

Exhibit 26

**Reply in Support of Motion for Temporary
Restraining Order and Preliminary Injunction**

Landow, et al. v. City of Fort Collins
15-cv-00281-WJM-KMT

May 16, 1995

Ordinance No. 70, 1995,
of the Council of the City of Fort Collins
Amending Section 17-126 of the City Code
and Adding Section 17-127 to the City Code
Pertaining to Panhandling. Adopted on First Reading.

The following is staff's memorandum on this item.

"Executive Summary"

Complaints relating to panhandling in the City have increased significantly in the last two years. Since the behavior was not illegal, Police Services does not have statistics on the number of complaints. This Ordinance has been drafted to try and prohibit the specific behaviors associated with panhandling that were reported as being frightening, intimidating or a public nuisance.

Many of the specific concerns were related to panhandling at locations such as the parking garage, patio restaurants, and bus stops where the persons solicited could not easily walk away from the panhandlers or when the person solicited was exiting a motor vehicle. Complaints have also been received about panhandlers loitering near ATM machines and approaching people while they had money in their hands. Other people complained of being approached at night in isolated places and feeling frightened and intimidated.

Several complaints have been received from the residents of the DMA apartments. Senior citizens are a frequent target of panhandlers because they are more easily intimidated. The management of the DMA apartments has even called for assistance in getting its residents on the bus because the bus stop shelter was full of young men waiting for the seniors. Therefore, panhandling of "at-risk persons" in public places is prohibited by the Ordinance. An "at-risk person" is defined in the Ordinance as a person 60 years of age or older, under 18 years of age, or a person with a disability. Such at-risk persons are less able to emotionally and physically protect themselves from unwanted panhandling.

This Ordinance is not intended to prohibit all panhandling in public places in the City. Rather, its purpose is to impose reasonable time, manner and place restrictions on panhandling in public places to prohibit that panhandling which adversely affects public safety and welfare."

Pat Kelly gave a brief history of the item and stated the majority of the complaints received were from residents of the DMA Plaza. He clarified the proposed ordinance did not eliminate panhandling but would control the time, manner and place so as not to be intimidating. He stated the ordinance did not affect people who sit with signs.

Councilmember Wanner made a motion, seconded by Councilmember Janett, to adopt Ordinance No. 70, 1995 on First Reading.

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Dan Cooper, 3413 Strachan Drive, supported the ordinance and urged Council to adopt it.

Joyce Wooden, 1040 Davidson Drive Director of New Bridges, spoke in support of the ordinance and stated many of her clients felt it was humiliating.

Sandy Lemburg, Poudre Canyon resident, stated he believed more input on the issue was needed.

Kelly spoke of the reasons for the time restrictions for panhandling.

Councilmember Kneeland stated she supported the ordinance and believed it addressed intimidating and aggressive behavior.

Councilmember Janett stated that the Downtown Public Safety Task Force has been working on this Ordinance for a year and thanked staff for addressing its concerns.

Mayor Azari supported the ordinance and thanked staff for addressing the specifics.

The vote on Councilmember McCluskey's motion was as follows: Yeas: Councilmembers Apt, Azari, Janett, Kneeland, McCluskey, Smith and Wanner. Nays: None.

THE MOTION CARRIED.

Resolution 95-64
Adopting the Poudre River Land Use
Framework Report and Recommendations. Adopted.

The following is staff's memorandum on this item.

"Executive Summary

The Poudre River Land Use Framework provides the foundation for land use planning along the Poudre River.

Over time, 20 different studies have been conducted on different facets of the River. Some of these studies were part of the City's Comprehensive Plan, while others were not. The intent of this document is to clarify and provide an understanding of what existing plans say about the Poudre River. By understanding what prior studies and plans have said about the River, the community will be in a better position to consider and evaluate proposals that affect this increasingly scarce resource. The community will also be better able to change the course of River planning if that is desired.

The Poudre River Land Use Framework makes the following specific recommendations:

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1. *The Poudre River Land Use Framework should be endorsed by affected advisory boards and commissions.*

(The framework has been reviewed by the Parks and Recreation Board, Natural Resources Advisory Board, Storm Drainage Board, Cultural Resources Board, Planning and Zoning Board, and the Landmark Preservation Commission. These boards recommend that Council adopt the framework and its recommendations.)

2. *City Council should adopt the recommendations of the Poudre River Land Use Framework by Resolution and authorize initiation of the River master planning process.*

3. *The Master Plan of the River should be developed as soon as possible and it should be adopted as an element of the Comprehensive Plan.*

4. *The River Master Plan should encompass the River corridor within the City's Urban Growth Area. It should identify and interrelate detailed sub-area land use arrangements, policies and implementation strategies to correspond to sub-area needs and themes.*

5. *The City should immediately address four critical action items, to preserve future options while a master plan is being formulated. These key action items are:*

- * Acquire land parcels that are key to elements of a larger River vision. These key parcels include the Kiefer property, the old pickle plant site, and appropriate Harmony Gateway parcels.*
- * Develop a partnership with private interests regarding future uses and development of the Flatiron Property.*
- * Develop a working agreement with gravel mining interests for reclamation and augmentation of key current and future gravel mining sites.*
- * Develop and adopt interim guidelines for proximity of development to the River, until a master plan has been completed.*

BACKGROUND:

Over one year has passed since Council approved funding for this project. Due to the length of time, a review of the process and circumstances preceding the delivery of this document might be helpful. This might be especially helpful because of some expectations that may have been raised in the minds of some readers.

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This study combines all the data from prior studies that have been done on the River. It has no new planning issues or recommendations. It was a project designed to bring prior discussion on the River into one document to provide the foundation for future, new planning. Some expectations may have surfaced that this document would result in a new land use document for the Poudre River. The size and scope of this project was limited to a small portion of that much broader goal. Achievement of this broader goal is the purpose of the next steps.

This study came about as part of the Council's budget discussions in planning the 1994 budget. Originally, the proposal before the Council was to recommend a planning study on a restricted area of the River near downtown Fort Collins. This study was proposed to cost \$40,000.

As part of the Council's deliberations, consensus was reached to have the study review the entire reach of the River from Overland Trail Road to I-25. The scope of study was broadened significantly, yet the budget remained \$40,000.

Following adoption of the budget, staff developed a scope of work for the project that could be handled within the \$40,000 financial limit. The scope of work in a nutshell was to develop a framework for future land use planning on the River and to bring together all prior studies that have been done on the Poudre River. The scope of work was submitted to the Council for its review. The feedback staff received was to proceed with the project. The resulting attached document is the product of that scope of work.

NEXT STEPS:

If the City Council chooses to adopt this study and its recommendations, staff will:

- *Continue with our attempts to acquire targeted lands within the river corridor.*
- *Begin the river master planning process within the framework of the City's comprehensive plan.*

The Development of a land use master plan for the Poudre River is a significant undertaking. In 1989, a comprehensive study of the river to determine the feasibility of national recreation area designation cost \$80,000. This study did not produce the land use specificity of this proposal. If a consultant was hired to do a full river master plan, staff believes the cost would be approximately \$150,000.

Staff would propose that the river master planning process be divided into three sections. If our approach is successful, we believe the costs can be significantly reduced.

1. *A planning grant has been developed and submitted to Great Outdoors Colorado (GO CO) that, if approved, would provide the following outcomes.*

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- *A memorandum of understanding with gravel companies that will provide for the conveyance of exhausted gravel lands to public ownership.*
- *Reclamation plans for specific gravel pits and the partnerships needed to reclaim the landscape to meet the public's desires.*
- *A water augmentation plan to support the acquisition of these exhausted gravel pits.*

This grant request is for \$50,000. In addition, the City will match this with both in-kind contributions, as well as contributions from Conservation Trust and the Natural Resources Tax. We should know in July if this grant application is successful. Roughly one-third of the river study area is in gravel ownership at this time. This project would remove one-third of the study area from the master planning process because it would be on a parallel planning track using different resources.

2. *The Poudre River Land Use Framework Study articulates many areas of agreement between the many master plans that reference the river. It is our belief that an in-house, team can quickly develop a master plan of these "agreement" areas. This team would:*

- *Plot and describe "non-controversial" land uses*
- *Create development guidelines along the corridor.*
- *Create a site specific definition of the river corridor*
- *Define the location and type of river restoration needs*
- *Establish minimum stream flow goals.*

In addition, this team would be responsible for continuing the purchase of targeted land along the river.

3. *The final piece of this master planning process is to collect community input and develop community consensus on the contentious areas along the river. Staff suggests that an outside consultant be hired to develop and implement this community process. The scope of work for the consultant would be to:*

- A. *Develop and conduct community outreach for input and review on plans developed by the staff team on the "agreement" areas.*

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- B. *Develop a community consensus on the "conflict" areas identified in the land use framework. These are site specific conflicts between existing, adopted master plans.*
- C. *Staff will propose in the 1996 budget process consideration of \$50,000 to hire a consulting firm for the community outreach and community consensus building phase.*

CONCLUSION:

Adopting the framework study at the May 16, meeting, will provide the foundation for future planning on the River. It will also provide the direction to acquire and plan for specific land uses. These uses are detailed in the recommendations of the document.

While this document has been developed, staff has not put "on hold" specific actions along the River. For example, the document recommends that we acquire the Harmony Gateway. This 280 acre parcel has been purchased by the Natural Resources Department.

Staff believes it is important that this document be adopted to bring together the prior thought of the community about the Poudre River. It provides a good starting point to build in new ideas of River use, as land use planning. The Fort Collins City Council has maintained a long-standing goal to protect and enhance the environment. Staff believes this land use framework is consistent with Council's goals and visions."

Director of Cultural, Library and Recreational Services Mike Powers gave a brief presentation and explained the intent of the framework report. He stated work would be done to identify portions of the river that would require restoration and begin the planning. He stated there would be an opportunity to collect community input and that staff would come to Council in the 1996 Budget to request funding to hire a consultant to assist staff with that endeavor. He stated there were 3 major components of the plan, acquire the land, reclamation of site specific areas, and water augmentation. He clarified the Downtown Development Authority and the Poudre River Trust have reviewed the Plan.

Councilmember Apt stated it was important to move ahead on the action items.

Director of Natural Resources Tom Shoemaker responded to Council questions and spoke of the wide mixes of land-use and the need for integration and natural topographic boundaries. He stated it was important to look at each parcel individually to determine habitat value and then decide how the parcel should be integrated.

Powers clarified that adoption of the Resolution did not accept an in-kind contribution offered by GO Colorado. He stated if and when a grant is obtained, staff will bring it to Council for its acceptance. He spoke of the funding for the project, other contributors and briefly spoke of what would be expected of a consultant.

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Councilmember Kneeland made a motion, seconded by Councilmember Wanner, to adopt Resolution 95-64.

THE MOTION CARRIED.

Councilmember Kneeland spoke in support of the motion and expressed pleasure that the project will finally be moving forward.

Councilmember Smith supported the motion and stated he supported continuing buying land surrounding the River, noting it will make it easier to begin implementation.

Mayor Azari commended Mike Powers and Tom Shoemaker for their outstanding work on this project.

The vote on Councilmember Kneeland's motion was as follows: Yeas: Councilmembers Apt, Azari, Janett, Kneeland, McCluskey, Smith and Wanner. Nays: None.

THE MOTION CARRIED.

Discussion and Decision
Regarding Citizen Complaint.

The following is staff's memorandum on this item.

"Executive Summary

The City Code provides that complaints pertaining to ethical conduct may be filed with the Mayor, in which event such complaints are to be placed on the agenda for the next special or regularly scheduled City Council meeting for review and possible action by the City Council.

BACKGROUND:

Section 2-569(d)(1) of the City Code describes a procedure whereby any person who believes that a Councilmember or board and commission member has violated any provision of state law or the City Charter or Code pertaining to ethical conduct may file a complaint with the Mayor. In the event that such a complaint is filed, the chairperson of the Ethics Review Board is to be notified and the complaint is to be placed on the agenda for the next special or regular City Council meeting for review and possible action by the City Council.

On May 3, 1995, a complaint was filed with the Mayor by Thomas W. Hartmann. In the complaint, Mr. Hartmann references a recent opinion issued by the Ethics Review Board, in which the Board expressed the belief that it is permissible under the City Charter for former Councilmember Gerry

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Horak to be employed by the City in an hourly capacity as an umpire or referee for City sponsored athletic events.

In his complaint, Mr. Hartmann questions whether those Councilmembers who received financial campaign election contributions from Mr. Horak should have excused themselves from participating in the formulation or approval of that opinion or should have disclosed that they might have a conflict of interest in the matter based upon Mr. Horak's contributions to their campaigns. Copies of Mr. Hartmann's complaint and the opinion of the Ethics Review Board are included in the agenda materials.

Under the City Code provision, the Council is to decide whether this complaint should be referred to the Ethics Review Board and, if not, whether any other action pertaining to the complaint is appropriate."

Councilmembers Azari, Smith and Wanner withdrew from discussion on this item due to a perceived conflict of interest.

City Attorney Steve Roy explained the alternatives available and the context in which the complaint was made. He stated that since two of the Councilmembers who were named in the complaint, are on the Ethics Review Board Council would need make a motion naming the alternative Ethics Review Boardmembers.

Councilmember Apt supported naming an alternative Ethics Review Board with the remaining 3 of the 4 Councilmembers.

Roy spoke of the Code provisions for an alternate Ethics Review Board.

Councilmember Janett stated it might be beneficial to appoint members of other Boards or Commissions to serve on the alternate board.

Councilmembers Kneeland and McCluskey volunteered to serve.

Councilmember Kneeland made a motion, seconded by Councilmember Apt, to form an alternative Ethics Review Board with Councilmember's Apt, Kneeland and McCluskey and 2 Boards or Commissions members. Yeas: Councilmembers Apt, Janett, Kneeland and McCluskey. Nays: None. (Councilmember's Azari, Smith and Wanner withdrawn)

Roy stated the City Clerk would select two names of Board or Commission members to serve with Councilmembers Apt, Kneeland and McCluskey.

THE MOTION CARRIED.

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OTHER BUSINESS

Councilmember McCluskey spoke of the need to simplify meeting times for Committees such as Finance, Ethics\Governance and Organizational Development.

Councilmember Kneeland clarified the Organizational Task Force has been meeting on Mondays at 4:30 p.m.

City Clerk Wanda Krajicek stated the Ethics\Governance Committee meeting times have not been set because appointments have not been made yet.

Councilmember Janett stated the curfew issue would be discussed at the Health and Safety Committee meeting to determine if there are any further concerns or issues that need to be addressed.

Councilmember Smith made a motion, seconded by Councilmember Wanner, to adjourn to 9:00 a.m. on May 20. Yeas: Councilmembers Apt, Azari, Janett, Kneeland, McCluskey, Smith and Wanner. Nays: None.

THE MOTION CARRIED.

ADJOURNMENT

The meeting adjourned at 10:20 p.m.



Mayor

ATTEST:



City Clerk