



WILSON WILLIAMS LLP

To: Annisa Hollingshead, City Clerk; Lisa Cunningham, Protester

CC: Carrie Daggett, City Attorney; Sara Afrmann, Assistant City Attorney

From: Geoff Wilson, Hearing Officer

Date: December 14, 2023

Re: ORDER on Protest filed 12/06/2023

ORDER DISMISSING PROTEST

1. On December 6, 2023 Lisa Cunningham (“Protester”) filed a Protest with the City Clerk pursuant to Art. X, Section 5(f)(3) of the Fort Collins City Charter (“Sec. 5(f)(3)”).
2. A copy of the Protest is attached. *See Appendix A.*
3. I now issue this **ORDER** dismissing the Protest.
4. Sec. 5(f)(3) sets forth a process for protesting the City Clerk’s initial determination of whether the signatures on a referendum petition are “sufficient” (as was the case here) or “insufficient.” Thus, the focus of a protest is likewise on the sufficiency of the signatures. In general, protests focus either on the information provided (or not provided) on the signature lines of the petition itself, or upon the manner in which a given signature or group of signatures was obtained (that is, the conduct of petition circulators).
5. Pursuant to the Charter, a hearing on the Protest was set for 9:30 am on December 13, 2023, in the City Council Chambers and notice was provided to the Protester. I was appointed Hearing Officer in the matter.
6. On December 10, 2023, I provided, *inter alia*, notice to the Protester and the City Clerk that, insofar as Section 2 of the Protest did not concern the sufficiency of signatures on the petition, I could not address it in this proceeding and would be dismissing that portion of the Protest. A copy of my notice to the Protester and the City Clerk is attached. *See Appendix B.*
7. In my December 10 notice I also informed Protester that her Protest was deficient in that it did not “set forth *with particularity* the grounds of protest and *the names* and defects in form *protested*,” as required in Sec.5(f)(3). I informed Protester that I was going to look past this defect (that is, not dismiss the Protest out of hand), but would



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- be expecting the Protester to identify “with particularity” which signatures she was protesting at our hearing.
8. On December 13 at 9:30 am in the Fort Collins City Council Chambers, the Hearing was convened. I explained the limited nature of the proceedings (i.e., the sufficiency of signatures only), and the Protester was sworn in.
 9. Protester then delivered a well-crafted and articulate statement in which she described situations that she, as well as she and her husband, had observed during the petition circulation process where signatures were apparently being gathered without the required “Big Book,” which included the printed land use code, being “available,” as was required by the City for lawful circulation of the referendum petitions. A copy of the City’s circulator instructions is attached. *See Appendix C.*
 10. Petitioner complained about the apparent widespread violation of this requirement by circulators. In response to my questions, Protester acknowledged that she had not signed the petition (thus her protest does not seek to invalidate *her* signature, but rather those of others), nor had she asked any petition circulators whether the Big Book was “available.”
 11. Protester said that under the process set forth in the Charter, she would have to locate scores of witnesses who had signed the petition and who could testify that the Big Book was not “available” when they affixed their signatures. Protester stated that this was a virtually impossible task and that she had not been able to identify any signatures “with particularity” in this Protest.
 12. Protester produced a witness, who was sworn and testified that he had observed signature gathering outside the library without the Big Book being visible. The witness testified that he had not seen anybody actually sign a petition, nor had he asked the circulators whether the Big Book was actually “available.” The witness also acknowledged that he had not signed the petition himself.
 13. Because the Protester did not identify any signatures on the petition with particularity in her Protest or at the Hearing, and thus did not establish by a preponderance of her evidence that the Clerk’s determination of sufficiency as to such signature(s) ought to be changed, this Protest is **DISMISSED**.

ISSUED THIS 14th DAY OF DECEMBER, 2023.

Hearing Officer Geoff Wilson

APPENDIX A

LISA CUNNINGHAM

612 Smith Street • Fort Collins, CO 80524
lisa.m.cunningham@protonmail.com • (970) 221-7141

Anissa Hollingshead, City Clerk
City of Fort Collins
300 Laporte Avenue
Fort Collins, CO 80522

REC'D BY CITY CLERK
DEC 6 '23 PM 2:05

Dear Ms. Hollingshead,

I'm am writing to protest the validity of the petition submitted on November 28, 2023 to prevent Ordinance No. 136, 2023 (The Land Use Code) from going into effect next month. I am filing this protest on two grounds: 1) the petitioners did not follow the City's rules to provide a physical, bound copy of the Ordinance to the public at all signing events, and 2) this petition process duplicates an earlier petition that was already publicly vetted and decided upon by City Council, and is an abuse of the petition process in itself.

1. Bound Copy Requirement

Per the City Clerk's *Protest and Referendum Process Memo* dated October 27, 2023, the petitioners were required to exhibit a bound document of the Land Use Code whenever they solicit signatures for all potential signers to review for themselves. I was not given this opportunity the week before Thanksgiving, when a female Fort Collins Preserve petitioner came to my door at 612 Smith Street bearing only the petition on a clipboard for me to sign, with no bound Land Use Code document in hand. In addition, on Sunday November 26th, I was outside of the Old Town library where the Preserve Fort Collins solicitors had set up a petition table, with no copies of the Land Use Code ordinance available for me to review. I am also attaching several photos posted by Preserve Fort Collins on their own Facebook page showing similar tables around town with no ordinance copies visible. The absence of this document violates the rules of the petition process, as well as the spirit of providing accurate information and facts to citizens about the ordinance.

2. Duplication of a Previous, Almost Identical Petition

The petition made against the current Land Use Code, is a repeat of the one submitted a year ago by the same group on this very topic in November 2022.

After the City Council repealed the Land Use Code in January 2023 in response to the last petition, City staff spent over six months of time, resources, and money to solicit input from the community. Through this extensive process, City staff made concessions and incorporated changes that were raised from citizens via surveys, workshops, public meetings, and walking tours. On October 17, when the City Council re-adopted the Land Use Code with these changes, this petition process reached its natural conclusion

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from a fully publicly vetted process. The City Council chose to adopt the Land Use Code, and it should stand.

As a citizen of Fort Collins, I am concerned that in this case the petition process is being used as a tactic to stonewall our City Council's decisions. The current petition is a manipulation of the City's democratic referendum process.

Certifying a petition which simply recycles identical grievances from a year ago, sets a dangerous precedent with dire implications for how our City can conduct its business in the future.

For these two reasons, I ask that you reject this petition.

Sincerely,

Lisa Cunningham
Lisa Cunningham

Lisa Cunningham



State of Colorado

County of LARIMER

Signed and sworn to [or affirmed] before me on DECEMBER 6, 20 23
by LISA MARIE CUNNINGHAM (name(s) of individual(s) making statement).

Heather Hallberg

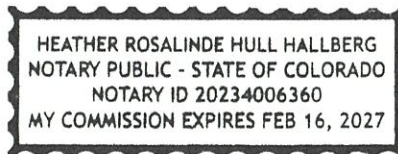
(Notary's official signature)

PUBLIC NOTARY

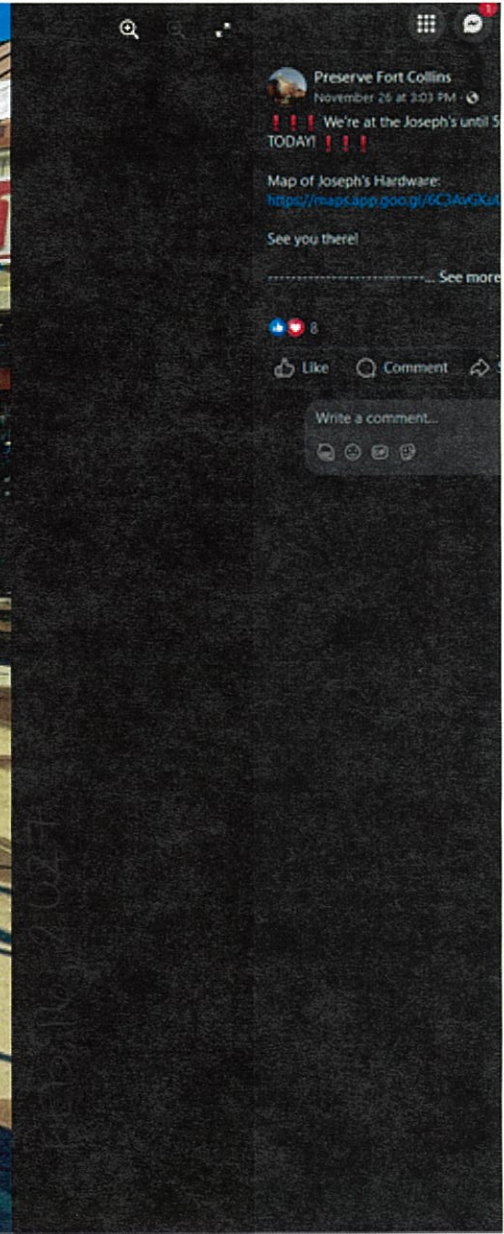
(Title of office)

FEB. 16, 2027

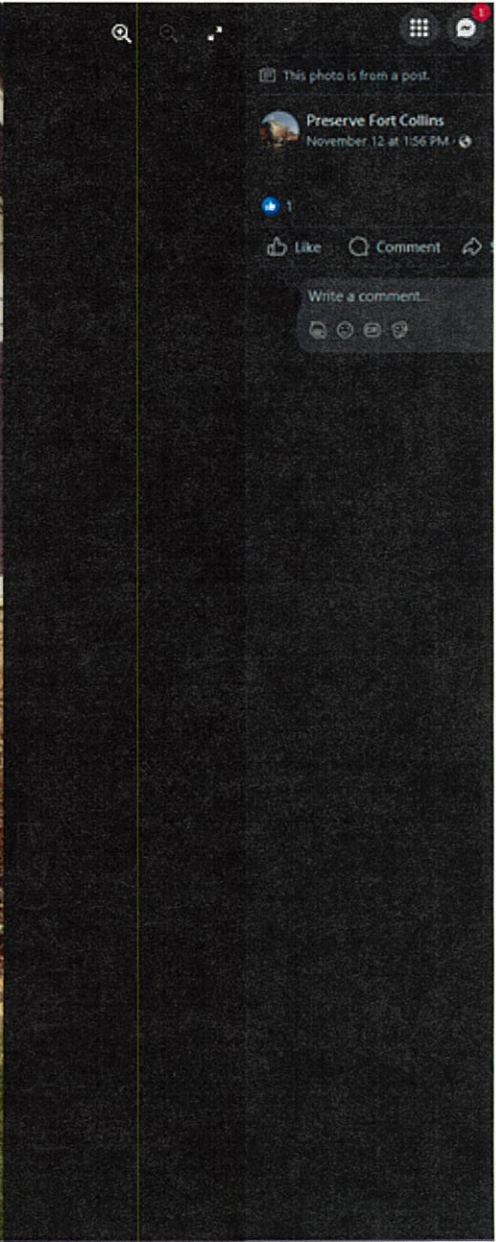
(Commission Expiration)



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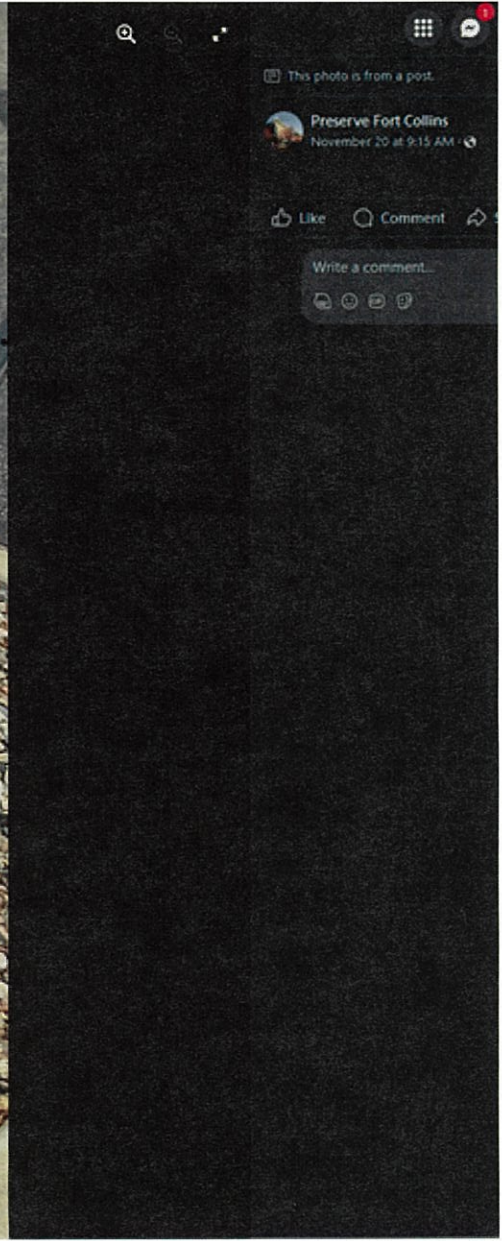
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APPENDIX B

Geoff Wilson

From: Geoff Wilson
Sent: Sunday, December 10, 2023 4:07 PM
To: Anissa Hollingshead; lisa.m.cunningham@protonmail.com
Cc: Sara Arfmann; Carrie Daggett
Subject: RE: Notice of Protest Filed and Protest Hearing Scheduled

Good afternoon:

I am the hearing officer for the Protest filed by Ms. Cunningham (the Protester) in the office of the Fort Collins City Clerk on December 6, 2023, pursuant to Art. X, Section 5(f)(3) of the City Charter. The hearing on this Protest will be at 9:30 am on Wednesday, Dec. 13 in the City Council Chambers (the Protester should have already received a notice to this effect).

As set forth in Art. X, Sec.5(f)(3) of the City Charter, Protester here objects to “a determination by the City Clerk that a petition is...sufficient.”

The City Clerk’s determination of petition sufficiency involves primarily a review of the signatures on the petitions. Specifically, Art. X, Section 5(f)(1) of the Charter directs that the City Clerk “ascertain...whether the petition is signed by the requisite number of registered electors and contains the required particulars and affidavits.” The reference to “particulars” is to the other items on the signature line of a petition, besides the signature itself. Thus, the process to protest this determination by the City Clerk is *also* focused on the adequacy of the signatures on the petition. That is why Art. X, Sec.5(f)(3) directs that a protest brought pursuant to that section “shall set forth *with particularity* the grounds of protest and *the names and defects in form protested.*” (emphasis added).

In **Section 1** of her Protest, Protester fails to identify specifically which names on the petition she is seeking to invalidate, beyond her own. Protester implies that she means to protest other signatures, but does not identify them with particularity. I am overlooking this defect in the Protest as to these additional signatures, but I will be looking for the Protester, at the outset of our hearing, to cure this defect by identifying with particularity which signatures she is protesting, should she wish to protest any signatures other than her own.

In **Section 2** of her Protest, Protester raises an objection to the petition that does not concern the determination of the sufficiency of signatures that is the lawful scope of this Protest, pursuant to Art. X, Section 5(f)(3) of the Fort Collins City Charter. Whatever merit Protester’s objections may have (and I express no opinion here), this Protest hearing is not the lawful forum. Accordingly, I will not be taking testimony or receiving other evidence in connection with Section 2 of the Protest on Wednesday morning, and I will be dismissing this portion of the Protest.

Pre-hearing Requests of the Protester.

The following will greatly assist me, as your Hearing Officer, as well as expediting our hearing.

1. Exhibits: Should Protester wish to submit any documentary (written/graphic/pictorial) materials for consideration at the hearing in connection with Section 1 of the Protest, please letter these materials individually (a, b, c, etc) for your use as exhibits, and provide them to the City Clerk by the *close of business on Monday*. The Clerk will make copies of the exhibits for me.
2. Witnesses: Should the Protester wish to provide testimony of any witnesses, please provide the City Clerk with a list of these witnesses and a brief statement of their intended testimony by the *close of business on Monday*. The Clerk will forward to me this list.

Order of the Hearing.

The hearing on Wednesday morning will begin at 9:30 am and proceed as follows:

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1. Introduction of Hearing Officer and opening remarks of the Hearing Officer.
2. Protester is administered oath.
3. Protester presents her case and answers questions from the Hearing Officer. Protester's witnesses, if any, are sworn in and may be examined by the Protester and the Hearing Officer.
The Protester's burden of proof in this proceeding is a "preponderance of the evidence," meaning that Protester must show that it is more likely than not that the signature protested is invalid.
4. Protester concludes her case; may make closing statement.
5. Hearing is closed; Hearing Officer takes case under advisement.
6. Hearing Officer will issue decision within ten days following the hearing.

This will be a public hearing, and the public is welcome to attend. However no public comment or testimony will be taken.

I will expect polite decorum by the public observing this proceeding.

Should I have omitted some detail or can answer any questions about our hearing on Wednesday morning, please send me an e-mail.

Best Regards.

Geoff Wilson
Partner
Wilson Williams LLP
317 W South Boulder Road, Suite 6
Louisville, CO 80027
P: (303) 330-8905
E: geoff@wilsonwilliamsllp.com
wilsonwilliamsllp.com

From: Anissa Hollingshead <ahollingshead@fcgov.com>
Sent: Friday, December 8, 2023 9:17 AM
To: lisa.m.cunningham@protonmail.com
Cc: elections <elections@fcgov.com>
Subject: Notice of Protest Filed and Protest Hearing Scheduled

Attached please find a notice of a protest hearing for the protest you have filed that has been scheduled to begin Wednesday, December 13, at 9:30 a.m. Also attached is a copy of your protest as received.

The hearing will be held in Council Chambers at City Hall and will be before a neutral hearing officer appointed by the City Manager. Remote participation via Zoom is possible. Please let us know if you would like remote participation arrangements.

The timeframe for scheduling this hearing is tightly constrained by the City Charter. Wednesday, December 13 is the only possible day to schedule a hearing that meets the requirements both for when a hearing must start after the filing of a protest and the window required to provide notice:

City Charter Article Section 5. Petitions.

- (f) Sufficiency of petition.
- (3) Protests. Registered electors desiring to protest a determination by the City Clerk that a petition is either sufficient or insufficient may file a written protest, under oath, in the office of the City Clerk within ten (10) days of the filing of the petition. The protest shall set forth with particularity the grounds of protest and the names and defects in form protested. **Upon the filing of a protest, the City Clerk shall set a time for hearing such protest, which shall be no more than seven (7) days thereafter. At least five (5) days prior to the hearing, the City Clerk shall mail a copy of the protest**

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to all of the designated petition representatives together with a notice of the time for hearing. All hearings shall be before a hearing officer appointed by the City Manager who shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents. All records and hearings shall be public, and all testimony shall be under oath. The hearing shall be summary in nature and concluded within thirty (30) days after the petition was filed. Said hearing officer shall decide and certify the results of the hearing within ten (10) days after the hearing is concluded. The City Clerk shall make any final determination regarding the sufficiency or insufficiency of a petition and shall base such determination on the protest hearing results certified by the hearing officer. A petition for referendum which has been deemed insufficient after protest may not be amended or circulated further.

.....
ANISSA HOLLINGSHEAD

Pronouns: she/her/hers

City Clerk

[City of Fort Collins](#)

300 Laporte Ave, Bldg A

970-416-2995 office

612-720-8751 mobile

ahollingshead@fcgov.com

INSTRUCTIONS REGARDING THE REFERENDUM PETITION CIRCULATION PROCESS RELATING TO ORDINANCE NO. 136, 2023

The purpose of this document is to provide information to the petition representatives that can also be shared with petition circulators to ensure an understanding of the expectations of the City Clerk's Office regarding the circulation and potential submission of a complete petition in the protest of Ordinance No. 136, 2023. This information is believed to be accurate and in compliance with the City Charter and Code. It is not intended to serve as legal advice. In all matters, the City Charter and the City Code are the authority on all aspects of the referendum petition process.

The petition form approval for the current referendum petition effort regarding Ordinance No. 136, 2023, is being issued today, Wednesday, November 8, 2023. This approval marks the start of the 20-day circulation period for the petition, which must conclude with the full submission of the petition by 5 p.m. on Tuesday, November 28, 2023.

As part of this referendum petition process, there are two parts of the petition for circulation that must be kept together at all times during the solicitation and collection of any signatures on each petition section.

1. Petition Sections:

Each section consists of

- Page 1, addressing the petition for referendum to the City Council of the City of Fort Collins, and including a general statement of purpose as provided by the petition representatives, the warning required in the City Charter, and the names and addresses of the three petition representatives.
- Pages 2-5, the full text of Ordinance No. 136, 2023, excluding any exhibits.
- Page 6, containing a notice that the circulator of the section has a bound copy of Exhibits A through G of the ordinance for review by those being asked to sign.
- Pages 7-9 for petition sections printed for 30 signatures, Pages 7-11 for sections printed for 50 signatures, and Pages 7-16 for sections printed for 100 signatures, containing signature pages for those wishing to sign the petition.
- Page 10 (or 12, or 17), containing space for the notarized affidavit of the petition circulator that must be completed by the individual who circulates that section.

2. Exhibit Books

Each exhibit book is spiral bound, with a clear plastic front cover and black vinyl back cover. Each book contains:

- 539 numbered color-printed pages containing exhibits A-G to Ordinance No. 136, 2023, comprising the Land Use Code adopted on October 17, 2023.
- A label assigning the book a sequential 3-digit number, starting with Book #001, along with a notice the book must remain in the custody of the circulator and returned to the petition representatives with completed petition(s).

The petition form approval records every petition section approved and provided to the petition representatives for circulation, along with the numbers of the exhibit books provided to the representatives.

REQUIREMENTS EACH CIRCULATOR MUST FOLLOW FOR EVERY PETITION SECTION THEY CIRCULATE FOR SIGNATURES:

- Be at least 18 years of age or older
- Personally circulate the petition section
- Ensure each signature is the signature of the person whose name it purports to be
- Ensure to the best of their knowledge and belief each person signing the petition is a registered elector (voter) in Fort Collins when they sign
- Ensure each signer has an opportunity before signing to read the full text of the entire petition, including both the petition section AND the exhibit book
- Any time they are circulating a petition section for signatures, always carry their assigned exhibit book and have it available for review
- Not pay or agree to pay in the future, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing the person to sign the petition

Every petition section includes an affidavit on its final page that must be completed by the person who circulated that section, attesting to adherence to each of the above requirements affirmed by the circulator's notarized signature. This affidavit must remain attached to the rest of the petition section.

The petition sections and exhibit books should be treated as two equal parts of the petition for circulation by the petition representatives and circulators. The only differentiation between the two is that one exhibit book should be provided to each circulator, while a circulator may be provided and may return multiple petition sections.

- All approved petition sections should be returned to the City Clerk's Office as part of the final complete petition submitted.
- All exhibit books provided to the petition representatives should also be returned to the City Clerk's Office at the time the final complete petition is submitted.
- It is the responsibility of the petition representatives to:
 - assign an exhibit book to each circulator who is provided petition sections for circulation, and to track which number exhibit book has been assigned to each circulator;
 - ensure all circulators clearly understand they must maintain both all petition sections they are provided and the exhibit book in the condition it was provided, without removing or adding any pages to either document, and without making extraneous markings or notes on either document;
 - ensure all circulators clearly understand the exhibit book must be carried and available to those being asked to sign at all times a petition section is being circulated.
- Please note any modification of a petition section or an accompanying exhibit book could result in invalidation of signatures.