



AGENDA ITEM SUMMARY

City Council

STAFF

Blaine Dunn, Accounting Director
John Duval, Legal

SUBJECT

Second Reading of Ordinance No. 128, 2023, Ratifying and Reaffirming Certain 2022 and 2023 City Expenditures and Designating Certain Unexpended and Unencumbered Appropriations as Non-Lapsing.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on September 19, 2023, addresses and remedies an oversight made in certain 2021, 2022, and 2023 appropriation ordinances related to certain appropriated funds that were intended to be designated as non-lapsing appropriations as contemplated in Section 11 of Article V of the City Charter ("Section 11"), but were not so designated. Section 11, which was amended by the City's voters in April 2021, provided before it was amended that all appropriations for capital projects and for federal and state grants were considered non-lapsing appropriations without any specific designation of non-lapsing in the appropriation ordinance. However, after being amended, Section 11 now requires that there be an express non-lapsing designation in the ordinance, and it also adds another category of appropriations that can be designated non-lapsing, those being private grants and donations.

It has been discovered that various appropriations for capital projects and for federal, state, and private grants and donations, mostly in 2021 appropriation ordinances, were intended to be designated as non-lapsing but through oversight that designation was not included in the ordinance. Nevertheless, these appropriations were accounted for in the City's accounting records as non-lapsing accounts and funds were spent from those accounts in the subsequent fiscal years of 2022 and 2023. To ensure these expenditures were properly spent in those years, this Ordinance ratifies and reaffirms those expenditures and designates the remaining amounts from those appropriations as non-lapsing for future expenditure.

STAFF RECOMMENDATION

Staff recommend adoption of this Ordinance on Second Reading.

BACKGROUND / DISCUSSION

On April 6, 2021, the City's voters approved an amendment to Section 11 in Article V of the City Charter ("Section 11"). Section 11 addresses when City funds appropriated by City Council for expenditure will either lapse or not lapse at the end of the fiscal year for which the appropriation is approved.

If an appropriation lapses at the end of the year, the funds return to the unappropriated reserves of the fund from which they were appropriated and must be appropriated again from that fund by Council if they

are to be spent in future years. If an appropriation has not lapsed, the funds remain available for expenditure in future years without the need for an additional appropriation by Council.

Before the City's voters amended it, Section 11 provided that all appropriated funds remaining unexpended at the end of the fiscal year lapsed unless the funds were (i) encumbered, (ii) for a capital project, or (iii) for a federal or state grant, in which case such funds would not lapse at the end of the fiscal year and would be available for expenditure in future fiscal years without further appropriation by Council.

The 2021 amendment revised Section 11 in two respects. First, it added to the categories of possible non-lapsing funds those for a private grant or donation. Second, it added the requirement that the Council must expressly designate in the appropriation ordinance whether an appropriation for a capital project or for a federal, state, or private grant or donation is to be non-lapsing.

However, the 2021 amendment did not change the non-lapsing status of appropriated funds "encumbered" at the end of a fiscal year. "Encumbered" is not defined in the Charter, but the City's past and current Financial Officers, in the exercise of their authority under Section 22 of Charter Article V to control the expenditure of appropriated City funds, have interpreted and applied "encumbered" to mean those appropriated funds which by the end of the fiscal year have been committed by the City to the payment of a legal obligation, such as a payment required under a contract.

It has been discovered that certain appropriation ordinances adopted by City Council since the amended Section 11 became effective on April 6, 2021, included appropriations for capital projects and for federal, state, and private grants and donations that were intended to be designated in the appropriation ordinance as non-lapsing funds, but through oversight such designation was not included in the ordinance. While some of these appropriated funds were encumbered at the end of the fiscal year, and therefore non-lapsing because of that encumbrance, some were not encumbered but were nevertheless expended in a succeeding fiscal year because Financial Services had designated the funds in the City's accounting records as non-lapsing based on the incorrect assumption that they had been designated as non-lapsing.

The City Attorney's Office and Financial Services have reviewed all of the City Council's appropriation ordinances adopted since the amended Section 11 became effective on April 6, 2021, to identify those appropriations for which a non-lapsing designation was intended but not included in the ordinance and the unexpended funds from such appropriations which were unencumbered at the end of the fiscal year but yet were expended in either or both fiscal years 2022 and 2023. The City Attorney's Office and Financial Services are recommending that City Council adopt this Ordinance to reaffirm and ratify those 2022 and 2023 expenditures and to designate the remaining unexpended and unencumbered funds from those appropriations as non-lapsing for expenditure in future fiscal years as authorized in Section 11.

There are seventeen 2021 ordinances affected, three 2022 ordinances affected, and one 2023 ordinance affected.

Identified below are each of the affected appropriation ordinances which are addressed in the operative sections of this Ordinance and a brief description of the relevant funds appropriated in them for capital projects and/or federal, state, and/or private grants and donations:

Ordinance No. 058, 2021 (Section 2)

This ordinance appropriated twenty-five separate private donations totaling \$42,264. They were received from multiple individuals and entities to be used for the various purposes designated by the donors. Each of these donations was deposited in and appropriated from the applicable City fund to meet the donor's intent. These included the General Fund, Natural Areas Fund, Cultural Services and Facilities Fund, Recreation Fund, Transportation Services Fund, Capital Projects Fund, Benefits Fund, and the Light and Power Fund.

Ordinance No. 065, 2021 (Section 3)

This ordinance appropriated a \$32,800 grant from the Colorado Department of Human Services Office of Early Childhood to be used to offset additional unbudgeted expenses associated with childcare during the COVID pandemic. The grant was deposited in and appropriated from the Recreation Fund.

Ordinance No. 073, 2021 (Section 4)

This ordinance appropriated a net grant of \$8,911,287 from the Federal Transit Authority to be used to address the effects of the COVID pandemic through funding for Transfort operations and mobility services for seniors and individuals with disabilities. The grant was deposited in and appropriated from the Transit Services Fund.

Ordinance No. 074, 2021 (Section 5)

This ordinance appropriated a grant of \$41,564 from the Colorado Department of Local Affairs to be used by Fort Collins Police Services to fund investigations and enforcement of laws related to unlicensed marijuana cultivation and distribution. The grant was deposited in and appropriated from the General Fund.

Ordinance No. 076, 2021 (Section 6)

This ordinance appropriated a grant of \$1,555,040 from the U.S. Department of Housing and Urban Development to be used by the City under the federal Community Development Block Grant Program (“CDBG Program”). The grant was deposited in and appropriated from the CDBG Program Fund.

Ordinance No. 077, 2021 (Section 7)

This ordinance appropriated a grant of \$957,860 from the U.S. Department of Housing and Urban Development to be used by the City under the federal Home Investment Partnerships Program (“HOME Program”). The grant was deposited in and appropriated from the HOME Program Fund.

Ordinance No. 079, 2021 (Section 8)

This ordinance appropriated a federal grant of \$4,217,846 being a portion of the grant funds the City received from the federal government under the 2020 American Rescue Plan Act (ARPA) to be used by the City to address the negative effects of the COVID pandemic related to public health, negative economic impacts, lost City revenue, premium pay for essential workers, and investment in water, sewer, and broadband infrastructure. The grant was deposited in and appropriated from the General Fund.

Ordinance No. 080, 2021 (Section 9)

This ordinance appropriated a grant of \$67,612 from the Colorado Division of Criminal Justice to be used for the City’s Restorative Justice Services Program. The grant was deposited in and appropriated from the General Fund.

Ordinance No. 098, 2021 (Section 10)

This ordinance appropriated \$8,200,000 of the proceeds from the 2018 issuance of bonds by the City’s Electric Utility Enterprise to fund the City’s capital project of constructing a broadband system throughout Fort Collins with these appropriated funds to be used for

the continued construction of that system and expended from the City's Broadband Subaccount in the Light and Power Fund.

Ordinance No. 103, 2021 (Section 11)

This ordinance appropriated a federal grant of \$1,243,768 from the U.S. Small Business Administration's Office of Disaster Assistance under its Shuttered Venue Operators Grant Program to be used for the City's Lincoln Center to address the negative effects the COVID pandemic had on its operations. The grant was deposited in and appropriated from the Cultural Services and Facilities Fund

Ordinance No. 113, 2021 (Section 12)

This ordinance appropriated, among other funds, the following grant funds and they were all deposited in and expended from the General Fund: (i) a \$130,000 Emergency Management Performance Grant, (ii) a \$65,366 Beat Auto Theft Through Law Enforcement (BATTLE) grant for Fort Collins Police Services ("FCPS") overtime pay, (iii) a \$8,370 Click It or Ticket grant for FCPS overtime pay, (iv) a \$32,092 Edward Byrne Memorial Justice Assistance grant for FCPS overtime pay, (v) a \$6,198 LEAF grant for FCPS overtime pay, (vi) a \$66,543 POMH grant for FCPS contractual mental health specialist, and (vii) a \$2,579 POST grant for FCPS officer training. It also appropriated \$100,000 for the Southeast Community Innovation Center and Pool Project.

Ordinance No. 114, 2021 (Section 13)

This ordinance appropriated the funds from the following two grants and both grants were deposited in and appropriated from the General Fund: (i) a \$837 State of Colorado LEAF grant for DUI and speed enforcement by FCPS, and (ii) a \$2,085 POST grant for FCPS officer training.

Ordinance No. 134, 2021 (Section 14)

This ordinance appropriated a grant of \$200,000 from the U.S. Environmental Protection Agency to be used to help align and supplement existing City programs regarding indoor air quality, energy efficiency, and emergency preparedness. The grant was deposited in and appropriated from the General Fund.

Ordinance No. 140, 2021 (Section 15)

This ordinance appropriated \$2,218,000 being transferred from the City's Community Capital Improvement Program Fund to its Capital Projects Fund to fund the capital project of renovating the City's Carnegie Library and it appropriated \$17,000 being transferred from the Capital Projects Fund to the Cultural Services and Facilities Fund to fund the capital project of commissioning an artwork under the City's Art in Public Places Program related to Carnegie Library project.

Ordinance No. 142, 2021 (Section 16)

This ordinance appropriated \$8,750,000 representing the City's 50 percent share of a \$16.5 million grant from the Federal Aviation Administration ("FAA") for capital projects at the Northern Colorado Regional Airport. The grant was deposited in and appropriated from the Airport Fund.

Ordinance No. 145, 2021 (Section 17)

This ordinance was the City's annual appropriation ordinance for the fiscal year 2022. In addition to multiple other appropriations, it appropriated the funds for all the capital projects identified in the ordinance in these amounts from the following City funds: (i) fifteen identified capital projects totaling \$8,526,814 - Light & Power Fund; (ii) fifteen identified capital projects totaling \$13,738,784 - Water Fund; (iii) eleven identified capital projects totaling \$5,662,790 - Wastewater Fund; (iv) twelve identified capital projects totaling \$7,209,871 - Stormwater Fund; (v) \$88,015 - Capital Projects Fund (Art in Public Places); (vi) thirteen identified capital projects totaling \$8,870,000 - Capital Projects Fund (General City Capital Projects); (vii) thirteen identified capital projects totaling \$6,359,000 - Community Capital Improvement Fund; (viii) three identified capital projects totaling \$1,650,000 - Conservation Trust Fund; and (ix) three identified capital projects totaling \$4,000,000 - Neighborhood Parkland Fund.

Ordinance No. 155, 2021 (Section 18)

This ordinance appropriated a \$2,437,500 State of Colorado grant to be used for the capital project known as the Laporte Avenue Multimodal Project (the "Project"). The grant funds were deposited in and appropriated from the Capital Projects Fund. It also appropriated \$389,142 transferred from the Transportation Capital Expansion Fee to the Capital Projects Fund for the Project and \$3,042 transferred from the Capital Projects Fund to the Cultural Services and Facilities Fund to commission an artwork under the City's Art in Public Places Program related to the Project.

Ordinance No. 031, 2022 (Section 19)

This ordinance appropriated \$172,584 of grant funds received from the Colorado Department of Human Services, Office of Early Childhood to be used by the Recreation Department for childcare programming, tuition assistance, workforce retention, and facility enhancements. The grant was deposited in and appropriated from the Recreation Fund.

Ordinance No. 118, 2022 (Section 20)

This ordinance appropriated \$16,445,834 representing the City's 50 percent share of grants from the State of Colorado and Federal Aviation Administration for capital projects at the Northern Colorado Regional Airport. The grant was deposited in and appropriated from the Airport Fund.

Ordinance No. 126, 2022 (Section 21)

This ordinance was the City's annual appropriation ordinance for fiscal year 2023. In addition to multiple other appropriations, it appropriated the funds for all the capital projects identified in the ordinance in these amounts from the following City funds: (i) \$81,132 - Cultural Services and Facilities Fund (Art in Public Places); (ii) eleven identified capital projects totaling \$8,783,838 - Capital Projects Fund (General City Capital Projects); (iii) eleven identified capital projects totaling \$4,588,000 - Community Capital Improvement Fund; (iv) one identified capital project totaling \$2,222,222 - Conservation Trust Fund; (v) one identified capital project totaling \$3,021,212 - Neighborhood Parkland Fund; (vi) fourteen identified capital projects totaling \$9,192,641 - Light & Power Fund; (vii) eight identified capital projects totaling \$4,132,000 - Stormwater Fund; (viii) eleven identified capital projects totaling \$10,565,253 - Wastewater Fund; and (ix) twelve identified capital projects totaling \$25,358,652 - Water Fund.

Ordinance No. 041, 2023 (Section 22)

This ordinance appropriated funds for these capital projects: (i) \$100,000 to be expended from the Transportation Fund for the Neighborhood Traffic Mitigation Program Project Construction; and (ii) \$4,361,774 to be expended from the Broadband Fund for the re-deployment of broadband working capital.

CITY FINANCIAL IMPACTS

Since this Ordinance addresses past expenditures or future expenditures that were previously intended to be appropriated as non-lapsing and spent for their authorized uses, this Ordinance will not affect the City's current finances.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration