

May 7, 2024

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

**PROCLAMATIONS AND PRESENTATIONS
5:00 PM**

A) PROCLAMATIONS AND PRESENTATIONS

- PP 1. **Declaring May 7, 2024 as Pat Ferrier Appreciation Day.**
- PP 2. **Declaring the week of May 12 through 18, 2024 as National Police Week and May 15, 2024 as Peace Officers Memorial Day.**
- PP 3. **Declaring the week of May 19 through 25, 2024 as National Travel and Tourism Week.**
- PP 4. **Declaring the month of May 2024 as Mental Health Awareness Month.**
- PP 5. **Declaring the month of May 2024 as National Water Safety Month. Mayor Jeni Arndt presented the above proclamations at 5:00 p.m.**

Mayor Pro Tem Francis presented the above proclamations at 5:00 p.m.

**REGULAR MEETING
6:00 PM**

B) CALL MEETING TO ORDER

Mayor Pro Tem Emily Francis called the regular meeting to order at 6:10 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City's Zoom platform.

A review of the interpretation services being offered was provided.

C) PLEDGE OF ALLEGIANCE

Mayor Pro Tem Emily Francis led the Pledge of Allegiance to the American Flag.

D) ROLL CALL

PRESENT

Mayor Pro Tem Emily Francis
Councilmember Susan Gutowsky
Councilmember Julie Pignataro
Councilmember Tricia Canonico
Councilmember Melanie Potyondy
Councilmember Kelly Ohlson

ABSENT

Mayor Jeni Arndt (Excused)

STAFF PRESENT

City Manager Kelly DiMartino

City Attorney Carrie Daggett

Interim City Clerk Heather Walls

E) CITY MANAGER'S AGENDA REVIEW

City Manager Kelly DiMartino provided an overview of the agenda, including:

- All items on the consent agenda were recommended for approval with no changes.
- The items on the discussion agenda were reviewed.

F) COMMUNITY REPORTS

None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS

(Including requests for removal of items from Consent Calendar for individual discussion.)

Carin Avila Rocky Mountain Raptor Program Executive Director discussed the proposed use of the Hughes Stadium site as Wildlife Nature Campus.

Randy Morgan thanked Council for the ability to speak and continued the presentation on the Wildlife Nature Campus concept.

Andi Hart opposed the National Police Week proclamation and discussed various police related incidents.

Tammy VerCauteran Bird Conservatory of the Rockies Executive Director continued the presentation on the Wildlife Nature Campus concept.

Michelle G. discussed living as a Jew in America.

Lou Griff expressed support for public safety and the National Police Week proclamation.

Ash W spoke in support of a ceasefire resolution.

Vicki Rossen requested Council move forward with removing the nine most controversial Land Use Code changes and opposed increasing density.

Sue McFaddin requested the removal of Item No. 2, *Second Reading of Ordinance No. 053, 2024, Appropriating Prior Year Reserves in the Natural Areas Fund and the Sales and Use Tax Fund for the Purpose of Land Conservation, Visitor Amenities, Restoration and Other Related Natural Areas Stewardship Activities Not Included in the 2024 Adopted City Budget*, from the consent agenda for additional discussion.

Jeff Gantman requested Council move forward with removing the nine most controversial Land Use Code changes.

Maddy Walinchus, Northern Colorado Wildlife Center, continued the presentation on the Wildlife Nature Campus concept.

Bob Nightwalker, Northern Colorado Wildlife Center, continued the presentation on the Wildlife Nature Campus concept, specifically highlighting the value of volunteers.

William Fairbank expressed support for the removal of the nine most controversial Land Use Code changes.

Brian Tracy opposed the increase in allowable floor area in 4-plexes in the OTB zone.

Steve Yurash suggested a Charter amendment preventing Council from addressing issues outside of Colorado and suggested for the Land Use Code related to providing privacy between neighbors by not allowing buildings to protrude through the daylight plane.

Peter O'Neil expressed support for the removal of the nine most controversial Land Use Code changes and urged Council to consider the demand side of the housing equation.

Bill King stated the City has officially registered an opinion on very few state land use bills and opposed House Bill 24-1107, which he stated the City has supported.

Rich Stave opposed the purchase of trash carts by the City and expressed concern about tax dollars going to climate.

Charles Kopp supported the removal of the nine most controversial Land Use Code changes.

Bill Dieterich stated it is a false premise that increased density will create affordable housing.

Claire (no last name given) opposed using funds per Item No. 10, *First Reading of Ordinance No. 063, 2024, Making a Supplemental Appropriation from the Colorado Department of Local Affairs Gray and Black-Market Marijuana Enforcement Grant Program for the Fort Collins Police Services Marijuana Enforcement Program* and expressed support for college student protests related to the Israel/Gaza conflict.

Tom Farnsworth expressed concern about the state pre-empting local control.

Trudy Haines, Fort Collins HOA Coalition, supported the removal of the nine most controversial Land Use Code changes and urged Council to honor that commitment moving forward.

Paul Herman, Water Commission member speaking on his own behalf, expressed concern about extremism growing across the United States.

Colleen Hoffman, Preserve Fort Collins and the Fort Collins HOA Coalition, expressed concern about the effects of increased density on infrastructure and resources and supported the removal of the nine most controversial Land Use Code changes. Hoffman urged Council to fight for its home rule status.

Peter Erickson stated housing affordability affects everyone and commented on his neighborhood being the densest zone in town.

Adam Hirschhorn stated housing is not just a local problem.

Danny Crisafulli stated Fort Collins is a city grasping with affordability, yet Council is still voting to remove ADUs from the Land Use Code.

Laura Lenhart expressed support for a ceasefire resolution and opposed an increase in policing.

Nancy York expressed concern about climate change and stated keeping the planet habitable should be a priority. York expressed concern about the non-functional Riverside Community Solar project.

Shirley Peel thanked Council for considering appointing her to the Planning and Zoning Commission and expressed concern about the Trilby and College intersection design, specifically the slip lanes.

Chris Griffith thanked Council for its support of Police Week.

Tallon Nightwalker, Northern Colorado Wildlife Center, expressed support for a Wildlife Nature Campus at the former Hughes Stadium site.

Alli (no last name given) opposed the recognition of Police Week and expressed support for a ceasefire resolution.

Lorena Lopez discussed the need to address the historic marginalization of the communities in the north Fort Collins area, specifically the Hispanic community, and proposed development projects be focused on improving housing, roads, and public utilities be initiated with input from the area residents.

Theresa Lopez commented on the marginalization and neglect of North College mobile home parks and urged Council to work to make improvements through comprehensive infrastructure projects. Lopez stated progress should include everyone.

Rebecca Mendoza commented on developments that carry the weight of historical neglect and the promise of future inclusion and expressed concern about North College developments further marginalizing area neighborhoods. Mendoza urged Council to utilize appropriated funds for meaningful community engagement with all community members.

Eloisa Ruiz expressed concern about recent development proposals that seem to diverge significantly from the North College Investment Plan.

Sabrina Herick discussed the proclamations related to National Police Week and Mental Health Awareness Month and stated her autistic child was abused by a Poudre School District transportation employee. Herick requested Council pledge to increase the local police budget only with funds earmarked specifically for de-escalation and mental health response training for officers.

Public comment ended at 7:41 p.m.

H) PUBLIC COMMENT FOLLOW-UP

Councilmember Canonico thanked the speakers and noted Fort Collins is a member of the Colorado Municipal League (CML) and Colorado Communities for Climate Action, both of which have full time staff at the state capital. She noted CML recommended a position of support for House Bill 24-1107 and requested staff provide some additional detail on that recommendation. Ginny Sawyer, Policy Manager, replied the bill relates to recouping costs and being protective of the City's financial stewardship.

Councilmember Canonico requested staff input on Shirley Peel's comments related to slip lanes in intersection design. City Manager DiMartino replied it is too late in the design process to eliminate the slip lanes from the Trilby/College intersection, but intersections will be examined moving forward on a case-by-case basis.

Councilmember Canonico requested staff input on the status of the Riverside Community Solar Garden. Brian Tholl, Energy Services Manager, replied Utilities is hosting two upcoming community listening sessions regarding the solar garden. Additionally, Tholl noted the array was built in 2014 with a single central inverter rather than the current design with many smaller inverters; therefore, work has been needed to develop a redesign solution.

Councilmember Potyondy thanked the speakers and requested clarification on Item No. 10, *First Reading of Ordinance No. 063, 2024, Making a Supplemental Appropriation from the Colorado Department of Local Affairs Gray and Black-Market Marijuana Enforcement Grant Program for the Fort Collins Police Services Marijuana Enforcement Program*. City Manager DiMartino clarified that is a grant appropriation. Greg Yeager, Deputy Police Chief, clarified the state grant funds come from the legal sale of marijuana which are then distributed to municipalities to help combat illegal marijuana sales.

Councilmember Potyondy requested additional information regarding the process for the use of the Hughes Stadium site. City Manager DiMartino stated Council will be discussing the proposed timeline for the development of the property's master plan at its conversation on council priorities at next week's work session and the plan is to have the process outlined by June.

Councilmember Pignataro thanked the speakers and noted the trash carts mentioned by Mr. Stave belong to the City per Item No. 7, *First Reading of Ordinance No. 060, 2024, Appropriating Philanthropic Revenue Received Through City Give for Environmental Services Curbside Recycling*, to allow for a change in contractor moving forward. Additionally, she noted that is grant funding as well.

Councilmember Pignataro requested additional information regarding the North College community engagement appropriation. City Manager DiMartino replied she would follow-up to determine if that specific appropriation was part of a URA item.

Councilmember Pignataro asked if staff pursued a grant for the parts needed for the solar array. City Manager DiMartino noted part of the 2050 tax appropriation does include \$250,000 for the solar garden. Tholl stated staff is exploring other grant opportunities and noted the challenge now is to reenergize the array in a timely manner while balancing the future needs and enhancements of the site.

Councilmember Pignataro requested staff follow-up on comments regarding the distribution of 2050 tax funds and electrification of golf carts. Jacob Castillo, Chief Sustainability Officer, clarified the electrification relates to the utility carts used by Parks and Recreation, not to golf carts.

Councilmember Ohlson requested a follow-up memo regarding Steve Yurash's question dealing with the daylight plane and its relationship to solar access. City Manager DiMartino replied staff will provide a follow-up memo.

Councilmember Ohlson commented on the importance of addressing the Hughes Stadium site during this Council's two-year term. He also stated the Fort Collins Police Department is a professional force always striving for improvement and noted funding more items related to mental health is moving forward and led by Police Services leadership.

Mayor Pro Tem Francis noted Council will be discussing an engagement plan for full community input regarding the Hughes Stadium property at its next work session. She also requested additional follow-up regarding the North College Investment Plan and community outreach.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

None.

J) CONSENT CALENDAR

1. Consideration and Approval of the Minutes of the April 2, 2024 Regular Meeting.

The purpose of this item is to approve the minutes of the April 2, 2024 regular meeting.

Adopted.

2. Second Reading of Ordinance No. 053, 2024, Appropriating Prior Year Reserves in the Natural Areas Fund and the Sales and Use Tax Fund for the Purpose of Land Conservation, Visitor Amenities, Restoration and Other Related Natural Areas Stewardship Activities Not Included in the 2024 Adopted City Budget.

This Ordinance, unanimously adopted on First Reading on April 16, 2024, appropriates \$7,924,969 in prior year reserves in the Natural Areas Fund and \$269,466 in prior year reserves in the Sales and Use Tax fund to be transferred to the Natural Areas Fund. These appropriations are for land conservation, resource management, planning, construction of trails and other visitor amenities, restoration of wildlife habitat, and other Natural Areas Department programs and activities to benefit the residents of the City, in accordance with the Natural Areas Master Plan.

Adopted on Second Reading.

3. Second Reading of Ordinance No. 054, 2024, Appropriating Philanthropic Revenue Received by City Give for FC Moves to Fund an Asphalt Art Installation.

This Ordinance, unanimously adopted on First Reading on April 16, 2024, requests an appropriation of \$25,000 in philanthropic revenue received by City Give for FC Moves, a department within the City's Planning Development and Transportation Service Area, for an asphalt art installation as designated by the grant award. This installation is consistent with the City's Active Modes Plan.

In 2019, the City of Fort Collins launched City Give, a formalized enterprise-wide initiative to create a transparent, non-partisan governance structure for accepting and appropriating charitable gifts.

Adopted on Second Reading.

4. Items Relating to the Adoption of a New Land Use Code.

A. Second Reading of Ordinance No. 056, 2024, Updating City Code References to Align with the Adoption of the Revised Land Use Code.

B. Second Reading of Ordinance No. 057, 2024, Amending the Zoning Map of the City of Fort Collins to Rename All Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer Zone Districts to the Old Town Zone District in Conjunction with the Adoption of the Revised Land Use Code.

These ordinances, unanimously adopted on First Reading on April 16, 2024, consider adoption of changes to the City's Land Use Code. The Land Use Code (LUC) Phase 1 Update implements policy direction in City Plan, the Housing Strategic Plan, and the Our Climate Future Plan.

Regarding Ordinance No. 055, 2024, corrections to clean up inadvertent numbering in Article 4 are recommended, and a suggested motion to do so is on page 5.

Additionally, this item updates City Code references to match changes to the Land Use Code including updating section references and wording.

Finally, because the revised Land Use Code renames the Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer zone districts to the Old Town zone district with corresponding subdistricts A, B, and C, updates to the zoning map to reflect the name changes are proposed. This change only affects the name of the zone districts and no changes to the boundaries are proposed.

Ordinance No. 055, 2024, will be considered under discussion due to a split vote.

Ordinance No. 056, 2024, Adopted on Second Reading.

Ordinance No. 057, 2024, Adopted on Second Reading.

5. **First Reading of Ordinance No. 058, 2024, Making Supplemental Appropriation of the 2050 Tax for Various Programs and Services Related to Parks, Recreation, Transit and Our Climate Future.**

The purpose of this item is to appropriate the 2024 funding of the new 2050 Tax. In November 2023, Fort Collins voters approved this 0.5% Sales & Use Tax increase, which is dedicated to the areas of Parks, Recreation, Transit and Climate. This tax begins in 2024 and expires at the end of 2050.

Adopted on First Reading.

6. **First Reading of Ordinance No. 059, 2024, Making a Supplemental Appropriation from the Local Planning Capacity Grant for the Affordable Housing and Planning Development Process Improvement Project and Approving a Related Grant Agreement.**

The purpose of this item is to appropriate awarded funds from the Proposition 123 Local Planning Capacity (LPC) Grant, administered by the State Department of Local Affairs (DOLA). This \$200,000 grant to the City will support a 12- to 18-month process improvement project intended to reduce development review timelines for affordable housing developments to meet Proposition 123's 90-day "fast track" approval requirements.

Adopted on First Reading.

7. **First Reading of Ordinance No. 060, 2024, Appropriating Philanthropic Revenue Received Through City Give for Environmental Services Curbside Recycling.**

The purpose of this item is to appropriate an award of approximately \$664,000 to defray the cost of new recycling carts being purchased for the City's Residential Contracted Trash and Recycling Program and to support recycling outreach and education for the community.

Adopted on First Reading.

8. **First Reading of Ordinance No. 061, 2024, Appropriating Prior Year Reserves and Unanticipated Philanthropic Revenue Received Through City Give for Various Programs and Services as Designated by the Donors.**

The purpose of this item is to request appropriation of \$58,235 in philanthropic revenue received through City Give. These miscellaneous gifts to various City departments support a variety of programs and services and are aligned with both the City's strategic priorities and the respective donors' designation.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on First Reading.

9. **First Reading of Ordinance No. 062, 2024, Appropriating Philanthropic Revenue Received Through City Give for the Art in Public Places Program, Pianos About Town Project.**

The purpose of this item is to consider an appropriation of \$47,115 in philanthropic revenue received through City Give for the Art in Public Places program for the designated purpose of Pianos About Town, a collaborative effort among the City of Fort Collins Art in Public Places program, the Fort Collins Downtown Development Authority, and the donor, Bohemian Foundation.

Adopted on First Reading.

10. **First Reading of Ordinance No. 063, 2024, Making a Supplemental Appropriation from the Colorado Department of Local Affairs Gray and Black-Market Marijuana Enforcement Grant Program for the Fort Collins Police Services Marijuana Enforcement Program.**

The purpose of this item is to support Fort Collins Police Services' Marijuana Enforcement Program in investigating gray and black-market marijuana cases by appropriating \$39,641 of unanticipated grant revenue from the Colorado Department of Local Affairs (DOLA), Gray and Black-Market Marijuana Enforcement.

Adopted on First Reading.

11. **Items Relating to the College Avenue-Trilby Road Intersection Improvements Project.**

A. Resolution 2024-064 Authorizing the Execution of an Amendment to an Existing Intergovernmental Agreement between the City of Fort Collins, Colorado, and the Colorado Department of Transportation for the College Avenue-Trilby Road Intersection Improvements Project.

B. First Reading of Ordinance No. 064, 2024, Making Supplemental Appropriations of Prior Year Reserves and Grant Revenue from the Colorado Department of Transportation and Authorizing Transfers for the College Avenue-Trilby Road Intersection Improvements Project.

The purpose of this item is to enable the City to receive and expend Colorado Department of Transportation (CDOT) funds for the College Avenue-Trilby Road Intersection Improvements Project (Project). The funds will be used for construction of improvements at the intersection of South College Avenue and Trilby Road. If approved, this item will: 1) authorize the Mayor to execute an amendment to the Intergovernmental Agreement (IGA) for the Project with CDOT; 2) appropriate \$361,361 of Congestion Mitigation and Air Quality (CMAQ) Improvement Program grant funds for the Project; 3) appropriate \$1,870,000 of Highway Improvement Program (HIP)

grant funds; 4) appropriate \$5,272,260 of Surface Transportation Block Grant (STBG) Program funds; 5) appropriate \$2,000,000 of Funding Advancements for Surface Transportation and Economic Recovery (FASTER) Act grant funds; 6) use \$14,800 from development contributions to construction as part of the local match; 7) appropriate as part of the local match contribution \$1,300 from the Transportation Capital Expansion Fee (TCEF) Reserves; 8) appropriate \$113 (0.7% of the local match amount) from TCEF Reserves to the Art in Public Places Program; and 9) appropriate \$48 (0.3% of the local match amount) for maintenance of art from Transportation Fund Reserves to the Art in Public Places Program.

Resolution 2024-064 Adopted.

Ordinance No. 064, 2024, Adopted on First Reading.

12. Items Relating to Sewer Service for the Northern Colorado Regional Airport's New Terminal.

A. Resolution 2024-065 Authorizing Execution of an Intergovernmental Agreement Between the City of Fort Collins, the City of Loveland and the South Fort Collins Sanitation District for Purchase of a Sewer Tap for the New Terminal at the Northern Colorado Regional Airport.

B. First Reading of Ordinance No. 065, 2024, Authorizing the Conveyance of a Permanent Non-Exclusive Sewer Easement on Property Jointly Owned by the City of Fort Collins and the City of Loveland at the Northern Colorado Regional Airport.

The purpose of the Resolution is to authorize the City Manager to execute an intergovernmental agreement for the purchase of a sewer tap from South Fort Collins Sanitation District sewer for service at the Airport's new terminal. The proposed Ordinance will authorize a conveyance of an easement to the Sanitation District to allow for a sewer service line for the terminal. The easement is over a portion of the Northern Colorado Regional Airport property, which is owned jointly by the City of Fort Collins and the City of Loveland.

Resolution 2024-065 Adopted.

Ordinance No. 065, 2024 Adopted on First Reading.

13. Resolution 2024-066 Authorizing the City Manager to Enter into an Agreement with Various Entities Regarding the Poudre Water Supply Infrastructure Wildfire Ready Action Plan.

The purpose of this item is to request approval for Fort Collins Utilities ("Utilities") to enter into an agreement with the City of Greeley and Water Supply and Storage Company (collectively "Project Partners") to jointly develop a Wildfire Ready Action Plan ("WRAP"). The Cache la Poudre ("Poudre") River watershed is a shared resource for municipal, agricultural, and recreational water users, with critical and separately owned water supply infrastructure located near Cameron pass. Staff from Utilities' Watershed Program and Project Partners aim to address the vulnerability of this infrastructure and water supplies to post-wildfire impacts by developing a collaborative WRAP. The proposed agreement regarding the Poudre Water Supply Infrastructure WRAP outlines the terms for this collaboration. The Water Commission has formally recommended that Council authorize the City Manager to sign the agreement.

Adopted.

14. **Resolution 2024-067 Adopting Findings of Fact in Support of the City Council’s Decision on Appeal to Uphold the Planning and Zoning Commission Approval of the Union Park Project Development Plan PDP230005.**

The purpose of this item is to make findings of fact and conclusions regarding Council’s decision at the April 16, 2024, Union Park Project Development Plan appeal hearing that the Planning and Zoning Commission held a fair hearing and properly interpreted the Land Use Code and Larimer County Urban Area Street Standards and upholding the Planning and Zoning Commissions’ approval of the Union Park Project Development Plan.

Adopted.

15. **Resolution 2024-068 Making an Appointment to the Planning and Zoning Commission.**

The purpose of this item is to fill a vacancy on the Planning and Zoning Commission.

In March 2024, Planning and Zoning Commission member Samantha Stegner resigned.

Pursuant to Council policy, the recommended appointee, Shirley Peel, has completed or will complete the required acknowledgement and acceptance of the Code of Conduct and the applicable laws and policies that govern service on City boards and commissions.

Adopted.

END OF CONSENT CALENDAR

Councilmember Pignataro moved, seconded by Councilmember Gutowsky, to approve the recommended actions on items 1-15 on the consent calendar.

The motion carried, 6-0.

K) CONSENT CALENDAR FOLLOW-UP *(This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)*

Councilmember Ohlson requested follow-up regarding the contractor at the Trilby and College intersection project attempting to bury the prairie dog village at that location and asked what changes are being planned to minimize the likelihood of those things happening in the future. City Manager DiMartino replied the City does require burying not occur, and in this case, as soon as it was reported, action was taken very quickly to intervene so animals were not harmed. Additionally, she noted staff is working proactively to ensure that contractors are fully aware of those requirements.

Councilmember Canonico thanked the donors who have provided grants through City Give for the purchase of recycling carts, the Pianos About Town project, and other projects.

Mayor Pro Tem Francis commented on Item No. 6, *First Reading of Ordinance No. 059, 2024, Making a Supplemental Appropriation from the Local Planning Capacity Grant for the Affordable Housing and Planning Development Process Improvement Project and Approving a Related Grant Agreement*, which will help move the City’s affordable housing approval process from 18 to 12 months.

Councilmember Gutowsky commended the Pianos About Town and asphalt art projects, both of which are funded for the purpose of creating art for the community.

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

Councilmember Potyondy thanked the City staff members who have been helpful in showing her some of the inner workings of the organization.

Councilmember Canonico thanked the Police Chief for coming up with idea of reaching out to other leaders around the country and the Navajo nation regarding furthering democracy, the science of crime prevention, and working together to promote better policing. She also reported on speaking to fourth graders at Zach Elementary School and on volunteering at the Colorado Marathon. She congratulated the Parks and Recreation Department for a successful Kids in the Park event at Twin Silo Park and reported on the Earth Day event.

Councilmember Gutowsky reported on the Center for Family Outreach annual fundraiser and on the Arbor Day event at Johnson Elementary School, noting Platte River Power Authority gifted the City \$3,500 to purchase trees that were planted on Arbor Day. She noted Fort Collins has been recognized as a Tree City USA by the National Arbor Day Foundation for 46 years.

Mayor Pro Tem Francis reported on the City of Fort Collins employee appreciation event and thanked the City's employees for all their work.

(Clerk's Note: Mayor Pro Tem Francis called for a brief recess at this point in the meeting. The meeting resumed at 8:25 p.m.)**

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

None.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

16. Second Reading of Ordinance No. 055, 2024, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt a Revised Land Use Code by Reference that Advances Adopted City Policy Goals and Incorporates Foundational Improvements and Separately Codify the 1997 Land Use Code as Transitional Land Use Regulations

This ordinance, adopted on First Reading on April 16, 2024, by a vote of 6-1 (Nays: Councilmember Gutowsky) considers adoption of changes to the City's Land Use Code. The Land Use Code (LUC) Phase 1 Update implements policy direction in City Plan, the Housing Strategic Plan, and the Our Climate Future Plan. Regarding Ordinance No. 055, 2024, corrections to clean up inadvertent numbering in Article 4 are recommended, and a suggested motion to do so is on page 5.

Second Reading of Ordinance No. 055, 2024, is considered under discussion due to a split vote at First Reading. Second Readings of Ordinance Nos. 056 and 057, 2024, are being considered with the consent calendar.

PUBLIC COMMENT

Rich Stave commented on the importance of definitions and stated higher density can lead to higher risk in terms of fire and can negatively impact resources. He expressed opposition to allowing ADUs in residential areas.

Paul Patterson requested Council honor its commitment to keeping the nine controversial items out of the Land Use Code.

Ross Cunniff, Land Conservation and Stewardship Board Member speaking on his own behalf, encouraged Council to adopt the Code before it and encouraged staff to add more clarity regarding solar access related to increased massing in the Old Town B zone. Cunniff also encouraged Council to work to amend or repeal state statutes that usurp home rule authority with respect to land use.

Kathryn Dubiel stated she would like to be able to trust the Council to handle future Land Use Code discussions in a way that respects its promises to its citizens and would like to trust that Council will fully disclose any proposed changes in agenda item summaries, specifically citing a change to the percentage of the lot size that can be built upon in one of the Old Town zone districts. Additionally, Dubiel requested Council make affordable housing units a significant deliverable of projects in the future.

Joe Rowan expressed support for the Land Use Code changes but stated additional work on affordable housing needs to be done by increasing supply, considering fee structures and rates, and in looking at the 15-minute city concept.

COUNCIL DISCUSSION

Mayor Pro Tem Francis asked if there were any changes to the ordinance between First and Second Reading. Deputy City Manager Marr replied in the negative.

Councilmember Ohlson noted the issue related to four-plexes and tri-plexes was included in the original set of changes. Noah Beals, Development Review Manager, confirmed that information and reiterated it was included in the Land Development Code and the Land Use Code.

Councilmember Gutowsky expressed doubt that density equals affordability and that, given the cost of construction, truly affordable housing can be built. Additionally, she stated she does not see a concerted effort to build AMI (Area Median income) qualified housing despite Code incentives. She commented on attending two ribbon cuttings for Landmark housing projects over the past week, one for a market rate project which still had price points well below the area, and one for an AMI-qualified project. She noted both projects contained very well-built homes.

Councilmember Gutowsky expressed concern there is no accountability built into the Land Use Code and asked for staff input on what is already being measured in terms of affordable housing development. She requested a report in perhaps a year regarding future success. Meaghan Overton, Housing Manager, replied that a great amount of data is available in multiple formats, including a publicly available housing dashboard. She noted a new data analyst has been hired to provide regular community-facing reports. She provided a graphic of the different types of housing that have been built from 2007-2023 and noted there are multiple mechanisms in place to ensure what is promised to be built is built.

Councilmember Gutowsky commented on the importance of measuring success, and given the information provided, she stated she will support the Land Use Code on Second Reading.

Councilmember Ohlson noted Council eliminated the most controversial items in the Land Use Code and stated he is hopeful the state's land use regulations will be challenged.

Councilmember Gutowsky commented on the importance of having a unanimous vote on such large items.

Mayor Pro Tem Francis stated there is robust data on housing, affordability, where the city needs to go, and how it is going to get there. She stated the Land Use Code helps to address the mismatch of the housing needed and the housing being built.

Councilmember Pignataro moved, seconded by Councilmember Canonico, to adopt on Second Reading, Ordinance No. 055, 2024, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt a Revised Land Use Code by Reference that Advances Adopted City Policy Goals and Incorporates Foundational Improvements and Separately Codify the 1997 Land Use Code as Transitional Land Use Regulations, with amendments to the revised Land Use Code to include the version of Article 4 that has corrected numbering as described in, and attached to, the Agenda Item Summary.

The motion carried, 6-0.

Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Pignataro, Ohlson, Potyondy, Gutowsky, and Canonico.

Nays: None.

17. Mason Street Infrastructure Overall Development Plan Appeal

The purpose of this quasi-judicial item is to consider an appeal of the Planning and Zoning Commission's decision on February 15, 2024, approving the Mason Street Infrastructure Overall Development Plan (ODP) #ODP230001. The ODP was approved on a vote of 5-0 (Stegner did not participate due to a conflict of interest).

The Appellant, Charles Meserlian, filed a Notice of Appeal on February 27, 2024, alleging:

- ***That the Planning and Zoning Commission (P&Z) failed to conduct a fair hearing in that they considered evidence relevant to their findings which was substantially false or grossly misleading. The Appellants assert that:***

“During the staff presentation for the Mason Street Infrastructure Overall Development Plan (ODP), it was stated that there is plenty of space for the ultimate regional detention pond. It is believed that this is grossly misleading since there is no evidence or analysis provided to reference that the ultimate regional [detention] pond is feasible with the proposed ODP improvements.”

- ***That the Planning and Zoning Commission (P&Z) failed to properly interpret and apply relevant provisions of the Land Use Code and City Code – specifically Land Use Code subsection 3.3.2(D)(5) regarding requirements for a building permit to be issued, specifically stormwater drainage facilities and appurtenances as required by Section 26-544 of the City Code. The appeal also lists City Code Section 26-543(a)(4) regarding adoption of the Dry Creek Basin Master Drainage Plan by reference.***

City Attorney Carrie Daggett provided an explanation of the appeal process and nature of the appeal.

Paul Sizemore, Community Development and Neighborhood Services Director, discussed the location of the Mason Street Infrastructure Overall Development Plan (ODP) and noted the ODP involves two parcels, one privately owned and one owned by the City, and the plan proposes to reshape the two parcels into three lots and Mason Street right-of-way. Sizemore noted the private property owner has a goal of locating a homeless shelter on one of the proposed lots; however,

this ODP does not contain any proposed land uses and only contains alignments for drainage, the street, pipes, and electric lines. Sizemore noted a detailed Project Development Plan (PDP) would follow the ODP with much more design detail for the infrastructure, and any future PDP would have its own process and hearing.

Sizemore stated the appeal primarily deals with the proposed stormwater detention pond shown on the ODP which is an interim design prior to the development of the regional stormwater pond capital project. He went on to detail the appeal allegations and discussed the applicable Land Use Code standards for review of an ODP. Additionally, Sizemore commented on the staff review that occurred for the ODP.

Councilmember Gutowsky stated she attended the site visit to gain an idea of the physical surroundings.

Councilmember Ohlson stated he visited the site a number of months ago.

Councilmember Potyondy stated she visited the site about a month ago and got a sense of the layout and surroundings.

Mayor Pro Tem Francis stated she used to work in the area and is familiar with the property's location.

Jason Cloys, Highland Development Services, and Charlie Meserlian, appellant, identified themselves as parties-in-interest supporting the appeal.

Claire Havelda, legal counsel for the applicant, 1311 North College, introduced the applicant team, Klara Rossouw, Ripley Designs, Collin Veto, 1311 North College, Andy Reese, Kimley-Horn, and Blaine Mathison, Northern Engineering.

Regarding the submission of a newspaper article by the applicant, Havelda stated it should be submitted as the basis for which this appeal was brought by the appellant is documented in the February 28th Coloradoan article regarding stopping the Rescue Mission from building on North College Avenue, which is a separate project and not the basis of an appeal of an ODP in the Municipal Code. Havelda stated the appellant's challenges and questions during the Planning and Zoning Commission hearing focused on the opposition to a future project by the Rescue Mission and questions were related to the sufficiency of the infrastructure only as it related to potential future multi-family low-income housing. Additionally, Havelda stated Meserlian never commented on or questioned any of the matters discussed in his appeal regarding the sufficiency of the Mason Street project's conformance with the 2012 Dry Creek Basin Stormwater Master Plan as it relates to the ODP or failure of the ODP to meet the criteria.

Meserlian stated his opinion about the homeless shelter is not material to the basis of the appeal.

Councilmember Pignataro asked why the newspaper article was not deemed appropriate evidence to be submitted. City Attorney Daggett replied there is one way in which the parties are allowed to submit to evidence: because the evidence relates to the fair hearing claim, which in this case is a claim that the Planning and Zoning Commission considered evidence in making its decision that was substantially false or grossly misleading. She stated the Coloradoan article does not appear to go to that question, and as a result would not be allowed as new evidence if Council concludes the same way, though it may opt to accept the evidence if it believes the article does relate to the question of whether the Commission was considering substantially false or grossly misleading evidence.

Council opted not to include the article as evidence.

Havelda objected to today's admission of slides 9-12 and the reference to some plans on slide 2 which reference plans that are not adopted master plans and that were not considered by the Planning and Zoning Commission noting the information should have been provided within seven days of the notice of appeal.

Cloys stated the references relate to the stormwater quality and stream restoration update of the Dry Creek Stormwater Master Plan.

Councilmember Potyondy supported not admitting the evidence referenced by Havelda.

Councilmember Pignataro asked if the Planning and Zoning Commission received the information or if the plans referenced were used to inform City staff's decision. City Attorney Daggett replied anything presented at the Commission hearing is already in the record. Sizemore stated Stormwater staff did consider the reports referenced in the slides as part of the ODP review. Ken Sampley, Stormwater Engineering Development Review Director, stated the studies referenced are familiar to the staff; however, they were not all directly used in the evaluation of staff's comments with respect to the ODP. Additionally, documents referenced on slides 6, 11, and 12 were not utilized by staff.

Mayor Pro Tem Francis recommended those slides be skipped and Council concurred.

APPELLANT PRESENTATION

Jason Cloys, Highland Development Services, stated there was no evidence provided in the ODP that the regional stormwater detention needs will be able to be achieved.

Havelda objected to the reference to items that have been excluded from the record as part of the appellant's presentation.

Cloys stated the ODP does not reference available information regarding the regional drainage plan and stated the lack of a regional drainage basin leaves a number of these properties undevelopable.

Charlie Meserlian, appellant, stated the ODP proposes a land swap between the City and a private entity and the plan is too premature to have this pond be part of a complete Dry Creek Master Plan. He commented on existing drainage issues in the area and stated Andy Reese with the applicant's team is not a licensed engineer.

Havelda objected to the last comments and requested Meserlian direct his comments to the basis of the written appeal.

Meserlian stated it is misleading to believe this is the first step to solving the drainage issues in the area as no complete plan is in place.

APPLICANT PRESENTATION

Havelda stated the appellants' arguments are based on a fundamental misunderstanding of the Land Use Code and Municipal Code as the regional detention pond will possibly be part of the City's future North Mason Corridor Stormwater Infrastructure Plan which is not part of the ODP. She stated the ODP contained an interim detention pond and the evaluation of the ODP was related to the requirements for that interim pond.

Klara Rossouw, Ripley Designs, discussed the purpose of an Overall Development Plan: to establish general planning and development control parameters for projects that will be developed

in phases with multiple submittals while allowing sufficient flexibility to permit detailed planning with subsequent submittals. Rossouw noted no land uses are proposed as part of the ODP and stated the seven criteria for an ODP are all supported by the application.

Rossouw stated the appellant's written basis for the appeal cites a Code Section that does not apply to this ODP.

Havelda reiterated that the ultimate buildout and design of a regional stormwater facility will be the responsibility of the City in the future; however, that is not part of this ODP. She requested Council uphold the Planning and Zoning Commission's unanimous decision and staff recommendation to approve the ODP.

APPELLANT REBUTTAL

Cloys stated the ODP needs to demonstrate that it can satisfy the drainage requirements and the Hickory Regional Detention Pond is being modified significantly by this ODP.

Meserlian questioned why a Master Plan and drainage plan exist when they are not required to be met.

APPLICANT REBUTTAL

Havelda noted the requirement of an ODP is not to satisfy every aspect of master plans, but rather to be consistent with the portion of the plan that is relevant to the ODP.

COUNCIL QUESTIONS/DISCUSSION

Councilmember Pignataro requested a staff explanation of the various plans and recommendation to the Commission. Sampley discussed the history of the Dry Creek Master Plan noting each plan and study has built upon previous studies. He noted the ODP does not require the inclusion of specific information.

Councilmember Canonico asked if there are seven standards for an ODP. Sizemore replied in the affirmative. City Attorney Daggett clarified that the Code provision related to ODP standards is not one of the ones used as the basis for the appeal.

Councilmember Potyondy asked if the Code provisions in the appeal are applicable to the ODP. Sizemore replied the three Code sections in the appeal speak to the adoption by reference of the Drainage Master Plan and to later phases in the development process that require the infrastructure to be completely designed and constructed.

Mayor Pro Tem Francis stated there was no gross or misleading information presented to the Commission and therefore, there is not a fair hearing issue. Additionally, regarding the Commission's failure to properly interpret and apply applicable sections of the Land Use Code, she stated the cited Code sections do not apply and are not relevant.

Councilmembers Potyondy, Pignataro, and Gutowsky concurred.

Councilmember Pignataro moved, seconded by Councilmember Potyondy, that the Council find that the Planning and Zoning Commission conducted a fair hearing in their consideration of the Mason Street Infrastructure Overall Development Plan or ODP, finding that the fair hearing issue raised in the Appellant's notice of appeal is without merit and that the Commission considered evidence and Staff recommendations that were appropriate for the level of detail required at the level of an overall development plan and

not substantially false or grossly misleading. And further that the allegation that the Planning and Zoning Commission failed to conduct a fair hearing contained in the Appellants' notice of appeal is hereby determined to be without merit and is denied and dismissed in its entirety.

The motion carried, 6-0.

Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Pignataro, Ohlson, Potyondy, Gutowsky, and Canonico.

Nays: None.

Councilmember Pignataro moved, seconded by Councilmember Canonico, that the Council dismiss the failure to properly interpret and apply allegations because Land Use Code Section 3.3.2(0) and City Code Section 26-544(a) are not required to be met for an overall development plan to be approved; and City Code Section 26-543(a)(4) adopts the Dry Creek Master Plan by reference and is not subject to interpretation or application. And I further move that the appeal is dismissed in its entirety.

The motion carried, 6-0.

Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Pignataro, Ohlson, Potyondy, Gutowsky, and Canonico.

Nays: None.

P) OTHER BUSINESS

OB 1. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

None.

Q) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 10:27 p.m.

Mayor Pro Tem

ATTEST:

Interim City Clerk