing Officer Decision on 613 S. Meldrum Carriage House Modifications of Standards (MOD 200001).

EXECUTIVE SUMMARY

The purpose of this item is to consider an Appeal of the Hearing Officer Decision, dated July 15, 2020, denying the request for five Modifications of Standards (MOD 200001) for a “carriage house” (i.e., a single-family detached dwelling) located behind a street-facing dwelling in the Neighborhood Conservation (NCB) zoning district. On July 28, 2020, a Notice of Appeal was filed alleging that the administrative hearing officer failed to properly interpret and apply relevant provisions of the City of Fort Collins Land Use Code (LUC) in rendering a final decision.

BACKGROUND / DISCUSSION

SUBJECT OF THE ADMINISTRATIVE HEARING

The subject of the hearing was a stand-alone request for five modifications of standards under the LUC (MOD 200001) related to the applicants’ proposed plan for a carriage house in the rear yard of an existing historic house at 613 S. Meldrum Street. The five modifications were described on page 2 of the Staff Report provided to the hearing officer as follows:

<table>
<thead>
<tr>
<th>Zoning Standard</th>
<th>Modified Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Footprint</td>
<td>600 sq. ft. (max)</td>
</tr>
<tr>
<td>Total Floor Area</td>
<td>1,000 sq. ft. (max)</td>
</tr>
<tr>
<td>Floor Area in Rear Half of Lot</td>
<td>1,583 sq. ft. (max)</td>
</tr>
<tr>
<td>Eave Height Along Side Lot Line</td>
<td>13 feet (max)</td>
</tr>
<tr>
<td>Width of Dormers Along Side Lot Line</td>
<td>25% of side wall length (max)</td>
</tr>
</tbody>
</table>

The specific LUC standards for which modifications were requested were:

- Section 4.9(D)(2) regarding floor space area limit
- Section 4.9(D)(2) regarding building footprint limit
- Section 4.9(D)(5) regarding building floor area limit in the rear half of lots
- Section 4.9(E)(2) regarding side wall eave height limit in the rear yard
- Section 4.9(E)(2) regarding dormer height in relation to side wall eave height

Review of the proposed modifications was governed by two requirements in LUC Section 2.8.2(H) regarding the modification of standards: that the granting of the modification would not be detrimental to the public good; and that the plan as submitted would promote the general purpose of the standard for which the modification is
requested equally well or better than would a plan which complies with the standard for which a modification is requested.

The crux of the hearing was the wording in the LUC that “the plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies.” The applicants contended that the proposed plan promotes the general purpose of the NCB zoning district equally well or better than other plans for other permitted forms of development in the NCB zoning district. The contention was that other forms of development that would comply with NCB standards are more impactful than the larger carriage house would be.

The hearing officer acknowledged contradictions presented by the applicants and their proposed plan:

- she concluded that the proposed plan would not be detrimental to the public good (Hearing Officer Decision p. 5), however,

- she also concluded that she was obligated to make a decision based on her interpretation that the purpose of the LUC standards to specifically limit the extent and mass of construction in rear yards, and that the much larger construction would not promote that general purpose as well as a compliant plan.

The hearing officer struggled (Hearing Transcript, p. 25, starting at line 22) with the applicants’ point that their plan to maintain their existing house and add the larger carriage house is equal or better than a plan for several other types of redevelopment that are permitted in the zone, based on the stated purpose of the NCB zoning district to provide a transition from residential to commercial areas.

She concluded that the “equal or better” criterion refers to the purpose of the size limit standards and not the larger purpose of the NCB zone district and so the hearing officer found no basis for approval (Hearing Officer Decision pp. 5-6).

As just one example of other types of development that would be permitted in the NCB zone district, the applicants noted that zoning allows for an existing house to be demolished and replaced with an apartment building and parking lot, without the same size limits. This has occurred at 621 S. Meldrum, two lots south of the applicants’ house. (Verbatim Transcript, pp. 8, starting at line 13)

As another example, the proposed carriage house could be connected to the existing historic house with a breezeway hallway, resulting in classification as a duplex which is permitted. (Verbatim Transcript, p. 23, starting at line 30)

These and other technicalities and apparent contradictions were discussed. The hearing officer acknowledged that a text amendment to the zoning appears to be warranted to address and clarify the contradictions and questions raised by the discussion.

The Verbatim Transcript page 25, lines 26-28 reflects the hearing officer’s dilemma with the wording in the LUC.

The Hearing Decision pages 5-7, B.i.-vi. are the hearing officer’s conclusions based on the extensive discussion.

APPEAL ALLEGATION

The Notice of Appeal alleges that the hearing officer failed to properly interpret and apply relevant LUC provisions, namely Sections 4.9(D)(2), 4.9(D)(5), and 4.9(E)(2).

Page 4 of the Notice of Appeal states the Appellant’s “primary objection” to the hearing Officer’s decision is her finding that she lacks the authority to grant the modifications for reasons other than the wording of the “equal or better” criterion in the LUC, and that this contradiction between her findings about that criterion and the “detriment to the public good” criterion demonstrates a failure to properly interpret the Land Use Code.
ATTACHMENTS

1. Public Notices with Mailing List (PDF)
2. Notice of Appeal - July 29, 2020 (PDF)
3. Staff Report to Hearing Officer - July 1, 2020 (PDF)
4. Staff Presentation to Hearing Officer (PDF)
5. Correspondence to Administrative Hearing Officer (PDF)
6. Applicant Presentation to Administrative Hearing Officer (PDF)
7. Project Plans (PDF)
8. Verbatim Transcript (PDF)
9. Hearing Officer Decision - July 15, 2020 (PDF)
10. Appeal Video Link (PDF)
11. Powerpoint Presentation (PDF)
City Clerk’s
Public Hearing Notice
Site Visit Notice
Mailing List
PUBLIC HEARING NOTICE

Appeal of the Administrative Hearing Officer Decision regarding the 613 South Meldrum Street Modification of Standards, MOD 200001, located at 613 South Meldrum Street

The Fort Collins City Council will hold a public hearing on the enclosed appeal.

Appeal Hearing Date: October 6, 2020
Time: 6:00 pm (or as soon thereafter as the matter may come on for hearing)
Location: Council Chambers, City Hall, 300 LaPorte Avenue, Fort Collins, CO
Agenda Materials: Available after 3 pm, October 1, 2020, in the City Clerk’s office and at fcgov.com/agendas.

Why am I receiving this notice? City Code requires that a Notice of Hearing be provided to Parties-in-Interest, which means you are the applicant of the project being appealed, have a possessory or proprietary interest in the property at issue, received a City mailed notice of the hearing that resulted in the decision being appealed, submitted written comments to City staff for delivery to the decision maker prior to the hearing resulting in the decision being appealed, or addressed the decision maker at the hearing that resulted in the decision being appealed.

Further information is available in the Appeal Guidelines online at fcgov.com/appeals.

The Notice of Appeal and any attachments, any new evidence that has been submitted and presentations for the Appeal Hearing can be found at fcgov.com/appeals.

If you have questions regarding the appeal process, please contact the City Clerk’s Office (970.221.6515). For questions regarding the project itself, please contact Rebecca Everette, Community Development and Neighborhood Services Senior Manager (reverette@fcgov.com 970.416.2625).

The City of Fort Collins will make reasonable accommodations for access to City services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call the City Clerk’s Office at 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance.

A petición, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominen 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 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione 48 horas de aviso previo cuando sea posible.

Delynn Coldiron, City Clerk

Notice Mailed: September 10, 2020
cc: City Attorney
    Community Development and Neighborhood Services
    Lori Strand, Administrative Hearing Officer
NOTICE OF SITE INSPECTION

An appeal of the Administrative Hearing Officer decision of July 15, 2020 regarding the 613 South Meldrum Street Modification of Standards, MOD 200001, will be heard by the Fort Collins City Council on October 6, 2020.

Pursuant to Section 2-53 of the City Code, members of the City Council will be inspecting the site of the proposed project on Monday, October 5, 2020 at 3:30 p.m.. Notice is hereby given that this site inspection constitutes a meeting of the City Council that is open to the public, including the appellants and all parties-in-interest. The gathering point for the site visit will be 613 South Meldrum Street, Fort Collins, Colorado.

The purpose of the site inspection is for the City Council to view the site and to ask related questions of City staff to assist Council in ascertaining site conditions. There will be no opportunity during the site inspection for the applicant, appellants, or members of the public to speak, ask questions, respond to questions, or otherwise provide input or information, either orally or in writing. Other than a brief staff overview and staff responses to questions, all discussion and follow up questions or comments will be deferred to the hearing on the subject appeal to be held on October 6, 2020.

Any Councilmember who inspects the site, whether at the date and time above, or independently shall, at the hearing on the appeal, state on the record any observations they made or conversations they had at the site which they believe may be relevant to their determination of the appeal.

If you have any questions or require further information, please feel free to contact the City Clerk’s Office at 970.221.6515.

Delynn Coldiron, City Clerk

Notice Mailed:  September 10, 2020

Cc:  City Attorney
     Community Development and Neighborhood Services
OBJECTID
58724
60455
137011
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Parcel Number
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Site Address
219 W MULBERRY ST
229 W MULBERRY ST
321 W MYRTLE ST
326 W MYRTLE ST THRU
529 S WHITCOMB ST
604 S MELDRUM ST
605 S MELDRUM ST
606 S SHERWOOD ST
615 S MASON ST
620 S HOWES ST
631 S MASON ST
411 W MYRTLE ST
321 W MULBERRY ST
619 S WHITCOMB ST THRU
203 W MYRTLE ST
630 S SHERWOOD ST
621 S MELDRUM ST
502 W MYRTLE ST
555 S HOWES ST
608 S HOWES ST
630 S WHITCOMB ST
506 S HOWES ST
612 S HOWES ST
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527 S WHITCOMB ST
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520 S HOWES ST
611 W MYRTLE ST
417 W MYRTLE ST
613 S MELDRUM ST

Name
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219 WEST MULBERRY LLC
229 W MULBERRY LLC
321 W MYRTLE LLC
326-332 W MYRTEL LLC
529 S WHITCOMB STREET LLC
604 SOUTH MELDRUM STREET LLC
605 SOUTH MELDRUM STREET LLLP
606 S SHERWOOD LLC
615 SOUTH MASON STREET LLC
620 S HOWES ST LLC
ABS I LLC
ACERS LADANA K
ALLEN ASWAD
ATN INVESTMENTS LLC
BAKER ERIC
GUNNARSDOTTIR STEFANIA
BBK PROPERTIES LLLP
BIG DEAL REAL ESTATE LLC
BLUTEGEL CPA LLC
CSU BOARD OF GOVERNORS
BROWN MITCHELL F/SHERRI A
BRZEZINSKI WAYNE E/WAYNE
CASAUS WENDIE WOLCOTT LIVING TRUST THE
CENTER GREEN PROPERTIES LLC
CFR INVESTMENTS LLC
CHAVEZ DAVID A/MILLER-CHAVEZ PAMELA A
CHAVEZ ALEXANDER CARLOS
CHIU SHEAN-TSONG
YUAN-YEE
CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS
CLEMENTS DAVID ARTHUR
COLLEGE HEIGHTS LLC
COLORADO DELTA ASSN OF SIGMA ALPHA EPSILONSIGMA ALPHA EPSILON
CSM VENTURES LLC
CSURF
DOUBLE D RE LLC
FIRST KOREAN CHURCH OF FORT COLLINS/THE
FROSETH BRUCE M
KREUL-FROSETH SUSAN A
FROSETH BRUCE M
KREUL-FROSETH SUSAN A
GLASER FOREST E
GREEN CHRISTIE/STEPHEN D
HAMMERS TIMOTHY J/SUZANNE L
HBC LAUREL LLC
HOFFMAN WILLIAM E JR
HOOVER LAURA B
HAINES THOMAS L
HOWES LLC
HSRE FLATS AT THE OVAL LLC
J AND M INVESTMENT PROPERTIES LLC
JAH LLC
JOHNSON MARK S/JANE G
K AND R TOWNSEND LLC
KENNY PAUL J (.50)
KENNY STACIE L (.50)
KEYS ELSA A/JAMES M
KIRKPATRICK KRISTIN/ROBERT
KLUDING AARON G
KOA INVESTMENTS LLC
KRUGER RENTALS INC
LIVINGSTON RICHARD A
LJD PROPERTIES LLC
M AND R PROPERTIES LLC
M H MALL INC
MAGNUSON CELESTE G
MANNO LUKE H
MARTIN FAMILY TRUST THE
MATLOCK JAMES J
MENGES ZONA-EMORY E
MCELHOES DAVID/ALYCE
MCENDAFFER DAVID A
CAROL J
MCGUIRE KENNETH/JULIE 2007 FAMILY TRUST
MELDRUM HOUSE LLC
MELDRUM PROPERTIES INC
MEYER JACK D/KAREN T
MINI INVESTMENTS LLC
MISHLOVE DAVID NICHOLAS
MYRTLE STREET VILLAGE APARTMENTS ASSOC
NEW HOWES STREET HIDEAWAYS LLC
NIELSEN BYRON W/MARTHA R
NORMAN JAMES
PALOMO JEFF A

Address
1010 ASHFORD CT
1404 43RD AVE
2012 TOPANGA CT
904 W MOUNTAIN AVE
1201 PARKWOOD DR
10374 PUMA GULCH RD
2291 ARAPAHOE AVE
PO BOX 1017
526 S COLLEGE AVE
PO BOX 1164
202 W LAUREL ST
PO BOX 2125
321 W MULBERRY ST
5125 E COUNTY ROAD 52
1736 BUSHNELL DR
3020 ABBOTSFORD ST
2519 RIDGE CREEK RD
PO BOX 270930
CAMPUS DELIVERY 6009
1907 N WHITCOMB ST
7760 WELD COUNTY ROAD 5
1210 SALAZAR RD STE D
PO BOX 4655
4630 ROYAL VISTA CIR APT 13
527 S WHITCOMB ST
807 ROCKY MOUNTAIN WAY
50 E NORTH TEMPLE
634 S WHITCOMB ST
7480 N COUNTY ROAD 15
3528 PRECISION DR STE 100
2306 VALLEY FORGE CT
PO BOX 483
608 S COLLEGE AVE
601 S WHITCOMB ST
900 PETERSON ST
524 SPRING CANYON CT
141 S COLLEGE AVE STE 103
349 SILVER SPRING CT
1721 FELTLEAF CT
PO BOX 271262
1616 MEADOWAIRE DR
515 W MULBERRY ST
214 SOPHIA TER
PO BOX 92129
PO BOX 657
500 E OAK ST
7957 BAYSIDE DR
528 WHEDBEE ST
1506 W OAK ST
521 MAPLE ST
504 S WHITCOMB ST
3305 N COUNTY ROAD 23E
6577 COTTONWOOD SHORES DR
515 S HOWES ST
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4134 HARBOR WALK DR
PO BOX 273487
605 S MASON ST
409 E PROSPECT RD
516 S WHITCOMB ST
429 S LOOMIS AVE
PO BOX 1453
16605 DANCING WOLF
5113 MAIL CREEK LN
1390 SHADY TREE LN
6312 CATTAIL CT
215 W MAGNOLIA ST 200
3207 ALUMBAUGH CT
PO BOX 607
905 S SUMMIT VIEW DR
PO BOX 395
1920 LINDEN RIDGE DR
3918 N COUNTY ROAD 13
422 W MYRTLE ST
2345 WALNUT ST UNIT 23

City
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LOVELAND
BOULDER
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TAOS
BOULDER
WINDSOR
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SALT LAKE CITY
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133225 Multiple Unit
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28276 Multiple Unit
0071340
27902 Residential
0067792
26718 Residential
0067652
28541 Residential

Attachment: Public Notices with Mailing List (9529 : Appeal of 613 S. Meldrum Hearing)

18.1

Packet Pg. 281


Notice of Appeal

- Notice of Appeal filed by Jeff Palomo, July 29, 2020
NOTICE OF APPEAL

Action Being Appealed: 613 South Meldrum Street Modifications of Standards, MOD 200001, Type 1 Administrative Hearing Decision

Date of Action: 07/15/2020 Decision Maker: Lori Strand

Appellant/Appellant Representative (if more than one appellant):

Name: Jeff Palomo Phone #: (720) 560-1832

Address: 613 South Meldrum Fort Collins, Colorado 80512 Email: japalomo@comcast.net

INSTRUCTIONS

For each allegation marked below, attach a separate summary of the facts contained in the record which support the allegation of no more than two pages, Times New Roman 12-point font. Please restate allegation at top of first page of each summary.

GROUNDs FOR APPEAL

The Decision Maker committed one (1) or more of the following errors (check all that apply):

☑ Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. List relevant Code and/or Charter provision(s) here, by specific Section and subsection/subparagraph:

Division 4.9 of the City of Fort Collins Land Use Code (LUC)
- LUC Section 4.9(D)(2)
- LUC Section 4.9(D)(5)
- LUC Section 4.9(E)(2)

Failure to conduct a fair hearing in that:

☐ (a) The Board, Commission, or other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter. [New evidence not allowed]

☐ (b) The Board, Commission or other Decision Maker substantially ignored its previously established rules of procedure. [New evidence not allowed]

☐ (c) The Board, Commission or other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. [New evidence allowed]

☐ (d) The Board, Commission or other Decision Maker improperly failed to receive all relevant evidence offered by the appellant. [New evidence allowed]

☐ (e) The Board, Commission or other Decision Maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence of judgment. [New evidence allowed]

NEW EVIDENCE

All new evidence the appellant wishes Council to consider at the hearing on the appeal must be submitted to the City Clerk within seven (7) calendar days after the deadline for filing a Notice of Appeal and must be clearly marked as new evidence. No new evidence will be received at the hearing in support of these allegations unless it is submitted to the City Clerk by the deadline (7 days after the deadline to file appeal) or offered in response to questions posed by Councilmembers at the hearing.

Form updated 4/22/2020
# APPELLANTS

*Parties-in-interest* have the right to file an appeal.

A party-in-interest is a person who, or organization which, has standing to appeal the final decision of a board, commission or other decision maker. Such standing to appeal is limited to the following:

- The applicant.
- Anyone who owns or occupies the property which was the subject of the decision made by the board, commission or other decision maker.
- Anyone who received the mailed notice of, or spoke at, the hearing of the board, commission or other decision maker.
- Anyone who provided written comments to the appropriate City staff for delivery to the board, commission or other decision maker prior to or at the hearing on the matter that is being appealed.
- A City Councilmember.

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Date:</th>
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<tbody>
<tr>
<td>/Jeff Palomo</td>
<td>07/28/2020</td>
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</tbody>
</table>

**Name:** Jeff Palomo  
**Email:** japalomo@comcast.net  
**Address:** 613 South Meldrum Street, Fort Collins, CO 80521  
**Phone #:** (720) 560-1832

**Describe how you qualify as a party-in-interest:**  
The Applicant/Property Owner/Occupant

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>/Denise White</td>
<td>07/28/2020</td>
</tr>
</tbody>
</table>

**Name:** Denise White  
**Email:** white.denise@ymail.com  
**Address:** 2345 Walnut Street, Unit 23, Denver, CO 80205  
**Phone #:** (303) 638-2204

**Describe how you qualify as a party-in-interest:**  
Spoke at the hearing/Applicant Partner/Part-Time Occupant

**Signature:**   
**Date:**   
**Name:**   
**Email:**   
**Address:**   
**Phone #::**   
**Describe how you qualify as a party-in-interest:**

---

**ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY**

_form updated 4/22/2020_
APPEAL LETTER

for Jeff Palomo

613 South Meldrum Street

Fort Collins, Colorado 80521

July 28, 2020

Fort Collins City Councilmembers (Wade Troxell, Mayor; Kristin Stephens, Mayor Pro Tem; Susan Gutowsky; Julie Pignataro; Ken Summers; Ross Cunniff; and, Emily Gorgol)

City Hall West, LaPorte Avenue

Fort Collins, CO 80521

RE: Notice of Appeal for 613 South Meldrum Street Modifications of Standards, MOD 200001, Type 1 Administrative Hearing Decision

Dear City of Fort Collins Councilmembers,

I’m filing this appeal asking the Fort Collins City Council to change a hearing officer’s decision denying a Modification of Use request. This written Notice of Appeal is filed within the required 14 calendar days following the decision dated July 15, 2020. I appeal this decision by Hearing Officer Lori Strand, which denied the request based on a “failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter.”

As the property owner and occupant of a historic resource property, located at 613 S. Meldrum St., I’ve been exploring how best to develop additional living space on the back lot of my property. Through this process, I’ve engaged city planning staff in multiple conversations as development ideas evolved. My goal was to determine which use best complements the primary structure (built 1910) and the surrounding neighborhood, is allowable by Land Use Code, and meets the residential needs of the applicant and occupant (myself).

Following an initial Conceptual Review in January 2020, and a subsequent meeting on May 4, 2020, planning staff suggested the pursuit of a Modification of Standards through a Type 1 Administrative Hearing for the proposed design of an enhanced carriage house. The design is larger than permitted by current Neighborhood Conservation, Buffer (NCB) standards; it combines habitable living space and additional storage/hobby space for the primary property into one structure.

In a Project Review meeting (June 10, 2020), as well as the Development Review Staff Report prepared for the July 1, 2020 hearing, staff stated that as the project did not strictly comply with code, they could not approve it to move forward in the process. Staff must apply code objectively; however, a hearing officer could find differently based on an ability to evaluate the intent of the code. Upon this recommendation, I applied for a modification of five standards in Division 4.9, the Neighborhood Conservation, Buffer zone district.
My primary objection to the hearing officer’s final decision is that she acknowledges she “lacks the authority under LUC 2.8.2(H) to grant the Modifications of Standards on the basis that the subject standards (i.e., LUC 4.9(D)(2), 4.9(D)(5), and 4.9(E)(2) might be outdated or that the Modification of Standards might facilitate development that is compatible with the surrounding area.” The hearing officer’s findings also state that she found that “the Modifications of Standards would not be detrimental to the public good.” In fact, she says they would generally be “compatible with the floor areas, building footprints, and heights of existing and planned development in the area surrounding the Subject Property, the purposes of the N-C-B zone district, and the density and eclectic character of this area.” The contradiction between these findings statement demonstrates a failure to interpret the Land Use Code.

Similarly, staff stated in the Development Review Staff Report that “to the extent that the proposal may represent compatibility with neighborhood character to a greater degree than zoning allows for other proposals on other properties, the larger question of whether the NCB zone standards are appropriate is beyond the scope of review of an individual development pursuant to the standards as adopted.”

Throughout this process, the staff has been professional and helpful. In exchanges, they’ve shared that this is the "first time" they have received questions like mine regarding the NCB and that this proposal has revealed several apparent contradictions. The hearing officer and staff have also suggested a need to revisit the LUC for the NCB as code seems to be outdated and designed based on usage in other buffer zones, which may not be applicable here.

In various documents, the staff and the hearing officer refer to compatibility and other merits of the proposed design, and that it reveals contradictions contained in the LUC and NCB. Yet, neither party feels they have the authority to approve the modification of use request; this determination appears to be under the purview of City Council. I now turn to you, and your role as decision-makers, to review this matter and overturn the hearing officer’s final decision.

As part of this process, I understand that the staff provides City Councilmembers with a transcript and recording of the July 1, 2020, proceeding. Likewise, they provide the exhibits shared in that proceeding, including the applicant’s materials and submitted Modification Request. Similarly, I understand that councilmembers, alone or with city staff, may wish to inspect the site of the development plan. I welcome the opportunity to see the property, and its context in the NCB neighborhood to better understand this proposal and the challenges which exist if required to adhere strictly to current code requirements.

Thank you for your consideration of this appeal.

Jeff Palomo
Staff Report
(with attachment)
Provided to the
Administrative Hearing Officer,
Hearing held on July 1, 2020
行政审查会议：2020年7月1日

613南梅尔德姆街标准修改，MOD 200001

摘要

这是一个单独的请求，要求对5条在科罗拉多州立大学（CSU）的主要校区附近的梅尔德姆街北第一街区的社区保护区（NCB）区内的车房大小限制的修改。

位置

613 S. Meldrum Street

用地

Jeff Palomo
613 S. Meldrum St.
Fort Collins, CO 80521

申请人/代表人

同上

工作人员

Clark Mapes, 城市规划师

内容

1. 项目介绍
2. 公众参与
3. 第2章 - 应用标准
4. 第3章 - 应用标准
5. 事实/结论
6. 建议
7. 附件

工作人员建议

拒绝修改请求。

下一步

如果得到法庭同意，申请人将有资格在接下来的12个月内提交一个附带申请，对一个车房进行大小修改。此申请是针对建筑大小修改，而不是后续对于实际开发计划的审查。如果得到批准，它们将代表扩建的最大尺寸限制。开发计划流程可能会涉及设计和兼容性发现，这些可能会导致最终尺寸的降低。
1. Project Introduction

A. PROJECT DESCRIPTION

The Neighborhood Conservation, Buffer (NCB) Zoning District contains detailed standards that limit the size of carriage houses in rear yards of residential lots. This stand-alone request consists of the following five Modifications of Standards:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Zoning Standard</th>
<th>Modified Request</th>
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<tbody>
<tr>
<td>Building Footprint</td>
<td>600 sq. ft.(max)</td>
<td>1,570 sq. ft.</td>
</tr>
<tr>
<td>Total Floor Area</td>
<td>1,000 sq. ft. (max)</td>
<td>2,190 sq. ft.</td>
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<tr>
<td>Floor Area in Rear Half of Lot</td>
<td>1,583 sq. ft. (max)</td>
<td>2,190 sq. ft.</td>
</tr>
<tr>
<td>Eave Height Along Side Lot Line</td>
<td>13 feet (max)</td>
<td>23 feet</td>
</tr>
<tr>
<td>Width of Dormers Along Side Lot Line</td>
<td>25% of side wall length (max)</td>
<td>43% of side wall length</td>
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</tbody>
</table>

1. Development Status and Background

**Historic Resource.** The subject property contains a brick Classic Cottage constructed circa 1910 and found eligible for local landmark designation in 2018, based on its original architectural integrity. This eligibility limits any ability to remove and replace the principal building on the lot and requires that any new construction on the site meets design compatibility and historic resource treatment standards. Compatibility requirements would be applied when a future development plan is submitted.

**Old Town Neighborhoods Plan and NCB zoning.** The subject property is in the Old Town Neighborhoods subarea plan area of Fort Collins. The neighborhoods encompass many of the earliest residential blocks in Fort Collins and are characterized by the classical grid street pattern of short blocks, historic home styles, and mature trees.

An ongoing neighborhood concern has long been how best to preserve, protect and enhance neighborhood character while still allowing opportunities to adapt to evolving community and social changes.

A continuum of community planning has produced subarea plans, character studies, zoning standards, and design guidelines in open and highly engaged public processes since at least the 1980’s. The NCB zoning district, and carriage house standards specifically, result from some of these processes.

The adopted Old Town Neighborhoods Plan recognizes the NCB area around south Meldrum as catering primarily to college student rental housing, including many apartment buildings. NCB zoning allows two-family and multifamily residential development, and within the past 10 years, several larger apartment projects have been constructed along Laurel Street, across from the CSU campus and located within the same zone district as this proposal.

The Modification of Standard requests are based largely on apparent contradictions in the NCB zoning -- i.e., that it allows for removal of original houses, if they are not historic landmark-eligible, for replacement by much larger apartment buildings and parking lots; while it limits new construction to a greater degree when an existing house is preserved and a detached carriage house is proposed. The applicant suggests that the latter approach is the most compatible approach to new construction.
2. Surrounding Zoning and Land Use

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<th>East</th>
<th>West</th>
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<tr>
<td>Zoning</td>
<td>Neighborhood Conservation, Buffer (NCB)</td>
<td>Neighborhood Conservation, Buffer (NCB)</td>
<td>Neighborhood Conservation, Buffer (NCB)</td>
<td>Neighborhood Conservation, Buffer (NCB)</td>
</tr>
<tr>
<td>Land Use</td>
<td>Single family houses and a rear yard duplex</td>
<td>Single family houses and apartment buildings</td>
<td>CSU parking lot and single family houses</td>
<td>Rear yards and parking for single family houses and a rear yard duplex across the alley</td>
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B. OVERVIEW OF MAIN CONSIDERATIONS IN STAFF REVIEW

Staff engaged in extensive consideration and exploration of potential support for the requested Modifications of Standards, due to the context on this particular block and adjoining blocks. The original historic pattern of modest houses with generous rear yards and small garages has been altered by 1) re-subdivision of corner lots, resulting in additional houses in formerly rear yard areas; 2) assembly of lots and removal of houses, replaced by larger apartment buildings, an office building, and parking lots in the southern portion of the block; and 3) construction of duplexes in rear yards. A large carriage house in the rear yard of a preserved and renovated historic landmark could arguably represent one of the more compatible changes that has occurred and will occur on the block.

Staff review has included extensive discussion with the applicants to reach mutual understanding of both the NCB standards and the specific proposal. The proposal has evolved in pre-submittal discussions and throughout the review process. For example, the original Conceptual Review meeting in January 2020 was for a proposed duplex in the rear yard (which is not a permitted use), followed by extensive exploration of the idea of two carriage houses, leading to this proposal for a large carriage house requiring modifications to all size limit standards.

Discussion has highlighted nuances and apparent contradictions in the NCB zone, which have been part of the applicant’s justifications.

Staff considered the possibility of findings based on modifications serving the purpose of the standards equally well or better than less-conservation-oriented plans that would meet NCB standards, e.g., demolition of houses and construction of larger multifamily buildings.

However, historic landmark eligibility would prevent such a plan on the subject property; and this perspective, i.e., that a more intense plan could meet the standards, has come up in the past but has not been used for staff findings.

Essentially, the proposed justification is that NCB zoning is not appropriate for its purposes. To the extent that may be the case, it is not a criterion on which staff can base findings on the carriage house standards.

A Potential Subsequent Development Plan. The consideration of modifications of size limits is separate from subsequent review of an actual development plan if the modifications are approved. They would represent maximum size limits; however it is important to be clear that review of the development plan could involve staff findings regarding design and compatibility that could require reduced building size in order for staff to recommend approval of the actual development plans.
2. Public Outreach

A. NEIGHBORHOOD MEETING
   A neighborhood meeting was not required for this land use, which requires ‘Administrative Review’ and for which neighborhood meeting requirements are not applicable.

B. PUBLIC COMMENTS:
   No public comment has been received to-date. Any comments received prior to the hearing will be forwarded to the hearing officer for consideration.

3. Land Use Code Article 2 – Procedural Requirements

A. PROCEDURAL OVERVIEW
   1. Conceptual Review – CDR200005
      A conceptual review meeting for the property was held on January 23, 2020.

   2. First Submittal – PDP200002
      The first submittal of this modification request was completed on May 22, 2020.

   3. Neighborhood Meeting
      Not required and not held as noted above.

   4. Notice (Posted, Written and Published)
      Posted Sign: June 1, 2020, Sign #546
      Written Hearing Notice: June 17, 2020, 107 addresses mailed.
      Published Hearing Notice: June 2, 2020 in the Coloradoan newspaper

Hearing notification area (blue shading)
A. STANDARDS SUMMARY

The applicant requests modifications of five standards in Division 4.9, the Neighborhood Conservation, Buffer zone district, in order to enable construction of a carriage house that would be larger than would otherwise be permitted by the standards. The standards address building footprint, total floor area, floor area in the rear half of a lot, side wall eave height, and extent of dormers along side walls.

Staff analysis of the request discusses the modification requests together as a single unified request because they are all inseparable aspects of the larger building construction sought by the applicant.

B. STANDARDS FOR REVIEW OF MODIFICATIONS

Modifications are governed by Section 2.8.2(H) and are provided here for reference:

"The decision maker may grant a modification of standards only if it finds that the granting of the modification would not be detrimental to the public good, and that:

(1) the plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested; or

(2) the granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Land Use Code, substantially alleviate an existing, defined and described problem of city-wide concern or would result in a substantial benefit to the city by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the city's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the project practically infeasible; or

(3) by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the owner of such property, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

(4) the plan as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be modified except in a nominal, inconsequential way when considered from the perspective of the entire development plan and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

Any finding made under subparagraph (1), (2), (3) or (4) above shall be supported by specific findings showing how the plan, as submitted, meets the requirements and criteria of said subparagraph (1), (2), (3) or (4)."
C. MODIFICATION REQUESTS AND APPLICANT’S JUSTIFICATION

The specific request comprises five standards as follows:

1. Code Section 4.9(D)(2) limits the total floor area for carriage houses as follows:
   “Any new single-family dwelling that is proposed to be located behind a street-fronting principal building shall contain a maximum of one thousand (1,000) square feet of floor area.”
   The request is for 2,190 square feet.

2. Code Section 4.9(D)(2) also limits the building footprint:
   “The building footprint for such single-family dwelling shall not exceed six hundred (600) square feet.”
   The request is for 1,570 square feet.

3. Code Section 4.9(D)(5) limits building floor area in the rear half of lots:
   “The allowable floor area on the rear half of a lot shall not exceed thirty-three (33) percent of the area of the rear fifty (50) percent of the lot.” The rear half of the lot is 4,750 square feet; 33 percent of that is 1,583 square feet.
   The request is for 2,190 square feet.

4. Code Section 4.9(E)(2) limits side wall eave height in the rear yard:
   “The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space.”
   The request is for a gabled eave 23 feet high.

5. Code Section 4.9(E)(2) limits dormers, related to the issue of side wall eave height:
   “An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.”
   The request includes a dormer feature that is 43% of the wall length. It is set back approximately 15 feet.

Applicant’s Justification. The applicant’s justification is attached. Staff’s interpretation is that the request is based upon the modification criteria in subparagraph 2.8.2(H)(1) above -- “as good or better.”

Staff’s interpretation of the applicant’s key points in the request is summarized as follows:

- The zoning does not fit well with the character of this particular NCB area as it exists and is evolving. Much of the original neighborhood context has been lost due to redevelopment and infill that alters the character of this block, as well as adjacent blocks in this NCB area.

- Relatedly, the historic neighborhood context continues to be lost because more of the original houses can be removed for multifamily development – i.e., those houses that are not eligible for landmark designation.

- The proposed approach to infill -- preserving the house and adding floor area in the rear yard – is “as good or better” than other changes that have occurred and will continue to occur under NCB zoning, for purposes of the NCB zoning.

- The applicant has noted that the zoning does not prohibit construction of two carriage houses, and the justification suggests that the requested floor area allowance is similar to two carriage houses.
The application highlights nearby examples of the bullet points above. For example, a recent example is two doors to the south, 621 S. Meldrum, where the original house was removed and replaced with a new large multifamily building, which overlooks the subject property as well as the intervening lot, and has a parking lot in its rear yard. Other examples are noted on the block and adjoining blocks. The request includes photos of these examples.

Also, on the intervening lot between the 621 S. Meldrum example and the subject property, the owner has had a Conceptual Review meeting for a proposal to remove the existing house and construct two duplexes, one behind the other. The second duplex would not be permitted behind the street-facing one under NCB zoning, and so the proposal connects the two duplexes with a roof over an intervening patio, which changes the classification to a fourplex, which is permitted. That conceptual proposal for the lot next door is shown on the last page of the request. No plan has been submitted following the Conceptual Review, but it is an example of what the NCB zoning permits.

As part of the overall block context, the applicant notes that two other rear yard duplexes exist on the block – one two doors to the north, and one across the alley, built before the NCB zoning standards were adopted. The one to the north is a garden level two-story building that faces the neighboring rear yard and has similar floor area to the proposed floor area.

D. STAFF FINDINGS

Staff finds that the Modifications of Standards would be detrimental to the public good and are not justified under subparagraph 2.8.2(H)(1) because:

1) The carriage house size and height standards specifically limit the scale of construction in rear yards, with limits on total size and side walls facing and overlooking neighboring rear yards. The standards result from thorough public processes and represent an adopted compromise among varied interests. The overall scale of proposed building as well as the high side walls would introduce construction of a scale that exceeds the specific limits to a degree that would introduce significant visual and privacy impacts that are intended to be avoided under the standards.

2) The standards require a scale of construction that is typically subordinate to the original houses which define the historic character that is intended to be reflected in development projects. The proposed modifications would allow a building with similar or greater mass than the original houses along the fronts of lots in the area.

3) To the extent that the proposal may represent compatibility with neighborhood character to a greater degree than zoning allows for other proposals on other properties, the larger question of whether the NCB zone standards are appropriate is beyond the scope of review of an individual development pursuant to the standards as adopted.

4) To the extent that the proposal may represent compatibility with neighborhood character that is equal or better in comparison to past development prior to the current zoning, it would not be a reason to support the modifications because the current standards may reflect a community response to past development.

5. Findings of Fact/Conclusion
In evaluating the request for the 613 South Meldrum Street Modifications of Standards, MOD200001, staff makes the following findings of fact:

- The modification requests comply with the process located in Division 2.2 – Common Development Review Procedures for Development Applications of Article 2 – Administration.
- The proposed modifications do not comply with standards in Section 2.8.2(H) and would be detrimental to the public good due to the extent of departure from the adopted carriage house size limit standards.
- The extent of the proposed increased size limits does not meet the purposes of the carriage house size limits standards equally well or better than a compliant plan, regardless of design mitigation of the size.

6. Recommendation

Staff recommends that the Hearing Officer deny MOD200001 based on the analysis and Findings of Fact/Conclusion in this Staff Report.

7. Attachments

1. Applicants’ Narrative
Modification Request for
613 South Meldrum Street, Fort Collins, Colorado 80521

DIVISION 4.9 - NEIGHBORHOOD CONSERVATION, BUFFER (N-C-B) DISTRICT IN THE UNIVERSITY NORTH NEIGHBORHOOD

(D) Land Use Standards.

(5) Allowable Floor Area on Rear Half of Lots. The allowable floor area on the rear half of a lot shall not exceed thirty-three (33) percent of the area of the rear fifty (50) percent of the lot.

In the Neighborhood Conservation, Buffer (N-C-B) District, carriage houses are permitted in this zoned area. They are considered by City of Fort Collins definition as "a single-family detached dwelling, typically without street frontage, that is located behind a separate, principal dwelling on the same lot, which fronts on the street" (City of Fort Collins Land Use Code, 5.1.2 – Definitions; adopted amendments Sept. 3, 2019).

Per the City of Fort Collins Carriage House Development Standards Brochure, the maximum total floor area, which includes the floor area of the basement (if any), ground floor plus the portion of any second story having a ceiling height of at least 7 ½ feet, in the N-C-B District is 1,000 sq. ft. with a maximum building footprint of 600 sq. ft. In March 2019, the N-C-B District Land Use Code was modified to permit carriage homes on lots less than ten thousand sq. ft. as confirmed by a city planner. Also confirmed in a conversation with a city planner is that the current Carriage House Development Standards brochure contains an error in that the basement is not included in the allowable square foot; instead, it is excluded as well as deck space.

DESCRIPTION OF PROJECT

The project requests to construct a carriage home behind an existing single-family structure. The site (parcel #9714111013) is approximately 1,600 feet west of S. College Avenue and approximately 700 feet south of W. Mulberry Street. Future access will be taken from S. Meldrum Street. The proposal will include an additional two garage parking spaces. The property is within the N-C-B District and is an addition of a Permitted Use application subject to City Council Review.

REASON FOR MODIFICATION REQUEST

The purpose statement for the Neighborhood Conservation, Buffer (N-C-B) District states that the district “is intended for areas that are a transition between residential neighborhoods and more intensive commercial-use areas or high traffic zones that have been given this designation in accordance with an adopted subarea plan.”
Fort Collins' demographics are changing, creating a demand for different housing types and a focus on livability issues. Neighborhoods need to ensure that development contributes to the positive character of the city, meet the needs of a variety of community members – including those who wish to age in place - and protect and enhance our historic resources. Likewise, the University North neighborhood and the 600 block of South Meldrum character, located in the N-C-B District, have evolved, and since the Land Use Code was adopted initially; however, the same neighborhood goals remain timeless.

This modification is requesting to modify the maximum total floor area allowed for a single carriage home under the current requirement, which is 1,000 sf. ft. maximum total floor area (600 sq. ft. maximum footprint) (City of Fort Collins Carriage House Development Standards brochure). The applicant requests a variance to construct a single Carriage home per plan in Attachment A: 613 S Meldrum Carriage House 4-23-20, consisting of 1468 sq. ft. of livable sq. ft. above 7'6” above grade, 510 sq. ft. below 7'6”, 730 sq. ft. of garage space and 848 sq. ft. of basement on the rear yard at 613 S. Meldrum St., Fort Collins, CO 80521. The N-C-B District permits carriage houses, and the proposed design will be in keeping with the character of the primary home, built in 1910, and continuity of the neighborhood.

The applicant intends for the enhanced total floor area allowance to construct a single carriage home, which provides housing in the community and extra storage (e.g., cars, lawn equipment) and accessory hobby rooms (e.g., fitness, art) for the primary residence, better than a plan that would comply. This working design (Attachment A: 613 S Meldrum Carriage House 4-23-20) strengthens compatibility between the proposed new development, the existing primary structure, and the current neighborhood context. Without the modification, the development would require the construction of two separate carriage homes, a carriage home and a separate storage building, or a duplex; however, these permitted options do not complement but compromise the integrity of the primary residence and green space on the lot.

The applicant understands the Landmark Preservation Commission and have taken code into account on the plans based on 613 S. Meldrum being identified by the city as a historic resource.

JUSTIFICATION

Fort Collin's demographics are changing, creating a demand for different housing types and creative solutions to livability issues. Land Use Standards and zoning restrictions are established by cities to help provide a framework for growth that maintains property values, supports neighborhood character, and enhances community livability. Neighborhoods need to ensure that any development contributes to its positive character, meets the needs of a variety of community members – including those who wish to age in place - and protects and enhances historic resources. The character of the University North neighborhood and the 600 block of South Meldrum, located in the N-C-B District, has evolved over time, and since the Land Use Code originally was adopted; however, the overarching neighborhood goals remain constant.
Once a street lined with single-family homes situated on generous lots, this block now consists of single-family homes (several considered historic resources, including 613 S. Meldrum) surrounded by multi-family complexes, a fraternity, a Colorado State University commercial parking lot, and the Church of Latter-Day Saints facing the street. Several duplexes and an apartment complex line the alley at the rear of the lot (Attachment B: Visual Context of Neighborhood Block). In 2013, the city approved the construction of a quadplex at 621 S. Meldrum and, more recently, a conceptual review from Oct. 3, 2019, for a direct neighboring property (617 S. Meldrum, built in 1920) indicates a plan to demolish this structure to allow for construction of a duplex behind a street-facing building attached by a roof on the site, essentially another quadplex which does not honor the historic resource buffer (Attachment C: Proposed Concept for Neighboring 617 S. Meldrum Property).

Furthermore, the proposed site of development, 613 S. Meldrum St., is one block away from Howes St. and two blocks from Mulberry St. which is zoned as the Downtown District. As the N-C-B District’s purpose is to provide a transition between residential neighborhoods and more intensive commercial-use area. The address of this property puts it right on the front line of this transition. This location also adds to the responsibility of properties to help balance the transition between residence and commercial use by maintaining a blend of single and multi-family residences, residential and commercial properties, preserved and new-build structures.

For residents on this block, only two of the homes appear to be owner-occupied, the applicant’s property and the neighboring property at 609 S. Meldrum; the remainder of the residential population on the street seems to be renters of college-age. The applicant, property/homeowner of 613 S. Meldrum, appreciates the vibrancy of the street due to its demographics, proximity to Old Town and the Colorado State University campus, and its appeal as an age-in-place residence. Additionally, the large lot and the historic charm of the 1910 home was a draw. Following the purchase of the property, the applicant has invested additional time, resources, and money to revitalize and restore the home’s historic features.

However, the family usage of a home in 1910 compared to that of 2020 has evolve. The original structure lacks a garage for storage of a car and lawn equipment, or adequate space needed to accommodate equipment for fitness or hobbies. As the lot size is large, the applicant explored various options to add storage space and a separate line of income from a rental unit that would ease the ability to age-in-place. This idea was buoyed by the fact that several other properties on the block possess large duplexes on the rear of their lot, behind the primary residence. As the applicant wishes to only manage one rental residence onsite while creating extra space for primary residence usage, a duplex like neighboring properties does not make sense to construct. The applicant then explored carriage houses as an alternate option. The carriage house concept adheres to the historic resources buffer (concerning the main house and the neighboring properties), maintains the neighborhood character by preserving the original primary structure while creating a secondary structure that complements the home and remains invisible from the street.
Through the exploration and idea evolution process, the applicant has engaged city planning staff in conversation to best achieve city goals and project-specific ones and comply with zoning codes. In recent discussions, the city expressed concern regarding eave height on the carriage house design, and the applicant is working to address this.

These conversations with city staff guided the evolution of the project; various explorations include:

- Demolishing the original 1910 structure for new construction, which better accommodates storage/accessory use needs and a separate carriage house for additional investment or a duplex.  
  *This idea does not appeal as the historic charm of the home is what led to its purchase. Additionally, much time and money have already been invested in refreshing the existing property. Currently, the applicant sees demolition as a last resort.*

- Maintaining the original primary structure and constructing a duplex to the rear of the lot.  
  *While permitted, a duplex inhibits real improvement to the property in a reasonable manner as the applicant does not require two additional fully habitable units. Additionally, this option causes practical hardship due to the expense of extra infrastructure not reflective of the project’s true scope. This option also significantly reduces green space on the property.*

- Maintaining the original primary structure and constructing two new buildings - both carriage houses or a carriage house/separate storage structure combinations on the rear of the lot.  
  *While permitted, as with the previous duplex option, this design inhibits real improvement to the property in a reasonable manner as the applicant does not require two additional fully habitable units. Additionally, this option causes practical hardship due to the expense of extra infrastructure not reflective of the project’s true scope. This option also significantly reduces green space on the property.*

- Constructing an enhanced single carriage house that combines habitable living space and additional storage/hobby space in one structure.  
  *This design takes up less of the rear lot footprint than other considerations, maintains more green space, and provides a structure that meets the goals of the development. This option also keeps design and construction costs in the project’s scope, best complements the primary structure on the property and is in harmony with neighboring properties. This option does not alter the character of the N-C-B District or University North neighborhood.*

The preferred option of an enhanced carriage house, however, is not a permitted use as under current build codes, a carriage house may not exceed 1,000 sf. ft. maximum total floor area (600 sq. ft. maximum footprint). Thus, the applicant requests the modification be allowed.
The modification is justified (although not currently permitted) by current Land Use Standards and build code, including how these standards have been applied to neighboring development projects on the block over the past decade.

**Article 3 – General Development Standards**

**Division 3.1 – General Provisions**

**Applicability**

Under the Land Use Standards General Provisions, the following section on applicability aligns with the modification request:

3.1.1 – Applicability

All development applications and building permit applications shall comply with the applicable standards contained in divisions 3.1 through 3.11 with the following exceptions:

(A) Single-family detached dwellings and extra occupancy rental houses on platted lots that are subject only to building permit review.

(B) Accessory buildings, structures and accessory uses associated with the single-family dwellings and extra occupancy rental houses listed in (A) above.

Applications for the development noted in exceptions (A) and (B) above must comply only with the standards contained in division 3.8; and with respect to extra occupancy rental houses, the additional standards contained in Section 3.2.2(k)(1)(j).

Existing Development. In addition to the foregoing, this Land Use Code shall continue to apply to ongoing use of land in completed developments to the extent that the provisions of this Land Use Code can be reasonably and logically interpreted as having such ongoing application.

(Ord. No. 59, 2000 §11, 6/6/00; Ord. No. 204, 2001 §§1, 11, 12/18/01; Ord. No. 120, 2003 §1, 9/2/03; Ord. No. 198, 2004 §3, 12/21/04; Ord. 123, 2005 §3, 11/15/05; Ord. 104, 2006 §12, 7/18/06; Ord. No. 063, 2018 , §6, 6/5/18; Ord. No. 077, 2019 , §5, 7/16/19)

**Division 3.4 – Environmental, Natural Area, Recreational and Cultural Resource Protection Standards**

**Historic Resource**

As the applicant’s primary structure was built in 1910 and identified by the city as a historic resource, the following sections align with the modification request:

3.4.7 – Historic and Cultural Resources

(A) Purpose

(1) The purpose of this Section is to ensure that proposed development is compatible with and protects historic resources by ensuring that:

(a) Historic resources on a development site are preserved, adaptively reused, and incorporated into the proposed development;
(b) Development does not adversely affect the integrity of historic resources on nearby property within the area of adjacency surrounding a development site; and

(c) The design of new structures and site plans are compatible with and protect the integrity of historic resources located within a development site and within the area of adjacency surrounding a development site.

(2) To accomplish its purpose, this Section provides:
   (a) The requirements for the treatment of historic resources located on a development site; and
   (b) The standards for design compatibility between proposed development and historic resources on a development site and within the delineated area of adjacency surrounding a development site.
   (c) This Section is intended to work in conjunction with the standards for the treatment of historic resources set forth in Chapter 14 of the Fort Collins Municipal Code and any relevant adopted standards for historic resources.

In Fort Collins, a historic resource is “any resource (a building, structure, object, or site) that has importance to the past for association with important history, culture, or design...Buildings and other resources that help tell the story of a historic district are considered ‘contributing’ to that district and are integral pieces of the larger historic story.” Maren Bzdek, with the Historic Preservation Department identified the primary structure at 613 S. Meldrum as a “historic resource.” The property is also eligible for landmark status; however, the applicant is not pursuing that designation at this time.

As stated earlier in the request, the applicant purchased the property because of its 1910 historic charm and has invested significant time, resources, and funds into preserving the property. Additionally, the applicant is working with an architect to design a carriage house that is compatible in design and size so as not to impact the integrity of the primary structure adversely.

Approving this modification will support the city’s desire to ensure that this historic resource remains in the N-C-B District, supporting the neighborhood character, while also providing the site to be adaptively “reused.” The addition of an enhanced carriage house will support both historic resource and contemporary usage needs.

(B) Historic Resources on the Development Site and within the Area of Adjacency.
   (1) As used in this Section, the area of adjacency shall mean an area, the outer boundary of which is two hundred (200) feet in all directions from the perimeter of the development site. Any lot or parcel of property shall be considered within the area of adjacency if any portion of such lot or parcel is within the two hundred (200) foot outer boundary.
   (2) Historic preservation staff shall identify as expeditiously as possible the historic resources on the development site and within the area of adjacency to be used for application of the design standards contained in below Subsection (E), Design
Requirements for a Proposed Development, and provide a list of such resources to the applicant. The procedure for identifying the relevant historic resources shall be as follows:

(a) The location of the following shall be identified within the area of adjacency:
   1. Any historic resource; and
   2. Any building, site, structure, and object that requires evaluation as to whether it is eligible for Fort Collins landmark designation and, therefore, qualifies as a historic resource.

(b) All historic resources on the development site shall be identified and the procedure in below Subsection (C)(1) shall be completed if necessary.

(c) Any building, site, structure, or object requiring evaluation shall be reviewed for eligibility for Fort Collins landmark designation pursuant to below Subsection (C)(2).

(d) Any historic resource identified in above steps (a), (b), or (c) shall be the historic resources utilized as the basis for applying Subsection (E). Identified historic resources on the development site and within the area of adjacency shall be classified as follows for purposes of applying the design standards set forth in the below Subsection (E):
   1. Historic resources on the development site, or abutting or on the other side of a side alley that abuts the development site; and
   2. All other historic resources.

(e) The historic comparison boundary shall be established at two hundred (200) feet in all directions from the perimeter of each identified historic resource except those located on the development site. The historic influence area formed by the overlapping area between the outer boundary of the development site and the historic comparison boundary is the area within which the standards in below Subsection (E) apply to any new construction proposed within such area.

(f) The historic influence area for any historic resource located on the development site shall be the entire development site.

Example of Area of Adjacency, Historic Comparison Boundary, and Historic Influence Area
(3) The historic preservation staff determination pursuant to this Section of the historic resources relevant to the application of the design standards set forth in below Subsection (E) is not subject to appeal. Notwithstanding, eligibility determinations pursuant to below Subsection (C)(1) are subject to appeal pursuant to Fort Collins Municipal Code Section 14-23.

Additionally, Maren Bzdek stated that the abutting property, 609 S. Meldrum, is also a historic resource and eligible for historic landmark status. A historic comparison boundary is to be “established at two hundred (200) feet in all directions from the perimeter of each identified historic resource except those located on the development site.”

Contrary to the description cited above, the neighboring property at 605 S. Meldrum has a duplex constructed on the rear lot, which does not align architecturally with the historic character of other properties within the historic boundary comparison. Attachment B: Context of the Neighborhood Block illustrates that multiple buildings have been developed within 100 feet of the properties at 613 and 609 S. Meldrum St. which do not maintain a compatible design with these historic resources. However, these buildings now also contribute to the character of the neighborhood. The city has permitted the construction of duplexes and quadplexes within the boundary of these historic resources, which demonstrates precedence in veering from the Land Use Standards in the N-C-B District.

Unlike these multi-family developments, the applicant proposes a structure that aligns with efforts to preserve what remains of the historic character of the neighborhood. The proposed design of an enhanced carriage house provides cohesiveness to not only the primary structure but an appropriate design to the abutting historic 609 S. Meldrum as well. The modification to allow the carriage home to increase its total floor area also aligns the plan with the character of newer developments in the neighborhood.

Article 4 – Districts

Division 4.9 – Neighborhood Conservation, Buffer (N-C-B) District
Permitted Uses

Several options for permitted residential use are outlined in the context of the N-C-B District’s Land Use Standards. In particular, the following sections align with the modification request:

(2) The following uses are permitted in the N-C-B District, subject to administrative review:
(a) Residential Uses:
   1. Single-family detached dwellings when there is more than one (1) principal building on the lot and/or when the lot has only alley frontage.
2. Two-family dwellings when there is more than one (1) principal building on the lot, provided that such two-family dwelling is located within a street-fronting principal building.

(3) The following uses are permitted, subject to Planning and Zoning Board review:

(a) Residential Uses:

2. Single-family attached dwellings

4. Mixed-use dwellings which are combined with any other use subject to Planning and Zoning Board review.

As stated earlier in the request, there is a need in Fort Collins to find a variety of housing options that add to neighborhood livability and character. The cited permitted uses allow for multiple dwellings on a single lot within the N-C-B District. The applicant’s property has an existing single-family, principal building on the lot and space available at the rear of the lot, which has remained undeveloped and possesses alley frontage for access. A second structure – such as the proposed enhanced carriage house - could easily subscribe to these parameters, including consideration as a mixed-use dwelling (single-family dwelling with additional storage space). The applicant recognizes that the permitted uses within the cited section are subject to either administrative or Planning and Zoning Board review.

The applicant also wishes to highlight that the block consists of duplexes and a quadplex, both constructed in recent years. While each of these structures is a permitted use, the duplexes possess larger footprints than the applicant’s proposed modification for an enhanced carriage house. This requirement presents a hardship for the applicant by inhibiting the ability to improve the property with a right-sized design.

City Plan

This modification request is further justified through the City Plan, unanimously adopted by City Council on April 16, 2019. The City Plan outlines important community values and provides an aspirational vision for the future. The Principles and Policies, Structure Plan, and Implementation and Monitoring sections of the document provide further support that this modification aligns with the city’s vision and core values.

Principles and Policies

First, the 2019 City Plan identifies Livability as a core value establishing an overall policy foundation and a reference as questions arise. In particular, the following Livability outcome areas align with the modification request:

- Principle LIV 3: Maintain and enhance our unique character and sense of place as the community grows.
  - Policy LIV 3.4 – Design Standards and Guidelines: Maintain a robust set of citywide design standards as part of the City’s Land Use Code to ensure a flexible, yet predictable,
level of quality for future development that advances the community’s sustainability goals, e.g., climate action. Continue to develop and adopt location-specific standards or guidelines where unique characteristics exist to promote the compatibility of infill redevelopment.

- **Policy LIV 3.5 – Distinctive Design:** Require the adaptation of standardized corporate architecture to reflect local values and ensure that the community’s appearance remains unique. Development should not consist solely of repetitive design that may be found in other communities.

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

**Principle LIV 4: Enhance neighborhood livability.**

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

Policies LIV 3.4, 3.5 and 3.5, along with LIV 4.2, identify the goal for development to be context-sensitive, avoid repetitive design, and work with location-specific standards to promote utilization of undeveloped infill property. The rear lot at 613 S. Meldrum offers an opportunity build a develop an enhanced carriage house that is sensitive to the historic and changing character of the neighborhood. This structure also avoids cookie-cutter design through an architectural design which supports the unique characteristics of the primary structure. This use would also promote infill utilization of a previously undeveloped property.

**Principle LIV 5: Create more opportunities for housing choices**

- **Policy LIV 5.6 - Existing Neighborhoods:** Expand housing options in existing neighborhoods (where permitted by underlying zoning) by encouraging:
  - Infill development on vacant and underutilized lots; » Internal ADUs such as basement or upstairs apartments;
  - Detached ADUs on lots of sufficient size; and
  - Duplexes, townhomes or other alternatives to detached single-family homes that are compatible with the scale and mass of adjacent properties.
Policies LIV 5 promotes the desire creative housing solutions that expand options in existing neighborhoods like the N-C-B District. The policy calls for infill development on unutilized lots and for detached alternative housing solutions that are a compatible with adjacent properties. As stated before, the modification would align with both the context of the historic main property as well as adjacent duplexes on the block. This development would serve as both additional single-family housing, as well as be a creative solution for storage and accessory space needs of the primary structure.

- **Principle LIV 6: Improve access to housing that meets the needs of residents regardless of their race, ethnicity, income, age, ability or background.**
  - **Policy LIV 6.5 – Aging in Place:** Retain attainable housing options in existing neighborhoods so residents can “age in place.”

Policy 6.5 recommends development provide opportunities to age-in-place. As the applicant wishes to retire while living in the primary structure, the enhanced carriage house modification would provide a residence which allows the applicant to do so in this neighborhood, while also maintaining an ongoing income stream from the rental unit.

- **Principle LIV 10: Recognize, protect and enhance historic resources.**
  - **Policy LIV 10.1 – Identify Historic Resources:** Determine through survey techniques what historic resources exist within the GMA; how significant these resources are; the nature and degree of threat to their preservation; and methods for their protection.
  - **Policy LIV 10.2 – Preserve Historic Resources:** Preserve historically significant buildings, sites and structures throughout Downtown and the community. Ensure that new construction respects the existing architectural character of the surrounding historic resources without artificially duplicating historic elements.
  - **Policy LIV 10.5 – Planning and Enforcement:** Recognize the contribution of historic resources to the quality of life in Fort Collins through ongoing planning efforts and enforcement of regulations.

Finally, the policies listed under Principle LIV 10 states a need to identify and preserve historic resources. Addressed in an earlier section, allowance of the modification to the size of the carriage house supports both the preservation of this historic resources and its vital role in maintaining this history as part of the neighborhood’s character.

**Structure Plan**

The city’s Structure Plan (*City Plan*, pages 47) provides direction on a growth framework, the how and where different areas of the community may change or grow in the future. This section of the *City Plan* is a tool for city staff to evaluate and make decisions regarding the location, intensity and design of future development, including infill development.

Per the Structure Plan, the Neighborhood Conservation, Buffer (N-C-B) District is identified as a Mixed Neighborhood. The primary home, and site of the proposed carriage home development, is at 613 S.
Meldrum St.; this site is a block away from Howes St. and two blocks from Mulberry St. which is identified in the plan as a Downtown neighborhood. As referenced earlier, the N-C-B District’s purpose is to provide a transition between residential neighborhoods and more intensive commercial-use area. The address of this property puts it right on the front line of this transition.

The Mixed Neighborhood has a Principal Land Use of single-family detached homes, duplexes, triplexes and townhomes with a Supporting Land Use of ADUs, small-scale multifamily buildings, retail, restaurants/cafes, community and public facilities, parks and recreational facilities, school, places of worship. Key characteristics/considerations for existing neighborhoods, such as University North include:

- While many existing Mixed-Neighborhoods may consist predominantly of single-family detached homes today, opportunities to incorporate ADUs or other attached housing options of a compatible scale and intensity may be feasible in some locations.
- The introduction of larger townhome or multifamily developments into existing single-family neighborhoods should generally be limited to edge or corner parcels that abut and/or are oriented toward arterial streets or an adjacent Neighborhood Mixed-Use District where transit and other services and amenities are available.
- Where townhomes or multifamily buildings are proposed in an existing neighborhood context, a transition in building height, massing and form should be required along the shared property line or street frontage.
- As existing neighborhoods change and evolve over time, rezoning of some areas may be appropriate when paired with a subarea or neighborhood planning initiative. See the Priority Place Types discussion on page 107 for more details about changes in existing neighborhoods over time.

Additionally, the Structure Plan states that opportunities for Mixed Neighborhoods include diversifying housing options in existing neighborhoods based on the age and condition of existing homes and lot sizes. Additional considerations shared detailed a need to reinvest in existing neighborhoods and provide more housing alternatives.

Implementation and Monitoring
Finally, the 2019 City Plan identifies performance measurements to track outcomes tied to the plan’s Policy and Principles in its Implementation and Monitoring section. The following dashboard strategies/measurements further justify granting the modification request:

- Principle LIV 2: Promote Infill and redevelopment.
  - Strategy LIV-2a: Review and update the Land Use Code as needed to align with the place types established in the Structure Plan.
- Principle LIV 3: Maintain and enhance our unique character and sense of place as the community grows.
  - Strategy LIV-3c: Identify locations within the community in the need of neighborhood or subarea planning to address area-specific issues and opportunities.
• **Principle LIV 4: Enhance neighborhood livability.**
  - **Strategy LIV-4a:** Develop and adopt updated design standards to address transitions between areas desired for intensification and existing neighborhoods.
  - **Strategy LIV-4d:** Explore developing a conditional use permit process to allow for a greater range of compatible uses.

• **Principle LIV 5: Create more opportunities for range of housing choices.**
  - **Strategy LIV-5a:** Conduct an evaluation and community dialogue with existing neighborhoods to determine the feasibility of and reasonable requirements for expanding allowances of attached/detached ADUs, duplexes, or other housing options. Consider factors such as lot size, age and condition of exiting housing stock, long-term attainability, proximity to services and amenities, and level of community support.
  - **Strategy LIV-5b:** Update development standards to require or encourage the inclusion of greater range of housing product types.

• **Principle LIV 10: Recognize, protect and enhance historic resources.**
  - **Strategy LIV-10d:** Reevaluate the design, development and demolition review processes to increase consistency and predictability.
  - **Strategy LIV-10e:** Consider codifying general compatibility standards for new construction. Clarify the role of the adopted design guidelines and standards and develop guidelines for additional districts or general guidelines.

As shared in previous section related to the Livability Principle, allowance of this modification supports each of these strategies to achieve the principle’s goal. The enhanced carriage house provides an opportunity to address infill development and transitional needs of the neighborhood, which itself is defined as a transition between downtown and more residential neighborhoods. The design creates an opportunity for a diverse housing options as it serves as additional housing and as support to the primary structure. It is also designed to support the historic character of the primary structure and surrounding properties.

In conclusion, the City of Fort Collin’s demographics are changing, which creates a demand for different housing types and a focus on solving livability issues. Property owners are adapting remodel and development plans to enhance neighborhood livability and compatibility. The goal for the development of the property at 613 S. Meldrum is to construct a right-sized carriage home that provides an additional housing unit and accessory space for the primary residence in a single design that keeps with the character of the primary home and continuity of the neighborhood.

By allowing this development to proceed with an enhanced maximum total floor area, the city will fill a need to help grow the property, and the neighborhood, in a way that is orderly and serves the public interests of enhancing historic resources and neighborhood livability, while supporting City Plan principles and policies. Strict compliance with the current Land Use Standard regarding carriage houses in the N-B-C- District inhibits improvement of the property in a reasonable manner that is consistent with other properties in the area. Such compliance would cause practical hardship due to the expense of...
additional infrastructure, which permitted alternatives cost considering the scope of the project. These permitted options make it more feasible, although less desirable, to demolish the historic resource of the 1910 built property. In contrast, the city will meet the purpose of the N-B-C- District equally well or better by allowing this modification.
Attachment B: Context of Neighborhood Block

The applicant’s property, located at 613 S. Meldrum St.

613 S. Meldrum St. (Picture 2), illustrates proximity to 617 S. Meldrum St. which is planned for demolition (see Attachment C for Proposed Concept Plan)
406 W. Laurel St
21K+ sqft Apt Complex
75' from my home

406 W. Laurel St.
Pic2 of 21k+ Apt Complex
25' from my home
630 S. Meldrum
LDS Learning Institution
Approx 70' from my home

618 S. Meldrum St.
Prkng Lot forefront 83k+sqft, 6 story Cmrcl Bldg
25' from my home
621 S. Meldrum
4plex 9965 Sqft
25' from my home

621 S. Meldrum
Pic2 of 4plex from side porch
25' from my home

621 S. Meldrum
Pic3 from back yard
25' from my home
609 S. Meldrum
Duplex behind existing home
25' from my home

629 S. Meldrum Duplex
Duplex behind single family
75' from my home
629 S. Meldrum
Pic2 Duplex behind single family
75' from my home

629 S. Meldrum
Pic 3 Duplex, Office Bldg
75' from my home
620 S. Sherwood
Duplex Adjacent to property in Alley
30' from my home

630 S. Sherwood St
14 Unit Apt Complex in Alley
55' from my home
Attachment C: Proposed Concept for Neighboring 617 S. Meldrum Property
Staff Presentation to the Administrative Hearing Officer, July 1, 2020
<table>
<thead>
<tr>
<th>Name</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clark Mapes, AICP</td>
<td>T: 970.221.6225 <a href="mailto:mayes@fcgov.com">mayes@fcgov.com</a></td>
</tr>
<tr>
<td>City Planner</td>
<td></td>
</tr>
<tr>
<td>Leslie Spencer</td>
<td>970.416.4288 <a href="mailto:lspencer@fcgov.com">lspencer@fcgov.com</a></td>
</tr>
<tr>
<td>Community Development</td>
<td></td>
</tr>
<tr>
<td>Alyssa Stephens</td>
<td>970.224.6076 <a href="mailto:astephens@fcgov.com">astephens@fcgov.com</a></td>
</tr>
<tr>
<td>Neighborhood Development Liaison</td>
<td></td>
</tr>
</tbody>
</table>

Please give Leslie your name and address to receive the decision report.

Please contact Alyssa with any technical questions.
613 Meldrum Carriage House – Modification of Standards
Clark Mapes, City Planner
As required by City Council Ordinance No. 079, 2020, a determination has been made that it is desirable to conduct a remote hearing to provide reasonably available participation by parties-in-interest and the public, because meeting in person would not be prudent.
During the hearing:

• You will join the meeting and be automatically muted. Your video feed will not be on.

• Use the "raise hand" button to let us know you would like to speak. City staff will call on you and unmute you when it’s your turn.

• If you are joining by phone, dial *9 to raise your hand and press *6 to unmute yourself in Zoom (you may still need to unmute your phone).

• Please state your name and address when you speak, so we can send you the decision report. OR,

• If you prefer, email your name and address to lspencer@fcgov.com.

• If you experience technical issues and need assistance during the hearing, please contact: Alyssa Stephens, Neighborhood Development Liaison, at astephens@fcgov.com or 970.224.6076.
Order of Proceedings

1. Project Introduction (staff)
2. Applicant Presentation
3. Staff Presentation
4. Staff Response to Applicant Presentation
5. Public Testimony
6. Applicant Response
7. Staff Response
8. Decision
   • Within 10 business days, Hearing Officer issues written decision
   • May approve, approve with conditions, or deny the development application
9. Decision is mailed to applicant and any person who provided testimony at public hearing
10. Appeal Process
    • Appeals are filed with the City Clerk’s Office
    • Written appeal must be received within 14 calendar days of the decision
    • Filing fee of $100.00
    • City Clerk will schedule appeal for City Council
## Contact Information

### City Staff Information:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Phone Number</th>
<th>Email</th>
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<td>City Planner</td>
<td>970.221.6225</td>
<td><a href="mailto:cmapes@fcgov.com">cmapes@fcgov.com</a></td>
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</table>

Please give Leslie your name and address to receive the decision report.

Please contact Alyssa with any technical questions.
Proposal Overview

Location

Attachment: Staff Presentation to Hearing Officer (9529 : Appeal of 613 S. Meldrum Hearing)
## Proposal Overview

<table>
<thead>
<tr>
<th>Subject</th>
<th>Zoning Standard</th>
<th>Modified Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Footprint</td>
<td>600 sq. ft. (max)</td>
<td>1,570 sq. ft.</td>
</tr>
<tr>
<td>Total Floor Area</td>
<td>1,000 sq. ft. (max)</td>
<td>2,190 sq. ft.</td>
</tr>
<tr>
<td>Floor Area in Rear Half of Lot</td>
<td>1,583 sq. ft. (max)</td>
<td>2,190 sq. ft.</td>
</tr>
<tr>
<td>Eave Height Along Side Lot Line</td>
<td>13 feet (max)</td>
<td>23 feet</td>
</tr>
<tr>
<td>Width of Dormers Along Side Lot Line</td>
<td>25% of side wall length (max)</td>
<td>43% of side wall length</td>
</tr>
</tbody>
</table>
Looking EAST Over the Rear Yard
Looking EAST Over the Rear Yard
“The decision maker may grant a modification of standards only if it finds that the granting of the modification would **not be detrimental to the public good**, and that:

(1) “as good or better” in achieving the general purpose of the standard than a plan which complies; or

(2) “alleviate a defined community need”

(3) “unusual or exceptional physical hardship”; or

(4) “the plan will not diverge from the standards except in a nominal, inconsequential way when considered from the perspective of the entire development plan and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

**Land Use Code Modification Criteria**
1.2.2 - Purpose
The purpose of this Code is to improve and protect the public health, safety and welfare by:

(A) ensuring that all growth and development which occurs is consistent with this Code, City Plan and its adopted components.
(B) encouraging innovations in land development and renewal.
(C) fostering the safe, efficient and economic use of land, transportation infrastructure, and other public facilities and services.
(D) facilitating and ensuring the provision of adequate public facilities and services such as transportation.
(E) avoiding the inappropriate development of lands and providing for adequate drainage and reduction of flood damage.
(F) encouraging patterns of land use which decrease trip length of automobile travel and encourage trip consolidation.
(G) increasing public access to mass transit, sidewalks, trails, bicycle routes and other alternative modes of transportation.
(H) reducing energy consumption and demand.
(I) minimizing the adverse environmental impacts of development.
(J) improving the design, quality and character of new development.
(K) fostering a more rational pattern of relationship among residential, business and industrial uses for the mutual benefit of all.
(L) encouraging the development of vacant properties within established areas.
(M) ensuring that development proposals are sensitive to the character of existing neighborhoods.
(N) ensuring that development proposals are sensitive to natural areas and features.
(O) encouraging a wide variety of housing opportunities at various densities that are well-served by public transportation for people of all ages and abilities.
Modification
Modification
Modification
Staff Findings

...detrimental to the public good and not justified under 2.8.2(H)(1) because:

1) Specific limits on scale of construction in rear yards; total size and side walls facing/overlooking neighboring rear yards. Limits based on thorough public processes and compromise among varied interests. The overall scale and walls would introduce significant visual and privacy impacts that are intended to be avoided under the standards.

1) The standards require a scale of construction that is typically subordinate to the original houses which define the historic character that is intended to be reflected in development projects. The proposed modifications would allow similar or greater mass than the original houses in the area.

1) To the extent that the proposal may represent compatibility with neighborhood character to a greater degree than zoning allows for other proposals on other properties, that larger question of whether the NCB zone standards are appropriate is beyond the scope of review of an individual development pursuant to the standards as adopted.

1) To the extent that the proposal may represent compatibility with neighborhood character that is equal or better in comparison to past development prior to the current zoning, it would not be a reason to support the modifications because the current standards may reflect a community response to past development.
Staff recommends denial of the Request for Modifications, MOD 200001
Correspondence provided to the Administrative Hearing Officer before the July 1, 2020 Hearing
List of Citizens who provided written comments before the hearing

1. Rayne Martin Architect no address given
2. Colin Christensen 609 S. Meldrum St. Fort Collins
3. Caroline Tuttle 617 S. Meldrum St. Fort Collins
Hi Jeff,
The demolition review and public posting process that we use for a proposed new single-family detached residence is found here: https://www.fcgov.com/historicpreservation/demolition-review. Assuming you have approved plans to build a new single-family dwelling that is not subject to the land use code (see 3.1.1), and the property has been fully documented through an intensive-level survey, we would sign off on the demolition permit. However, it does include the possibility of a proposed landmark designation to prevent demolition by 3 or more members of the community, which would have to occur during the public posting period. That situation occurs only rarely, and City Council would be the decision maker if such a request were to come forward.

Thanks,
Maren

MAREN BZDEK
970-221-6206 office
mbzdek@fcgov.com

From: japalomo@comcast.net <japalomo@comcast.net>
Sent: Wednesday, June 24, 2020 1:32 PM
To: Maren Bzdek <mbzdek@fcgov.com>; Clark Mapes <CMAPES@fcgov.com>
Subject: [EXTERNAL] RE: RE: RE: 1925 map

Hi Maren,

Thank you for your quick reply, information, and narrative. I assumed this a possibility, so I appreciate the clarification, and agree that building onto the existing home is not my preferred option (although an option nonetheless). My partner and I would rather preserve the historic home as-is and create the additional living space we and potential future homeowners need in the proposed carriage house.

I also understand size and scale considerations and think we all agree this certainly was not honored in other developments in this neighborhood in the past - hence, my application for modification. To that point, this property is in a transitional (NCB) zone. The attic in the existing home is substantial and primary home height is greater than that I proposed on back lot structure; I feel it would certainly appear subordinate. As shared in my application, I'm certain the proposed carriage home would not even be visible from the street.

That aside, I continue to consider all possibilities should my modification request be denied, even demolishing and creating from scratch. This would certainly be my last option; however, can you confirm that property labeled a 'historic resource' does not preclude it from demolition as an option? Hopefully, I get approved with my preferred option and all this moot, but I continue to seek information that allows me to keep all options on the table as I choose the best path forward so as not to waste more time and money. Particularly should the modification request be denied.

Let me know.

Thanks,

Jeff
From: Maren Bzdek <mbzdek@fcgov.com>
Sent: Tuesday, June 23, 2020 5:01 PM
To: japalomo@comcast.net; Clark Mapes <CMAPES@fcgov.com>
Subject: RE: RE: RE: 1925 map

Jeff,

Typically, it is easier to get approval under the historic review standards for new construction that is not attached to the original structure, just because creating that attachment impacts the original building form and materials and will often bring the new construction close enough to be more visible from the street. However, additions on the rear are definitely possible and successful recent examples that meet our current code requirements use a “hyphenation” technique that creates a connecting element between the original building and new construction, minimizes how much you need to cut into the rear elevation, and preserves the original building form and roofline. So picture a passageway of sorts that can have a variety of functions, perhaps connected through an existing rear opening as closely as possible to preserve most of the rear elevation.

Do note that, like new construction anywhere on the site, there is this idea for additions to historic buildings of “sensitive and subordinate” in terms of design character, massing, and placement. With that principle in mind, there are several ways to add square footage to a historic property, but sticking points in that conversation are often centered on size/scale of the new construction.

I think it is something you could look into for your property, although it would be less preferable than a smaller carriage house than what you are showing now, so that would be another option we would encourage you to consider.

Also, an addition to your single-family historic home that meets lot coverage requirements, since it is not a historic landmark, would not require the application of the 3.4.7 standards because that would not fall under the land use code. The principles I have highlighted above would only be regulated by Historic Preservation if the land use code were otherwise triggered, as is the case with adding a carriage house.

Hope this helps!
Maren

MAREN BZDEK
970-221-6206 office
mbzdek@fcgov.com

From: japalomo@comcast.net <japalomo@comcast.net>
Sent: Tuesday, June 23, 2020 3:48 PM
To: Clark Mapes <CMAPES@fcgov.com>; Maren Bzdek <mbzdek@fcgov.com>
Subject: [EXTERNAL] RE: RE: 1925 map

Less preferred of course, but just want to consider all options. At some point I have to get results on the money I’m spending!
From: Clark Mapes <CMAPES@fcgov.com>
Sent: Tuesday, June 23, 2020 3:41 PM
To: japalomo@comcast.net; Maren Bzdek <mbzdek@fcgov.com>
Subject: RE: RE: 1925 map

Now THAT I have seen. Maren, what are chances of an addition on the back?

Clark Mapes
City of Fort Collins
Planning
cmapes@fcgov.com
970-221-6225

Tell us about our service, we want to know!

From: japalomo@comcast.net <japalomo@comcast.net>
Sent: Tuesday, June 23, 2020 3:39 PM
To: Clark Mapes <CMAPES@fcgov.com>
Subject: [EXTERNAL] RE: 1925 map

Another option I had thought of was expanding the back of the home in addition to a carriage and accessory building to try and achieve desired rooms and purpose. I see that some historic homes have done so, in particular the one on corner of college and mulberry.

From: Clark Mapes <CMAPES@fcgov.com>
Sent: Tuesday, June 23, 2020 3:21 PM
To: japalomo@comcast.net
Subject: 1925 map

Hello, regardless of what happens with your proposals, I thought you might be interested to see these 1925 map images from an old archive. No agenda here, just interesting to see the original development.
To: Clark Mapes, City of Fort Collins Planning Department

RE: 613 S. Meldrum

Dear Mr. Mapes,

I am writing to you in support of the Development Modification Request at 613 S. Meldrum, Fort Collins, CO. When I began working with Jeff Paloma, we discussed the design of a carriage house to be built to the rear of the property. We began with some concept drawings, and adapted them to adhere to the Design Standards of the City of Fort Collins.

As the design evolved, it became clear that the additional enclosed space would be required. One option was a duplex, which was quickly dismissed as it would not be keeping in the character of the existing home. A second option for an additional accessory building was looked at. While this option presented some promise as it provided the additional room, it was determined that the most efficient use of space would be to enlarge the single carriage home.

I believe this is the best option because it combines the quaintness of the carriage home, and the flexibility of a comfortable sized space. It will also allow for better landscaping between the buildings, that would have been broken up by the presence of a third structure.

As the architectural designer of other carriage homes within the City, I am confident that should the request be granted, this home will be an attractive and harmonious addition to the character of the neighborhood.

Sincerely,

Rayne Martin
Rainbird Design
Clark,

I am the current owner of 609 S.Meldrum Rd, Fort Collins. Our adjacent neighbor, Jeff Palomo, shared with my wife and I his Application for Modification Request at 613 S.Meldrum. He explained the project to us and we are aware of the elements of this request. I am writing to let you know that we take no exception to his plans and fully support the request.

We are particularly pleased to see he is maintaining the architectural and historical character of the property. Unlike many of the surrounding properties that have much more substantial structures which bear no resemblance to the original neighborhood, we believe Jeff’s request helps protect and enhance the historical character of the original community.

We hope you find our support helpful in your review of Jeff & Denise’s request.

Thank you

Colin Christensen
Good afternoon Clark,

Jeff and Denise have shared their challenges with the approval of their architectural plans and we are reaching out to let you know that we strongly support what they are hoping to do to the property. We really appreciate their effort to thoughtfully preserve the historical appearance of the original house, while creating more livable space for themselves and also trying to allow for more affordable housing in the back. We believe that their plans would not negatively impact the character of the neighborhood, unlike the neighboring building to our south.

Thanks for taking our support into consideration as you make a decision!

Sincerely,
Caroline and Nick
617 S Meldrum St
(512)517-3834
January 24, 2020

Jeff Palomo
Fort Collins, CO

Re: 613 S. Meldrum Duplex

Description of project: This is a request to construct a duplex behind an existing single-family structure. The site (parcel #9714111013) is approximately 1,600 feet west of S. College Avenue and approximately 700 feet south of W. Mulberry Street. Future access will be taken from S. Meldrum Street. The proposal includes 2 on-site parking spaces. The property is within the Neighborhood Conservation, Buffer District (N-C-B) zone district and is an Addition of a Permitted Use application subject to City Council Review.

Please see the following summary of comments regarding 613 S. Meldrum Duplex. The comments offered informally by staff during the Conceptual Review will assist you in preparing the detailed components of the project application. Modifications and additions to these comments may be made at the time of formal review of this project. If you have any questions regarding these comments or the next steps in the review process, please contact your Development Review Coordinator, Tenae Beane via phone at 970-224-6119 or via email at tbeane@fcgov.com.

Comment Summary

Development Review Coordinator
Contact: Tenae Beane, 970-224-6119, tbeane@fcgov.com

1. I will be your primary point of contact throughout the development review and permitting process. If you have any questions, need additional meetings with the project reviewers, or need assistance throughout the process, please let me know and I can assist you and your team. Please include me in all email correspondence with other reviewers and keep me informed of any phone conversations.

2. The proposed development project is subject to an Addition of Permitted Use process. The decision maker for your project will be City Council at a public hearing. Prior to City Council, the Planning & Zoning Board will make a recommendation on the project to City Council. For both hearings, we will formally notify surrounding property owners within 800 feet (excluding public right-of-way and publicly owned open space). A neighborhood meeting is required at least 10 days prior to formal submittal of a development review application. For the
neighborhood meeting, we will formally invite surrounding neighbors to attend the meeting. Neighborhood meetings offer an informal way to get feedback from surrounding neighbors, identify any potential concerns prior to the formal hearing, and are an opportunity for you to share your development proposal. The assigned Planner and the City’s Development Review Liaison will help facilitate the meeting. Please contact me, your Development Review Coordinator, to assist you in setting a date, time, and location.

3. I will provide you a roadmap specific to your development review project, helping to identify each step of the process. For more detailed process information, see the Development Review Guide at www.fcgov.com/drg. This online guide features a color coded flowchart with comprehensive, easy to read information on each step in the process. This guide includes links to just about every resource you need during development review.

4. I will provide a Project Submittal Checklist to assist in your submittal preparation. Please use the checklist in conjunction with the Submittal Requirements located at: http://www.fcgov.com/developmentreview/applications.php. The checklist provided is specific to this Conceptual project; if there are any significant changes to this project, please let me know so we can adjust the checklist accordingly. I can send an updated copy of the Submittal Checklist to ensure you are submitting the correct materials.

5. As part of your submittal you will respond to the comments provided in this letter. This letter is provided to you in Microsoft Word format. Please use this document to insert responses to each comment for your submittal, using a different font color. When replying to the comment letter please be detailed in your responses, as all comments should be thoroughly addressed. Provide reference to specific project plans or explanations of why comments have not been addressed, when applicable.

6. The request will be subject to the Development Review Fee Schedule: https://www.fcgov.com/developmentreview/fees.php

I will provide estimated fees, which are due at time of project submittal for formal review. This is an estimate of the initial fees to begin the development review process based on your Conceptual Review Application. As noted in the comments, there are additional fees required by other departments, and additional fees at the time of building permit. The City of Fort Collins fee schedule is subject to change - please confirm these estimates before submitting. If you have any questions about fees, please reach out to me.

7. Submittals are accepted any day of the week, with Wednesday at noon being the cut-off for routing the same week. Upon initial submittal, your project will be subject to a completeness review. Staff has until noon that Friday to determine if the project contains all required checklist items and is sufficient for a round of review. If complete, a formal Letter of Acceptance will be emailed to you and the project would be officially routed with a three-week round of review, followed by a formal meeting.

8. When you are ready to submit your formal plans, please make an appointment with me at least 24 hours in advance. Applications and plans are submitted electronically in person with initial fees. Pre-submittal meetings can be beneficial to ensure you have everything for a complete submittal. Please reach out and I will assist in those arrangements.
1. As we discussed by phone, the Addition of a Permitted Use process in code Section 1.3.4 allows an applicant to "submit a plan that does not conform to the zoning, with the understanding that such plan will be subject to a heightened level of review, with close attention being paid to compatibility and impact mitigation. This process is intended to allow for consideration of unforeseen uses and unique circumstances on specific parcels with evaluation based on the context of the surrounding area. The process allows for consideration of emerging issues, site attributes or changed conditions within the neighborhood surrounding and including the subject property. For residential neighborhoods, land use flexibility shall be balanced with the existing residential character."

2. In this case, findings would have to justify adding a use that is specifically prohibited. The unique circumstances of the eclectic, scruffy pattern of rear yards on this block are understood. A basic question would appear to be "why not just add a permitted carriage house"? If a duplex could be fitted onto the site within constraints of stormwater runoff and parking, could one of the units be qualified affordable to help justify it?

3. If you proceed to a neighborhood meeting, staff would like to coordinate on ideas for findings to justify the APU as part of proceeding and preparation.

4. This development proposal will be subject to all applicable standards of the Fort Collins Land Use Code (LUC), including Article 3 General Development Standards. The entire LUC is available for your review on the web at http://www.colocode.com/ftcollins/landuse/begin.htm.

5. If this proposal is unable to satisfy any of the requirements set forth in the LUC, a Modification of Standard Request will need to be submitted with your formal development proposal. Please see Section 2.8.2 of the LUC for more information on criteria to apply for a Modification of Standard.

Department: Historic Preservation
Contact: Maren Bzdek, 970-221-6206, mbzdek@fcgov.com

1. CODE REQUIREMENTS FOR HISTORIC RESOURCES ON DEVELOPMENT SITE:
This property was determined to be eligible for Fort Collins landmark status in 2018, which means that the adaptive reuse requirements in 3.4.7 of the land use code will apply.

This section of the code outlines that the project must include a rehabilitation and adaptive reuse plan for those structures pursuant to Land Use Code Section 3.4.7(B), to the maximum extent feasible.

Designated historic resources are eligible for financial incentives to support adaptive reuse and historic rehabilitation projects that meet the Secretary of Interior’s Standards for the Treatment of Historic Properties. If the development site contains a historic resource that is on the National or State Register of Historic Places but is not already a Fort Collins Landmark as well, and you would like to designate it, you would then qualify for zero-interest landmark rehabilitation loans from the City as well as the state and...
federal tax credits and other grants from the state for rehab and structural assessment that are available for properties on the National or State Registers. All proposed work would have to comply with the federal standards for rehabilitation and our local codes in order to be eligible for these incentives, and all changes to the property would have to be approved by staff or the Landmark Preservation Commission, in concurrence with the development review process.

2. DESIGN COMPATIBILITY WITH HISTORIC RESOURCES ON OR NEAR DEVELOPMENT SITE
The abutting property at 609 S Meldrum is also eligible for Fort Collins landmark status, which means that any new construction on the site at 613 S Meldrum will need to be compatible with the historic resources on both properties.

The design compatibility requirements for new construction are in land use code section 3.4.7(E), Table 1. Those requirements are designed to create an appropriate design relationship between new construction and nearby historic resources. They cover building massing and design features to ensure that any new construction fits in with the existing historic context.

3. Designated historic resources are eligible for financial incentives to support adaptive reuse and historic rehabilitation projects that meet the Secretary of Interior’s Standards for the Treatment of Historic Properties. If the development site contains a historic resource that is not already a Fort Collins Landmark, and you would like to designate it, you would then qualify for zero-interest landmark rehabilitation loans from the City as well as the state and federal tax credits and other grants from the state for rehab and structural assessment that are available for all historic properties, including those on the National or State Registers. All proposed work would have to comply with the federal standards for rehabilitation and our local codes in order to be eligible for these incentives, and all changes to the property would have to be approved by staff or the Landmark Preservation Commission, in concurrence with the development review process.

Department: Engineering Development Review
Contact: Morgan Stroud, 970-416-4344, mstroud@fcgov.com

1. Site Specific:
   There are some sections of the sidewalk in front of this property that do not meet ADA requirements. These will need to be replaced to bring them up to standard with this project.

2. Site Specific:
   The existing fence is located too close to the sidewalk as it is. It will need to be moved a minimum of 2 feet from the back of the sidewalk or on the property line, whichever is greater.

3. Site Specific:
   The existing alleyway behind this property is partially paved, the section directly behind this property appears to be unpaved. Depending on the project and how many units are being added to the property, this may need to be paved and brought up to standards with this project.
4. Larimer County Road Impact Fees and Transportation Expansion Fees are due at the time of building permit. Please contact Kyle Lambrecht at 221-6566 if you have any questions.

5. The City’s Transportation Development Review Fee (TDRF) is due at the time of submittal. For additional information on these fees, please see: http://www.fcgov.com/engineering/dev-review.php

6. Any damaged curb, gutter and sidewalk existing prior to construction, as well as streets, sidewalks, curbs and gutters, destroyed, damaged or removed due to construction of this project, shall be replaced or restored to City of Fort Collins standards at the Developer's expense prior to the acceptance of completed improvements and/or prior to the issuance of the first Certificate of Occupancy.

7. All public sidewalk, driveways and ramps existing or proposed adjacent or within the site need to meet ADA standards, if they currently do not, they will need to be reconstructed so that they do meet current ADA standards as a part of this project.

8. Any public improvements must be designed and built in accordance with the Larimer County Urban Area Street Standards (LCUASS). They are available online at: https://www.larimer.org/engineering/standards-and-guides/urban-area-street-standards

9. This project is responsible for dedicating any right-of-way and easements that are necessary or required by the City for this project. This shall including the standard utility easements that are to be provided behind the right-of-way (15 foot along an arterial, 8 foot along an alley, and 9 foot along all other street classifications). Information on the dedication process can be found at: http://www.fcgov.com/engineering/devrev.php

10. Utility plans will be required and if needed a Development Agreement will be recorded once the project is finalized.

11. A Development Construction Permit (DCP) will need to be obtained prior to starting any work on the site.

12. LCUASS parking setbacks (Figure 19-6) apply and will need to be followed depending on parking design.

13. All fences, barriers, posts or other encroachments within the public right-of-way are only permitted upon approval of an encroachment permit. Applications for encroachment permits shall be made to Engineering Department for review and approval prior to installation. Encroachment items shall not be shown on the site plan as they may not be approved, need to be modified or moved, or if the permit is revoked then the site/landscape plan is in non-compliance.

14. The development/site cannot use the right-of-way for any rain gardens to treat the storm runoff. We can look at the use of rain gardens to treat street flows – the design standards for these are still in development.

15. Doors are not allowed to open out into the right-of-way.

16. Bike parking required for the project cannot be placed within the right-of-way and if placed just behind the right-of-way need to be placed so that when bikes are parked they do not extend into the right-of-way.

17. In regards to construction of this site, the public right-of-way shall not be used for staging or storage of materials or equipment associated with the Development, nor shall it be used for parking by any contractors, subcontractors, or other personnel working for or
hired by the Developer to construct the Development. The Developer will need to find a location(s) on private property to accommodate any necessary staging and/or parking needs associated with the completion of the Development. Information on the location(s) of these areas will be required to be provided to the City as a part of the Development Construction Permit application.

Department: Traffic Operations
Contact: Steve Gilchrist, 970-224-6175, sgilchrist@fcgov.com

1. TRAFFIC IMPACT STUDY: The addition of two units (or a single duplex) on the property is not expected to generate a level of traffic that would warrant a traffic impact study. TIS waived.

2. FOR INFORMATION ONLY: Will need to work with Engineering on improvements that may be needed to the street frontage, sidewalks, and alley.

Department: Erosion Control
Contact: Chandler Arellano, carellano@fcgov.com

1. Information Only:
No Comment from Erosion Control. Based upon the submitted Planning Materials it has been determined that this project; will disturb less than 10,000 sq. ft., is not proposed to be in a sensitive area, has no steep slopes (greater than 3H:1V) within or adjacent to the project, and is not part of a larger common development that will or is under construction. Therefore, no Erosion Control Material submittal is needed. If this project substantially changes in size or design where the above criteria now apply, erosion control materials should be submitted. Though the project at this time requires no erosion control material submittal, the project still must be swept and maintained to prevent dirt, saw cuttings, concrete wash, trash debris, landscape materials and other pollutants from the potential of leaving the site and entering the storm sewer at all times during the project in accordance with City Code 26-498. If complaint driven or site observation of the project seem not to prevent the pollutant discharge the City may require the project to install erosion and sediment control measures. Nearby inlets that may be impacted by the pollutants, in particular dirt, should be protected as a good preventative practice and individual lots should be protected from material escaping onto the sidewalk. If at building permit issuance any issues arise please email erosion@fcgov.com to help facilitate getting these permits signed off.

Department: Stormwater Engineering
Contact: Matt Simpson, (970)416-2754, masimpson@fcgov.com

2. Master plan and criteria compliance (site specific comment):
The design of this site must conform to the drainage basin design of the Old Town Master Drainage Plan as well the Fort Collins Stormwater Criteria Manual. Please note, a new stormwater criteria manual was released in December 2018:


3. Documentation requirements (site specific comment):
A drainage report and construction plans are required and must be prepared by a
Professional Engineer registered in the State of Colorado. The drainage report must address the four-step process for selecting structural BMPs.

4. Stormwater outfall (site specific comment):
The stormwater outfall options for this site appear to be surface flow to Meldrum Street. There is an alley at the west side (rear) of this property. Drainage into alleys in the Old Town Basin can be problematic, causing damage to downstream and neighboring properties. As part of any construction with this development, a drainage analysis will need to be completed by a Civil Engineer addressing any additional drainage created by the development and may be required to show how conveyance of site drainage is conveyed to an adequate public facility without impacting downstream properties.

5. Alley Drainage and Arthur Ditch (site specific comment):
The alley behind this property drains to a stormwater inlet that is connected to the Arthur Ditch pipe. The Arthur Ditch is contained within a buried pipe and crisscrosses throughout properties in this area of town. It is recommended that this development reduces the amount of area and flow that drains to the alley from this property. Any development that increases stormwater discharge into the alley and the Arthur Ditch will: 1) need to obtain permission and an agreement from the ditch company for this discharge; and 2) need water quality treatment.

The Arthur Ditch company will also need to be contacted about any construction or site work above or near to the ditch pipe. The Ditch contact information is: Arthur Irrigation Co. 2600 S. Timberline, Fort Collins, CO 80525 970-874-0189

6. Detention requirements (site specific comment):
When improvements are being added to an existing developed site, onsite detention is only required if there is an increase in impervious area greater than 5000 square feet. If it is greater, onsite detention is required with a 2-year historic release rate for water quantity.

7. Imperviousness documentation (standard comment):
It is important to document the existing impervious area since drainage requirements and fees are based on new impervious area. An exhibit showing the existing and proposed impervious areas with a table summarizing the areas is required prior to the time fees are calculated for each building permit.

8. Detention drain times (standard comment):
Per Colorado Revised Statute §37-92-602 (8) that became effective August 5, 2015, criteria regarding detention drain time will apply to this project. As part of the drainage design, the engineer will be required to show compliance with this statute using a standard spreadsheet (available on request) that will need to be included in the drainage report. Upon completion of the project, the engineer will also be required to upload the approved spreadsheet onto the Statewide Compliance Portal. This will apply to any volume-based stormwater storage, including extended detention basins

The City requires stormwater quality treatment of all new or modified impervious areas. This requirement has two categories: 1) ‘standard water quality’ treatment, and 2) ‘Low Impact Development’ (LID) requirement. For this site, the ‘standard water quality’ requirement is already provided for in the City’s Udall Natural Area water treatment
10. Low Impact Development requirements (standard comment):
The City requires the use of Low Impact Development (LID) methods to treat stormwater quality on all new or redeveloping property, including sites required to be brought into compliance with the Land Use Code. There are two (2) categories of LID requirements; the development will need to meet one of the two following options:

1. LID with Permeable Pavers: When using the permeable pavers option, 50% of the new or modified impervious areas must be treated by LID methods. Of the new or modified paved areas, 25% must be pervious.
2. LID - without Pavers: 75% of all new or modified impervious areas must be treated by LID methods. This typically consists of a rain garden or bioretention system, but other options are allowed.

Accepted methods are described in the Fort Collins Stormwater Criteria Manual (FCSCM), Chapter 7:

**The existing Single Family residence with one proposed Carriage House would not be required to add LID to the site. A new duplex on the rear of the lot will require LID. Please feel free to contact Water Utilities with any questions**

11. Erosion control requirements (standard comment):
The erosion control report requirements are in Chapter 2, Section 6 of the Fort Collins Stormwater Criteria Manual (December 2018, www.fcgov.com/erosion). If you need clarification concerning this section, please contact the Erosion Control Inspector, Jesse Schlam at 224-6015 or jschlam@fcgov.com

12. Inspection and maintenance (standard comment):
There will be a final site inspection of the stormwater facilities when the project is complete and the maintenance is handed over to an HOA or another maintenance organization. Standard operating procedures (SOPs) for on-going maintenance of all onsite drainage facilities will be included as part of the Development Agreement. More information and links can be found at:

13. Fees (standard comment):
The 2020 city wide Stormwater development fee (PIF) is $9,447/acre of new impervious area over 350 square feet and there is a $1,045/acre of site review fee. No fee is charged for existing impervious area. These fees are to be paid at the time each building permit is issued. Information on fees can be found at:
http://www.fcgov.com/utilities/business/builders-and-developers/plant-investment-development-fees or contact our Utility Fee and Rate Specialists at (970) 416-4252 for questions on fees. There is also an erosion control escrow required before the Development Construction permit is issued. The amount of the escrow is determined by the design engineer, and is based on the site disturbance area, cost of the measures, or a minimum amount in accordance with the Fort Collins Stormwater Manual.
1. Existing Water Infrastructure (site specific comment):
   There is an existing 8-inch water main in Meldrum Street with an existing 3/4-inch water service to the site.

2. Existing Sewer Infrastructure (site specific comment):
   There is an existing 8-inch sanitary sewer main in Meldrum Street with an existing sanitary sewer service to the site. The City does not keep accurate records of the location of sewer services - which are private. The sewer service can be located with the help of a professional plumber.

3. Water and Sewer Services for Proposed Site (standard comment):
   Each building will require a separate water and sewer service connecting to the City main.

4. Utility Separations (standard comment):
   Water and sewer service configurations for redeveloping lots in this area of the City can be problematic. Exact location of the existing water and sewer services and other utilities onsite will be required for your site engineer to determine service routing options.

   For your reference, minimum water and sewer service separations are:
   > 10-ft min. between water and sewer services.
   > 6-ft min. between trees and water or sewer services.
   > 4-ft min. between shrubs and water or sewer services.
   > 10-ft min. between storm-drain pipes and other utilities.
   > Service lines of the same type may be joint trenched with 3-ft of separation

   Other utilities, such as gas, electric, and communications will also have spacing requirements and will need space on the site. Last, please remember that there may be service lines on the adjacent properties for which clearances also need to be maintained.

5. Service abandonment (standard comment):
   Any existing water and sewer services that are not planned to be re-used with this project will be required to be abandoned at the main.

6. Water service sizing (standard comment):
   The water service and meter for this project site will need to be sized based on the AWWA M22 manual design procedure. A sizing justification letter that includes demand calculations for maximum flows and estimated continuous flows will need to be provided as a part of the final submittal package for this project.

7. Sewer discharge (standard comment):
   Please note that all City of Fort Collins Utility Customers are subject to City Code requirements for wastewater. These requirements include Section 26-306 Wastewater Discharge Permit Requirements and Section 26-332 Prohibitive Discharge Standards. A permit may be required depending on activities on the site; however, discharge standards apply to every customer, both large and small, regardless of what activities take place on the site. Please contact Industrial Pretreatment, (970) 221-6900, to discuss these requirements and how they apply to this development.
8. Water conservation (standard comment):
The water conservation standards for landscape and irrigation will apply. Information on these requirements can be found at: http://www.fcgov.com/standards

9. Fees (standard comment):
Additional or larger services will incur development fees and water rights. These fees are due at building permit. Information on fees can be found at: http://www.fcgov.com/utilities/business/builders-and-developers/development-fees or contact our Utility Fee and Rate Specialists at (970) 416-4252 for questions on fees.

**An additional dwelling unit will incur additional water and sewer fees – even if there are no new water and sewer services. Please contact Water Utilities with any questions**

Department: Electric Engineering
Contact: Rob Irish, 970-224-6167, rirish@fcgov.com

1. The existing property is currently fed from the rear of the property by a 1/0T underground cable from an existing 25kva pad mount transformer to the North of 605 Meldrum St. This cable looks to be direct buried and may need to be relocated for the carriage house and upgraded back to the transformer.

2. Any relocation or modification to existing electric facilities will be at the expense of the owner/developer.

3. Any existing and/or proposed Light & Power electric facilities that will remain within the limits of the project must be located within a utility easement.

4. Depending on load requirements, it may be necessary for the owner to provide a pocket easement for a pad mount transformer to handle the additional capacity.

5. Secondary service for any buildings other than single-family detached, will be installed, owned and maintained by the owner.

6. A commercial service information form (C-1 Form) and a One-line diagram will need to be submitted to Light & Power Engineering for any proposed electric changes and/or additions. A link to the C-1 form is below: http://www.fcgov.com/utilities/business/builders-and-developers/development-forms-guidelines-regulations

7. Electric Capacity Fee, Building Site charges, and any system modification charges necessary will apply to this development. Please contact Light & Power Engineering at ElectricProjectEngineering@fcgov.com. Please reference our Electric Service Standards, development charges and fee estimator at the following link: http://www.fcgov.com/utilities/business/builders-and-developers

8. Please contact Light & Power Engineering at ElectricProjectEngineering@fcgov.com if you have any questions. Please reference our policies, construction practices, development charge processes, electric services standards, and fee estimator at http://www.fcgov.com/utilities/business/builders-and-developers.
1. City of Fort Collins Land Use Code [Section 3.2.1 (E)(3)], requires that to the extent reasonably feasible, all plans be designed to incorporate water conservation materials and techniques. This includes use of low-water-use plants and grasses in landscaping or re-landscaping and reducing bluegrass lawns as much as possible. Native plants and wildlife-friendly (ex: pollinators, butterflies, songbirds) landscaping and maintenance are also encouraged. Please refer to the Fort Collins Native Plants document available online and published by the City of Fort Collins Natural Areas Department for guidance on native plants is: http://www.fcgov.com/naturalareas/pdf/nativeplants2013.pdf. Also see the City of Fort Collins Plant List: https://www.fcgov.com/forestry/plant_list.pdf.

2. Site light sources shall be fully shielded and down-directional to minimize up-light, spill-light, glare and unnecessary diffusion on adjacent property. All lighting shall have a nominal correlated color temperature (CCT) of no greater than three thousand (3,000) degrees Kelvin [see LUC 3.2.4(D)(3)].

Department: Forestry

Contact: Molly Roche, 224-616-1992, mroche@fcgov.com

1. 1/21/2020: PRE-SUBMITTAL: Forestry Tree Inventory
   There appear to be existing private property and City-owned street trees on-site. What are the anticipated impacts to them associated with this development? Regardless of tree impact, please schedule an on-site meeting with City Forestry to obtain tree inventory and mitigation information. Existing significant trees, specifically City-owned and maintained street trees, should be retained to the extent reasonably feasible. This meeting should occur prior to first round PDP.

2. 1/21/2020: INFORMATION ONLY FOR PDP
   Please provide a landscape plan that meets the Land Use Code 3.2.1 requirements such as ‘full tree stocking’. This should include the existing tree inventory, any proposed tree removals with their locations clearly noted and any proposed tree plantings (including species, size, quantity and method of transplant). The plans should also include the following City of Fort Collins notes:

   General Landscape Notes
   Tree Protection Notes
   Street Tree Permit Note, when applicable.
   These notes are available from the city planner or Molly Roche (mroche@fcgov.com)

   Required tree sizes and method of transplant:
   Canopy Shade Tree: 2.0" caliper balled and burlapped
   Evergreen tree: 6.0" height balled and burlapped
   Ornamental tree: 1.5" caliper balled and burlapped

   Required mitigation tree sizes:
   Canopy Shade Tree: 2.0" caliper balled and burlapped
Evergreen tree: 8.0' height balled and burlapped
Ornamental tree: 2.0" caliper balled and burlapped

3. 1/21/2020: INFORMATION ONLY FOR PDP
Please include locations of utilities on the landscape plan including but not limited to water service/mains, sewer service/mains, gas, electric, street lights and stop signs. Please adjust tree locations to provide for proper tree/utility separation.
10’ between trees and public water, sanitary, and storm sewer main lines
6’ between trees and water or sewer service lines
4’ between trees and gas lines
10’ between trees and electric vaults
40’ between canopy shade trees and streetlights
15’ between ornamental trees and streetlights
20-40’ between street trees and stop signs

4. 1/21/2020: INFORMATION ONLY FOR PDP
If applicable, please provide an “Existing Tree Removal Feasibility Letter” for City Forestry staff to review. Proposals to remove significant existing trees must provide a justification letter detailing the reason for tree removal. This is required for all development projects proposing significant tree removal regardless of the scale of the project. The purpose of this letter is to provide a document of record with the project’s approval and for the City to maintain a record of all proposed significant tree removals and justifications. Existing significant trees within the project’s Limits of Disturbance (LOD) and within natural area buffer zones shall be preserved to the extent reasonably feasible. Streets, buildings and lot layouts shall be designed to minimize the disturbance to significant existing trees.
(Extent reasonably feasible shall mean that, under the circumstances, reasonable efforts have been undertaken to comply with the regulation, that the costs of compliance clearly outweigh the potential benefits to the public or would unreasonably burden the proposed project, and reasonable steps have been undertaken to minimize any potential harm or adverse impacts resulting from noncompliance with the regulation.) Where it is not feasible to protect and retain significant existing tree(s) or to transplant them to another on-site location, the applicant shall replace such tree(s) according to City mitigation requirements.

Department: Fire Authority
Contact: Jim Lynxwiler, 970-416-2869, jlynxwiler@poudre-fire.org

1. DUPLEX
The following comments apply only to duplex development on this site. Other code options may allow for construction of a carriage house, should that become the primary option. Contact PFA for details.

2. REQUIRED FIRE ACCESS
Fire access is required to within 150' of all exterior portions of any building as measured by an approved route around the perimeter. The building's proposed footprint places the structure out of access as measured from Meldrum and fire access from residential alleys is not considered reliable. Future site plans shall account for the construction of a
fire lane on the property or how otherwise this requirement is mitigated. Fire lane specifications provided below.

3. FIRE LANE SPECIFICATIONS
   A fire lane plan shall be submitted for approval prior to installation. In addition to the design criteria already contained in relevant standards and policies, any new fire lane must meet the following general requirements:
   > Fire lanes established on private property shall be dedicated by plat or separate document as an Emergency Access Easement.
   > Maintain the required 20 foot minimum unobstructed width & 14 foot minimum overhead clearance.
   > Be designed as a flat, hard, all-weather driving surface capable of supporting 40 tons.
   > Dead-end fire access roads in excess of 150 feet in length shall be provided with an approved turnaround area for fire apparatus.
   > The required turning radii of a fire apparatus access road shall be a minimum of 25 feet inside and 50 feet outside. Turning radii shall be detailed on submitted plans.
   > Be visible by red curb and/or signage, and maintained unobstructed at all times. Sign locations or red curbing should be labeled and detailed on final plans. Refer to LCUASS detail #1418 & #1419 for sign type, placement, and spacing. Appropriate directional arrows required on all signs.

4. REQUIRED WATER SUPPLY
   A fire hydrant capable of providing 1000 gpm at 20 psi residual pressure is required within 400' of any residential building, as measured along an approved path of vehicle travel. While the closest hydrant on the NE corner of Meldrum and Myrtle appears to exceed this distance, it may be deemed acceptable if all other conditions for fire access have been resolved.

5. FIRE SPRINKLER SYSTEM
   The addition of a duplex or triplex will require the installation of a residential fire sprinkler system. Please contact the City Building Department for further information.

6. ADDRESS POSTING & WAYFINDING
   Wayfinding to a residence not immediately fronting the public street and accessible via an alley is problematic. The residence will need to be addressed off of Meldrum and accessible from Meldrum via a pedestrian sidewalk. The address shall be posted at Meldrum with signage directing emergency resources to the duplex. Such information shall be accounted for and detailed on the site plan.

Department: Building Code Review
Contact: Katy Hand, khand@fcgov.com

1. -Both a duplex and a single family carriage house will be designed/built under the current IRC Code
2. -A Duplex typically needs to sprinkled to P2904 (installed by a plumber) or in this case, likely an upgraded 13R system for fire access issues. (installed by a fire sprinkler contractor)
   -A Triplex will need to be sprinkled to a 13R system (installed by a fire sprinkler contractor)
   -A Carriage house does not need to be sprinkled unless there is a fire access issue. If
PFA will require a sprinkler system it would be a P2904 system

3. To avoid exterior fire rated walls with limited or no openings:
   - A Duplex will need to be located 3ft min from property lines or per land use code (whichever is stricter)
   - A Carriage house will will need to be located 5ft min from property lines
   - The new building and existing house will need to be separated from each other by 10ft min

4. INFORMATIONAL: Please visit our website for a list of current adopted building codes and local amendments for building permit submittal:
   https://www.fcgov.com/building/codes.php

5. Linked is some additional information/guides for a new house/duplex:
   https://www.fcgov.com/building/res-requirements.php

Department: Technical Services
Contact: Jeff County, 970-221-6588, jcounty@fcgov.com

1. As of January 1, 2015, all development plans are required to be on the NAVD88 vertical datum. Please make your consultants aware of this, prior to any surveying and/or design work. Please contact our office for up to date Benchmark Statement format and City Vertical Control Network information.

2. If submitting a replat for this property/project, addresses are not acceptable in the Subdivision Plat title/name. Numbers in numeral form may not begin the title/name. Please contact our office with any questions.
Pre-Submittal Meetings for Building Permits

Pre-Submittal meetings are offered to assist the designer/builder by assuring, early in the design, that new commercial or multi-family projects are on track to complying with all of the adopted City codes and Standards listed below. The proposed project should be in the early to mid-design stage for this meeting to be effective and is typically scheduled after the Current Planning PDP submittal. Applicants should be prepared to present site plans, floor plans, and elevations and be able to discuss code issues of occupancy, square footage, type of construction, and energy compliance method being proposed. Applicants of new commercial or multi-family projects should contact their Development Review Coordinator to schedule a pre-submittal meeting.

Construction shall comply with the following adopted codes and standards as amended:

- 2018 International Building Code (IBC) with local amendments
- 2018 International Residential Code (IRC) with local amendments
- 2018 International Existing Building Code (IEBC) with local amendments
- 2018 International Energy Conservation Code (IECC) with local amendments
- 2018 International Mechanical Code (IMC) with local amendments
- 2018 International Fuel Gas Code (IFGC) with local amendments
- 2018 International Swimming Pool and Spa Code (ISPSC) with local amendments
- 2015 International Plumbing Code (IPC) as amended by the State of Colorado
- 2017 National Electrical Code (NEC) as amended by the State of Colorado

Snow Load Live Load: 30 PSF / Ground Snow Load 30 PSF.
Frost Depth: 30 inches.
Wind Loads:
  - Risk Category II (most structures):
    * 140mph (Ultimate) exposure B or
    - Front Range Gust Map published by The Structural Engineer's Association of Colorado
  - Risk Category I: 130mph (Ultimate) exposure B
  - Risk Category III & IV: 150mph (Ultimate) exposure B
Seismic Design: Category B.
Climate Zone: Zone 5.
Energy Code Use:
1. Single Family; Duplex; Townhomes: 2018 IRC Chapter 11 or 2018 IECC Chapter 4 Residential Provisions

Current codes and amendments are effective as of January 12, 2019. Copies of the code amendments can be obtained at www.fcgov.com/building/codes.php or at the Building Services office.
Applicant Presentation to the Administrative Hearing Officer, July 1, 2020
613 S. MELDRUM
Modifications of Standards Request
THEN
JANUARY 2019

NOW
MAY 2020
Reaching the decision to request a Modification of Use was a journey.

THE WHY

HOW DID WE GET HERE?
WE ARE UNIQUE

ZONE DISTRICTS
HISTORIC BOUNDARIES
WHAT SERVES GREATER GOOD
The subject property is in the Old Town Neighborhoods subarea plan of Fort Collins...

- Development Review Staff Report, p. 1

“The Old Town Neighborhoods Plan (Plan) is a combined update of the Eastside and Westside Neighborhood Plans developed in the 1980s, and provides a renewed vision and policy guidance for the two neighborhoods.

- The Fort Collins Old Town Neighborhood Plan, p. 7
- Adopted Feb. 21, 2017

Image credit: Google Earth
OLD TOWN NEIGHBORHOODS CHARACTER AREAS

The 2013 Eastside Westside Character Study identified six distinct character areas comprising the NCL and NCM zone districts of the Old Town Neighborhoods. Character districts were determined based on building age, size and height, as well as lot size, lot coverage and floor area ratio. Additional information about the neighborhood character districts can be found in the Old Town Neighborhoods Design Guidelines, available for download on the Old Town Neighborhoods Plan webpage: www.fcgov.com/otnp
TIMELINE OF NEIGHBORHOOD PLANNING EFFORTS & ZONING CHANGES

- **1986**: Eastside Neighborhood Plan
- **1989**: Westside Neighborhood Plan
- **1991**: New Conservation Zoning Districts
- **1996**: Eastside Westside Design Guidelines
- **2004**: Carriage House Standards
- **2013**: Eastside Westside Character Study & Design Standards

Image credit: City of Fort Collins
A PLACE WITHOUT REAL PLACEMAKING…

OR IS IT?
SITE CONTEXT
OUR NEIGHBORHOOD

515 S. Meldrum | Primary with Carriage and Garage
1,724 sf primary + 1,400 sf carriage + 352 sf garage

617 S. Sherwood | Stucco Duplex Add-on
3,338 sf

627 S. Sherwood | Primary with Duplex
842 sf primary + 1,524 sf secondary

515 S. Meldrum | Primary with Carriage and Garage
1,724 sf primary + 1,400 sf carriage + 352 sf garage

629 S. Sherwood | Primary with Addition and Sep. Unit
888 sf primary + 834 sf addition + 2,584 sf separate

621 S. Meldrum Fourplex
9,965 sf

Proposed Concept for 617 S. Meldrum
2 duplexes connected by a patio roof

Packet Pg. 381
LEVELS OF CONTEXT
LISTENING TO OUR COMMUNITY

CELEBRATING AND ENHANCING THE QUALITIES THAT MAKE THE NEIGHBORHOODS UNIQUE

Image credits:
City of Fort Collins
OTNP Plan
PREFFERED OPTION
AS PROPOSED IN MODIFICATION REQUEST

AREA CALCULATIONS:

SECOND FLOOR AREA = 828 SQ. FT. INCL. STAIRS (APPROXIMATELY 620 SQ. FT. ABOVE T-1/2 FT. / 510 SQ. FT. BELOW T-1/2 FT)
FIRST FLOOR AREA = 1578 SQ. FT. (848 SQ. FT. LIVING SPACE / 730 SQ. FT. GARAGE)
BASEMENT = 648 SQ. FT.

Image credit: Rayne Byrd, Architect
OF ALL POSSIBLE OPTIONS

PROPOSED ENHANCED CARRIAGE HOUSE IS EQUAL OR BETTER & BEST INTERESTS OF PUBLIC GOOD

1. ADDITION TO PRIMARY HOME
2. DEVELOP TWO CARRIAGE HOMES, CARRIAGE HOME & ADU, or CARRIAGE HOME, ADU & SHED
3. DEVELOP DUPLEX
4. DEMOLISH EXISTING STRUCTURE, DEVELOP NEW
PLAN B – DUEL CARRIAGE HOMES
PERMITTED IN CURRENT L.U.C.

AREA CALCULATIONS:
SECOND FLOOR AREA = 630 SQ. FT. (INCL. STAIRS) / 318 SQ. FT. ABOVE T-6' HT. / 252 SQ. FT. BELOW T-6'
FIRST FLOOR AREA = 600 SQ. FT. (246 SQ. FT. LIVING SPACE (INCL. STAIRS) / 304 SQ. FT. GARAGE)
BASEMENT = 254 SQ. FT. (118 SQ. FT. LIVING SPACE / 56 SQ. FT. STOR. & STAIRS)

X2

+ SHED
PREFFERED OPTION
EQUALLY GOOD OR BETTER & BEST INTEREST OF PUBLIC GOOD

AREA CALCULATIONS:

SECOND FLOOR AREA = 1550 SQ. FT. INCL. STAIRS (APPROXIMATELY 620 SQ. FT. ABOVE T-6" HT. / 930 SQ. FT. BELOW T-6")
FIRST FLOOR AREA = 1518 SQ. FT. (848 SQ. FT. LIVING SPACE / 730 SQ. FT. GARAGE)
BASEMENT = 848 SQ. FT.

Image credit: Rayne Byrd, Architect

Packet Pg. 388
Attachment: Applicant Presentation to Administrative Hearing Officer (9529: Appeal of)
THANK YOU FOR YOUR CONSIDERATION

QUESTIONS?
Proposed Plans
Provided to Administrative Hearing Officer,
July 1, 2020
Verbatim Transcript of the Administrative Hearing Officer, July 1, 2020
ADMINISTRATIVE HEARING
CITY OF FORT COLLINS
Held July 1, 2020
Remote/Virtual Meeting
In the Matter of:
613 South Meldrum Street Carriage House Modifications of Standard #MOD200001
Meeting Time: 5:30 PM, July 1, 2020

Hearing Officer:
Lori Strand

Staff Members Participating:
Clark Mapes, City Planner
Maren Bzdek, Senior Historic Preservation Planner
Leslie Spencer
MS. LORI STRAND: I'm going to go ahead and open the public meeting; the time is 5:31 PM on July 1st, 2020. Tonight, the City of Fort Collins will be conducting an administrative hearing virtually for the 613 South Meldrum Street project. The project number is MOD200001. My name is Lori Strand, I am going to be the hearing officer this evening. Myself and several members of City staff, as well as the applicant, are participating remotely. I see right now we have Collin and Rita attending from the public, and we'll keep an eye to see if there's other folks that join.

I think I'm going to ask you to put your screen up, Clark, if that's okay? As I mentioned, there are a couple members of staff that are here. Clark Mapes will be the presenter on behalf of the City tonight, Leslie Spencer is here tonight to help with the public comment portion. You can also email Leslie if you don't intend on giving public comment put would like to get a copy of my decision. Her email address is up on the screen and we'll be sure to show it again. If you're having any technical difficulties, please reach out to Alyssa Stephens; her phone number and her email address are up on the screen, so I'll go ahead and let that stay up for just a couple minutes in case you want to jot that down…and folks that are either applicants or members of the public, in case you run into technical issues.

Okay…so, if we can go to the next screen. In order for us to hold this meeting remotely, as the hearing officer, I'm required by Ordinance 079 to make a determination that it's appropriate and desirable to conduct this hearing using remote technology in order to provide a reasonably available participation to the parties-in-interest and to the public consistent with the requirements of Ordinance 079, because meeting in person would not be prudent for some or all persons due to a public health emergency. I do make that finding; we all know that we're still facing challenges of COVID-19, so it is in fact prudent for us to continue remotely for this particular matter. Next screen please.

So, again, tonight everybody is going to be participating through the Zoom platform or by phone. You will be muted, so if you're trying to chat, you won't be able to until it's your turn to speak. We'll go over the order of proceedings in a moment, but there will opportunity for staff to speak, for the applicant to speak, and the public to speak. When it comes time for public comment…actually at any point leading up to public comment, you can raise your hand on your screen. At the middle bottom of your screen, there should be a button that says 'participants.' When you click on that, a screen will show up to your right, and in the bottom right-hand corner there's a 'raise hand' button. So, if you would like to give public comment, go ahead, raise your hand, keep it raised, and come public comment period, we'll unmute you and give you your moment to speak. If you're joining by phone, which it doesn't look like anyone is right now, so I won't speak to that at the moment, but if we see folks that join by phone…I think…Leslie, can you let me know if that occurs? Leslie is muted so…

MS. LESLIE SPENCER: Yes, I can do that. I will unmute myself and let you know when we get another attendee who wants to speak during public comment.

MS. STRAND: Okay. When it is time to speak, we'll ask that you state your name and address, spelling your name, provide your address so that we can give you a copy of the decision, or again, you can email your address to Leslie Spencer at the email address on the screen again. Again, Alyssa's information is up there if you're having technical difficulties.

So, before every administrative hearing, we read some of the rules of conduct. So, I'm going to go ahead and do that, and then we'll go through the order of proceedings. So, this is an administrative type I hearing, this is a legal hearing; I will moderate it for civility and fairness to ensure that everyone who wishes to speak can be heard. All persons present by Zoom or phone have an obligation to follow
my instructions in that regard. Our expectations of all attendees is to not speak until you are recognized…we’ll unmute you when you are recognized, so that makes it a little bit more straightforward. Please confine your remarks to the merits of the proposal under consideration, please address your remarks to me and maintain a courteous tone, and avoid injecting personal tone into the debate. We will not tolerate personal attacks or questioning the motivations of another speaker. The proposal and not the speaker is the topic of interest. So, those are our rules of conduct that we like to read for each hearing, and now we’ll go ahead to the orders of proceedings so everybody knows what to expect.

So, as we do with all administrative hearings, there will be a brief introduction of the project by staff followed by an opportunity for the applicant and their team to present on what they’re proposing, followed by a more detailed presentation by staff. Afterwards, there will be an opportunity for me to get clarity from the applicant and the staff and for staff to respond to the applicant presentation. Afterwards, we will open up the public testimony portion, so, again, raise your hand if you’d wish to speak. The applicant will have an opportunity to respond to public testimony as will staff, and then I will close the public hearing and within ten business days, I will issue a written decision. Again, if you provide your address to Leslie, we’ll make sure you get a copy of that. I have authority to approve, approve with conditions, or to deny the application. The appeals process is up there; there will be fourteen days to appeal a decision. And, with that, I believe we are done with all the administrative components and I’m going to turn it over to Clark to start us off.

MR. CLARK MAPES: Hello, good evening, Clark Mapes, City Planner. I’m going to very quickly here just skip ahead to my screen with some of the maps and graphics on it. This introduction will be very brief. Here we go with the screen…I hope you’re seeing the zoning map and the location of the proposal here. The City Land Use Code governs development in Fort Collins and this request is defined as development. The Land Use Code contains legal regulations that govern all the development in the city, and the Land Use Code contains the different zoning districts in different parts of the city. This subject property is in the Neighborhood Conservation Buffer zoning district. You can see there…and it’s the middle area…you see the site highlighted, and you can see that one block to the east is the Downtown zoning district, and a little bit to the west is the next level of intensity in the transition of zoning districts, which is called the Neighborhood Conservation Medium Density zoning district. We’ll be talking tonight about the NCB zone, Neighborhood Conservation Buffer district…we’ll be talking quite a bit about that I expect.

Here’s a Google Earth view of the block with the site…the lot highlighted in yellow. You can see the block defined by Meldrum Street, South Meldrum, and the address is 613 South Meldrum, Laurel Street with Colorado State University on the other side of Laurel, Sherwood and Myrtle. So here we have a block sitting right next to Colorado State University, just to help orient you to the location.

And then an aspect of the Land Use Code zoning regulations and other development regulations…and by the way, we call those regulations 'standards,' we refer to those as 'standards.' Standards in the Land Use Code come with a section that allows for modification of the standards based on unique circumstances of a property, and based on meeting criteria that are listed for required findings in order to approve modifications of standards. This is the last slide I'm going to present for now. We'll let the applicants give their presentation, and then I'll come back to this later…I'll come back to the criteria for findings that are required to approve or deny modifications of standards. In this case, the request is to modify standards for the size of a building footprint on the ground, and I think everybody can see here, 600 square feet is the stated limit in the NCB zone, and the request is for 1,570 square feet in the building footprint. Likewise, total floor area allowed within a…these standards apply to carriage...
houses in the rear yard of a residential lot in the NCB zoning district. The total floor area allowed for a carriage house, 1,000 square feet. You can see there the request, 2,190. There's a limit on floor area in the rear half of the lot, a limit for the height of building walls alongside lot lines, you can see there, standard 13, a request for about 23 feet, and the...actually...okay, yes, there's a standard involving dormers, kind of getting a little bit technical in the architecture of the building, but there's also a request that requires a modification regarding the dormers. Kind of technical...I'm going to stop here and let the applicant give their presentation and then I can come back and give a little more presentation about the zoning and the modifications and the criteria for modifications. So, I'll stop sharing and I'm ready for the applicant...to see the applicant's presentation.

MS. DENISE WHITE: Great, I'm just getting that ready. This is Denise White, and I know you said to start with the presentation slide up, but it's not wanting to let me share my screen once I do that, so I'm going to just go ahead and share screen and we will make a quick transition.

MR. JEFF PALOMO: And just so I remain unmute, Denise and I will be tag-teaming this.

MS. WHITE: There we go; thank you for your patience there with the little technical...my screen would not show me the share screen when I put it into presentation mode. Thank you everyone for joining us tonight and giving us your time. We realize for many this is before a long holiday weekend, so we do appreciate the time this evening. We also have gratitude for all the conversations we've had with staff between emails and meetings and phone calls that have been supportive in giving us information or helping us get to where we're at tonight, including recommending we go for this modification of use as we do not meet the land codes of use. So, quick introduction to who we are. I'm Densie White, my partner Jeff Palomo is actually the property owner and he is the primary resident in that home. Again, I'm his partner. I'm a former Fort Collins resident...actually used to work for the City, so it's a little strange being on this side of the presentation. But I'm also a current part-time resident of the home as we try to make it something that becomes more of our full-time retirement home for both of us.

And so, tonight, kind of as we talk about the process through the meeting...our presentation basically is going to give a quick background of what we put into our application and what we read out of the staff report, a refresher as to why we're asking our request, and then really we're going to focus, since we know the hearing officer and staff have seen our application, kind of addressing some of the concerns we saw in the staff report as we realize, and Clark just said, some technical issues, and the numbers speak for themselves, so really we want to speak to what we feel is in the best interest of public good as well as an answer to our construction dilemma here...or our development dilemma here...that really is equal or better than the options that are currently available to us by those technical standards in the Land Use Code.

So, quick look here...this is the property we're talking about, that's 613 South Meldrum. You know, it's got charm. When we first found it, you can see it with the for-sale sign on there. With a little history about ourselves, kind of our elevator pitch is that, you know, we are both individuals that really enjoy historic properties. We also have been drawn to eclectic neighborhoods, and I think you couldn't find one that is maybe a little more eclectic than this one, as we found out...it's actually not even a neighborhood, it's a zone. So, you know, we have another home in Fort Collins that we do have a tenant in. But, we were up in the area and we drove by this home and we both just kind of fell in love with it. We fell in love with the historic nature of it, not even knowing the background to it yet, but just the appeal of...the curbside appeal of the historic resource approach to it. We also loved the vibrancy of the neighborhood. We are definitely not representative of the demographic that's in that neighborhood. We
skew a little bit older; I'm not going to say how much older, but we do skew a little bit older, and we are
owners versus renters. And Jeff, as I said, is a primary resident in that home at this time. I kinda come
and go based on my work, but he is on-site living in as a homeowner in a single-family unit right there.

Again, we like this neighborhood, we like this house, and we are really looking to design the
home in a space that not only can we age-in-place in and enjoy our retirement years, but also one that
meets that historic needs with contemporary needs...or the historic preservation with contemporary
needs...and give us space that we need for what we want to have a full, rich, live-in-place life which
includes things like a hobby space, fitness room, and a garage...these homes don't have garages. Finally,
we are looking at long-term, chance to have an income stream to cover the investment we put into
development as well as once we retire and we lose some of that income stream that we have from
working, how can we help supplement from that. And what we are trying to achieve with the proposal, or
with what we've put forth as our preferred option of design, is to really work with rehabilitating the house
that we have as a historic resource. You can kind of see the before and after picture there; we've already
put a lot of work into it, including having, you know, pulled a permit and done all the work on that front
porch. When we purchased the house, the brickwork was pulling away from the home, so we have
already invested quite a bit of time, money, and love into making this the home we want it to be to live in.
Again, just trying to find and create a space that's desirable for someone living in it now, being Jeff and I,
as well as making it a space and a piece of property that will make future generations also want to
preserve it and keep this historic resource intact, as well as our development, which cohesively fits into
that.

So, how did we get here? Reaching the decision to request a modification for use really was a
journey for us. We have definitely not picked the easiest path. Actually, now that I'm on this side of
development and processing, I'm not sure why anybody ever goes through this. It is a lot of work. But
you can see that it was an iterative process for us. We didn't just land on wanting an enhanced carriage
home as our first option. We started, in our first thoughts, of just putting a duplex out there. Early
discussions, we realized that although that is possible, it's a process, and so we'd be sitting probably where
we are right now going down that road. Second, we kind of looked at what was allowed by Land Use
Code, and we found that we could actually put two smaller carriage homes on the property. That is still a
possibility; however, it is less desirable to us because it eats up some of that Nature in the City, open
space, green space, areas that we could do some urban agriculture. I'd like to have a farm...or not a
farm...but a salad garden in the backyard and grow some of our own vegetables and whatnot. And so you
can see where we've landed on this current enhanced carriage house, which it is larger than what by Code
and definitions of the City of Fort Collins a carriage house is, but it still is basically a carriage house.
And we do continue to explore options with the city. You can see over here, we have some sketches there
where we considered to go back and forth on this gable or dormer discussion, but tonight, for the
purposes of what we've requested for the modification of use, you can see the plan as it is. Next slide.

You know, again, it's not an easy decision to be here and go through this process. And it's funny,
because you don't go through this process unless you think you're unique, and of course everyone thinks
they're unique, everyone thinks their baby is the cutest, everyone thinks their puppy is the most adorable
and most well-behaved, and everybody probably coming to Planning and Zoning and going through this
process truly feels their project is unique because it's theirs, right? And so, you know, again, I don't want
to touch too much on what was included in the packet as to why we feel the justifications are there. The
hearing officer has seen the packet, staff and their response have seen our packet, and so we're happy, of
course, to respond to any questions you may have about how we feel our plan fits into the City Plan, the
Structure Plan, and the greater good for the city as a whole, but particularly this neighborhood area.

But mostly we want to focus on some other things that were brought up in the staff report tonight. And, again, I think what we're looking at is addressing those questions that were concerned because, as Clark mentioned, again, the technical stuff we're not going to mix the numbers and make the numbers come up different from what our plan is, from what Land Use Code allows. So, we're trying to really set that context as to why we fit those other things.

MR. PALOMO: Denise, just to give a little context to the neighborhood in the pictures here...you have the upper two right pictures are all one unit connected by breezeways and extensions of...I mean there's actually two carriage homes attached to this particular property. But this is what the NCB is comprised of. There's a side of an apartment complex to the far right, on the bottom left is a home which looks circa 1900 with a carriage house in the back with gabled roofs overlooking each neighbor's back as well as a separate structure for a garage.

MS. WHITE: Thanks Jeff, and I think Jeff is right, so that helps set some of the context here. We understand Code has changed since many of these structures were built, but we're also here to kind of say that this has become the character of the neighborhood that we're in so what we're asking for fits the character of the neighborhood, and we'll get a little more into that in a little bit here.

Again, one of the...you know...different experiences and perspectives really drive interpretation and opinion on what is for the better good. This is a staff...a comment that came up in the staff report which was that they felt that this option was a detriment to the public good, and you know, that is something we actually take great exception to because we feel like we've put a lot of thought into what serves this neighborhood and what serves this area, this zone, not just ourselves...obviously we have a personal interest, but as we said, we appreciate historic resources. We also appreciate being in that...closer to that commercial area, being closer to downtown. So, we really have thought about that and I think, you know, as I mentioned earlier, you know...my background is I've had over 25 years in actual...on the other side of government, being in public engagement and communications, and having gone through planning processes. So, I know in a lot of times when I'm working with different points of view, you know, you realize everybody wants the best solution, we're just differing on how we get there. And so staff has expressed to us in previous meetings that, you know, they really have a job to stick to Code as it's written, and we respect that. They've also shared with us though, and that's kind of what led us with some guidance to start this modification of use process and hearing, is that applicants going through this process and those developing on their property really have a little more wiggle room to maybe contextualize and interpret what character means, what that Code means, even though staff kind of have to stick to that technical definition.

So, what we were going to cover for the rest of the presentation really is tackling a couple of the things that we felt staff brough up in their report that is why they really are recommending denial of our application here, and key, we see, you know, that they say it's a departure from standards for a carriage house in the NCB zone. Clearly when we look just by the numbers, that's true. I mean, we can't, as we said, we can't make magic numbers work here. Our plan has the numbers it has, the Code has the number it has. So, really what we're trying to do is bring forth what we feel is more, again, what staff brought up again as being detrimental to public good or not providing an option that is equally well or better than one that complies. So, again, we feel pretty strongly that this is the best option. There are others available to
us; we will share a couple of those and why we could consider those should we be forced down that road, but that we don't think that those options really serve the better good here for the public.

MR. PALOMO: And, Denise, I'm going to segue into that...it truly was an iterative process. I mean, we considered many possibilities and went back and forth with the architect. We spent a good deal of time and money and truly feel that our proposal is...is the best solution for the neighborhood as well as us.

MS. WHITE: As I said, from the neighborhood, trying to pull it's standards and it's character, as well as for us personally trying to find and build that property that we want to call home and age in...combining historic with that need for some more contemporary use space. So, I know, again, Clark shared the zoning map originally so I've got a couple repeats here, but maybe we can share how we're viewing them a little differently. So, site context...as Clark pointed out and staff have pointed out, we are in that NCB zone. That's part of the zone district for those neighborhood buffers, and so this is kind of a bigger shot of that. One of the things we want to address or look at through a different lens, because when we put in our application initially, we didn't look closely at the Old Town Neighborhood Plans...we looked at it, we just didn't feel it really covered us, so we want to show...or this piece of land, not necessarily us personally, but this neighborhood and this land. So we are going to share, kind of, that interpretation and set some of that context. And you can see right away, in 2017 right there in the Old Town Neighborhood Plan which is pretty new, they clearly say that the Plan is a combined update of two previous neighborhood plans developed in the '80's and that it provides a renewed vision and policy guidance for two neighborhoods. Again, two neighborhoods...and I'm going to emphasize that because when we go to the next slide, you're going to see we're not really those neighborhoods. So, we are a conservation zone, and the Old Town Neighborhood Plan, I might refer to it as the OTNP because it gets to be a mouthful, really was designed and how it's explained in the Plan, to create a lasting value, to support a quality of life, and to help make neighborhoods a great place to live. So, for the neighborhoods, that's awesome. For the buffer zones, that's who we are, we don't really get to have that same quality of life attribute applied to us. Instead what we get is we get to become the neighborhood protectors, we get to be that buffer zone, exactly what it's called, and our job in that zone living there is to make sure that commercial doesn't get over into the neighborhoods so that they can protect their neighborhood character.

So, again we mentioned the two neighborhood plans that merged, and so that's the Westside Neighborhood and the Eastside Neighborhood. You can see the lovely little blue arrow shows you exactly where we're located in the Old Town Neighborhood Plans, and it is just on the inside of that NCB zone. I think it's the Downtown District right next to it, and more than once Jeff and I have laughed about how it might be easier if we had been in the Downtown District by half a block, and I think even City staff have shared with us that, you know, when they looked at this part of the zone, that might have been something that was considered, but it didn't happen, so we now in the NCB zone. Again, this is a block that is designed to transition residential to the more intense commercial land uses. We are on the edges, and so, you know, we kind of feel like we're fringie in this plan, and we'll go a little bit more into that.

And the Plan does include standards to really enhance compatibility between the neighborhoods and the larger buildings or intenser [sic] land uses. And again, as we go through our options and what's already existing in context and the character of the zone and into that buffering neighborhood, we feel that our plan, even though it doesn't necessarily align technically with Land Use Code, fits the spirit of this Plan, of the Old Town Neighborhood Plan, and it aligns nicely with what City Plan is looking to accomplish.
MR. PALOMO: So, and I point here Denise is, I mean we ponder the question, I mean, how do you best preserve a mixed-use section zone. I mean, is that really fostering more residential preservation and development, or is it really allowing for more multi-plex dwellings? So, segue into…

MS. WHITE: And, again, I will add to that, you add additional complexities, again, as I said, we think we're unique and we do think we're unique, so you add to the additional complexities that we're not really fitting into these neighborhoods, we're part of a buffer zone, and we have a historic resources as our primary property. So there's extra context and sensitivities and design that need to be considered when we're looking at anything we do to that property as long as that primary home stands.

MR. PALOMO: And one more point that, I mean, literally 25 feet away you have a quad-plex that is nearly 10,000 square feet that was built in 2013. I mean it's 25 feet away from our home that is a 1910 build, and we've invested quite a bit of money in preserving that as a residential structure. That is how eclectic that block is.

MS. WHITE: So, again, just kind of giving that big shot, and as I said, the quick overview in the beginning also referenced it, but this is that Google Earth shot showing you what that zone looks like and where we are located into it, and it gives you a little more of the landscape architecture around us: mixed buildings, parking lots, apartment buildings, multiple structures on one piece of property due to either duplexes, carriage homes, add-ons, or all of the above actually into it. And you can also see that we are one of the few actual single resident homes still within this context of this NCB. We have two neighbors, one is I believe in the public participation section for today, that's our neighbor to the north, and they have a home similar to ours, also bought around the same time. Unique context, just a little fun fact, is these three homes were actually owned by the same owner previously. He passed away and his family sold all three of these. So, around the same time, we all became homeowners in the same area. As I said, we know his son who lives next door to us in there as an owner-occupied. The property to the south is one that we will bring up again and you also saw it in the packet. That is a home that we have seen a proposed concept for where the current owner is going to demolish that property. So when we're looking at maintaining character and context, we really are one of the few single residences looking to make our space livable as still a single residence as we continue to protect those neighborhoods as part of our job in the NCB zone.

And again, this is just a closer one, we won't stay on this too long. But again, to give you a little context, a little closer, that's our home, those are our blocks…our block and immediate neighbors. So again, as the staff report kind of deferred back to some of the Old Town Plan neighborhood character areas, this just goes back to, again, saying that we are unique, we are not, you know, we are the odd duck, we are the square peg, round hole here, because what you can see is that the Old Town Plan, even though its public participation process encompassed a lot of this area and probably extensively more…I've been part of public process engagement…what you're seeing here is that our NCB zone, which is where we're located, and it's kind of that clear area versus all the colored areas, doesn't even have it's own character area defined for it in the Plan. Our job strictly is to be a buffer zone; we don't even get to have a neighborhood character, which as I said, kind of hurts my feelings because I feel like we are in a neighborhood. And I left the text from this image because this image came right out of the Old Town Neighborhood Plans, because it talks about how the 2013 Eastside/Westside character study identified six distinct character areas comprising the NCL and the NCM zone, but uh-oh, just like everything else, the NCB is missing. I mean, it's not even referenced here.
MR. PALOMO: And, Denise, and hence my question before, again, what do you consider in a proposal when there's no character, right? What are you trying to preserve?

MS. WHITE: So, again, yeah, in terms of location and the site, per this Plan, the surrounding neighborhoods and their character and location are protected. It's really where our house is located in this zone where we're solely there to protect the other neighborhoods and not necessarily be able to develop our own character, which, based on photos and context you've seen, we do have a character. And, even though we're considered a zone, I think we are a neighborhood.

Again, from the Old Town Neighborhood Plan, we have a timeline of these planning facts, and I included this just to show how much time goes by before zoning changes. And I'm sure Jeff will pop in here because he's done a little more research on this that I have. But, you can see that this Eastside/Westside character study and the Old Town Neighborhood Plans were developed out of these plans that were again, in the '80s. But what wasn't mentioned necessarily in these plans is that conservation zoning districts, the thing that we're part of, was developed in the 1990's, so 1991. Again, the property we're talking about is a carriage home, and the carriage house standards were developed in 2004. So, I'm not a math major, I'm more in communications, so I don't even want to do that math on that, but that's like sixteen, twenty some years ago. And so, yes, these neighborhoods were looked at, public participation was brought into it to look at the neighborhoods, and so they developed new standards for those, and yet it still feels like the conservation zoning districts were left out of the process and left unrepresented. Or, again, at worst just didn't matter because we're not really supposed to be a neighborhood, we're supposed to be a buffer zone. And, yes, we've looked through Code; there have been changes to the conservation zoning district and to the carriage house standards in like, minor steps, including what allows us to build a carriage home was a zone change or a change in the Land Use Code last year I think it was that allows smaller properties to allow for a carriage home. We wouldn't have qualified prior to that either.

MR. PALOMO: So, Denise, leave this up here. And on point to this, and I take exception to staff's report on this forum not being appropriate to address zoning code. When do you do so, thirty years from now when another deep dive is taken? I mean look at how much change we've experienced over the last six months let alone thirty years. I mean, that's astounding, right? And to Denise's point, I mean carriage house standards were developed sixteen years ago. I mean how did staff maintain nimbleness to be in front of it as opposed to after it, right, after the fact, reactive where it's too late.

MS. WHITE: And we get that, we get that, because as I said I've worked in planning before, you are reacting, you're hearing voices from the public or concerns and you're trying to react and then be proactive by creating plans. But as we said, when we look at the timelines here, knowing Jeff and I want to age in place here and make this a great property for future generations, we could be dead before the next zoning change happens. So, you know, I'm not looking forward to that…

MR. PALOMO: But appreciating our asset and the character of our home individually, I mean we've spent money and time in preserving it and we want to add value to it, and the amenities that anyone would expect that has the means to purchase a new home and call it their forever home, right? And I think our proposal actually adds that value and will go a long way in helping stabilize the preservation of that primary home.

MS. WHITE: So I kind of talked a lot about what the character and compatibility and what the goals were for the Old Town Neighborhood Plan, and again kind of showed that we were kind of
Peripheral in that plan. As I said, we weren't living in that home at the time when the public planning process went on leading to the Old Town Plan. It does show that, you know, there's appendices that show how robust that outreach really was, and I know how hard it is to listen to the points of view to find something that is kind of a compromise across the whole, but then when you compare the fact that thousands of, or a little over a thousand, public participation and process and surveys for the Old Town Neighborhood Plan, and then for tonight's meeting, for our zone, I think it was 107 notifications went out. It just kind of shows contextually how kind of marginalized we can be because we live in a zone. And, you know, we get it, we picked this house because we liked the vibrancy, we liked what we consider a neighborhood, and we understand it's not a neighborhood, it's a zone, but we still would love some of the opportunity to have it be a neighborhood and create a character in our property and in our development that aligns with what is already there in the zone and what has...what actually matches that.

So, as I said, the Old Town Neighborhood Plan that has been referred to...we didn't heavily rely on it in our initial application because we didn't feel like it super applied to us other than our house happened to fall into it. So then you start to ask like, well, what are we really? Are we a place without real placemaking? Have we been overlooked? And not just us, I mean the whole zone area. Or is it? The City Plan actually calls our area, and gives a little more definition as to what the NCB should be, and you can kind of see the big Structure Plan over here on the right and the close up on the left, but we are a mixed neighborhood. And we're identified in the Land Use Code and in City Plan as being that mixed neighborhood. And so, being in that mixed neighborhood, again, it's a mix of all sorts of things. That's the character of that area. It's residential, it's commercial, it's retail, it's places of worship, it's multi-families, it's single-families, it's carriage homes, it's duplex. So, really when we look around at our neighborhood and see what's there, like what we're proposing fits the context and the character of where we're at. In addition to that, when we're looking back to that greater public good, because we interpret looking at that public good as representing the larger audience of the Old Town Neighborhood Plan, again, we think we, being tasked with being protectors of that, being in a buffer zone, this opportunity exists to kind of create a great, cohesive development which, yes, it doesn't align numbers-wise, but intent, and character, and compatibility, it really does.

MR. PALOMO: And point here that I want to make Denise is, you know, being a protector, what are you protecting? I mean, being a buffer zone...I mean my perception is the Downtown district is mostly commercial and pretty resilient right? I mean, you could plop anything in there and it's going to be a downtown based upon what exists there now. I think a little more sensitive are the residential neighborhoods, right? So we think in terms of protecting the residential neighborhood, and that being what we're actually proposing. I mean, all of our efforts have been preserving that residential home by adding the best proposal that we've considered of all we considered, and I think that will go a long way in maintaining that preservation.

MS. WHITE: The next slide has a bit of graphics in it so it will take just a second to load. There we go. So, again, as Jeff kind of said, how do we protect what's already happened? And so this is just a slide, and I do want to say thank you to Clark because, you know, we do like history, and so another little aside, we found this postcard from we believe the 1925 when we found the print mark on it that we found when we were doing some tearing up old wallpaper in the house, and it's almost pristine. So, you know, it's kind of cool that we have that. And Clark shared with us this map that he had and it was really cool to get, but then we also realized it kind of laid out better than a Google map to show what we're trying to show here. So, appreciate that support again in providing some materials to us.
But you can see here, this is kind of, again, that NCB block area and some of the character that is
developed in it, some of the compatibility that's developed in it. And granted, many of these were done
prior to Code change or they've found ways to get around it, and we'll talk a little bit more about that too.
But just trying to establish when we're talking that the proposal that we are putting out there is not for the
greater good or that it's not compatible, or that there's not something equal...or that it's not equal or better
than what we can do. These are some examples of things we can do...there's a process to each of them,
but these are all examples we can do. So, I'd love to call attention to the property at 629 South Sherman
[sic], that's the blue block right in the middle of the screen there, and that's like a block away from us.
That is a property that has a primary home, that's the front picture you see, the one on the far left. It is
connected to that structure that is right in the middle picture you see...this is all one structure. And then,
in addition to that, it has a third unit on the back which you see on the right. You know, this is something
that already exists in that neighborhood, and I understand in the staff report they call out saying that's not
a good enough reason to change the Code, or give us an exclusion on the Code. But, at the same time,
what we're trying to say is, you know, the forest fire has already gone through here. You know, these are
things that already exist, and we have the ability to do...we'll show in a moment some of the things that
we have also considered that could be backup plans that fit into maybe this as character, but is that for the
better good of the public here?

MR. PALOMO: So, Denise, let me add a point here. I mean, the zones, the Code was established
and you know, they've been modified to some degree over the years, but they were established thirty
years ago, and I think even today we can try to add space and, you know, the aggregate space that we
want, by connecting to the existing historic home. But, we don't want to do that. We think that's an
inferior design, and we've actually considered that. And, you know, we could pursue that. That would be
the easier path to take. But, again, we're adamant that that is an inferior path.

MS. WHITE: As Jeff just said, there are actually a lot of easier paths to take if we didn't want to
really pursue what we feel is the best option for us and for the community, bot the NCB community and
the larger community.

So, just to touch on a couple other ones here because I know we did include a couple in the
application packet. You can see over here, closer to our home, as we talked about that one single
residence at 617, that's our neighbor. You know, staff also graciously provided us an image of what was
a proposed concept. Now, that may not be what the design is right now, but we have been old that this
concept could be allowed. It is permitted via Land Use Code. So, when you look at it, it really is just two
duplexes, but, it's connected by this patio and a roof over it which suddenly makes it a quad-plex. And
what we're saying is, you know, that's not such a bad design, but it also is very different when you're
putting that next to a historic resource. It's just showing that we could do something similar to that, but is
that really for the better good when we have a historic resource on the site.

MR. PALOMO: So, let me speak to this Denise. And again, from an investment standpoint, I
mean this is an investor that obviously owns this property and he wants a return off it. You know, that
might potentially be the easier path, right? You can...I don't know why two duplexes were not allowed
over a quad-plex. I don't know what differentiates them other than, you know, a few hundred dollars of
lumber and shingles connecting them...what the characteristic difference would be from an impact
standpoint. But, you can tell we're genuinely invested in that property to call it our forever home. I
mean, I think that proposed concept looks awesome, just not for a neighbor, a next door neighbor. I think
that contradiction is too substantial personally.
MS. WHITE: And that's permitted via the Land Use Code, so, again, these are things we can also do. We are not taking the easy path, we are taking the one that we truly feel that...we wouldn't be going down this hard of road if we didn't feel that this was the best option, again, that isn't detrimental to public good. We feel those other options could be. And I'll let the other photos kind of speak for themselves there, but these are all things that are in the neighborhood and help define, for lack of having our own neighborhood character defined for us in the Old Town Neighborhood Plans, this is what's defining the character of our little NCB zone.

MR. PALOMO: But Denise, one point...stay there if you can go back. I mean they're really relevant here...I think they highlight the eclecticness [sic] of it. I mean, that center one to the left there, the stucco duplex...I mean that was an add-on to a circa 1900 pretty charming home through a series of breezeways. The one below...I mean it shows the...what appears to be a circa 1900 home in front, and to the right is a duplex. And on the side that you can't see, I mean there's a gabled entranceway that overlooks the one to the right there. But there's three pretty substantial duplexes right next to each other. That is the zone we're in.

MS. WHITE: And again, we understand Code may have changed since these were built; however, again, it's like that ship has sailed. This is the character of this neighborhood now...of this zone. So again, just kind of quickly referring back to the Old Town Neighborhood Plans because we did revisit it seeing it come up in the staff report again. What were we not paying attention to there? And the more we read through it, the more we just realized it actually supports the fact that we really weren't considered. And by we, I don't mean Jeff and I, I just mean those zone districts, in particular this NCB, and perhaps because there's not a lot of owners there...or residents that live there...that they weren't as vocal or didn't feel it impacted them as much, but you know, just because something happened in the past, or just because it wasn't vocalized at the time doesn't mean it's not time to try to steer into a different direction or right the course.

So, in that Plan, you know...or the design guidelines, sorry, this came out of the design guidelines...you know, they looked through these level of context as they're looking at what a development might fit or not fit into that neighborhood, how it's appropriate. And this is, again, aside from Land Use Code, we can't argue the numbers, but you look there on the right and this is kind of the layers it goes through, which is like looking at the neighborhood. In this case their example is a historic neighborhood which can be good because we have a historic resource as our property...they go down to the character study. Again, we don't have a character study in the Old Town Plan. We are a zone and we weren't given a character study other than what we can find in the City Plan.

Next you go to that surrounding context in the block. We have shown you what's in that surrounding context and block. And then the adjacent properties, and we've also talked about those. The one that plans to demolish and build and then our neighbor to the right who I believe is here for public comment, so we'll let him speak for himself, but he has provided us a letter of support saying that he doesn't object to this project.

Also in that plan was this...and I know there's a lot of words and I hate putting a lot of words...people start to read them...on a slide, but this was a vision structure that was shared in there. And so going back to that public participation process and knowing that this Plan was vetted, a lot of that that boiled down to and is shown in this plan is that there were four kind of key areas of concern, or themes, that rose to the top here. And so those were neighborhood character and compatibility, land use and transition areas, sustainability, and then circulation and mobility. Really, you know, those all kind of
broke down into what was in these other categories which are kind of like, what's unique, livable, connected, sustainable. And again, Land Use Code aside, when you look at our proposed project and then you compare it to these kind of categories which are in the Old Town Neighborhood Plan and in the design guidelines, you know, unique...we were looking for unique here. A diversity of building styles, historic context, compatible design, single-family character, landscaping and tree canopy. Like, our design hits all of these buttons. We aren't looking to create a diversity of building styles, we're not looking to do the piecemeal mish-mash non-cohesive design that we've seen in that previous slide where you see the add-on then the triplex added to it. We're looking to preserve that historic context and help keep that integrity intact here in this neighborhood, and to protect the neighborhoods that that's our job to protect.

Compatible design...it's a mish-mash of design, but we do feel like this is a compatible design, both to, like, what the character of the NCB zone is already, as well as a compatible design to the existing structure on the property which is a historic resource. Single-family character; we are one of the few single-family homes left in that area, and we are trying to maintain that by respecting that property with the best preferred option here. Landscaping and tree canopy, again, this option continues to give us some of that urban nature in the city kind of space, a chance for some urban agriculture, as well as just that green space that's between the two structures. Some of our other alternate options will eat into that, we'll kind of give you a quick show of that.

MR. PALOMO: And point to that...I mean we feel righting the path would be best by nurturing and fostering the preservation of some of these circa 1900 homes. But the contradiction in the Code just makes it so challenging to do so. I mean, relative to accessory dwellings in the back, termed carriage homes, a quad-plex has very little to zero constraints to build. There's not height restrictions, there's no footprint restrictions, there's no floor whole square footage restrictions...it's insane. I mean, you could essentially do whatever you want if you demolish that structure that exists on there, versus a carriage home, versus our challenge. I mean, there are so many constraints that were developed sixteen years ago for a carriage home. And mind you, the Code for our zones were established nearly thirty years ago, and all those are, with minor modifications over the years, are still applicable and apply and restrict us from really adding true value in righting the wrong.

MS. WHITE: So, again, just kind of looking at these, and as Jeff kind of said, we're trying to show, again, we know Code...by Code...the numbers are what they are. But, here's where we feel like we fit these other aspects that the City is asking of any property development that's happening within the Old Town Neighborhood Plan or this Neighborhood Conservation Buffer. So, you know, again, livability and sustainability. Connectivity [sic] I'm not going to touch on so much. We are right on a major Transfort path right into the student union center, so we've got connectivity. We have made many friends, even though we don't know all their names, of people who walk by when we're out in the yard, you know, and so we were trying to get some of them to call in today to say, you know, because they're always telling us they love what we're doing with the place, they looked at the development review online. But you know, I don't believe, you know, it's like...they just...they are happy with what we're doing with it, they like the plan, but they're not so opposed to it or whatever that they feel they need to speak up to defend it.

So...sustainable. Again, sustainable here...we're talking from the green and open space in there, but more in that sustainable and keeping in that historic context is the fact that this is a property we're trying to maintain, historic preservation for the historic resource as well as into future generations and
future uses, because we're trying to create the best option that will make someone else invest and keep
this going on in perpetuity.

I'm going to kind of skip over this slide because I did share most of what we were going to speak
to on it in the last slide, but it's just to acknowledge that we have read through the Plan. We are also
trying to listen to the community just as the planners did when they went through that process. But again,
looking through that Plan, you know, it feel like focus was on those neighborhoods, less focus on the
conservation buffers, which really just have a job to do, and that's not to be a neighborhood, it's to be a
protector of the neighborhoods. And, again, pulling from that Plan, these pictures, and I know they're
kind of artistic so you can't quite see all of the details in them...these were pulled from that Plan and they
were all included in the Plan as good examples. And they go to the examples that Jeff and I have already
showed you...that it's a mixed bag. And so, if you're really trying to protect the neighborhoods in the
next zones over, that ship has sailed. And so, this really is the character of the neighborhood that we live
in now and it's the character of the neighborhood that is protecting those other neighborhoods.

So, let's get to that preferred option we keep referring to...just to refresh your memory of what
that looks like. We really are, in this modification request, looking to have what we're calling the
enhanced carriage house. So, it is a carriage house in its main purpose, but it's oversized. And the
oversize is because we are looking to not only have the carriage house, but to have extra living space for
the primary residence. And that's basically, again, to mix what we've been hearing from staff as well as
what you read in the Old Town Neighborhood Plans, is that this is really an area that is 50/50. Fifty
percent of them want nothing touched, they want to maintain the history, and fifty percent are really
looking for, like, development, and moving into the next century. And we feel like this is that best option
that fits those needs. It really is a 50/50 option. We maintain the historic residence and the integrity of it,
and then we build something very compatible to that property...or to that primary structure...that is also
compatible to the neighborhood and the neighborhood character. And it also brings the old back into the
new, because we get to keep that beautiful old structure, but we get to bring some of the new world uses
to it. By new world, I just mean things like art room, hobby space, fitness room, a garage, you know, we
don't have a garage. So, this is to accomplish that. You can see from the site plan, the basic kind of
layout, and you can see the space that weaves between the primary structure and the carriage home. Even
though it's an enhanced carriage home, we still have quite a bit of yard there, and so...again, those
common needs. So, yes, it is sounding oversized, but it's not all just people livable space...730 square
feet of this is for garage, which is a contemporary need and use. So, just kind of going through what the
existing plan is and why. We'll go through next what our other alternate options are and why we think
this is the best.

MR. PALOMO: Denise, let me speak to this a bit here. I mean, it's...you consider it stand-alone,
and, yeah, it exceeds the parameters of what a carriage home is, but truly this is a combination of
otherwise having this parsed out to accommodate not only the features for the front as well as the back. I
mean, garage, 730 square feet, in my opinion, that shouldn't go against allowable livable square feet. I
mean, that's housing two vehicles, a couple motorcycles, and lawn equipment. I mean, 730 square feet...I
mean, that alone, just for storage, chews up 1,000 square feet of what technically is allowable for a
carriage home. I mean, that's insane, that's not current...you know, that's not sustainable. I mean, code
needs to be addressed to accommodate the needs of today, not the needs sixteen to thirty years ago, right?
So, you know, we can parse all this out, and we've considered that possibility, but it is truly an inferior
design; it chews up all the green space in the yard and you get more of the same. Back to you Denise.
MS. WHITE: Thanks…and so, yeah, we've talked about those possible options, and Jeff just
referred to parsing it out, so, you know, of all the options we've looked at, we really truly believe that in
looking through the neighborhood plans, through the buffer zone definitions, through City Plan, and what
the City is trying to achieve, you know, this proposed enhanced carriage house really is equal or better
than our alternatives, and it really is in the best interest of the public good, so it's not detrimental to the
public good.

And so, we have four options on the table…there's actually five options; the fifth option would be
leave the structure just as it is and not do any development on it, but that doesn't meet our needs, so that is
off the table. The rest of these options we maintain, and we considered them, but they are back-up plans.
Really, we feel like we have presented the best option. So, some of these other options include adding to
the primary home, and remember that primary home is a historic resource. So, in talking with Maren, the
Senior Historic Preservation Planner with the City, you know, she's given us some parameters and some
information on how this could be done, and it is a process, and there are concerns with diminishing or
damaging that primary home which is the historic resource, and there's limitations into kind of how it can be
done. Like, one of these options is this hyphen, so that's kind of what we did there, which is like a just
out connection between the back of the house to addition, the next construction.

MR. PALOMO: And, Denise, let me chime in here. I mean, and we've illustrated examples of
that, and that's actually predominant and proliferated throughout this zone in those few blocks, and you
know, I don't think anyone would agree that that is a great design.

MS. WHITE: And it doesn't feel compatible, if you're trying to protect those other
neighborhoods, it doesn't feel compatible to those other designs. But, it is an option…it is an option.

MR. PALOMO: And the option you spoke to before of doing nothing, I mean it still leaves that
historic home vulnerable to, you know, someone that, beyond us, that acknowledges it doesn't meet their,
you know, current livable standards from a space standpoint and a feature and amenities standpoint. So,
you know, there's a lot of yard there. So, so yeah, that's not an option.

MS. WHITE: Yeah; it also leaves that property vulnerable to not existing. Because, in addition
to…it's like looking at our neighbor to the south, you know, they bought that property to demolish that
home to build from scratch what they wanted to do, which is another one of our options. I'll jump ahead
to that. You know, I know in the staff report it says we cannot demolish existing structures; however, you
know, through email exchanges and clarification, we do believe we can. It does…it is a process just like
we're going through right now; it's a different type of process. But, we can, and it actually could be easier
than what we're doing right now because it doesn't trigger other codes or other surveys that have to go on.
And so, yeah, it is not…I think staff represented the resources as being historic landmark or designated
landmark, it is not, it is a historic resource. We, down the road, may consider trying to get it landmarked,
but we've also found through this process we have enough hurdles and hoops to get through that if we
added another hurdle or hoop for ourselves, we could actually hurt our process and our intent of trying to
maintain this main primary structure which is a historic resource, but it is an option on the table.

A couple of the other ones, and Jeff referred to them a little earlier, is we can add more structures
to the property. We can do two carriage homes, smaller in size. We could do a carriage home and an
accessory dwelling unit, or we could do a carriage home, an accessory dwelling unit, and a shed. So, you
know, code allows us to do a lot of things. Again, working through processes, but more allowable than
what we're trying to do right now. We are not taking the easy path; we are trying to do this, even though
it's hard, because we think it is the best option for everyone.

And finally, you've seen some of them; we could develop a duplex. That was actually one of the
first courses we went down and paths we went down. You know, and both that, as well as perhaps two
carriage homes, requires additional infrastructure, and so that's why we went back to one solo structure;
however, that is an avenue available to us.

So, just wanted to kind of give you a quick view of what one of those alternates might look like.
So, you saw our original plan which is one larger carriage home which doesn't eat up too much of the
yard space, which fits into kind of that 50/50 old/new kind of feel of the neighborhood and respects the
character and our neighbors on that.

This would be another alternate option; probably if we get denied on this first one, this could be
the path we go down next, and it's building two smaller carriage homes, which is not our intent, it's not
our desire because it does eat up a lot of space. But, it would serve our purposes better than just doing a
carriage home and a shed for garage stuff because, again, as I said, we have additional needs for fitness
and some art space and both of those require some plumbing, and if we have to put plumbing in, we have
to go through a different review process and have infrastructure put in, and if we're going to put all that
infrastructure in, rather than twenty years from now, or ten years from now, go, oh, let's try to turn that
into a carriage house and be caught by land code use then, we would probably look to our future and say,
let's get it done now and just make sure that we can have it even though we don't need it now, in case we
need it in the future or a future owner does.

MR. PALOMO: And, let me speak to this. And, it's sad, because, you know, we're being…one of
the issues is a gable to the side yards. We'd have to address that in this as well to a dormer configuration,
but pretty doable. But again, contrasting that to a quad-plex, or two duplexes connected by a breezeway,
or a few hundred dollars in lumber and shingles…they're not governed by that. It's a sad omission in the
Code. So, you know, staff's standing behind the position that, you know, this allows you to overlook the
neighbor's yard…it's not a consideration for multi-family units.

MS. WHITE: And, as I said, Jeff and I have talked about how we think that this is kind of crazy,
that something like this would be allowed. And I believe even staff have told us in one meeting that, you
know, it probably is something that was overlooked because when they were doing the Old Town
Neighborhood Plans, nobody thought about this scenario. And so, again, it just speaks to the point that
like, code, just by it's nature, is always a step behind, it's always a step behind. And so we're trying to
move forward, and as I said, marry that contemporary with the historic on this. So, you've kind of seen
what we think is a viable option should we not be able to move ahead with our preferred option, but this
also just feeds into more of that clutter, or what we feel like when the neighborhood plans groups, the Old
Town Neighborhood Plans groups, were giving their public feedback, this is probably more of what they
were concerned with than a single structure that might be a little oversized.

So, we'll go back to that one just so you can kind of see, again, what we're putting forth. And we
hope we've really made the case here that this option truly is equally good or better than other options that
would comply, and that it truly is in the best interest of everyone's good, the public good, our good, the
Neighborhood Conservation Buffer and doing our job, because we do think that of all the options
available to us…if our job in the Neighborhood Conservation Buffer zone is to kind of protect those
neighborhoods on the other side, this one feels like it has the most character and compatibility to some of
those single family homes, or other options that we see in those neighborhoods. And I'll let Jeff talk for
a moment, see if he has anything else to say in conclusion.

MR. PALOMO: Well, a couple other things...a concern from staff is the back structure should
appear subordinate to the primary. You know, from the front, even on the sidewalk, you truly cannot see
beyond the primary structure. This would be virtually non-visible from anyone walking down or driving
down the front. And for two, I mean this is a combination of value, not only into itself, but it adds value
to that front. I mean, again, these old homes which have plenty of character don't have amenities that are
expected by consumers today, and that is, you know, garage space, garage space...and again, to reiterate
that point, 730 square feet of this structure is garage, is for storage, is protecting vehicles from the
elements. And...I'm sorry?

MS. WHITE: Is that about it?

MR. PALOMO: Well, actually, one other point here. And one other thing I want to take
exception to in the staff report is, there's a statement in there that mentions, should we be successful in
getting approval for our application, that we've convinced you guys, and hopefully we do get approval on
this, but they reserve the right to reduce the square footage based upon design and concept. This is our
design, this is our concept. I mean, that would deem this meeting, this whole process, a complete charade
and irrelevant to that if they're permitted to reduce the size. I mean, we've reduced this, you know, in a
responsible, respectful way of the primary structure, and complete consideration into the neighborhood
and really establishing character that we think would bode best for encouraging preservation of other
circa 1900 homes in the neighborhood. And I think that is truly the bulk of them; I mean some of them
are in disrepair, but some of them have great bones and this might encourage a preservation perspective as
opposed to a tear down and putting up a quad-plex perspective. And, with that, I turn it over to Denise.

MS. WHITE: Yeah, I think that's it. That's all we've got to present in addition to what was
presented in the original packet. So, I will stop screen sharing now and go into mute. I think it goes to
staff, but, as I said, we weren't one hundred percent sure of the flow, so if you do have questions that
we're able to respond to now, we are open for those too, but I will stop sharing my screen now.

MS. STRAND: Thanks Denise. I actually jotted quite a few questions down, but I think that it
would be most effective and efficient for Clark to do his presentation, and then I will throw my questions
out there, because perhaps some will be answered, but thank you for that.

MR. MAPES: Alright, thank you for that presentation. I think everyone can see why staff, over
the last I'm not sure how many months, six or more months, has explored this so far in depth, and I'll say
I think more in-depth examination of all those issues in the NCB zoning district than have ever come up
before. There's a lot of first-time topics that we've discussed with the applicants in this whole process,
one definite example being the idea of two carriage houses. It's true, that was just...there's nothing in the
zone that prohibits that, but it was never even contemplated as a possibility. That's just one example.

This would be kind of repetitive, I think, to what the applicants have presented, but this is...so, to
be clear, this is looking east over the rear yard of the property. You see the property outlined there...so
typically you might have the imagery with north to the top, but here it's looking east so that you can see
the property from the rear yard. And this shows you the whole block...doesn't go quite as far to the right
as where Laurel Street is, but Laurel Street fronts those large buildings that you see right there. And these
are properties where larger buildings have been built...either the houses removed or larger buildings built
in the rear yards of what formerly was the original, you know, modest houses on large lots. I think the applicants have covered this whole idea pretty well, but that's available for us. And then here we are with another view looking the opposite way, west, over the front yard. You see the property there. It's just to give a sense of how this property and its yard, you know, fits in the context of the block. If there's any detailed questions or discussions, we can come back to this and identify specific properties and so on. And again, I understand that in the last few days we have received comments, or you know, communications of support from the neighbors on both sides of this lot regarding, you know, the impacts on the rear yards that could be introduced if this were to happen.

On the modification, the staff report explains the criteria that govern modifications. The decision maker can grant the modification only if it finds that it not be detrimental to the public good and that it meets one of these four criteria. I want to speak to the not detrimental to the public good. I want to be candid here in saying that all through the discussions we've had over the months, staff has...and it's not just me as the staff planner, I've discussed this with all of our planning staff...and we've been struggling whether to find that this is in some way as good or better as a plan that would comply with the carriage house standards, or maybe it be closer to the 1,000 square feet of floor area and so on, and the 600 square foot footprint, and the thirteen foot eave height. In the staff report when I mentioned a finding that it would be detrimental to the public good, that part of it has not had much thought. And I would retract that part of it. I think staff's main finding involves that criterion one that, when you compare this carriage house to a carriage house that complies with those much more limited size and height limits, staff just simply was not able to make a finding that that was the case, that it was as good or better in that regard. But, if I can do that here...never done this before, but there wasn't much thought, if any, given to...it was kind of a rote aspect of finding that staff was going to recommend denial of the request...but, the detrimental to the public good part, I would not have been able to explain a strong, or a clear, finding in support of that.

So, with that...also...on the modification, you've seen enough of the...

MS. STRAND: I'm sorry, Clark, can I just interrupt real quick? You just said that you would have difficulty finding support for a finding that it's not detrimental to the...there's a lot of cross negatives so I just want to be clear. So, are you saying that you would have difficulty not finding that that criterion was met? If you were to...it's staff's recommendation that this alternative that's being proposed is not detrimental to the public good? I just want to be clear on what staff's finding is on that piece.

MR. MAPES: I would have difficulty finding that it would be detrimental to the public good, which is what the staff report says. And I could explain why, you know, I didn't consider that very much. Usually these things go together, whether it's in support or denial of a modification. Usually...that's another first that I've ever seen...that I think there is a difference in this case between the detrimental to the public good and then one of the criteria. To approve a modification, there has to be a finding for both, that it not be detrimental to the public good and that it meets one of these criteria. And staff's entire review has been really based on the criterion one, and really not on any discussion of whether and how it would be detrimental to the public good. So, the finding would be the same, that staff does not find that it is...that it meets criterion one, even though I would retract the finding in the staff report that says that it would be detrimental to the public good.

MS. STRAND: Okay, thanks for the clarification. Go on.
MR. MAPES: Yeah…I don't think it would be detrimental to the public good because of the… for a whole number of reasons. So… I think you've seen enough of the plans for the modification. This shows the size, the footprint, you know… larger than the existing home and so forth, as explained in the staff report. It's that magnitude of exceeding the written stated standards that staff has struggled with as far as finding support. Here, the lower elevation here shows you the wall height exceeding 13 feet, in fact, you know, by quite a bit, where the left gable is just a wall, a straight up wall that far exceeds 13 feet. The right gable you see here would be a dormered feature that occupies more than 25% of the wall length. So those are size limits that would require modifications. And this is just the other side, looking at the top elevation here, the north elevation where, again, there is wall height in excess of 13 feet, as specifically intended to not occur under the limits, and then a dormer feature... this is actually recessed back but, it would be considered a dormer feature and that would be limited to no more than 25% of the wall length, and it would exceed that. So, those are, again, it's just the numbers that we've talked about.

Staff's findings, as stated in the staff report, again, this detrimental to the public good… that was kind of a rote statement that I put in there without giving it much thought, because typically, as I said, that normally goes hand in hand with whatever finding is made on these other criteria.

I don't know… I guess I can read through these. I'll try to summarize a little bit, but the point is, with staff's finding, that the limits that are in the Code are very specific, limiting total size and the height of side walls. It's been acknowledged that those are based on extensive public processes; they represent compromise. There are people throughout the Old Town neighborhoods who even feel that the standards that exist are too lenient, but you know, these represent a compromise. But among those who feel that the standards are too lenient, there's some strong sentiment that the least the City can do is follow our own zoning standards. I have been involved in a lot of those past processes and they do involve other parts of the Old Town neighborhoods, mostly... the vast majority of the concerns and issues are in other parts of the Old Town neighborhoods that are more intact with their original historic pattern of modest houses, or even small houses, with yards around them and so on. So, staff agrees that this is a unique situation. This area of NCB zoning next to CSU is unique, and it's unique among the Old Town neighborhoods in general, the larger Old Town neighborhoods.

But that first finding there that the scale and those walls would introduce visual and privacy impacts that are specifically intended to be avoided. The impacts would be on the neighbors on either side, and again, you've got information, comments, from those neighbors on both sides that we've gotten today, and I think yesterday or Friday. And we appreciate hearing from that, but... so that could be a consideration. The standards that are in the Code have a general overall part of their vision, I guess, behind them, that they would be subordinate to the original houses, kind of more like the pattern that was the original historic pattern in the neighborhoods that people are concerned is threatened by redevelopment and larger construction in the rear yards. Again, that really is more pertinent in other parts of these Old Town neighborhoods.

Staff's finding is based on comparing the proposal not to the other things that could be done on the property, such as removing the house and building an apartment building, but comparing it to the purpose of the standard and comparing it to a plan that would have a carriage house, again, of the size that complies with the standard. And also, just acknowledging that also comparing it to past development isn't something that staff can really base a finding on, because in fact some of the... well, the zoning in these neighborhoods and the carriage house standards were done in response to some of that past development, so it's not a reason to find that we could continue to do those things. Again, all of those provisions in the zone and regarding carriage houses were done more with other areas in mind.
Staff...okay...this is my last slide. Staff acknowledges the points in the application. The original context...in fact the original development of this block and this whole area has changed dramatically over the years. And we understand the applicants' contention that the larger carriage house would be as good or better than some of the other kinds of development that could be done here, but again, that's not the way staff ended up...didn't base our recommendation on that, based more on comparing it to, as I said, to a carriage house that does meet the standards.

I mentioned this is the first time that staff has encountered, at least at this level, some of the contradictions in the zoning. Staff, I can tell you, is thinking that we do need to revisit this NCB zoning. There's a number of issues that you've heard some of tonight, that I don't think...it's not just me, again, the Planning staff, is seeing that the standards and the limits and so forth may not be consistent with the purpose of the zoning or neighborhood character conservation.

So, with that, that's my presentation. Oh, there were a few points, kind of some specific points, to respond to the applicants' presentation. One, as far as the property being a landmark, my understanding is that it's been found to be eligible as designation as a historic landmark, but staff has not ever said that it is a historic landmark. But the fact that it's eligible for designation makes it a historic resource and subject to Land Use Code limits for that. Very, very semantic point, but staff's...the staff report says that the ability to demolish an eligible historic resource like that is limited. The staff report didn't say that it's prohibited, but it's pretty strictly limited, and the process to do that is a difficult one...just semantics really.

There is the idea of a duplex, I think, a duplex in the rear yard, which was the first conceptual proposal, and that actually is something that's just directly not permitted in the list of permitted uses in the zoning. Again, a minor point, but to the extent that if the applicants feel that one of their options is to go back to the idea of a duplex in the rear yard, that's not permitted. One of the things that staff has realized, I think here for the first time, is the contradiction in the fact that a duplex could be put in the rear yard behind the street-facing house if it was connected by a roof. So, again, that's something that we just hadn't seen prior to the conceptual review for the property next door, and that's an obvious contradiction that doesn't make sense in the zoning.

And then, finally, if the modifications were to be approved here, the staff report just wanted to make sure that everyone understands that that doesn't represent approval of a development plan to build the carriage house. If the modifications are approved here, then the applicants can submit a development plan, and they can submit those very plans that we're looking at, but they would go through the development review process, and the particular difference there, from the review that's been done regarding the modification so far, is that it would go before the Landmark Preservation Commission which would be looking at the design compatibility of the proposal. And the staff report just kind of has a, sort of, caveat, or warning in there that if the LPC, or staff, in our review were to find that it's violating other provisions of the Code for design compatibility, this approval of this modification wouldn't just override any further review and enable that to be built as it is. So, with those points, I will stop sharing and see how we want to move on next. Thank you.

MS. STRAND: Thank you...a lot of information. It sounds like there's some text amendments that may be needed at some point in the near future. But, I do have a number of questions, and they're going to be scattered. And I think...so I apologize if they seem to jump around, but I'd like to have staff answer them first and then the applicant can respond and provide their take on it. So, I may have to pause a couple times as I try to read my scribbles.
The first thing I want to understand, and both presentations have spoken to this, but I’m not entirely clear on it, is a clear understanding of what the alternatives are. And I’m focused on the standards that I have to make a decision by. And both staff and the applicant have focused on one of the four, kind of, alternatives, for the granting of a modification, and that’s the equally or better. So, you know, that language says the plan as submitted will promote the general purpose of the standard for which the modification is requested. So, there are one, two, three, four, five, different modifications that are being requested…equally well or better than a plan which complies with those standards. So, I know that that’s more narrow probably than what folks would like, but I do feel I am somewhat constrained to that criterion in what I am able to move forward.

So, what I want to understand is that, assuming the 1910 home stays, what can, or can’t be allowed in the rear, and what is the kind of comparative analysis of those massing components. Because these standards that we’re seeking a modification to are really building footprint, floor area, height of the eave, dormers…they all kind of go to that massing and, you know, whether or not there is a kind of privacy issue with adjacent properties. So, we talked about a duplex. So, a duplex in the rear yard, from what you just said, is not permitted, but perhaps would be permitted if it was connected in some way. So, can you just go through, Clark, if we keep the 1910 house, these are the options. And I like a kind of massing comparison because of that standard.

MR. MAPES: So, there could be…if you find the point going from front to back in the lot where you find the rear half of the lot…within the rear half of the lot, there could be 1,583 square feet divided up among carriage houses that are limited to 1,000 square feet, other accessory buildings, think garage or shed, limited to 600 square feet. So, any combination of carriage houses and other garages or sheds, with carriage houses not exceeding 1,000 and sheds not exceeding 600. So like one carriage house and one shed, you’d have 1,600 square feet…

MS. STRAND: Minus seventeen, because it's 1,583.

MR. MAPES: So, 1,000 and 600…so there's 1,600…so just in the rear half, that would exceed the 1,583, but that's pretty close.

MS. STRAND: Right.

MR. MAPES: If it was possible for part of the carriage house or one of the sheds to overlap into the front half, then, you know, there could be additional square footage permitted.

MS. STRAND: So, in what context would it be allowed to cross over that middle mark?

MR. MAPES: Okay…there's nothing that requires that these things be built in the rear half…

MS. STRAND: Oh, I see.

MR. MAPES: And so, the lot itself also would have a total square footage allowance. I don’t have that total in front of me…you know that actually has never come up, but I could easily find it if we want. But the lot itself, the overall lot, also has a total square footage limit. So, as long as they’re within the total square footage limit for the lot, whatever it is, and 1,583 square feet in the rear half of the lot, then they could do an addition to the house, they can have a combination of additions to the house and those other accessory buildings I mentioned, the carriage house, garages and sheds…so that's what they

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could do. They could add on to the house and build these other buildings within those overall floor area limits, and with the accessory buildings, carriage house and other accessory buildings limited to those sizes.

MS. STRAND: So, I guess…

MR. MAPES: Now, to the extent that there is a possible way for this owner or some future owner to demolish that historic resource, then one of the alternatives would be a multi-family building…it wouldn’t even have to be limited to a four-plex, a multi-family building with its parking lot, as long as it complied with these floor area limits. The total for the lot, whatever it is, and then the 1,583 in the rear half. The building that is two door down, the four-plex that you saw some photos of…

MS. STRAND: That’s proposed, that is in concept plan?

MR. MAPES: No, two doors down is a four-plex that is built where a house was removed. And there is a four-plex…largest building in this row of little houses. The…next door to the south is the image you saw with essentially two duplexes connected by a roof. And in fact, that’s a bit ironic that this applicant started requested a duplex in the rear yard, was told the Code doesn’t permit that…and that was around the time that this conceptual review came in for the property next door in which they would scrape the house, remove the house, build two duplexes, one behind the other, but have it be permitted by connecting them with a roof that forms kind of a little courtyard between them. So, that’s one of the, sort of contradictions that you’ve heard about. So, that’s next door…two doors down is the four-plex. That four-plex, if it was possible to fit the floor area and the parking, that four-plex could have been probably more. The limit there is 24 units per acre, so I don’t know what the density per acre is on that four-plex, but if it’s possible to get more than four units, multi-family buildings are permitted.

MS. STRAND: For the house where there is the four-plex, was it a…eligible for designation?

MR. MAPES: No.

MS. STRAND: No; so they are distinguishable in that regard.

MR. MAPES: And likewise, the house next door that came to conceptual review, which was…you know, is being proposed…that owner does indeed intend to remove it and build the two duplexes. Whether they come in with that very contemporary, modern design that you saw would have to be, you know, that would have to go through the design review process, and it doesn’t look likely that that could come in just the way they designed it, but I don’t know yet. That would have to…

MS. STRAND: For the concept one, I think I missed it, is that eligible for designation?

MR. MAPES: That was my point, no, that one is not.

MS. STRAND: Neither of them are? Okay.

MR. MAPES: None of these…you know, we're not seeing any proposals for demolishing eligible houses.

MS. STRAND: Okay. So, you know, to my initial question, you know, I guess the point of my question is that when you talk about what can go in the rear yard, is there a contradiction with respect to,
MR. MAPES: The only way a duplex could be put in the rear...well, behind the street-facing house, is if it was connected to the...

MS. STRAND: Right, and so let's assume it's connected, let's assume it's allowed...because, again, these standards go to...mostly go to massing and height. So, you couldn't have something bigger that would be allowed than what's allowed for a carriage house because these rear lot requirements apply regardless of if it's a carriage house, and accessory building...

MR. MAPES: I see...

MS. STRAND: That's my question.

MR. MAPES: Actually, no, the total floor area limits would be the same, but the wall height, side wall height, would not. So, that's the main thing. But, a duplex attached to the main house that was going to maximize its floor area could be any mass, subject to design review, but any mass that doesn't violate the total floor area limits for the whole lot or for the rear half.

MS. STRAND: Right.

MR. MAPES: So, there's a kind of a fine, almost a semantic point in the Code...the duplex that's not permitted in the rear yard, it's not permitted to be behind the street-facing house. So, that's a little different than the floor area limits on the rear fifty percent of the lot...it's all related, it all overlaps, but...

MS. STRAND: Go ahead Jeff...

MR. PALOMO: I'm sorry; I just want to see if you see my hand raised?

MS. STRAND: I saw you light up, so...

MR. PALOMO: Okay...so, that was the initial concept submitted and included in the documents that Clark submitted to you, or remitted to you, were the staff findings on that initial concept, so he speaks to it there...there's written review. And, to my understanding, Clark, it's not permitted by Code, but there's a process to, much like this, to go through an approval for it.

MR. MAPES: The addition of a permitted use...right. So, a duplex behind the street-facing house is not a permitted use, but like everything in the Code, there is a procedure for that, and that would be...another process called the addition of a permitted use...so that is true. There'd even be a way to propose a duplex behind the street-facing house, that's correct. Thank you.

MR. PALOMO: Yep, and a couple other points here. And, to answer some of your questions, and my understanding, and correct me if I'm wrong Clark, but, both Denise and I have spent a lot of time going through Code, and my understanding is, and this is illustrated on some of the pictures that we've also provided Lori, that if you connect a back structure with a breezeway, you're not governed by the constraints that govern a carriage house...it's part of the primary structure. Now...

MR. MAPES: Correct.
MR. PALOMO: Yeah...so all the concerns on eave height, on total height of the structure, on
square footage...I mean, you're governed by the primary, and, relative to the size of the lot. And, you
know, we see illustration there, and we provided a couple and spoke to it...I mean, I think the most
flagrant one that...is the one...I think it's 617 Sherwood. But, they've added a couple breezeways...and
all these homes appear to be circa 1900 homes. Nothing looks new other than that quad-plex. And I don't
know if back then, Code dictated that they actually had to have a landmark study done. And Clark, you
would know more so that I, but just from a design and a conceptual compatibility standpoint, I mean you
have a pretty much square block of stucco connected by breezeway to a circa 1900 home, and I think the
total square footage excluding basement is over 3,300 square feet, and I think that lot size is the same. In
fact, I think on this whole NCB, all of them are 9,500 square feet.

MR. MAPES: Yeah, it's correct; your essential point is correct. Carriage houses have these
specific, special size limits that don't pertain to the other things that are permitted in the zone and
that...staff finds...and I don't even think anyone could disagree, that that needs to be revisited. The
carriage house standards make a lot more sense in the intact, other character areas that the Plan...you
know, the Old Town Neighborhoods Plan, identifies, where there really is that original pattern more
intact. So, the intention for those...even the original intention for those could be revisited for a number of
other reasons, so your points about the Code needing some attention, staff agrees with. And, you're right,
carriage houses have limits that don't pertain to other kinds of things that could be done. That's in the
zoning...for historic resources, there's still design standards, design compatibility standards, that would
affect just jumping straight ahead to, you know, maximizing all the numbers.

MR. PALOMO: Yeah, and to that point, Lori, and we spoke to it, I mean this isn't the easiest of
all the paths we could have chosen, but, you know, our argument is it is the best path and there's a lot of
added value not only to us, but to preservation of that front property, as well as, you know, fostering, you
know, some like development in the neighborhood as opposed to the idea of scraping and erecting
multiplexes, right? So, yeah...we certainly chose the harder path, but it is genuinely, in our opinion, and
we hope we've convinced you, that it is the best.

MS. STRAND: Well, I have some more questions, and we still have a lone member of the public,
so, I'm going to try to go through them a little more quickly. But, you know, preservation of the front
property seems to be, you know, a big grounds for why this is equally well or better. So, I'd like Maren to
just quickly confirm what's been said, that this property is eligible, and so were a request for demolition to
be submitted, you know, what's the process? And you know, is this saving this property? I mean, it
sounds like it's a difficult process, but maybe you can just speak a little bit to what's been said.

MS. MAREN BZDEK: Yeah, the process for demolition of a historic resource that meets our
Code requirements for significance and integrity is different under the Land Use Code versus replacing an
existing single-family building with another single-family use. So, that would be the only reasonably
easy route forward. It still includes...

MS. STRAND: Single-family to single-family?

MS. BZDEK: Single-family to single-family. There is an exception to that process; we do have a
demolition posting process and members of the public could potentially come forward and propose a non-
consensual landmark designation and if Council were approve that, that would prevent demolition in that
circumstance, but that's the only thing that would prevent it other than not having plans that would meet
building permit requirements for a new single-family structure.
MS. STRAND: So, if they wanted to propose a new single-family structure or a duplex, because we're talking about razing the whole lot, what's the process in that context?

MS. BZDEK: The duplex would happen as a change of use under the Land Use Code, and that would be reviewed just as this proposal is. And so, the Code is much stricter in that regard. Any change of use requires essentially adaptive reuse of the historic resource because simply, the way the Code is written is, that identified historic resource on the development site, any treatment of it has to meet the Secretary of Interior standards, and demolition, in and of itself, doesn't meet those standards.

The other thing that I think is important to understand for any change of use considerations is carriage house versus addition...you know it's been said that, you know, in some ways a carriage house would be...or can, and should be, easier...and certainly in the regard of the Secretary of Interior standards, it is, because once you start putting an addition on to a historic resource, you're following, under our Code, the Secretary of Interior standards for changing that historic resource, which is a more rigorous, you know, examination, than adding new construction to the site. There are similarities there, but you're not impacting the structure itself with the new construction as you are with an addition. So, you know, the other example that was given of the property on Sherwood, yes, was done before the adaptive reuse requirement was in place that required the identification of historic resources on the development site, and their retention were they to be established. The other thing that would have happened, if that were to come through today, is that those...that additional square footage added on to those existing homes, presuming they were in that particular case considered a historic resource, would have to meet the Secretary of Interior standards, which that particular project would be unlikely to be able to prove.

MS. STRAND: Okay, so that just pre-exists these standards, so, again, okay. Alright, thank you. I may need you again.

Okay, I'm going to look again, quickly, through my notes. Alright, I have lots of scribbles so I'm going to read them…

So, one question I have...again, the struggle I have is I think the same struggle that staff has already communicated, that I think there's an acknowledgement that there are issues here, but whether this meets the standard that I'm obligated to apply in making a decision is frankly what I'm struggling with, so I just have a question which really doesn't go to my decision, but it is in terms of, has this been considered. You are a couple blocks from the Downtown zone district, and I think that I read in the applicants' materials that there is this redevelopment that's gone on, and there are these changed circumstances. I mean, these are all the terms and plan-based, you know, changes that tend to support a rezoning. And, obviously, you're in the middle. You've got, you know, properties to the east of you, but only a block to the east of you. I mean, would this be allowed in the Downtown zone district I guess is a question I have. And, if this...this has even been explored, and maybe it's more my curiosity, but it sounds like there's a bunch of planning-type folks that are both on the applicants' side and the staff side, so, what do you think Clark?

MR. MAPES: The Downtown zone permits...I will say almost anything. Not industrial uses, not truck stops, but any kind of residential, commercial...possibly with the exception of listing single-family detached dwellings. I can look real quick and check and see.

MS. STRAND: I mean, it doesn't...yeah…
MR. MAPES: If the Downtown zone does not list single-family detached dwellings as a use, it
would only be because it would have been considered moot for development in the downtown. But, the
downtown is very permissive of all kinds of commercial, residential, mixed-use kinds of uses. To your
question…like, whether this could or should have been included in the Downtown zone, I don't think so.
The Downtown zone, and it has various sub-districts, this would be in the Campus North subdistrict, but
they list the permitted uses, and like I said, it's all kinds of commercial uses. But, I have come to realize
over the last six or more months that at least this particular bit of NCB zoning needs some kind of tailored
character area-based examination to address the fact that, for an investor, there is kind of an incentive to
demolish the existing little houses along the street in order to get your square footage as opposed to
keeping the small original houses along the street and getting your additional square footage in the rear
yard, which changes the character of the neighborhood much less than demolishing the little houses does.

So, anyway, Downtown zone wouldn't be right just because of all the permitted uses that are
listed, but if this was in the Downtown zone, I would think it would be permitted unless it's just not
listed…

MS. STRAND: I did have a use question too. So…and I know we're not reviewing the plans
tonight specifically, but…so, the front property is a single-family detached, the rear property is detached
and is clearly another dwelling unit, but it's attached to an additional accessory use with habitable space
that's accessory to the primary…the principal structure up front. Is there a use issue? Because you
have…I mean, is this really a mixed-use dwelling because there's two uses in the structure?

MR. MAPES: The carriage house?

MS. STRAND: Yeah.

MR. MAPES: No, the carriage house is a single-family detached dwelling behind the street-
-facing single-family detached dwelling.

MS. STRAND: But looking at the plans, the accessory use space that has the art, the hobby, the
garage…it's not…they can't access one another. So, there's two different uses in the one structure. And
Jeff, correct me if I'm wrong, I don't think that the hobby, or the two-car garage, or the basement space
that I think is intended for the 1910 space owners to use is accessible to the actual dwelling unit space, so
it's…

MR. PALOMO: So, Lori, the reason we pursued a carriage home is because we truly want an
accessory building that is part of the primary structure, and our intended use is for not only the stand-
alone dwelling for family, friends, and potentially income in the future, but those hobby rooms and art
rooms are intended for use for the primary…and that's one of the reasons we didn't pursue a duplex. I
mean, it's a similar hearing to this, but we know that was an option, but our intent is not to get return on
our investment purely on that, and we don't want it really separated, autonomous from that primary
structure. The intent is to call that the forever home with the amenities that we could otherwise afford in
a new home somewhere else, but you know, we love that neighborhood and walkability to everything that
we cherish is there, so that's why we're making the investment.

MR. MAPES: I think I should chime in here. So, there's kind of some land use planning
semantics here. When we think about the use and the classification of the use is based on that building
being a single-family detached dwelling, and whether those rooms are used by the owner or a tenant or
anything else, you know, what goes on inside of that dwelling we...it doesn't affect the use of it as a
single-family detached dwelling. And, they did provide floorplans, but the wall that kind of divides parts
of this dwelling doesn't change the land use classification of it as simply a single-family detached
dwelling. It's one building, and that building is a single-family detached dwelling. And, to the extent that
the dwelling has rooms, sort of accessory to the dwelling, that would be used by the front house and not
the rear...that kind of stuff we just don't even get into, we don't even know...we being the City. The City
doesn't even know, really, what goes on in those rooms. Art, hobbies, carpentry…

MS. STRAND: Yeah, it was an unusual layout…

MR. MAPES: It is...that's part of...there are a number of unprecedented aspects to this and, you
know, it's got...what makes it one dwelling unit is the fact that it has one kitchen.

MS. STRAND: Right.

MR. MAPES: We happen to get floorplans; I see three bathrooms, something like an art room,
hobby room, knitting room, carpentry room...but we just don’t…

MS. STRAND: It's a unique layout where it's two different...spaces…

MR. PALOMO: Can I speak to that?

MR. MAPES: But we just don't...there just isn't anything…

MS. STRAND: Jeff, I don't think...like I said...I don't think it's necessary; I just wanted to hear if
it was a use issue, and I'm hearing that there's not a use issue.

MR. PALOMO: I mean, we considered; we'd probably comply with one carriage house in the
back other than, you know, maybe garage storage for the front, and that unique layout in the front of that,
I mean, we can propose at attachment to the primary structure, but we want to keep that primary structure
intact.

MS. STRAND: Like I said, it sounds like Clark said there isn't a use issue, so that was my
question.

MR. MAPES: To thoroughly answer your question, it crossed my mind whether staff would
somehow insist that there be a doorway between what appears to be the dwelling unit and the other parts,
but we just don't have anything that gets to that level of detail.

MS. STRAND: Fair enough...okay, I'm just going down my questions. Okay, I do think that
those are my questions right now. I'm going to let...open up public comment, and then we'll go back with
more questions if I scan through my notes and see that there's more there. So, it's 7:32 PM; I'm going to
open up the public comment period and ask Leslie, are there any hands raised? I don't see any, but it may
just be I don't see it.

MS. SPENCER: No; I don't see any hands raised at this point.

MS. STRAND: So, the only attendee in the audience is Mr. and Mrs. Christensen, so if you do
want to speak, now is the time. Raise your hand, I'll give you a second. If not, then thanks for joining
and listening in. Okay, with that, I'm going to go ahead and close the public hearing at 7:33 PM, there
being no public comments.

So, this is the part of the hearing where the staff, or the applicant, would respond to public
 testimony, but there wasn't any. So, I just want to...I just want to ask, you know, kind of, one narrow
question again, and I really want Jeff or Denise to kind of focus on the question because I do feel
constrained by the standard itself. So, the standard that I'm obligated to apply is: the granting of the
modification would not be detrimental to the public good. I think you've spoken a lot to that, I think that
Clark has spoken a lot to that at the start of his presentation, but, you know, in focusing on the second
component, the plan as submitted will promote the general purpose of the standard, and that specifically,
the footprint standard, the floor area standard, the eave height and the dormer width...that modifying
those standards will equally or better...will serve the purposes of those standards which is, you know, to
not have a big footprint, to not invade on the neighboring property owners, better than a plan that would
comply with those five standards. So, if you could speak...just take a couple minutes...to speak to that
question, I think it would be really helpful. Because you've spoken a lot to the public detriment, and I
appreciate that, but the other piece I think is...where I need help.

MR. PALOMO: Sure...let me start and if Denise wants to chime in...absolutely. So, that was the
first thing we...well, it was actually the second avenue we considered. Initially, it was the inquire on the
duplex...kind of abandoned that; we didn't want that, you know, entity separation. And, secondly, which
is our plan B, is something that would comply. Granted, we'd have to address the dormers, but it
just...parsing the utility out across the entire backyard just chews it up and doesn't do the primary home
justice, nor utility. And Denise spoke to it, it creates space that could be a concern from a safety
standpoint. It chews up, you know, any aggregated green space, it just...it provides more eclectic and
mish-mosh that we've illustrated is what's proliferated through the neighborhood. And that, we feel, is,
you know...genuinely the intent of staff, to really try and prevent that and get some direction that is in the
best interest of not only the neighborhood, but the community, right? And we feel by consolidating that
space, it is aesthetically more appealing, and it accomplishes...it achieves that goal based upon anything
that would comply with Code at this juncture. And, you know, we spoke to Code, it's fourteen to thirty
years old.

MS. STRAND: So the alternative that you're speaking to is this duplex with attachment to get
around that issue.

MR. PALOMO: No, the two stand-alone carriage homes.

MS. STRAND: The two stand-alone...okay the two stand-alone...

MR. PALOMO: With a storage.

MS. STRAND: And then, if you actually built one stand-alone, it doesn't serve your personal
purposes in having that space that allows you to age in place and to, you know, have more of those
modern amenities that you see in homes.

MR. PALOMO: Lori, I have $10,000 in damage done by hail on my vehicle. I mean, 730 square
feet of garage would leave, what 270 square feet left for actual living space? I mean, a consideration for
staff on any Code changes would be to eliminate garage as technically livable space. I mean, we better be
able to achieve and work within the confines of Code. But again, I mean part of...look at the changes that
have taken place in the world here over the last six months, and look at historically the Code
changes…it's just completely reactive. Process needs to improve to be in front of it, right, and
accommodate, you know, current needs.

MS. STRAND: Denise, did you want to add something?

MS. WHITE: No, I think as you were talking to that historic, because I think you were also going
to check with Maren on this one or something…I think when we look at what we feel is in the best intent
of the equally or better structures as to really honoring that primary structure, when you do start to clutter
that backyard up, I think it does, in my opinion, and I don't have the Code background, but it does start to
clutter up that backyard which detracts more from, we feel, that historic primary resource. Because you
see that. I mean, even if you hide it from the street and they are smaller structures, you walk around the
side, you walk down the alley, you loose that primary structure and the appeal of it because it suddenly
becomes some of those other pictures we saw, which is kind of a puzzle put together on a piece of
property.

And, so, yeah, as I said, things we didn't share is, you know, Jeff had restored a historic building
in Breckenridge, I restored a home I lived in that was built in 1890, so, like, we do love the history of this
piece of property. And so, you know, it's personal opinion, maybe, over Code, but with our love and our
past history on this, we feel this best honors that piece of property and the primary structure that we really
were drawn to and have put a lot of work into to date.

MS. STRAND: Thank you, Denise. So that was my last question. I think this has been really
useful. I appreciate everybody's time and effort and discussion, Jeff, Denise, and Clark. And thank you
Maren. So, I'm going to go ahead and close the public hearing. It is 7:40 PM. If Mr. and Mrs.
Christensen would like a copy of the decision, I would like to just remind them to email Leslie Spencer,
so if we could put Leslie's email address back up on the screen, that would be great. I'll be making my
decision in the next ten business days I believe it is, but it will be sooner than that. And that's all; thanks
for everybody's time tonight. I appreciate the time spent.
Hearing Officer Decision, July 15, 2020
CITY OF FORT COLLINS
TYPE 1 ADMINISTRATIVE HEARING

FINDINGS AND DECISION

HEARING DATE: July 1, 2020
PROJECT NAME: 613 S. Meldrum Street Modifications of Standards
CASE NUMBER: MOD 200001
APPLICANT/OWNER: Jeff Palomo
613 S. Meldrum Street
Fort Collins, CO 80521
HEARING OFFICER: Lori Strand

PROJECT DESCRIPTION: This is a standalone request for five (5) modifications of standards set forth in Division 4.9 of the City of Fort Collins Land Use Code (“LUC”) governing size limits on carriage houses in the Neighborhood Conservation, Buffer (N-C-B) zone district.

The request has been submitted in advance of a development plan application.

The subject property is located at 613 S. Meldrum Street, Fort Collins, CO 80521 (the “Subject Property”). The Subject Property contains a brick classic cottage constructed circa 1910.

The Applicant is requesting the modifications of standards to facilitate development in the rear of the Subject Property of one structure that combines a single dwelling unit with 1-car garage and an additional habitable living space with a hobby/knitting room, a carpentry/utility room, art room, and a 2-car garage (collectively referred to herein as the “Enhanced Carriage House”).

BACKGROUND:

The surrounding zoning and land uses are set forth below:

<table>
<thead>
<tr>
<th>Zoning</th>
<th>North</th>
<th>South</th>
<th>East</th>
<th>West</th>
</tr>
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<tbody>
<tr>
<td>Neighborhood Conservation, Buffer (N-C-B)</td>
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<td>Neighborhood Conservation, Buffer (N-C-B)</td>
<td>Neighborhood Conservation, Buffer (N-C-B)</td>
</tr>
</tbody>
</table>
The Applicant requests the following five (5) modifications of standards set forth in Division 4.9 of the LUC (collectively, the “Modifications of Standards”):

1. LUC Section 4.9(D)(2) limits the total floor area for carriage houses as follows:

   “Any new single-family dwelling that is proposed to be located behind a street-fronting principal building shall contain a maximum of one thousand (1,000) square feet of floor area.”

   The request is for 2,190 square feet.

2. LUC Section 4.9(D)(2) limits the building footprint for carriage houses as follows:

   “The building footprint for such single-family dwelling shall not exceed six hundred (600) square feet.”

   The request is for 1,570 square feet.

3. LUC Section 4.9(D)(5) limits building floor area in the rear half of lots:

   “The allowable floor area on the rear half of a lot shall not exceed thirty-three (33) percent of the area of the rear fifty (50) percent of the lot.”

   The rear half of the Subject Property is 4,750 square feet; 33 percent of that is 1,583 square feet. The request is for 2,190 square feet.

4. LUC Section 4.9(E)(2) limits side wall eave height in the rear yard:

   “The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space.”

   The request is for a gabled eave 23 feet high.

5. LUC Section 4.9(E)(2) limits dormers, related to the issue of side wall eave height:

   “An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.”
The request includes a dormer feature that is 43% of the wall length. It is set back approximately 15 feet.

Additional project background is detailed in the Development Review Staff Report prepared for this application, a copy of which is attached to this decision as **ATTACHMENT A** (the “Staff Report”) and is incorporated herein by reference.

**SUMMARY OF DECISION:** Denied.

**ZONE DISTRICT:** Neighborhood Conservation, Buffer (N-C-B)

**HEARING:** The Hearing Officer opened the remote hearing at approximately 5:35 p.m. on Wednesday, July 1, 2020.

**EVIDENCE:** Prior to or at the hearing, the Hearing Officer accepted the following documents as part of the record of this proceeding:

1. Development Review Staff Report prepared for 613 S. Meldrum St. (MOD #200001), attached to this decision as **ATTACHMENT A**.
2. Applicant’s written Request & Justification.
5. Copy of PowerPoint presentation presented during the hearing by Clark Mapes, AICP, City Planner.
6. Copy of PowerPoint presentation presented during the hearing by Denise White and Jeff Palomo.
8. Written comment from Rayne Martin, Rainbird Design, dated June 26, 2020
11. Written correspondence between Maren Bzdek, Clark Mapes, and Jeff Palomo.
14. The City’s Comprehensive Plan, the Old Town Neighborhoods subarea plan, the Land Use Code, and the formally promulgated ordinances and polices of the City are all considered part of the record considered by the Hearing Officer.

TESTIMONY: The following persons testified at the hearing:

From the City: Clark Mapes, AICP, City Planner
Maren Bzdek, Senior Historic Preservation Planner

From the Applicant/Owner: Jeff Palomo
Denise White (Owner’s partner and part-time resident)

From the Public: None.

FINDINGS

1. Testimony of Mr. Mapes, City Planner, and evidence presented to the Hearing Officer establish the fact that notice of the remote public hearing was properly posted, mailed, and published.

2. As required by City Council Ordinance 079, 2020, the Hearing Officer, in consultation with City staff, determined that it was desirable to conduct the hearing by remote technology so as to provide reasonably available participation by parties-in-interest and by the public, consistent with the requirements of Ordinance 079, because meeting in person would not be prudent for some or all persons due to a public health emergency.

3. Based on testimony of Maren Bzdek and the Staff Report, the existing single-family structure on the Subject Property, constructed circa 1910, is eligible for local landmark designation, which eligibility requires an heightened review process prior to demolition of the structure and requires any new construction on the Subject Property to meet design compatibility and historic resource treatment standards.

4. The Hearing Officer evaluated the request based on the standards set forth in Section 2.8.2(H) of the LUC governing decisions on modifications of standards. Per Section 2.8.2(H), the Hearing Officer may grant a modification of standard only if the granting of the modification would not be detrimental to the public good and that one of four other criteria set forth in Section 2.8.2(H)(1) through (4) is met.

5. The Applicant’s written Request & Justification and presentation focused on the Enhanced Carriage House not being detrimental to the public good and the criterion set forth in Section 2.8.2(H)(1). The criterion in Section 2.8.2(H)(1) requires the Hearing Officer to find that “the plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested.” (Emphasis added.)
6. Mr. Mapes provided clarification during the hearing that, notwithstanding the Staff Report, City staff’s analysis focused on the criterion in Section 2.8.2(H)(1) and not on whether or not the Modifications of Standards would be detrimental to the public good. Mr. Mapes testified that he did not think the Modifications of Standards would be detrimental to the public good.

7. Based on testimony provided at the public hearing and a review of the materials in the record of this case, the Hearing Officer concludes as follows:

A. The application complies with the applicable procedural and administrative requirements of Article 2 of the Land Use Code.

B. The Modifications of Standards do not meet the applicable requirements of Section 2.8.2(H) of the Land Use Code. The Hearing Officer specifically finds:

   i. Granting of the standalone Modifications of Standards would not be detrimental to the public good. The area of the N-C-B zone district where the Subject Property is located is comprised of a variety of uses (including single-family, duplex, quadplex, and multi-family uses, a fraternity house, a commercial parking lot, and a church) with a range of different floor areas, building footprints, and heights. The Modifications of Standards would facilitate the development of an enlarged carriage house that is generally compatible with the floor areas, building footprints, and heights of existing and planned development in the area surrounding the Subject Property, the purposes of the N-C-B zone district, and the density and eclectic character of this area of the N-C-B zone district. This finding is limited to the standalone Modifications of Standards and does not extend to the proposed design and development plan for the Enhanced Carriage House, which have not been fully reviewed by the City or the Hearing Officer.

   ii. While the Applicant presented testimony that their proposed Enhanced Carriage House would provide a transition between residential and commercial areas consistent with the purpose of the N-C-B zone district, the Applicant failed to demonstrate that the Modifications of Standards will promote the general purposes of the standards set forth in LUC Sections 4.9(D)(2) (as to total floor area and building footprint), 4.9(D)(5) (as to building floor area in the rear half of lots), and 4.9(E)(2) (as to side wall eave heights and dormers) equally or better than a project that complies with the subject standards (including, for example, a compliant carriage house). These purposes include, without limitation, protecting the privacy
of and views from adjacent properties and ensuring that carriage houses are subordinate in massing to primary dwelling units.

iii. The Applicant presented testimony that the subject standards (i.e., LUC §§ 4.9(D)(2), 4.9(D)(5), and 4.9(E)(2)) are no longer appropriate for the area of the N-C-B zone district where the Subject Property is located, suggesting that the standards are outdated and misaligned with the changed conditions and demographics of the area. The Applicant more broadly testified that the N-C-B zone district does not reflect the existing and changing conditions of the area of the N-C-B zone district where the Subject Property is located and that a City planning effort specific to this area of the N-C-B zone district is needed.

iv. It is not the role of the Hearing Officer to determine whether changed conditions and demographics of an area warrant revisions to legislatively-adopted standards in the LUC and, if so, what new standards may be appropriate. Such determinations are the purview of City Council after appropriate public outreach and input.

v. The Hearing Officer lacks the authority under LUC §2.8.2(H) to grant the Modifications of Standards on the basis that the subject standards (i.e., LUC §§ 4.9(D)(2), 4.9(D)(5), and 4.9(E)(2)) might be outdated or that the Modifications of Standards might facilitate development that is compatible with the surrounding area.

vi. The Applicant did not present evidence to support the granting of the Modifications of Standards under the other criteria set forth in Sections 2.8.2(H)(2) through (4) and, therefore, the Hearing Officer finds that none of these criteria are met.

(a) With regard to Section 2.8.2(H)(2), the Applicant expressed their desire to maintain the existing single-family dwelling, which is an historic resource, in furtherance of several City policies related to historic preservation, but the record fails to demonstrate that strict application of LUC §§ 4.9(D)(2), 4.9(D)(5), and 4.9(E)(2) will render the project practically infeasible. The Applicant testified that the Enhanced Carriage House is their preferred option from a design, functionality, and financial perspective, but they acknowledged there remain other alternatives that would not require demolition of the historic resource (e.g., two carriage houses or rear expansion of the existing structure).
(b) With regard to Section 2.8.2(H)(3), no evidence was presented that there exist exceptional physical conditions or other extraordinary and exceptional situations, unique to the Subject Property, that warrant granting the Modifications of Standards.

(c) Finally, with regard to Section 2.8.2(H)(4), the Modifications of Standards diverge substantially from the subject standards (i.e., LUC §§ 4.9(D)(2), 4.9(D)(5), and 4.9(E)(2)).

**DECISION**

Based on the findings set forth above, the Hearing Officer hereby denies the 613 S. Meldrum Street Modifications of Standards (MOD 200001).

DATED this 15th day of July, 2020.

[Signature]
Lori Strand
Hearing Officer
ATTACHMENT A

Staff Report
613 S. Meldrum Street Modifications of Standards, MOD 200001
Summary of Request

This is a stand-alone request for five Modifications of Standards in the City of Fort Collins Land Use Code (LUC) governing size limits on carriage houses in the Neighborhood Conservation Buffer (NCB) zone district.

Zoning Map

Next Steps

If approved by the Hearing Officer, the applicant would be eligible to submit a development plan application for a carriage house with the modified size limits within the next 12 months. This application for building size modifications is separate from subsequent review of an actual development plan and must not be construed as an implied approval of a development plan. If the modifications are approved, they would represent modified maximum size limits for building footprint and floor area. A development plan process could possibly involve design and compatibility findings that could result in reduced final dimensions.

Site Location

613 S. Meldrum Street, located on the first block north of the Colorado State University (CSU) main campus.

Zoning

Neighborhood Conservation, Buffer District (NCB)

Property Owner

Jeff Palomo
613 S. Meldrum St.
Fort Collins, CO 80521

Applicant/Representative

Same as above

Staff

Clark Mapes, City Planner

Contents

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Staff Recommendation

Denial of the Modification Requests.
1. Project Introduction

A. PROJECT DESCRIPTION

The Neighborhood Conservation, Buffer (NCB) Zoning District contains detailed standards that limit the size of carriage houses in rear yards of residential lots. This stand-alone request consists of the following five Modifications of Standards:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Zoning Standard</th>
<th>Modified Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Footprint</td>
<td>600 sq. ft.(max)</td>
<td>1,570 sq. ft.</td>
</tr>
<tr>
<td>Total Floor Area</td>
<td>1,000 sq. ft. (max)</td>
<td>2,190 sq. ft.</td>
</tr>
<tr>
<td>Floor Area in Rear Half of Lot</td>
<td>1,583 sq. ft. (max)</td>
<td>2,190 sq. ft.</td>
</tr>
<tr>
<td>Eave Height Along Side Lot Line</td>
<td>13 feet (max)</td>
<td>23 feet</td>
</tr>
<tr>
<td>Width of Dormers Along Side Lot Line</td>
<td>25% of side wall length (max)</td>
<td>43% of side wall length</td>
</tr>
</tbody>
</table>

1. Development Status and Background

Historic Resource. The subject property contains a brick Classic Cottage constructed circa 1910 and found eligible for local landmark designation in 2018, based on its original architectural integrity. This eligibility limits any ability to remove and replace the principal building on the lot and requires that any new construction on the site meets design compatibility and historic resource treatment standards. Compatibility requirements would be applied when a future development plan is submitted.

Old Town Neighborhoods Plan and NCB zoning. The subject property is in the Old Town Neighborhoods subarea plan area of Fort Collins. The neighborhoods encompass many of the earliest residential blocks in Fort Collins and are characterized by the classical grid street pattern of short blocks, historic home styles, and mature trees.

An ongoing neighborhood concern has long been how best to preserve, protect and enhance neighborhood character while still allowing opportunities to adapt to evolving community and social changes.

A continuum of community planning has produced subarea plans, character studies, zoning standards, and design guidelines in open and highly engaged public processes since at least the 1980’s. The NCB zoning district, and carriage house standards specifically, result from some of these processes.

The adopted Old Town Neighborhoods Plan recognizes the NCB area around south Meldrum as catering primarily to college student rental housing, including many apartment buildings. NCB zoning allows two-family and multifamily residential development, and within the past 10 years, several larger apartment projects have been constructed along Laurel Street, across from the CSU campus and located within the same zone district as this proposal.

The Modification of Standard requests are based largely on apparent contradictions in the NCB zoning – i.e., that it allows for removal of original houses, if they are not historic landmark-eligible, for replacement by much larger apartment buildings and parking lots; while it limits new construction to a greater degree when an existing house is preserved and a detached carriage house is proposed. The applicant suggests that the latter approach is the most compatible approach to new construction.
2. Surrounding Zoning and Land Use

<table>
<thead>
<tr>
<th>Zoning</th>
<th>North</th>
<th>South</th>
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<td>Neighborhood Conservation, Buffer (NCB)</td>
</tr>
<tr>
<td>Land Use</td>
<td>Single family houses and a rear yard duplex</td>
<td>Single family houses and apartment buildings</td>
<td>CSU parking lot and single family houses</td>
<td>Rear yards and parking for single family houses and a rear yard duplex across the alley</td>
</tr>
</tbody>
</table>

B. OVERVIEW OF MAIN CONSIDERATIONS IN STAFF REVIEW

Staff engaged in extensive consideration and exploration of potential support for the requested Modifications of Standards, due to the context on this particular block and adjoining blocks. The original historic pattern of modest houses with generous rear yards and small garages has been altered by 1) re-subdivision of corner lots, resulting in additional houses in formerly rear yard areas; 2) assembly of lots and removal of houses, replaced by larger apartment buildings, an office building, and parking lots in the southern portion of the block; and 3) construction of duplexes in rear yards. A large carriage house in the rear yard of a preserved and renovated historic landmark could arguably represent one of the more compatible changes that has occurred and will occur on the block.

Staff review has included extensive discussion with the applicants to reach mutual understanding of both the NCB standards and the specific proposal. The proposal has evolved in pre-submittal discussions and throughout the review process. For example, the original Conceptual Review meeting in January 2020 was for a proposed duplex in the rear yard (which is not a permitted use), followed by extensive exploration of the idea of two carriage houses, leading to this proposal for a large carriage house requiring modifications to all size limit standards.

Discussion has highlighted nuances and apparent contradictions in the NCB zone, which have been part of the applicant's justifications.

Staff considered the possibility of findings based on modifications serving the purpose of the standards equally well or better than less-conservation-oriented plans that would meet NCB standards, e.g., demolition of houses and construction of larger multifamily buildings.

However, historic landmark eligibility would prevent such a plan on the subject property; and this perspective, i.e., that a more intense plan could meet the standards, has come up in the past but has not been used for staff findings.

Essentially, the proposed justification is that NCB zoning is not appropriate for its purposes. To the extent that may be the case, it is not a criterion on which staff can base findings on the carriage house standards.

A Potential Subsequent Development Plan. The consideration of modifications of size limits is separate from subsequent review of an actual development plan if the modifications are approved. They would represent maximum size limits; however, it is important to be clear that review of the development plan could involve staff findings regarding design and compatibility that could require reduced building size in order for staff to recommend approval of the actual development plans.
2. Public Outreach

A. NEIGHBORHOOD MEETING
   A neighborhood meeting was not required for this land use, which requires 'Administrative Review' and for which neighborhood meeting requirements are not applicable.

B. PUBLIC COMMENTS:
   No public comment has been received to-date. Any comments received prior to the hearing will be forwarded to the hearing officer for consideration.

3. Land Use Code Article 2 – Procedural Requirements

A. PROCEDURAL OVERVIEW
1. Conceptual Review – CDR200005
   A conceptual review meeting for the property was held on January 23, 2020.

2. First Submittal – PDP200002
   The first submittal of this modification request was completed on May 22, 2020.

3. Neighborhood Meeting
   Not required and not held as noted above.

4. Notice (Posted, Written and Published)
   Posted Sign: June 1, 2020, Sign #546
   Written Hearing Notice: June 17, 2020, 107 addresses mailed.
   Published Hearing Notice: June 2, 2020 in the Coloradoan newspaper

Hearing notification area (blue shading)
4. Land Use Code Article 2 - Staff Analysis of Modifications of Standards

A. STANDARDS SUMMARY

The applicant requests modifications of five standards in Division 4.9, the Neighborhood Conservation, Buffer zone district, in order to enable construction of a carriage house that would be larger than would otherwise be permitted by the standards. The standards address building footprint, total floor area, floor area in the rear half of a lot, side wall eave height, and extent of dormers along side walls.

Staff analysis of the request discusses the modification requests together as a single unified request because they are all inseparable aspects of the larger building construction sought by the applicant.

B. STANDARDS FOR REVIEW OF MODIFICATIONS

Modifications are governed by Section 2.8.2(H) and are provided here for reference:

“"The decision maker may grant a modification of standards only if it finds that the granting of the modification would not be detrimental to the public good, and that:

(1) the plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested; or

(2) the granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Land Use Code, substantially alleviate an existing, defined and described problem of city-wide concern or would result in a substantial benefit to the city by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the city's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the project practically infeasible; or

(3) by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the owner of such property, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

(4) the plan as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be modified except in a nominal, inconsequential way when considered from the perspective of the entire development plan and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

Any finding made under subparagraph (1), (2), (3) or (4) above shall be supported by specific findings showing how the plan, as submitted, meets the requirements and criteria of said subparagraph (1), (2), (3) or (4)."
C. MODIFICATION REQUESTS AND APPLICANT’S JUSTIFICATION

The specific request comprises five standards as follows:

1. Code Section 4.9(D)(2) limits the total floor area for carriage houses as follows:
   “Any new single-family dwelling that is proposed to be located behind a street-fronting principal building shall contain a maximum of one thousand (1,000) square feet of floor area.”

   The request is for 2,190 square feet.

2. Code Section 4.9(D)(2) also limits the building footprint:
   “The building footprint for such single-family dwelling shall not exceed six hundred (600) square feet.”

   The request is for 1,570 square feet.

3. Code Section 4.9(D)(5) limits building floor area in the rear half of lots:
   “The allowable floor area on the rear half of a lot shall not exceed thirty-three (33) percent of the area of the rear fifty (50) percent of the lot.”

   The rear half of the lot is 4,750 square feet; 33 percent of that is 1,583 square feet.

   The request is for 2,190 square feet.

4. Code Section 4.9(E)(2) limits side wall eave height in the rear yard:
   “The exterior eave height of an eave along a side lot line shall not exceed thirteen (13) feet from grade for a dwelling unit located at the rear of the lot or an accessory building with habitable space.”

   The request is for a gabled eave 23 feet high.

5. Code Section 4.9(E)(2) limits dormers, related to the issue of side wall eave height:
   “An eave of a dormer or similar architectural feature may exceed thirteen (13) feet if set back two (2) feet from the wall below and does not exceed twenty-five (25) percent of the wall length.”

   The request includes a dormer feature that is 43% of the wall length. It is set back approximately 15 feet.

**Applicant’s Justification.** The applicant’s justification is attached. Staff’s interpretation is that the request is based upon the modification criteria in subparagraph 2.8.2(H)(1) above -- “as good or better.”

Staff’s interpretation of the applicant’s key points in the request is summarized as follows:

- The zoning does not fit well with the character of this particular NCB area as it exists and is evolving. Much of the original neighborhood context has been lost due to redevelopment and infill that alters the character of this block, as well as adjacent blocks in this NCB area.

- Relatedly, the historic neighborhood context continues to be lost because more of the original houses can be removed for multifamily development – i.e., those houses that are not eligible for landmark designation.

- The proposed approach to infill -- preserving the house and adding floor area in the rear yard – is “as good or better” than other changes that have occurred and will continue to occur under NCB zoning, for purposes of the NCB zoning.

- The applicant has noted that the zoning does not prohibit construction of two carriage houses, and the justification suggests that the requested floor area allowance is similar to two carriage houses.
The application highlights nearby examples of the bullet points above. For example, a recent example is two doors to the south, 621 S. Meldrum, where the original house was removed and replaced with a new large multifamily building, which overlooks the subject property as well as the intervening lot, and has a parking lot in its rear yard. Other examples are noted on the block and adjoining blocks. The request includes photos of these examples.

Also, on the intervening lot between the 621 S. Meldrum example and the subject property, the owner has had a Conceptual Review meeting for a proposal to remove the existing house and construct two duplexes, one behind the other. The second duplex would not be permitted behind the street-facing one under NCB zoning, and so the proposal connects the two duplexes with a roof over an intervening patio, which changes the classification to a fourplex, which is permitted. That conceptual proposal for the lot next door is shown on the last page of the request. No plan has been submitted following the Conceptual Review, but it is an example of what the NCB zoning permits.

As part of the overall block context, the applicant notes that two other rear yard duplexes exist on the block – one two doors to the north, and one across the alley, built before the NCB zoning standards were adopted. The one to the north is a garden level two-story building that faces the neighboring rear yard and has similar floor area to the proposed floor area.

D. STAFF FINDINGS

Staff finds that the Modifications of Standards would be detrimental to the public good and are not justified under subparagraph 2.8.2(H)(1) because:

1) The carriage house size and height standards specifically limit the scale of construction in rear yards, with limits on total size and side walls facing and overlooking neighboring rear yards. The standards result from thorough public processes and represent an adopted compromise among varied interests. The overall scale of proposed building as well as the high side walls would introduce construction of a scale that exceeds the specific limits to a degree that would introduce significant visual and privacy impacts that are intended to be avoided under the standards.

2) The standards require a scale of construction that is typically subordinate to the original houses which define the historic character that is intended to be reflected in development projects. The proposed modifications would allow a building with similar or greater mass than the original houses along the fronts of lots in the area.

3) To the extent that the proposal may represent compatibility with neighborhood character to a greater degree than zoning allows for other proposals on other properties, the larger question of whether the NCB zone standards are appropriate is beyond the scope of review of an individual development pursuant to the standards as adopted.

4) To the extent that the proposal may represent compatibility with neighborhood character that is equal or better in comparison to past development prior to the current zoning, it would not be a reason to support the modifications because the current standards may reflect a community response to past development.

5. Findings of Fact/Conclusion
In evaluating the request for the 613 South Meldrum Street Modifications of Standards, MOD200001, staff makes the following findings of fact:

- The modification requests comply with the process located in Division 2.2 – Common Development Review Procedures for Development Applications of Article 2 – Administration.
- The proposed modifications do not comply with standards in Section 2.8.2(H) and would be detrimental to the public good due to the extent of departure from the adopted carriage house size limit standards.
- The extent of the proposed increased size limits does not meet the purposes of the carriage house size limits standards equally well or better than a compliant plan, regardless of design mitigation of the size.

6. Recommendation

Staff recommends that the Hearing Officer deny MOD200001 based on the analysis and Findings of Fact/Conclusion in this Staff Report.

7. Attachments

1. Applicants’ Narrative
YouTube link to the video of Administrative Hearing for the 613 South Meldrum Street request for Modifications of Standards.

https://youtu.be/Gy36ik4xqb4
Staff Powerpoint Presentation to Council
October 6, 2020
Appeal of 613 S. Meldrum Decision

City Council Hearing October 6, 2020
Overview and Timeline

• Project Overview
  • Location: 613 S. Meldrum Street
  • Zoning: Neighborhood Conservation, Buffer (NCB)
  • Project Summary: 5 Modification Requests to allow a carriage house larger than permitted by Land Use Code

• Key Dates
  • July 1: Administrative Hearing
  • July 15: Decision – denial of requested modifications
  • July 28: Notice of Appeal filed by Applicant
# 5 Carriage House Modifications

<table>
<thead>
<tr>
<th>Subject</th>
<th>Zoning Standard</th>
<th>Modified Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.9(D)(2) Building Footprint</td>
<td>600 sq. ft. (max)</td>
<td>1,570 sq. ft.</td>
</tr>
<tr>
<td>4.9(D)(2) Total Floor Area</td>
<td>1,000 sq. ft. (max)</td>
<td>2,190 sq. ft.</td>
</tr>
<tr>
<td>4.9(D)(5) Floor Area in Rear Half of Lot</td>
<td>1,583 sq. ft. (max)</td>
<td>2,190 sq. ft.</td>
</tr>
<tr>
<td>4.9(E)(2) Eave Height Along Side Lot Line</td>
<td>13 feet (max)</td>
<td>23 feet</td>
</tr>
<tr>
<td>4.9(E)(2) Width of Dormers Along Side Lot Line</td>
<td>25% of side wall length (max)</td>
<td>43% of side wall length</td>
</tr>
</tbody>
</table>
“The decision maker may grant a modification of standards only if it finds that the granting of the modification would not be detrimental to the public good, and that the modification:

1. is “as good or better” in achieving the general purpose of the standard than a plan which complies; or

2. “alleviate a defined community need”

3. “unusual or exceptional physical hardship”; or

4. “the plan will not diverge from the standards except in a nominal, inconsequential way when considered from the perspective of the entire development plan and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.”
Main Consideration of the Hearing:

- for the purpose of the standard

vs.

- for the purpose of the NCB zoning district
Main Consideration

- Modifications must promote the general purpose of the standard
  - Staff recommended denial of the modifications because the proposal would not promote the general purpose of the standards “equally well or better than” a project that complies

- Applicant contends that the proposed plan promotes the purpose of the NCB zone district better than plans for other types of redevelopment that are permitted in the zone (i.e. apartments).
  - NCB zone purpose: provide a transition from commercial to residential areas.
Hearing and Findings

- Hearing Officer concluded that the proposed plan would not be detrimental to the public good (Hearing Officer Decision p. 5) however,

- Hearing Officer concluded that she was obligated to make a decision based on the purpose of the standards to specifically to limit the extent and mass of construction in rear yards, and that the much larger construction would not promote that general purpose as well as a plan which complies.

- Modifications were denied
Summary of Allegation

- Failure to properly interpret and apply relevant provisions of the Land Use Code:
  - Section 4.9(D)(2); Section 4.9(D)(5); Section 4.9(E)(2)
  - Primary objection to the Hearing Officer’s finding that she lacks the authority to grant the modifications for reasons other than the wording of the “equal or better” criterion in the Land Use Code, and that the contradiction between her findings about that criterion and the “detriment to the public good” criterion demonstrates a failure to interpret the Land Use Code.