

ORDINANCE NO. 058, 2012
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE XIV OF CHAPTER 15 OF THE CITY CODE
REGARDING LICENSING OF OUTDOOR VENDORS

WHEREAS, the City currently licenses outdoor vendors, pursuant to the provisions of Article XIV of Chapter 15 of the City Code, but limits their operation to private property only; and

WHEREAS, interest in the community in allowing outdoor vendors as a mode of delivery of foods and other goods and services has grown, in keeping with a similar national trend; and

WHEREAS, City staff has conducted a general review of the treatment of outdoor vendors in the City's codes and regulations, and as a result City staff has identified and recommended certain modifications to Article XIV of Chapter 15 of the City Code to update and expand the licensing of outdoor vendors in Fort Collins and to establish related requirements; and

WHEREAS, the City Council is considering on this same date Ordinance No. 057, 2012, enacting amendments to the Land Use Code in order to establish outdoor vendors as a permitted use in certain zone districts and to set basic development requirements associated with such uses; and

WHEREAS, in view of the foregoing, the Council desires to amend Article XIV of Chapter 15 of the City Code as provided herein.

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

Section 1. That Section 15-381 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-381. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Block face shall mean the portion of a street between two (2) intersections, including all on-street parking within such boundaries.

Commissary shall mean a commissary that is approved as such under the laws and regulations of the State of Colorado and Larimer County that govern retail food establishments.

Commissary-prepared shall mean prepared, cooked and assembled in a commissary, without further preparation, cooking or assembly after leaving said commissary.

Food shall mean a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

Licensee shall mean a person who has been issued a license under the provisions of this Article.

Mobile food truck shall mean a motorized wheeled vehicle, or towed wheeled vehicle designed and equipped to serve food. *Mobile food truck* shall include both "hot trucks" upon which food is cooked and prepared for vending, and "cold trucks" from which only commissary-prepared, ready-to-eat or packaged foods in individual servings are handled.

Mobile food truck vendor shall mean an outdoor vendor who operates from a mobile food truck.

Neighborhood zone district shall mean one of the following zone districts, as established in Article 4 of the Land Use Code: Rural Lands (R-U-L); Urban Estate (U-E); Residential Foothills (R-F); Low Density Residential (R-L); Low Density Mixed-Use Neighborhood (L-M-N); Medium Density Mixed-Use Neighborhood (M-M-N); Neighborhood Conservation, Low Density (N-C-L); Neighborhood Conservation, Medium Density (N-C-M); Neighborhood Conservation, Buffer (N-C-B); and High Density Mixed-Use Neighborhood (H-M-N).

Neighborhood mobile food vendor shall mean an outdoor vendor operating in locations on streets that are in neighborhood zone districts from a mobile food truck or pushcart licensed for use in the retail sale or service of only commissary-prepared, ready-to-eat or packaged food in individual servings. *Neighborhood mobile food vendor* shall not include a vendor operating from a mobile food truck or pushcart on which food is cooked.

Non-neighborhood zone district shall mean any zone district, as established in Article 4 of the Land Use Code, that is not a neighborhood zone district.

Old Town Plaza shall mean the outdoor plaza area owned and managed by the Downtown Development Authority within the area bounded on the south by the northern edge of the Mountain Avenue right-of-way; on the west by the eastern edge of the College Avenue right-of-way; on the north and northeast by the southern and southwestern edge of the Walnut Street right-of-way; and on the east by the most westerly point at which the Walnut Street and Mountain Avenue rights-of-way intersect.

Outdoor vendor shall mean any person, whether as owner, agent, consignee or employee, who sells or attempts to sell, or who offers to the public free of charge, any services, goods, wares or merchandise including, but not limited to, food or beverage,

from any outdoor location, except that outdoor vendor shall not include a person who:

- (1) Vends from private premises where the same or similar services or goods are also offered on a regular basis from an indoor location on such premises;
- (2) Vends from a public sidewalk pursuant to a City encroachment permit if the person vending also vends the same or similar services or goods on a regular basis from an indoor location on premises immediately adjacent to such location;
- (3) Vends directly and exclusively to manufacturers, wholesalers or retailers for the purpose of resale;
- (4) Vends by or on behalf of the City, or at an outdoor event sponsored by the City;
- (5) Vends from property owned by the City, if such vending is pursuant to a concession agreement or other agreement with the City or is pursuant to a facility-specific permit issued for operation at said facility by the City department authorized to issue such permits, such as a permit to operate in a park or recreation area or on a trail pursuant to § 23-203(d);
- (6) Vends from a public sidewalk within the Downtown Zone District, as defined and established in the Land Use Code, pursuant to a concession agreement with the City;
- (7) Vends from and within Old Town Plaza under a written license or other agreement with the Downtown Development Authority;
- (8) Vends at a yard sale; provided, however, that this exception shall not apply to a person who has vended at five (5) or more previous yard sales within the preceding twelve (12) months;
- (9) Vends as part of an auction conducted pursuant to a license issued by the City under Division 2, Article IV of this Chapter;
- (10) Vends outdoor transportation services as a public utility under a certificate of public convenience and necessity issued by the Colorado Public Utilities Commission; and
- (11) Vends food or catering services at an individual private residence for a private event.

Outdoor vendor of miscellaneous goods and services shall mean an outdoor vendor who offers miscellaneous goods or services to the public on private property. *Outdoor vendor of miscellaneous goods and services* shall include, but not be limited to, Christmas tree lots, pumpkin patches, and other temporary outdoor holiday sales; vehicle windshield chip repair; temporary car wash events; and temporary non-profit fundraising sales.

Outdoor vendor of transportation services shall mean an outdoor vendor (not regulated by the Colorado Public Utilities Commission) who offers transportation services to the public. *Outdoor vendor of transportation services* shall include, but not be limited to, vendors of valet parking services; transportation services by pedal power such as pedi-cab or conference bicycle services; horse-drawn carriage rides, or other means of transportation service offered for hire.

Packaged shall mean bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. *Packaged* shall not include a product in a wrapper, carry-out box, or other nondurable container used to protect food during the service and receipt of the food by the consumer.

Private shall mean any location that is not a public right-of-way, or public street, alley or sidewalk.

Pushcart shall mean a mobile vending cart, pushcart, or trailer, that is not motorized or attached to a vehicle for towing, and that does not exceed ten (10) feet in length (excluding the length of the trailer hitch, if any), four (4) feet in width, or eight (8) feet in height. A *pushcart* may be used to cook and prepare food for vending, or to serve commissary prepared, ready-to-eat or packaged food in individual servings.

Pushcart vendor shall mean an outdoor vendor operating from a pushcart.

Ready-to-eat food shall mean food that is edible and that is in the form in which it is reasonably expected to be consumed without further washing, cooking, or additional preparation.

Special vending license shall mean a temporary outdoor vendor license issued pursuant to § 15-382(c) for outdoor vending at an occasional, temporary event located solely on a single private lot when the event does not require the issuance of a special events permit under Chapter 23.5.

Vend or Vending shall mean the sale, attempt to sell, or offering to the public of any services, goods, wares or merchandise.

Yard sale shall mean the offering of goods for sale for no longer than a period of three (3) consecutive days, from an informal stand or display on an individual residential lot in a residential zone district by or on behalf of the owner or resident

of the lot, provided that such owner or resident is not in the business of selling at retail or wholesale the goods offered at the yard sale. *Yard sale* shall include, but not be limited to, yard sales, garage sales, lemonade stands, and bake sales.

Section 2. That Section 15-382 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-382. License required.

(a) It shall be unlawful for any outdoor vendor to engage in such business within the City without first obtaining a license in compliance with the provisions of this Article.

(b) Any person who arranges for or allows one or more outdoor vendors to operate at a special event held pursuant to a license issued under Chapter 23.5 must obtain an outdoor vendor license under this Article. Upon the issuance of such license, the outdoor vendors vending at such special event shall be relieved of the obligation to obtain individual licenses under this Article in order to operate as part of said special event. Notwithstanding the provisions of § 15-386 and § 15-387, the requirements applicable to outdoor vendors operating as part of a special event held under a license issued pursuant to Chapter 23.5 shall be determined by the Financial Officer on a case-by-case basis, taking into consideration the location, nature and scope of the special event, and any related circumstances.

(c) The Financial Officer may issue a special vending license to a person responsible for an occasional, temporary event located solely on a single private lot when the event does not require the issuance of a special events permit under Chapter 23.5. Notwithstanding the provisions of § 15-386 and § 15-387, the requirements applicable to outdoor vendors operating as part of a special vending license event shall be determined by the Financial Officer on a case-by-case basis, taking into consideration the location, nature and scope of the special vending event, and any related circumstances. Upon the issuance of such special vending license, an outdoor vendor operating within the terms of and as part of a special vending license shall not be required to obtain a separate outdoor vendor license for that operation. Any special vending license shall be subject to the following restrictions and limitations:

- (1) No more than four (4) such licenses shall be issued for a specified property during any calendar year;
- (2) No more than four (4) outdoor vendors of any single vendor type may participate as part of a licensed event;
- (3) No more than a total of (8) outdoor vendors may participate as part of a licensed event;

- (4) The number and type of outdoor vendors to be allowed as part of a licensed event shall be determined by the Financial Officer based on the specific circumstances of the proposed event, including, but not limited to the location of the event, the size of the lot where the event is held, the types of surrounding land uses and their proximity to the event, and any other potential impacts on public health, safety and welfare that the proposed event may have.
- (e) The application fee to be paid to the City for the issuance, modification, or renewal of any license pursuant to this Article shall be set by the City Manager pursuant to his or her authority to establish administrative fees in Chapter 7.5.

Section 3. That Section 15-383 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-383. Application for license; license modifications.

- (a) An application for a license under this Article shall be submitted to the Financial Officer no less than five (5) working days prior to the first day of proposed operation.
- (b) A license may be issued under this Article for a period of either six (6) months or twelve (12) months, except that a special vending license as described in § 15-382(c) may be issued for a specified period not to exceed three (3) days.
- (c) A request for a modification of a license to add new vehicles, operations, locations or to modify other license restrictions or conditions, as applicable, shall be submitted to the Financial Officer and shall meet all of the requirements, and be reviewed in the same manner as, an application for a license hereunder. The term of a license may not be modified to extend beyond the originally applicable six (6) or twelve (12) month period.

Section 4. That Section 15-384 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-384. Contents of application.

- (a) The application shall contain the following information:
 - (1) Name, address and telephone number of the applicant and, if other than the applicant, name, address and telephone number of the person managing or supervising the applicant's business during the proposed period of operation; and, if a corporation, the state under which it is incorporated, and appropriate evidence of good standing to do business in the state of Colorado;

- (2) Type of operation to be conducted, including the particular type of service, goods, wares or merchandise to be sold;
 - (3) A description of the design of any vehicle, pushcart, kiosk, table, chair, stand, box, container or other structure or display device to be used in the operation by the applicant, including the size and color, together with any logo, printing or sign which will be utilized by the applicant, and the license plate and registration information for any vehicle to be used;
 - (4) The proposed period of operation, if less than the entire six (6) or twelve (12) month license period;
 - (5) The proposed hours and days of operation;
 - (6) Each location on private property for which the application is made;
 - (7) Written consent of the property owner if the location for which the application is made is on private property;
 - (8) Proof of liability insurance as required by Subsection 15-387(c);
 - (9) A plan of any location on private property for which the application is made, showing the location of all existing and proposed structures, access, equipment and parking;
 - (10) Documentation of a sales and use tax license in good standing issued by the Colorado Department of Revenue, Larimer County, and the City; and
 - (11) For the vending of food, documentation of regulatory approval as a retail food establishment by Larimer County.
- (b) The Financial Officer may request and require such additional information as he or she deems necessary in order to consider the application and make the required determinations as set forth in this Article. The time frame for review of any application shall be suspended during the pendency of any such request for additional information.

Section 5. That Section 15-385 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-385. Review and approval.

- (a) Applications shall be considered individually and in chronological order as established by the date of receipt of a properly completed application. However, no application will be accepted for review more than sixty (60) days prior to the proposed period of operation. Within five (5) working days of the filing of an

application under § 15-384, the Financial Officer shall review such application and shall make a determination as to whether the application contains the required information and, if so, whether the issuance of a license is consistent with the requirements of this Article and compatible with the public interest. In making such determination, the Financial Officer shall consider the following factors and may consider other factors the Financial Officer considers necessary to protect the health, safety and welfare of the public:

- (1) The degree of congestion of any public right-of-way that may result from the proposed use and the design and location of any operating locations on private property, including the probable impact of the proposed use on the safe flow of vehicular and pedestrian traffic. Factors to be considered shall include, but not be limited to, the width of streets and sidewalks, the volume of traffic, and the availability of off-street parking;
 - (2) The proximity, size, design and location of existing street fixtures and furniture at or near the specified locations, including, but not limited to, sign posts, lampposts, bus stops, benches, telephone booths, planters and newspaper vending devices;
 - (3) The probable impact of the proposed use on the maintenance, care and security of the specified locations; and
 - (4) The recommendations of the Policy, Planning and Transportation Services Director and the Community and Operations Services, insofar as the specified locations may affect the operation of those service areas, based upon the factors recited herein; and
 - (5) The level and types of outdoor vendor activity already licensed for the specific locations proposed in the application, and the impacts that the issuance of a license may have on surrounding properties.
- (b) The Financial Officer shall also obtain the determination of the Zoning Administrator as to whether the proposed use conforms to the requirements of the Land Use Code as applied to any specified location. If the Zoning Administrator determines the proposed use is not in compliance with the requirements of the Land Use Code, the application shall not be approved.
- (c) If the Financial Officer determines that the issuance of a requested outdoor vendor license would be consistent with the requirements of this Article, with or without additional conditions, the Financial Officer shall issue the license, subject to any such conditions. If the Financial Officer determines that the issuance of an outdoor vendor license would not be consistent with the requirements of this Article, the Financial Officer shall notify the applicant of his or her determination in writing, with an explanation of the reasons for such denial.

Section 6. That Section 15-386 of the Code of the City of Fort Collins is hereby deleted in its entirety.

Section 7. That Section 15-387 of the Code of the City of Fort Collins is hereby renumbered to be Section 15-386, and amended to read in its entirety as follows:

Sec. 15-386. Requirements for issuance.

- (a) Each license shall be valid for only for the specific location or locations described on the face of the license.
- (b) In addition to the licensee's name, address and telephone number, the license shall contain the following:
 - (1) The type of operation;
 - (2) The period of time for which the license was issued;
 - (3) The hours and days of operation;
 - (4) The designated location or locations, including specified types of public rights-of-way, as applicable;
 - (5) A brief description of any vehicle, cart, kiosk, table, chair, stand, box, container or other structure or display device to be utilized by the licensee;
 - (6) Any special terms and conditions of issuance;
 - (7) A statement that the license is personal and is not transferable in any manner;
 - (8) A statement that the license is valid only when used at the location or locations designated on the license;
 - (9) A statement that the license is subject to the provisions of this Article.

Section 8. That Section 15-388 of the Code of the City of Fort Collins is hereby renumbered to be Section 15-387, and amended to read in its entirety as follows:

Sec. 15-387. Restrictions and operation.

- (a) No licensee may use, for the purpose of on-site storage, display or sale, any vehicle, cart, kiosk, table, chair, stand, box, container or other structure or display device not described on the face of the license.
- (b) No such vehicle, structure or device referred to in (a) above shall be located:
 - (1) In any on-street parking space that is not parallel to the adjacent street;
 - (2) In any public parking space in a manner that does not comply with applicable parking regulations or a properly issued parking permit for the use of said parking space;
 - (3) Upon a public sidewalk within the extended boundaries of a crosswalk;

- (4) Within ten (10) feet of the extension of any building entranceway, doorway or driveway;
- (5) Upon a public sidewalk within the Downtown Zone District, as defined and established in Article 4 of the Land Use Code (except as a concessionaire of the City);
- (6) Upon a public right-of-way, or public street, alley or sidewalk within a City park or other City facility (except as a concessionaire or pursuant to a permit issued for operation in a park or recreation area or on a trail pursuant to § 23-203(d), or for operation at another City facility pursuant to facility-specific permit issued by the City); or
- (7) In any location in which the vehicle, structure or device may impede or interfere with or visually obstruct:
 - a. the safe movement of vehicular and pedestrian traffic;
 - b. parking lot circulation; or
 - c. access to any public street, alley or sidewalk.
- (c) No licensee shall operate during the hours of 3:00 a.m. to 7 a.m.;
- (d) Each licensee who during the course of its licensed activities operates within or enters upon a public right-of-way or publicly owned property shall maintain liability insurance in an amount to be determined by the Financial Officer according to administrative regulation with proof of the same to be presented at the time of submission of the application. Any licensee who fails to provide proof of such insurance shall be prohibited from operating within or entering upon such property.
- (e) Each licensee shall pick up and dispose of any paper, cardboard, wood or plastic container, wrappers or any litter which is deposited within twenty-five (25) feet of the designated location or within twenty-five (25) feet of the point of any sale or transaction made by the licensee if the radius of the designated location exceeds twenty-five (25) feet. The licensee shall carry a suitable container for the placement of such litter by customers or other persons.
- (f) Each licensee shall maintain in safe condition any vehicle, structure or device as described in (a) above, so as not to create an unreasonable risk of harm to the person or property of others, and shall use flashing lights and other similar warning and safety indicators when stopped to vend services in any location in street right-of-way.
- (g) No licensee shall leave unattended any vehicle, structure or device as described in (a) above, on a public right-of-way or at any licensed location, or place

on public sidewalks or in public streets or alleys any structures, canopies, tables, chairs or other furniture or equipment.

(h) Each licensee shall prominently display the license issued hereunder in a location readily visible to the public on each vehicle, structure or device as described in (a) above.

(i) Each licensee operating in an on-street location must serve the public only from the sidewalk and not from the street or adjacent parking spaces.

(j) Each licensee shall comply with the provisions of all applicable ordinances of the City as well as the requirements of all state and federal laws, including, but not limited to, City noise restrictions, sign regulations, limitations on discharge of liquid waste, sales and use tax requirements, and food safety and other related requirements established by state or county regulation.

(k) No more than one (1) outdoor vendor of any specified type may be licensed to operate on any lot, tract or parcel of land, except that this limitation shall not apply to special vending licenses and licenses for special events as described in § 15-382.

(l) Each licensee shall have an affirmative and independent duty to determine the safety and suitability of any particular stopping point or location of operation, both in general and at any particular time, and to operate in a manner reasonably calculated to avoid and prevent harm to others in the vicinity of the licensee's operations, including but not limited to potential and actual customers, pedestrians, and other vendors or vehicles.

(m) The following additional requirements shall apply to particular types of outdoor vendor licensees, as specified:

(1) Mobile food truck vendors shall:

- a. Vend only on lots in non-neighborhood zone districts or on streets in locations in non-neighborhood zone districts where parallel parking is allowed;
- b. Not stop to vend within two hundred (200) feet of the property boundary of any public or private school for students within the grade range of kindergarten through twelfth (12th) grade;
- c. Vend only food and non-alcoholic beverages; and
- d. Permanently affix or paint any signage on the mobile food truck, with no signs/banners in or alongside street right-of-way or across roadways.

(2) Pushcart vendors shall:

- a. Vend only on lots in non-neighborhood zone districts or on streets in locations in non-neighborhood zone districts where parallel parking is allowed;
 - b. Not stop to vend within two hundred (200) feet of the property boundary of any public or private school for students within the grade range of kindergarten through twelfth (12th) grade;
 - c. Vend only food and non-alcoholic beverages; and
 - d. Stop to vend only in locations that are no more than twelve (12) inches from a curb or edge of travel lane.
- (3) Neighborhood mobile food vendors shall:
- a. Vend only on streets in locations in neighborhood zone districts where parallel parking is allowed;
 - b. Not stop to vend within two hundred (200) feet of the property boundary of any public or private school for students within the grade range of kindergarten through twelfth (12th) grade;
 - c. Vend only during the hours of 10:00 a.m to 8:00 p.m.;
 - d. Vend only food and non-alcoholic beverages;
 - e. Stop to vend only in locations that are no more than twelve (12) inches from a curb or edge of travel lane; and
 - f. Not stop to vend for more than fifteen (15) minutes in any particular cul-de-sac, or on any particular block face.
- (4) Outdoor vendors of miscellaneous goods and services shall operate only on lots in non-residential zone districts.
- (5) Outdoor vendors of transportation services shall:
- a. Operate in accordance with all vehicular traffic laws and regulations, including, but not limited to, equipment requirements such as front and back lights and side reflectors;
 - b. Limit stopping and standing in street rights-of-way or alleys so as to avoid delay or obstruction of traffic;
 - c. Stop to vend services only in locations that are no more than twelve (12) inches from a curb or edge of travel lane; and
 - d. Operate so as to avoid obstruction of pedestrian traffic and not on sidewalks.

Section 9. That Section 15-389 of the Code of the City of Fort Collins is hereby renumbered to be Section 15-388, and amended to read in its entirety as follows:

Sec. 15-388. Renewal.

Renewal of a license shall be treated as a new application under the provisions of this Article. Any violation by the licensee of the provisions of this

Article shall be an additional factor to be considered in the review and approval procedure described in § 15-385.

Section 10. That Section 15-390 of the Code of the City of Fort Collins is hereby renumbered to become Section 15-389.

Section 11. That Section 15-391 of the Code of the City of Fort Collins is hereby renumbered to be Section 15-390, and amended to read in its entirety as follows:

Sec. 15-390. Restrictions due to changed conditions.

The Financial Officer may suspend the vending operation of any licensee or all licensees at any designated location, if he or she determines that the licensed activity in that location will no longer meet the requirements of this Article due to construction activity or other changed conditions affecting public health, safety or welfare. In such event, the Financial Officer shall provide written notice to the affected licensee or licensees, and the authorization to operate in such location shall not be reinstated until such time, if at all, as the licensed operations may be safely resumed in the judgment of the City Engineer. Any such suspension shall not extend the term of the affected license or licenses.

Section 12. That a new Section 15-391 of the Code of the City of Fort Collins is hereby added and reads in its entirety as follows:

Sec. 15-391. Revocation or nonrenewal.

The Financial Officer may temporarily suspend, or permanently revoke and shall not renew any license issued pursuant to this Article if the Financial Officer determines that any of the following have occurred:

- (1) Fraud, or material misrepresentation or false statement in the application for the license or any renewal application;
- (2) Failure to obtain a sales and use tax license as required by the City or to remit any sales tax due the City;
- (3) Failure to operate, or supervise operations conducted under the license, so as to reasonably ensure that such operation is in compliance with the terms of the license and with the provisions of this Article; or
- (4) Authorizing, condoning or knowingly tolerating any unlawful vending operations or any operation conducted in such a manner as to constitute a menace to the health, safety or general welfare of the public.

Section 12. That Section 15-392 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-392. Violations and penalties.

In addition to the suspension, revocation or denial of any license issued hereunder, any person who violates the provisions of this Article may be punished by a fine or imprisonment or both, in accordance with § 1-15.

Section 13. That a new Section 15-394 of the Code of the City of Fort Collins is hereby added to read in its entirety as follows:

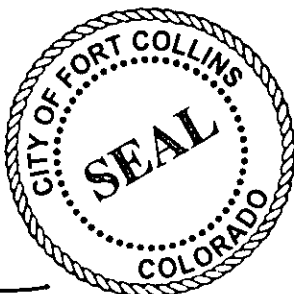
Sec. 15-394. Appeal.

An applicant or license may appeal any decision relating to his or her application or license by the Financial Officer to the City Manager in accordance with Chapter 2, Article VI of the City Code. The City Manager's decision shall be final.

Introduced, considered favorably on first reading, and ordered published this 5th day of June, A.D. 2012, and to be presented for final passage on the 17th day of July, A.D. 2012.

ATTEST:


Interim City Clerk

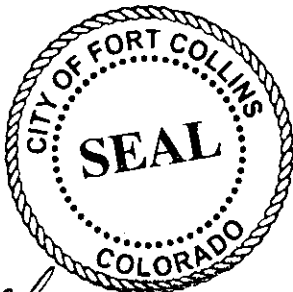



Mayor

Passed and adopted on final reading on the 17th day of July, A.D. 2012.

ATTEST:


City Clerk




Mayor