

ORDINANCE NO. 128, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
RATIFYING AND REAFFIRMING CERTAIN 2022 AND 2023 CITY EXPENDITURES  
AND DESIGNATING CERTAIN UNEXPENDED AND UNENCUMBERED  
APPROPRIATIONS AS NON-LAPSING

WHEREAS, on April 6, 2021, the City’s voters approved an amendment to Section 11 in Article V of the City Charter (“Section 11”); and

WHEREAS, 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; and

WHEREAS, 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 City Council if they are to be spent in future years; and

WHEREAS, if an appropriation has not lapsed, the funds remain available for expenditure in future years without the need for an additional appropriation by City Council; and

WHEREAS, before the City’s voters amended Section 11, it provided that all appropriated funds remaining unexpended at the end of the fiscal 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 be available for expenditure in future fiscal years without further appropriation by City Council; and

WHEREAS, 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 and second it added the requirement that the City 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; and

WHEREAS, the 2021 amendment did not, however, change the non-lapsing status of appropriated funds “encumbered” at the end of a fiscal year; and

WHEREAS, “encumbered” is not defined in the Charter, but the City’s past and current Financial Officers have, 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; and

WHEREAS, 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; and

WHEREAS, 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 as non-lapsing in its accounting records based on the incorrect assumption that they had been designated as non-lapsing in the ordinance; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the City Council wishes to reaffirm and ratify all those 2022 and 2023 expenditures and to designate the funds remaining unexpended and unencumbered from the appropriations identified below as non-lapsing for future expenditure as authorized in Section 11; and

WHEREAS, the City Council's further reaffirms and ratifies the public purposes for which such expenditures were originally appropriated and finds that the non-lapsing designations as hereafter provided are necessary for the public's health, safety, and welfare.

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

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

Section 2. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No. 058, 2021, which funds are twenty-five separate private donations totaling \$42,264 received from multiple individuals and entities to be used for various public purposes and deposited in and expended from several different City funds, including 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, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 058, 2021, that remain unexpended and unencumbered.

Section 3. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No.

065, 2021, which funds are 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 and deposited in and expended from the City's Recreation Fund, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 065, 2021, that remain unexpended and unencumbered.

Section 4. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No. 073, 2021, which funds are 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 and deposited in and expended from the City's Transit Services Fund, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 073, 2021, that remain unexpended and unencumbered.

Section 5. That the City Council hereby reaffirms and ratifies all the City's expenditures that have been made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No. 074, 2021, which funds are 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 and deposited in and expended from the City's General Fund, and hereby designate as non-lapsing pursuant to Section 11 all the funds appropriated in Ordinance No. 074, 2021, that remain unexpended and unencumbered.

Section 6. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No. 076, 2021, which funds are 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") and deposited in and expended from the City's CDBG Program Fund, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 076, 2021, that remain unexpended and unencumbered.

Section 7. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No. 077, 2021, which funds are 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") and deposited in and expended from the City's HOME Program Fund, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 077, 2021, that remain unexpended and unencumbered.

Section 8. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No. 079, 2021, which funds are 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 and deposited in and expended from the

City's General Fund, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 079, 2021, that remain unexpended and unencumbered.

Section 9. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No. 080, 2021, which funds are a grant of \$67,612 from the Colorado Division of Criminal Justice to be used for the City's Restorative Justice Services Program and deposited in and expended from the City's General Fund, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 080, 2021, that remain unexpended and unencumbered.

Section 10. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No. 098, 2021, which funds totaled \$8,200,000 and are 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, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 098, 2021, that remain unexpended and unencumbered.

Section 11. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No. 103, 2021, which funds are 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 has had on its operations and deposited in and expended from the City's Cultural Services and Facilities Fund, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 103, 2021, that remain unexpended and unencumbered.

Section 12. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using certain of grant funds appropriated in Ordinance No. 113, 2021, which funds were deposited in and expended from the City's General Fund and are: (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) \$6,198 LEAF grant for FCPS overtime, (vi) a \$66,543 POMH grant for FCPS contractual mental health specialist, and (vii) a \$2,579 POST grant for FCPS officer training; and Ordinance No. 113 also appropriated \$100,000 for the Southeast Community Innovation Center & Pool Project; and hereby designate as non-lapsing under Section 11 the portions of these funds appropriated in Ordinance No. 113, 2021, that remain unexpended and unencumbered.

Section 13. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using certain of the funds appropriated in Ordinance No. 114, 2021, which funds are: (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, with both grants deposited in and expended from the General Fund, and hereby designate as non-lapsing

under Section 11 the portions of these grant funds appropriated in Ordinance No. 114, 2021, that remain unexpended and unencumbered.

Section 14. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the funds appropriated in Ordinance No. 134, 2021, which funds are 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 and deposited in and expended from the City's General Fund, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 134, 2021, that remain unexpended and unencumbered.

Section 15. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the hereafter described funds appropriated in Ordinance No. 140, 2021, which funds are \$2,218,000 being transferred from the Community Capital Improvement Program Fund to the Capital Projects Fund and appropriated from it to fund the capital project of renovating the City's Carnegie Library and \$17,000 being transferred from the Capital Projects Fund to the Cultural Services and Facilities Fund and appropriated from it to fund the capital project of commissioning an artwork under the City's Art in Public Places Program related to Carnegie Library project, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 140, 2021, for these capital projects that remain unexpended and unencumbered.

Section 16. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the hereafter described funds appropriated in Ordinance No. 142, 2021, which funds are \$8,750,000 representing the City's 50% share of a \$16.5 million grant from the Federal Aviation Administration ("FAA") for capital projects at the Northern Colorado Regional Airport (the "Airport") and deposited in and expended from the Airport Fund, and hereby designate as non-lapsing under Section 11 all the FAA grant funds appropriated in Ordinance No. 142, 2021, for these Airport capital projects that remain unexpended and unencumbered.

Section 17. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal year 2023 using these described funds appropriated for all the capital projects identified in Ordinance No. 145, 2021, the City's annual appropriation ordinance for fiscal year 2022: (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, and hereby designate as non-lapsing under Section 11 all of these capital project funds appropriated in Ordinance No. 145, 2021, that remain unexpended and unencumbered.

Section 18. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal years 2022 and 2023 using the hereafter described funds appropriated for the capital project known as the Laporte Avenue Multimodal Project (the "Project") in Ordinance No. 155, 2021, which are \$2,437,500 of State of Colorado grant funds deposited in and appropriated from the Capital Projects Fund and \$389,142 transferred from the Transportation Capital Expansion Fee to the Capital Projects Fund and appropriated from it, 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, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 155, 2021, for the Project and artwork that remain unexpended and unencumbered.

Section 19. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal year 2023 using the funds appropriated in Ordinance No. 031, 2022, which funds are total grants of \$172,584 from the Colorado Department of Human Services, Office of Early Childhood deposited in and expended from the City's Recreation Fund to be used by the Recreation Department for childcare programing, tuition assistance, workforce retention, and facility enhancements, and hereby designate as non-lapsing under Section 11 all the funds appropriated in Ordinance No. 031, 2022, that remain unexpended and unencumbered.

Section 20. That the City Council hereby reaffirms and ratifies all the City's expenditures made in fiscal year 2023 using the hereafter described funds appropriated in Ordinance No. 118, 2022, which funds are \$16,445,834 representing the City's 50% share of grants from the State of Colorado ("Colorado") and Federal Aviation Administration ("FAA") for capital projects at the Northern Colorado Regional Airport (the "Airport") and deposited in and expended from the Airport Fund, and hereby designate as non-lapsing under Section 11 all these Colorado and FAA grant funds appropriated in Ordinance No. 118, 2022, for the Airport capital projects that remain unexpended and unencumbered.

Section 21. That the City Council hereby designates as non-lapsing under Section 11 all of the following capital project funds as identified and appropriated in Ordinance No. 126, 2022, the City's annual appropriation ordinance for fiscal year 2023, that remain unexpended and unencumbered: (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.

Section 22. That the City Council hereby designates as non-lapsing under Section 11 all of the capital project funds identified and appropriated in Sections 4 and 6 of Ordinance No. 041, 2023, that remain unexpended and unencumbered which are: (i) \$100,000 expended in the Transportation Fund for Neighborhood Traffic Mitigation Program Project Construction; and (ii) \$4,361,774 expended in the Broadband Fund as re-deployment of broadband working capital.

Introduced, considered favorably on first reading and ordered published this 19th day of September, 2023, and to be presented for final passage on the 3rd day of October, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Passed and adopted on final reading this 3rd day of October, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

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City Clerk