

AGENDA ITEM SUMMARY

August 15, 2017

City Council

STAFF

SeonAh Kendall, Economic Health Manager
Mike Beckstead, Chief Financial Officer
John Duval, Legal

SUBJECT

Second Reading of Ordinance No. 101, 2017, Submitting to a Vote of the Registered Electors of the City of Fort Collins a Proposed Amendment to Article XII of the City Charter to Add a New Section 7 Pertaining to Telecommunication Facilities and Services.

EXECUTIVE SUMMARY

This Ordinance, adopted on First Reading on August 8, 2017 by a vote of 5-2 (Nays: Martinez, Summers), submits to Fort Collins electors a proposed amendment to Charter Article XII, Municipal Public Utilities. The amendment would authorize the City Council to provide, by future ordinance, telecommunications/broadband facilities and services as a public utility, to issue of up to \$150 million in bonds, the ability to go into executive session to discuss matters related to competition in the telecommunications industry, and the option to establish governance of this public utility through a board and/or to delegate rate-making authority to the City Manager. This measure does not mandate that the City provide municipal retail broadband services, or that a third-party be the provider.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, August 8, 2017 (w/o attachments) (PDF)
2. Staff memo in response to Council questions (PDF)
3. Ordinance No. 101, 2017 (PDF)

AGENDA ITEM SUMMARY

City Council

August 8, 2017

STAFF

SeonAh Kendall, Economic Health Manager
Mike Beckstead, Chief Financial Officer

SUBJECT

Items Relating to a Proposed Charter Amendment to Add a New Section to Charter Article XII Pertaining to Telecommunication Facilities and Services.

EXECUTIVE SUMMARY

- A. Possible Public Hearing and Motions Regarding Protest(s) of Ballot Language.
- B. First Reading of Ordinance No. 101, 2017, Submitting to a Vote of the Registered Electors of the City of Fort Collins a Proposed Amendment to Article XII of the City Charter to Add a New Section 7 Pertaining to Telecommunication Facilities and Services.

The purpose of this item is to propose an amendment to Charter Article XII, Municipal Public Utilities. The amendment would authorize the City Council to provide, by future ordinance, telecommunications/broadband facilities and services as a public utility, to issue of up to \$150 million in bonds, the ability to go into executive session to discuss matters related to competition in the telecommunications industry, and the option to establish governance of this public utility through a board and/or to delegate rate-making authority to the City Manager. This measure does not mandate that the City provide municipal retail broadband services, or that a third-party be the provider.

Any protest of the proposed ballot language must be received no later than Monday, August 7, 2017, at noon. The protest(s) shall be heard, considered, and resolved by Council prior to adoption of Ordinance No. 101, 2017. If protest(s) are received, copies will be included in Council's "Read-before" packet.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

City Broadband Strategic Objectives

The FCC noted that the real culprit of slow, expensive internet in the U.S. is the lack of competition among providers. New broadband entrants into the market have a substantial impact on price and service.

The City's 2016 Strategic Plan includes Strategic Objective 3.9 - "Encourage the development of reliable high speed internet services throughout the community". The Broadband Plan overall objective is to bring reliable, Gig speed internet to the City of Fort Collins, while making an informed decision through evaluation of risk and opportunities. Broadband is defined by the FCC as internet download speed of 25 megabits per second ("Mbps") and upload of 3 Mbps or faster.

Additional benefits sought include:

- Competitive pricing (residential market pricing at \$70/month or less for 1 Gbps and an affordable internet tier);
- Universal coverage across the Growth Management Area;
- Underground service for improved reliability; and
- Timely implementation to providing services within a reasonable time frame (less than five years).

At the July 2017 work session, City Council directed staff to continue work on developing the ballot language and refining the message. The City Attorney’s office, in collaboration with City staff, has prepared the proposed Charter amendment and ballot question.

Timeline of activity to refer the ballot:

Timeframe	Key Activities
August 8, 2017	First Reading of ballot language
August 15, 2017	Second Reading of ballot language; Final date for City Council to adopt the ballot language
August 29, 2017	Intergovernmental agreement with the County calling the special election
September 8, 2017	City Clerk certification of ballot language
November 7, 2017	Election
November 8, 2017 (If Voter Disapproval)	Status Quo-No further action
November 8, 2017 (If Voter Approved)	See projected timeline (Attachment 3)

The ballot measure would allow:

- Council the ability to add Telecommunication/Broadband services to the City’s electric utility or create a new utility to provide these services;
- Issue securities or debt not to exceed \$150M to fund the project;
- Establish a governance structure including the ability to: (1) go into executive session for matters relating to competition;(2) establish and delegate Council’s authority and power to a board and/or commission, except the power to issue debt; and (3) delegate the ability to set and/or change rates or fees to the City Manager.

The ballot measure **does not** mandate the City to provide municipal retail broadband services, or that a third-party internet service provider would offer the service. The ballot measure would allow City Council to pursue broadband services through either option.

Informational materials such as the projected timeline, FAQ, business plan and website were created to inform the community about the broadband project.

CITY FINANCIAL IMPACTS

The broadband financial feasibility model estimates that the project will cost between \$130,000,000 to \$150,000,000. The price range is attributed to the technology selected to implement a municipal broadband (ActiveE vs. GPON), potential increases to subscribership/take rate, and the product mix (video, voice, internet). The issuance of securities or other debt would be in an amount not to exceed \$150M.

BOARD / COMMISSION RECOMMENDATION

None

PUBLIC OUTREACH

- Broadband Town Hall - November 14, 2016
- Broadband Technical Group - Oct 20, 2016; Nov 1, 8, and 14, 2016; Dec 14, 2016; Mar 30, 2017; July 17, 2017
- Fort Collins Area Chamber of Commerce Local Legislative Affairs - Dec 16, 2016; March 31, 2017
- Broadband Open House - Oct 12, 2016; Nov 29, 2016
- Leadership Northern Colorado - March 28, 2017
- North Fort Collins Business Association - May 24, 2017
- Broadband Citizen Group - Nov 16, 2016; March 29, 2017; June 21, 2017
- Community Issues Forum - November 17, 2016
- Super Issues Meeting - November 30, 2016
- Economic Advisory Commission (Informational only) - May 17, 2017

ATTACHMENTS

1. Broadband Flyer (PDF)
2. Broadband Business Plan, Version II, July 31, 2017 (PDF)
3. Powerpoint presentation (PDF)

COPY



MEMORANDUM

Date: August 9, 2017

To: Mayor and City Councilmembers

From: SeonAh Kendall, Economic Health Manager
Andres Gavaldon, Strategic Finance Director

Through: Darin Atteberry, City Manager
Jeff Mihelich, Deputy City Manager
Mike Beckstead, Chief Financial Officer

Re: August 8, 2017 Council Special Meeting Follow Up: Broadband

This memorandum provides clarification and corrections from the Council Special Meeting held on August 8, 2017 in re: to broadband.

Items clarified and/or corrected within this memorandum include:

1. Further explanation of the estimated cash flow and debt payments in the Broadband Business Plan (Attachment 1). This schedule outlines the revenue, expenses, operating income, debt service and ending cash balance illustrating the bonds can be paid off from cash generated by the broadband operating income in year 14.
2. Correction to staff's FCC definition of broadband. Broadband is defined by the FCC in 2015 as internet download speed of 25 Mbps and upload of 3 Mbps or faster. The FCC published a 2016 Progress on Broadband report that included the following data:
 - 10 percent of all Americans (34 million people) lack access to 25 Mbps/3 Mbps service.
 - 39 percent of rural Americans (23 million people) lack access to 25 Mbps/3 Mbps.
3. Correction: Comcast's Internet Essentials program, designed for low-income households, is not federally funded. Internet Essentials includes download Internet speeds of 10 Mbps, a free Wi-Fi router, access to digital literacy materials, and options to purchase a computer at a discounted rate.
 - Attachment 2 provides additional information from Comcast on their Internet Essential program.
 - Century Link does participate in the federally funded Lifeline program that also offers broadband services through wireless or bundled services.

4. Council requested information on the historical practice of providing the public draft ballot language before adoption.
 - Response from the City Clerk's Office:
 - There were four Charter amendments on the April 2017 ballot. The proposed Charter language was reviewed by the Election Code Committee in 2016 on July 18, September 14, and November 10, and presented to the City Council at the December 13, 2016 Work Session.
 - No formal policy exists that states when ballot language is presented to the public. The Clerk's office recognizes this as an opportunity for improvement and will develop a policy for future consideration.
 - For the Broadband ballot, charter change and business plans, drafts of these materials were published on July 6th in support of the July 11th work session.

Attachment 1: Estimated cash flow and debt payments over the life of the debt

Attachment 2: Comcast email clarifying the low income Internet Essentials program.

ATTACHMENT 1 to memo

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Revenue	\$0	\$916,653	\$4,879,311	\$10,888,757	\$18,211,765	\$22,783,408	\$23,777,179	\$24,703,513	\$25,202,613
Operating Expenses	\$1,501,119	\$2,550,951	\$3,442,524	\$3,747,059	\$4,298,867	\$4,826,271	\$4,874,048	\$5,217,769	\$5,431,482
SG&A	\$302,750	\$884,003	\$908,951	\$936,060	\$1,109,890	\$1,055,856	\$1,084,269	\$1,112,355	\$1,136,518
Expense	\$1,803,869	\$3,434,953	\$4,351,475	\$4,683,120	\$5,408,758	\$5,882,128	\$5,958,318	\$6,330,124	\$6,567,999
Operating Income	-\$1,803,869	-\$2,518,301	\$527,836	\$6,205,637	\$12,803,007	\$16,901,280	\$17,818,862	\$18,373,390	\$18,634,613
Interest Payments Total	-\$5,457,332	-\$5,457,332	-\$5,457,332	-\$5,286,559	-\$4,927,306	-\$5,857,106	-\$4,554,581	-\$4,053,344	-\$3,529,044
Principal Payments Total	\$0	\$0	\$0	-\$4,269,322	-\$8,073,078	-\$10,087,863	-\$10,546,079	-\$11,025,359	-\$11,526,682
Subtotal Principal and Interest	-\$5,457,332	-\$5,457,332	-\$5,457,332	-\$9,555,882	-\$13,000,384	-\$15,944,969	-\$15,100,660	-\$15,078,703	-\$15,055,726
Operating Income less Debt Service	-\$7,261,201	-\$7,975,633	-\$4,929,496	-\$3,350,244	-\$197,377	\$956,311	\$2,718,202	\$3,294,687	\$3,578,888

	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Total
Revenue	\$25,383,653	\$25,548,804	\$25,697,621	\$25,848,046	\$26,000,098	\$26,153,798	\$285,995,217
Operating Expenses	\$5,305,943	\$5,617,558	\$5,817,263	\$5,695,110	\$5,977,152	\$6,165,445	\$70,468,561
SG&A	\$1,157,853	\$1,177,155	\$1,196,501	\$1,216,064	\$1,235,838	\$1,255,816	\$15,769,880
Expense	\$6,463,795	\$6,794,714	\$7,013,765	\$6,911,174	\$7,212,990	\$7,421,261	\$86,238,441
Operating Income	\$18,919,857	\$18,754,090	\$18,683,857	\$18,936,872	\$18,787,108	\$18,732,537	\$199,756,777
Interest Payments Total	-\$2,980,606	-\$2,406,907	-\$1,917,700	-\$1,406,369	-\$871,902	-\$313,239	-\$54,476,660
Principal Payments Total	-\$12,051,073	-\$10,486,681	-\$10,954,833	-\$11,444,146	-\$11,955,588	-\$18,703,803	-\$131,124,507
Subtotal Principal and Interest	-\$15,031,679	-\$12,893,588	-\$12,872,533	-\$12,850,515	-\$12,827,489	-\$19,017,042	-\$185,601,167
Operating Income less Debt Service	\$3,888,178	\$5,860,502	\$5,811,324	\$6,086,357	\$5,959,618	-\$284,505	\$14,155,610

From: Lehmann, Jon [mailto:Jon_Lehmann@comcast.com]
Sent: Wednesday, August 09, 2017 7:00 AM
To: Mike Beckstead
Cc: SeonAh Kendall
Subject: RE: Comcast - Internet Essentials - Federally funded???

Thanks Mike.

Below is the summary we included in our most recent RFP response to the City.

a. Internet Essentials Program Helping to Close the Digital Divide in the City

With respect to the City's objective of ensuring that lower income residents have access to affordable broadband tier prices (as stated in the RFP and at every public Council meeting), Comcast offers its "Internet Essentials" program. Internet Essentials is the largest and most expansive broadband adoption effort that any U.S. company has ever undertaken. Launched in the fall of 2011, Internet Essentials is available in more than 30,000 schools and 4,000 school districts, spanning 39 states and the District of Columbia. To date, Comcast nationally has connected more than 3 million low-income Americans to low-cost, high-speed broadband service at home through its Internet Essentials program.

More than 150,000 Coloradans – including more than 2,700 in Fort Collins – have been connected to the internet at home through Comcast's Internet Essentials program. Internet Essentials tackles the broadband adoption gap (digital divide) head-on, addressing device availability, price, and digital literacy, which is the most significant barrier to broadband adoption. As stated above, the program provides low-cost broadband service at 10 Mbps for \$9.95 a month including a complimentary Wi-Fi modem to allow for the connection of multiple devices in the home; the option to purchase a full-service, broadband-ready computer for less than \$150; and multiple options for digital literacy training in print, online, and in person.

To qualify, a household must either: 1) have a child in a Title 1 school (50% or more of the students receive free or reduced lunch); 2) receive a Pell Grant for Community College; or 3) be a part of Section 8 housing or tied to HUD housing in any manner. To find out more, please go to www.internetessentials.com

We will have an announcement on new upgrades and benefits on August 15th.

Please let me know if you have any questions or concerns.

Sincerely,

Jon Lehmann
Senior Director, Government & Regulatory Affairs
Comcast Cable Corporation
1899 Wynkoop Street, Suite 550
Denver, CO 80202
303-880-7032 cell

303-603-2062 office

jon_lehmann@cable.comcast.com

INTERNET ESSENTIALS | Comcast's [Internet Essentials program](#) has connected [3 million low-income Americans to affordable internet service](#) – including [nearly 132,000 in Colorado](#) – and invested more than \$300 million in cash and in-kind support for digital literacy training and educational initiatives. Check out our [5-year progress report](#) to learn more.

ORDINANCE NO. 101, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF
THE CITY OF FORT COLLINS A PROPOSED AMENDMENT TO
ARTICLE XII OF THE CITY CHARTER TO ADD A NEW SECTION 7
PERTAINING TO TELECOMMUNICATION FACILITIES AND SERVICES

WHEREAS, pursuant to Article IV, Section 8 of the Charter of the City of Fort Collins (“Charter”), the Charter may be amended as provided by the laws of the State of Colorado; and

WHEREAS, as provided in Article XX, Section 9 of the Colorado Constitution and in Section 31-2-210(1)(b) of the Colorado Revised Statutes, the City Council may initiate a proposed Charter amendment by adopting an ordinance to submit the amendment to the City’s electorate and must adopt in that ordinance a ballot title for the amendment; and

WHEREAS, Charter Article XII, titled “Municipal Public Utilities,” contains various provisions authorizing and regulating the City’s public utilities, like its water and electric utilities, including the requirement in Section 1 of Article XII that the City’s electors must give their approval before the Council can construct, condemn, purchase, acquire or lease any new public utility; and

WHEREAS, on November 3, 2015, a majority of the City’s electorate voted “yes” in answer to a ballot question submitted to them asking if the City, in the exercise of its home rule power, should have the right to provide, either directly or indirectly through private and/or public partnerships, to its residents, businesses, educational institutions and other organizations in the City, various kind of telecommunication facilities and services, including broadband Internet facilities and services; and

WHEREAS, as a result of this response from the electorate, City Council and staff have conducted significant research, public outreach and investigation to determine whether the City should provide high-speed broadband Internet service as a public utility; and

WHEREAS, after completing that research, public outreach and investigation, the Council has determined that the City’s electorate should be asked to amend the Charter to allow, but not require, the Council to authorize, by future ordinance and without a vote of the electorate, the City’s electric utility or a new telecommunications utility to acquire and provide directly or indirectly telecommunication facilities and services, including high-speed broadband Internet facilities and services; and

WHEREAS, on July 18, 2017, the Council adopted on first reading Ordinance No. 096, 2017 (“Election Ordinance”) calling a special municipal election to be held on November 7, 2017, as a coordinated election with the Larimer County Clerk and Recorder (“November Election”) and the Election Ordinance will be considered by Council on second reading at its August 15, 2017, regular meeting; and

WHEREAS, the Council's intent in adopting this Ordinance No. 101, 2017, is to present to the City's electorate at the November Election, through the ballot title set in Section 3 of this Ordinance, a proposed amendment to Charter Article XII that would add a new Section 7 to Article XII, which, if adopted, would allow the Council, by ordinance and without a vote of the electorate, to authorize the City's electric utility or a new telecommunications utility to acquire, construct, provide, fund and contract for telecommunication facilities and services within and outside the City's territorial limits, whether directly or in whole or part through one or more third-party providers; and

WHEREAS, this new Section 7 also grants to the Council certain powers relating to providing telecommunication facilities and services, and these include: (a) issuing securities and other debt; (b) setting the customer charges for these facilities and services; (c) convening in executive session to consider matters pertaining to competition in providing these facilities and services; (d) delegating to a Council-appointed board or commission some or all of the Council's governing authority and powers granted in this Charter amendment, but not the power to issue securities and other debt; and (5) delegating to the City Manager some or all of Council's authority to set customer charges for these facilities and services.

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 following proposed new Section 7 to Charter Article XII shall be submitted to the registered electors of the City as "Proposed Charter Amendment No. 1" at the November Election, provide that the Election Ordinance is adopted on second reading on August 15, 2017, and becomes law ten (10) days thereafter as provided in the Charter:

Charter Article XII, Municipal Public Utilities

Section 7. Telecommunication facilities and services.

(a) In addition to all the powers granted by this Charter to the Council to acquire, condemn, establish, construct, own, lease, operate and maintain an electric utility to provide light, power and other electrical facilities and services, the Council may, by ordinance and without a vote of the electors, authorize the electric utility to acquire, construct, provide, fund and contract for telecommunication facilities and services within and outside the City's territorial limits, whether directly or in whole or part through one or more third-party providers. Alternatively, the Council may create by ordinance, and without a vote of the electors, a telecommunications utility to exercise these same powers to furnish telecommunication facilities and services within and outside the City's territorial limits. If the Council creates a telecommunications utility, it may also establish that utility as an enterprise of the City in the same manner, with the same powers and subject to the same requirements and limitations established under Section 19.3(b) of Article V of this Charter for the City's other enterprises. The Council may also exercise

with respect to the telecommunications utility the same general authority and powers granted to Council in this Charter with respect to the City's other utilities.

(b) The Council, acting as itself, the board of the electric utility enterprise or as the board of the telecommunications utility enterprise, shall have the power to issue revenue and refunding securities and other debt obligations as authorized in Sections 19.3 and 19.4 of Article V of this Charter to fund the provision of the telecommunication facilities and services authorized in this Section. The cumulative total principal amount of any such securities and other debt obligations issued shall not exceed one hundred and fifty million dollars (\$150,000,000), except that any refunding of such securities or other debt obligations shall not be included in that cumulative total. The City's payment of and performance of covenants under the securities and other debt obligations issued under this subsection (b) and any other contract obligations of the City relating to the provision of telecommunication facilities and services under this Section, shall not be subject to annual appropriation so long as annual appropriation is not required under Article X, Section 20 of the Colorado Constitution.

(c) The Council shall set by ordinance the rates, fees and charges for furnishing the telecommunication facilities and services authorized in this Section subject to the same limitations in Section 6 of Article XII of this Charter for setting the rates, fees and charges for other City utilities, except to the extent this authority is delegated by Council pursuant to subsection (e) below. In setting such rates, fees and charges, the Council may also include amounts payable to the City's general fund for a franchise fee, a reasonable rate of return on any contributions from the general fund to acquire or construct telecommunication facilities, and the repayment of any loans from the general fund used to support the provision of telecommunication facilities and services under this Section, to include the payment of a reasonable rate of interest on any such loans.

(d) In addition to the authority to go into executive session as provided in Section 11 of Article II of this Charter, the Council, and any board or commission established under subsection (e) below, may go into executive session to consider matters pertaining to issues of competition in providing the telecommunication facilities and services authorized in this Section, which shall include, without limitation, matters subject to negotiation, strategic planning, pricing, sales and marketing, development phasing and any other matter allowed under Colorado law.

(e) As authorized in Section 1 of Article IV of this Charter, the Council may, by ordinance, establish a Council-appointed board or commission and delegate to it, in whole or part, the Council's governing authority and powers granted under this Section concerning the furnishing of telecommunication facilities and services by the City's electric utility or telecommunications utility, but not the power to issue securities as provided in subsection (b) above which shall only be exercised by the Council acting as itself or as the board of the electric utility enterprise or as the board of the telecommunications utility enterprise. The Council may also delegate by ordinance to the City Manager, in whole or part, its authority in subsection (c) above to set the rates, fees and charges for furnishing telecommunication facilities and services. Any Council

ordinance delegating this authority shall set forth the process to be used by the delegate for the setting of these rates, fees and charges. In addition, the amount of the rates, fees and charges so set by the delegate shall be determined under the same criteria the Council is authorized and required to follow in subsection (c) above.

(f) For purposes of this Section, *telecommunication facilities and services* shall mean those facilities used and services provided for the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, to include, without limitation, any broadband Internet facilities and services using any technology having the capacity to transmit data to enable a subscriber to the service to originate and receive high-quality voice, data, graphics and video. *Telecommunication facilities and services* and "broadband Internet facilities and services" are to be interpreted under this Section in the broadest possible way to cover the widest range of technologies and technology infrastructure, regardless of how these terms may be defined by federal or state law.

Section 3. That the following ballot title, with its title and submission clause, is hereby adopted for submitting the proposed new Section 7 in Charter Article XII to the City's electorate at the November Election, provide that the Election Ordinance is adopted on second reading on August 15, 2017, and becomes law ten (10) days thereafter as provided in the Charter:

CITY-INITIATED
PROPOSED CHARTER AMENDMENT NO. 1
ADDING A NEW SECTION 7 TO CHARTER ARTICLE XII TO
AUTHORIZE, BUT NOT REQUIRE, THE CITY'S PROVISION OF
TELECOMMUNICATION FACILITIES AND SERVICES AS A
PUBLIC UTILITY, INCLUDING BROADBAND INTERNET SERVICES

Shall Article XII of the City of Fort Collins Charter be amended to allow, but not require, City Council to authorize, by ordinance and without a vote of the electors, the City's electric utility or a separate telecommunications utility to provide telecommunication facilities and services, including the transmission of voice, data, graphics and video using broadband Internet facilities, to customers within and outside Fort Collins, whether directly or in whole or part through one or more third-party providers, and in exercising this authority, to: (1) issue securities and other debt, but in a total amount not to exceed \$150,000,000; (2) set the customer charges for these facilities and services subject to the limitations in the Charter required for setting the customer charges of other City utilities; (3) go into executive session to consider matters pertaining to issues of competition in providing these facilities and services; (4) establish and delegate to a Council-appointed board or commission some or all of the Council's governing authority and powers granted in this Charter amendment, but not the power to issue securities and other debt; and (5) delegate to the City Manager some or all of Council's authority to set customer charges for telecommunication facilities and services?

_____ Yes/For
_____ No/Against

Introduced, considered favorably on first reading, and ordered published this 8th day of August, A.D. 2017, and to be presented for final passage on the 15th day of August, A.D. 2017.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 15th day of August, A.D. 2017.

Mayor

ATTEST:

Interim City Clerk