

September 5, 2023

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

PP 1. Declaring September 9, 2023 as Poudre Landmarks Foundation 39th Annual Historic Homes Tour Day.

REGULAR MEETING

6:00 PM

B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the regular meeting to order at 6:01 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City's Zoom platform.

C) PLEDGE OF ALLEGIANCE

Mayor Jeni Arndt led the Pledge of Allegiance to the American Flag.

D) ROLL CALL

PRESENT

Mayor Jeni Arndt
Mayor Pro Tem Emily Francis
Councilmember Susan Gutowsky
Councilmember Tricia Canonico
Councilmember Shirley Peel
Councilmember Kelly Ohlson
Councilmember Julie Pignataro

STAFF PRESENT

City Manager Kelly DiMartino
City Attorney Carrie Daggett
City Clerk Anissa Hollingshead

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.
- 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.)

Kimberly Carracedo spoke representing young people in Fort Collins as well as New Era Colorado in support of the elimination of U+2, and the challenges presented by the definition of family for students and other young people.

Marsha Mulroney, Fort Collins resident, spoke about the choices made over the last 45 years before being able to buy a home in Fort Collins in an HOA with protections for avoiding too much density, and in opposition to changes in density rules in HOAs and existing neighborhoods.

Jeff Emmel, Fort Collins resident, spoke regarding land use code changes as the representative of a townhouse cluster in the Landings and the impacts of changing regulations for short term rentals without enforcement, and against similar effects from changes to U+2, stating one size does not fit all.

Stefanie Berganini, Fort Collins resident and chair of Democratic Socialists of America, Fort Collins Housing Committee, spoke to urge the Council to repeal U+2, noting the work to fix this ordinance has been undertaken for nearly 20 years without action and sharing reasons for repeal.

Connor M Flynn, Fort Collins resident and head of the Electoral Committee of the Fort Collins chapter of the Democratic Socialists of America, spoke in support of the repeal of U+2, noting no level of enforcement can avoid packed housing where necessity and property owners allow it to happen, rendering U+2 unfunctional, as well as noting trying to limit occupancy pushes density out and causes more greenhouse gases through more car trips.

Greg Zoda, graduate student at CSU and a co-chair of DSA Fort Collins, spoke against U+2 as well, sharing it is something that is unenforceable to a large degree and the community would be better served by thoughtful densification. Zoda also commented on the consent agenda item with the second reading of the appropriation for encampment site cleanup pilot program, noting the actions taken through that program are not the right approach.

Paul Anderson, Fort Collins resident, spoke about why he has supported the initiation and strengthening of U+2 that has led to families moving into the neighborhood instead of landlords and venture capitalists packing in students and running up the costs of housing.

Lloyd Walker spoke about the policies and programs in place under the U+2 and how they contribute to neighborhood character and build vitality and vibrancy throughout Fort Collins, arguing U+2 is working across Fort Collins and sharing reasons how it does so as well as suggestions for refining the current system.

Randolph Lippert, Fort Collins resident, shared a story from his time as an EMT in San Diego assisting a 15 year old transgender woman who attempted suicide after being beaten by her parents for her existence, noting the challenges U+2 imposes on transgender individuals and others with marginalized identities.

Nick DeSalvo, ASCSU President, shared a letter from all three branch heads of ASCSU, with agreement from the entire organization on the direction desired to eliminate U+2, noting this is not support to put this on the ballot but rather to take action at the Council level. DeSalvo also spoke to the economic value students contribute to the city's economy.

Sean McCoy, Fort Collins resident, spoke in support of the repeal or amendment of U+2, sharing data from Corona Insights studies showing a 70% increase in rent from 2005 to 2018, as well as figures of the high number of empty bedrooms in the city.

Madeleine Kamberg, Fort Collins resident, CSU student and small business owner with a family, noted the issues of students and families have a lot of overlap and are not mutually exclusive. Kamberg stated the policy is lazy, seeking to solve problems of noise, trash, etc., caused by humans by limiting humans, making enforcement something prime for discrimination and a violation of the 14th Amendment as well as the Colorado Constitution and the Fair Housing Act.

Eric Sutherland spoke regarding the second reading planned by the Electric Utility Enterprise Board he stated constituted an additional \$25 million bailout of Connexion without so much as a business plan.

Oliver Vollmer, Fort Collins resident since 2019, spoke regarding U+2 and how it exacerbates the affordability crisis in the city, urging Council to eliminate it.

Adam Eggleston, Fort Collins resident, spoke about U+2 and how all of the focus groups and other evaluation of this tool shows it uses financial penalties to resolve behavioral issues, as well as noting with the increasing costs of housing more populations will continue to be impacted by this policy, including seniors.

Not on the sign-up list and name not given, spoke against U+2, noting it doesn't work because it cannot be enforced.

Rich Stave noted at the last meeting he had questions about the bond issue that staff tried to answer but did not actually address what he was asking. Stave asked if it was an accurate understanding of how money is flowing from the Electric Utility and who is paying the interest on the bonds.

Alex Scott, Fort Collins resident, spoke in support of the Council repealing U+2 and shared calculations of the average costs to a renter over the course of a four-year college term, with increased savings of \$9280 to an individual with a small increase in allowed occupancy, which would enable more of a cushion and helping to avoid homelessness.

Public comment concluded at 6:55 p.m.

H) PUBLIC COMMENT FOLLOW-UP

Councilmember Julie Pignataro asked for staff to respond to the concerns raised regarding the bond issuance for Connexion. Chad Crager stated the interest on the bonds being issued is being paid from Connexion customer revenue. Crager also noted there is a resident feedback group for Connexion with which financial estimates and planning have been shared. Crager committed to following up with a memo when the process of reviewing bond accreditation is complete.

Councilmember Pignataro also asked for some additional information about the site cleanup process. Assistant City Manager Rupa Venkatesh shared the teams involved in cleanup process, including the Police HOPE Team with special training and Outreach Fort Collins, and how engagement occurs when individuals experiencing homelessness are present at the time of a cleanup, although noting that in most instances clean up is occurring at sites that have been abandoned.

Councilmember Pignataro then thanked community members for coming out to comment on U+2.

Councilmember Susan Gutowsky referenced comments made about some of those present who are older and comfortable, and don't have the same kinds of responsibilities, and how those comments can be disparaging and walk the line on ageism, encouraging everyone to stay to the facts and avoid calling names.

Clerk's Note: Mayor Arndt called for a break at 6:53 p.m. The meeting resumed at 7:06 p.m.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

None.

J) CONSENT CALENDAR

- 1. Consideration and Approval of the Minutes of the August 8, 2023 Special Meeting and the August 15, 2023 Regular Meeting.**

The purpose of this item is to approve the minutes of the August 8, 2023 special meeting and the August 15, 2023 regular meeting.

Approved.

- 2. Second Reading of Ordinance No. 104, 2023, Appropriating Unanticipated Revenue from Bond Proceeds from the Issuance of the Series 2023 Electric Utility Enterprise Revenue Bonds for Light and Power, Connexion, and the Art in Public Places Program.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates the funds received from the bond issuance in the Light and Power Fund. These proceeds will be used to fund capital projects needing to occur for both Light and Power and Connexion, as well as for operating funds for Connexion, to pay issuance costs for the Series 2023 Revenue Bonds, and to transfer certain funds required by the Art in Public Places Program (APP Program) for the capital projects.

There was an error in the Ordinance on First Reading in Section 2. The appropriation amount expressed in words did not match the numerical value. The numerical value was correct and reflected throughout the Ordinance. The appropriation amount expressed in words has been updated to match the numerical value.

Adopted on Second Reading.

- 3. Second Reading of Ordinance No. 105, 2023, Appropriating Prior Year Reserves in the General Fund to Continue the Encampment Site Cleanup Pilot Program.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates \$200,000 in additional funds to continue the encampment site cleanup pilot program. In Fall 2022, staff identified a backlog of site cleanups throughout the City and determined that cleanups needed to shift from twice a month to once per week. This was implemented towards the end of January 2023 with the recognition that additional funds would be needed if this pilot program achieved desired results.

Adopted on Second Reading.

- 4. Second Reading of Ordinance No. 106, 2023, Making Supplemental Appropriations from the 2023 Colorado Opioid Settlement Funds for Use by the Municipal Court.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates \$75,000 of the City's share of 2023 funds from the Colorado Opioid Settlement to be used in the remainder of 2023 to work towards establishing a municipal drug court program for persons with opioid use disorder and co-occurring substance use or mental health issues. This is a permitted use for these funds under the Colorado Opioid Settlement Memorandum of Understanding ("MOU") between the City and the State of Colorado.

Adopted on Second Reading.

5. **Second Reading of Ordinance No. 107, 2023, Appropriating Prior Year Reserves Designated for Fire Protection Services in the Fire Protection Capital Expansion Fee Account within the Capital Expansion Fee Fund for Payment to the Poudre Fire Authority to be Used by it for a New Headquarters Building.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates funds from the reserves in the Fire Protection Capital Expansion Fee Account within the City's Capital Expansion Fee Fund ("CEF Fund") and payment of those funds to the Poudre Fire Authority ("PFA") for its purchase of a new Headquarters Building.

Adopted on Second Reading.

6. **Second Reading of Ordinance No. 108, 2023, Appropriating Prior Year Reserves in the General Fund for the Purchase of Police Radios.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, requests an appropriation in the amount of \$620,000 for the purchase of police handheld radios and approve the use of prior year reserves in the General Fund. There are currently 242 total handheld radios with 130 replaced in 2022. This leaves the remaining 112 radios needing to be replaced.

Adopted on Second Reading.

7. **Second Reading of Ordinance No. 109, 2023, Making a Supplemental Appropriation from the Colorado Division of Criminal Justice of Unanticipated Grant Revenue for Various Restorative Justice Services Programs.**

This Ordinance, unanimously adopted on First Reading on August 15, 2023, appropriates grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services. A grant in the amount of \$57,356 has been awarded from the Colorado Division of Criminal Justice (DCJ) Juvenile Diversion Fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program (RJCP) and Reflect Program for all other offenses. No match is required and the grant period is July 1, 2023, to June 30, 2024.

Adopted on Second Reading.

8. **First Reading of Ordinance No. 110, 2023, Appropriating Prior Year Reserves and Philanthropic Revenue Received Through City Give for The Carnegie Center for Creativity as Designated by the Donors.**

The purpose of this item is to request appropriation of \$100,000 in philanthropic revenue received through City Give for The Carnegie Center for Creativity as designated by the donors.

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. **Items Related to the Implementation of a Strengthening Mobility and Revolutionizing Transportation (SMART) Grid Electric Vehicle Charge Management Solution.**

A. Resolution 2023-077 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the U.S. Department of Transportation for Implementation of a SMART Grid Electric Vehicle Charge Management Solution.

B. First Reading of Ordinance No. 111, 2023, Making a Supplemental Appropriation of Grant Funds from the U.S. Department of Transportation SMART Grants Program in Support of the City of Fort Collins Electric Vehicle Fleet.

The City successfully applied for \$1,059,037 under the U.S. Department of Transportation (USDOT) SMART Grants Program to support implementing a SMART Grid Electric Vehicle (EV) charge management solution to control usage of City owned EV chargers to reduce energy consumption (the SMART Grid Project).

The purpose of this item is to support this project by:

- *Authorizing the Mayor to execute an Intergovernmental Agreement (IGA) with the USDOT for implementing the SMART Grid Project; and*
- *Appropriating \$1,059,037 of unanticipated grant revenue from USDOT.*

Adopted Resolution and Adopted Ordinance on First Reading.

10. First Reading of Ordinance No. 112, 2023, Making Supplemental Appropriations and Authorizing Transfers for the “Planning to Implement Future Innovation Zones” Project.

The purpose of this item is to develop the Innovation Zones Project Plan by:

- *Appropriating \$50,000 of unanticipated grant revenue, awarded by the Colorado Department of Transportation’s Office of Innovative Mobility; and*
- *Utilizing matching funds in the amount of \$10,000 from existing 2023 appropriations into this new grant project.*

Adopted on First Reading.

11. First Reading of Ordinance No. 113, 2023, Making Supplemental Appropriations and Authorizing Transfers for the City of Fort Collins Electric Vehicle Readiness Roadmap Update.

The purpose of this item is to update the City’s 2017 Electric Vehicle (EV) Readiness Roadmap by:

- *Appropriating \$40,000 of unanticipated grant revenue, awarded by the Colorado Energy Office; and*
- *Utilizing matching funds in the amount of \$13,333 from existing 2023 appropriations into this new grant project.*

Adopted on First Reading.

12. First Reading of Ordinance No. 114, 2023, Amending Various Sections of the Code of the City of Fort Collins to Correct References to the Building Review Board and to Correct References to Meeting Minutes Requirements.

The purpose of this item is to amend various sections of City Code. During the work of the Ad Hoc Committee on Boards and Commissions, staff identified necessary edits to all reference to the Building Review Board. Those references should be changed to the Building Review Commission, which is in line with City Ordinance No. 049, 2021. Also, staff identified numerous incorrect references to the requirement for various bodies to record meeting minutes.

Adopted on First Reading.

13. **First Reading of Ordinance No. 115, 2023, Authorizing Conveyance of a Permanent Non-Exclusive Utility Easement on Property Jointly Owned by the City and the City of Loveland at the Northern Colorado Regional Airport for the AeroFNL Development.**

The purpose of this item is to authorize a permanent non-exclusive utility easement over a portion of the Northern Colorado Regional Airport property owned jointly by the City of Fort Collins and the City of Loveland and leased by IC Loveland Investors, LLC, to allow for the installation and maintenance of electrical infrastructure for the new AeroFNL development.

Adopted on First Reading.

14. **Resolution 2023-078 Approving the Execution of the Fifth Amended Intergovernmental Agreement Establishing the Larimer Emergency Telephone Authority.**

The purpose of this item is to approve an agreement to amend and supersede an intergovernmental agreement (IGA) establishing an "E911" Emergency Telephone Service. The City is a party to an Intergovernmental Agreement (the "E-911 IGA") dated November 14, 1990, which established a separate legal entity called the Larimer Emergency Telephone Authority ("LETA"). LETA is responsible for operating the emergency telephone service program (911) and defining how each of the parties will participate in the Authority. The LETA Board of Directors recently approved an amended E-911 IGA to expand services and representation in LETA operations into Jackson County. This Resolution approves execution of the Fifth Amended Intergovernmental Agreement for the Establishment of the Larimer County Emergency Telephone Authority.

Adopted.

15. **Resolution 2023-079 Amending the Existing Intergovernmental Agreement Between the City of Fort Collins and the Colorado Department of Transportation for the Reconstruction of the US 287 and Troutman Traffic Signal to Extend the Agreement's Expiration Date.**

The purpose of this item is to extend the expiration date of an existing Intergovernmental Agreement ("IGA") with the Colorado Department of Transportation ("CDOT") that is set to expire on September 11, 2023, to September 11, 2025. This date will allow for staff to complete the work and receive the full \$250,000 reimbursement amount identified in the IGA.

Adopted.

16. **Resolution 2023-080 Adopting Findings of Fact in Support of the City Council's Decision on Appeal to Remand the Planning and Zoning Commission Approval of a Major Amendment to the Ziegler-Corbett Overall Development Plan.**

The purpose of this item is to make findings of fact and conclusions regarding Council's decision at the August 15, 2023, appeal hearing to remand the Planning and Zoning Commission decision to approve the Ziegler-Corbett Overall Development Plan Major Amendment back to the Planning and Zoning Commission for further consideration.

Adopted.

17. **Resolution 2023-081 Making an Appointment to the Human Relations Commission.**

The purpose of this item is to fill a vacancy on the Human Relations Commission.

Adopted.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to approve the recommended actions on items 1-17 on the Consent Calendar.

The motion carried 7-0.

K) CONSENT CALENDAR FOLLOW-UP

Councilmember Shirley Peel mentioned how item 8 for funding closing the gap for the Carnegie Foundation, noting she was able to tour that building and see the renovation being done there.

Councilmember Susan Gutowsky also shared how also taking a tour of the facility was impressive, and demonstrated how the renovation is taking the building down to the bones to show off its architecture.

Mayor Jeni Arndt congratulated Kevin Goff on being appointed to the Human Relations Commission.

Councilmember Kelly Ohlson noted items 9-11 include actions relating to electric vehicles that all indicated board and commission involvement is not applicable when there are City advisory boards that would be appropriate to consult with on these sorts of matters.

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

Councilmember Susan Gutowsky

- The Behavioral Health Policy council met recently about the Longview Mental Health Facility that will be opening this month after being funded through a tax initiative in 2018. The first patients will be served beginning in December. She also noted this year over \$2,800,000 were distributed through the tax that was implemented, noting it is an efficient process for distributing this money.

Councilmember Shirley Peel

- At a recent listening session, Code Compliance staff and the Police HOPE team were present to help answer resident questions and concerns. She shared appreciation for the staff who participated.
- The Chamber is celebrating Small Business September.

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

None.

Clerk's Note: Mayor Arndt called for a 15-minute break at 7:10 p.m. The meeting resumed at 7:25 p.m.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

18. Items Relating to City Council's Direction to Address Existing Occupancy Regulations.

A. Possible Public Hearing and Motion(s) Regarding Protest(s) of Ballot Language.

B. Resolution 2023-082 Directing City Staff to Prepare and Present to Council Amendments to the City of Fort Collins Land Use Code Increasing Limits on Occupancy in Residential Dwellings.

C. Resolution 2023-083 Referring to the Registered Electors of the City of Fort Collins Resolution 2023-082, Concerning Amending the Fort Collins Land Use Code to Increase the Occupancy Allowed in Residential Dwellings.

Any protest of the proposed ballot language must be received no later than Tuesday, September 5, 2023, at noon. Protest(s) shall be heard, considered and resolved by the Council prior to adoption of the related Resolution. If protests are received, copies will be included in Council's "Read Before the Meeting" packet.

Senior Project Manager Sylvia Tatman-Burruss introduced the item and presented as set forth in the slide deck in the agenda packet. Assistant City Attorney II Aaron Guin was also available for questions as part of the presentation and discussion.

PUBLIC COMMENT

Rich Stave spoke about how this is an emotionally charged issue but fails to see how it will save anyone money. Regarding assertions that the current ordinance is unenforceable, a similar argument could be made about speed limits since people still speed, but those people are taking a risk of enforcement and fines. Stave also stated it has been heard that CSU increased enrollment without increasing available student housing, and it shouldn't be the community's issue to solve.

COUNCIL DISCUSSION

Councilmember Pignataro asked how a June 2024 timeframe was established. Tatman-Burruss noted it was based on time for community engagement as well as preparing materials for Council. Pignataro followed up by asking what we would expect to see and be looking for in choosing additional time for community engagement.

Mayor Pro Tem Francis noted prior studies have been mainly about the impact of U+2 and who is violating it, but we haven't done studies on potential options for adjustments. Ginny Sawyer noted the interpretation of previous studies is correct, while we haven't looked at more nuanced options like an extra occupancy program.

Councilmember Pignataro noted there are things we know as a Council are totally wrong, like having the government define family and that shouldn't wait 6 months. There was discussion about the potential to take action in two parts.

Mayor Arndt noted she has been talking to a lot of people since the excellent discussion by the Council at the previous meeting. She voiced support for directing staff to prepare potential actions for Council but not to refer something to the voters at this time, rather considering passing an ordinance that could then be referred to the voters.

Councilmember Peel asked to clarify if there are things that could be done immediately, could it be possible to pass proposed Resolution 2023-083, and bring things incrementally that could be passed immediately.

Councilmember Ohlson asked for a clarification noting the timing indicates a no later than time but doesn't require it to wait until that time. He spoke in support of keeping actions together on this matter.

Councilmember Canonico voiced support for Resolution 2023-083 rather than referring the subject to the ballot.

In response to a question about whether the resolution is necessary for work to continue, City Manager Kelly DiMartino stated there is a clear direction from at least three Councilmembers from this conversation to proceed with this work and also noted the timing indicated was driven by providing options that ensure there is ample time to make next year's ballot if desired.

Councilmember Gutowsky voiced support for referring it to staff, and wondered if taking action by resolution would provide more clarity to the next Council.

Councilmember Ohlson spoke as someone who has and will support U+2, and who will be on the next Council, he is committed to working on this.

Mayor Pro Tem Francis stated a preference for a formal action with a timeline via the resolution.

Councilmembers Peel and Canonico stated their agreement in support of the resolution.

Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to adopt on first reading Resolution 2023-082 Directing City Staff to Prepare and Present to Council Amendments to the City of Fort Collins Land Use Code Increasing Limits on Occupancy in Residential Development.

Councilmember Ohlson stated he will not be supporting the resolution, as it presumes the action that will be taken rather than moving forward with exploratory work and shared regarding the history of the development of the current form of U+2 in response to neighborhood issues. He also stated a commitment to fixing the definition of family in a way that does not just serve to increase the number of allowed residents.

Councilmember Canonico stated support for having staff bringing this forward with options that can address the concerns of Councilmember Ohlson's area while noting this is something affecting all neighborhoods in the city.

Mayor Pro Tem Francis asked for follow up on if we actually have numbers around increased CSU enrollment versus the city's population. She also noted this resolution doesn't presume what will be brought to Council for consideration but rather says Council is committed to looking at options to increase occupancy.

Councilmember Peel stated agreement with Councilmember Ohlson's concerns while feeling like the process remains open to looking at different ideas to address this issue, which was also reiterated by Mayor Arndt.

Councilmember Gutowsky reiterated belief that a resolution is not required and therefore will not be voting for it.

Councilmember Peel commended community members for coming forward to share their views as well as potential solutions and encouraged people to continue sharing solutions.

Councilmember Ohlson reiterated he won't support by the resolution but remains committed to working with the Council on shared solutions to this issue.

The motion to Adopt Resolution 2023-082 carried 5-2.

Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Peel, Canonico, and Pignataro.

Nays: Councilmembers Gutowsky and Ohlson.

No motion was made regarding Resolution 2023-083.

19. **First Reading of Ordinance No. 116, 2023, Amending the Land Use Code Regarding Buffering Between Buildings with Occupiable Space and Oil and Gas Facilities.**

*Based on Council direction during the October 25, 2022, Work Session discussion and the April 2023 adoption of Ordinance No. 151, 2022 for new oil and gas well sittings, staff seek to update the reverse setback development standards (LUC 3.8.26) to reflect recent changes in the **Colorado Energy and Carbon Management Commission (ECMC)** regulations, recently adopted Ordinance No. 151, 2022 – AMENDING THE LAND USE CODE TO REGULATE OIL AND GAS FACILITIES AND PIPELINES, and lessons learned over the past 4 years, including:*

- *Apply reverse setback buffers to all occupiable buildings, not just residential uses; and*
- *Explicitly state required setback buffers, rather than refer generally to ECMC rules; and*
- *Create a more predictable pathway for abandoned/inactive well types; and*
- *Eliminate the buffer exemption for crossings of arterial roadways.*

Interim Senior Manager, City Planning Clay Frickey introduced the item before turning the presentation over to Senior Environmental Planner Kirk Longstein who presented as set forth in the slide deck in the agenda packet. Also present to assist with questions was Assistant City Attorney Brad Yatabe.

PUBLIC COMMENT

Bill Swalling, Centennial resident, spoke of concerns of impact to existing communities and not being able to put playgrounds in these areas.

Rich Stave stated in trying to read through materials he didn't follow everything, but in the presentation tonight had questions about if these proposals are in areas currently within city limits or that may in the future be in the city limits.

COUNCIL DISCUSSION

Councilmember Pignataro stated there is a lot of very technical material provided for this item, which she also followed when it was before the Air Quality Advisory Board. Regarding the 2018 Environmental Site Assessment related to Country Club Reserve, knowing that all our recommendations request a new site assessment after 5 years she asked the purpose of providing one that is 5 years old. Planner Longstein indicated the purpose is letting the public know we have no evidence to believe there are elevated hydrocarbons related to these wells, and to demonstrate the type of information we are seeking to require as part of this code.

Pignataro indicated the presentation has an updated slide 12 with updated options but asked to step back for a bit so staff can talk about the why about why we are looking at this and why now. Longstein indicated this was a suggested workstream in 2022 given the rulemaking happening then at the state and associated emerging literature. Staff is continuing to pursue this because there is evidence to show there is some level of risk for community members that live within proximity to active wells, with emerging literature about these impacts. There are setbacks that are in place of 500 feet, while based on what is happening at the state and in other Front Range communities, these recommendations increase that distance.

Councilmember Pignataro stated she does not see an argument for removing the point-of-sale disclosure requirement, and asked if there are things she is missing. Longstein indicated this was a discussion at the Planning and Zoning Commission including how someone would know if they were in the vicinity of a well.

Councilmember Gutowsky asked for staff clarification on where this requirement would be removed. Longstein indicated it would remove the requirement from City Code and leave the general Sellers Disclosure Statement that does include environmental sections.

Mayor Pro Tem Francis asked about how prescriptive the disclosure requirements are. Longstein indicated it requires 14-point font on a standalone document. Francis asked from a health and safety perspective what the point is of prohibiting a park in existing communities when residents

already live there and will be outside. Longstein indicated the policy intent was to address larger scale types of gathering places that could draw in additional people to the area.

Councilmember Peel thanked staff for the table put together and provided in the materials provided in that day's read before packet. Peel asked why there is a 2000-foot setback for injection wells that are not above ground. Longstein indicated there were a number of conversations about this in particular, including expert testimony at the Planning and Zoning Commission. These types of wells are regulated by a federal statute and the EPA has the technical guidance around them which defines the zone of endangering influence, which led to the suggestion of a modification to the 2000-foot setbacks if an applicant provides additional information through the modification process. The injection wells present potential concerns with soil, grass, groundwater and surface water impacts.

Councilmember Peel clarified state statute does not have reverse setbacks. Peel then asked if this is just for new development and if the wells in the part of the city are in developed areas or areas already under development, what is being excluded? Longstein indicated new development applications could include areas with abandoned and unplugged wells such as Montava, the property south of Mountain Vista, as well as a small number of other areas.

Mayor Arndt asked what the practical impacts of these regulations would be if they were only applied to new development. Frickey indicated the focus of this conversation is on development in buffer zones where there may not be awareness of potential health risks.

Councilmember Canonico asked with the potential for rule 211 hearings to close wells, how many wells would then remain unplugged in the city. Longstein indicated this is a new process and the City has been in conversation with other government entities about moving forward with applications but there is not have a good sense of timing. If the hearings are successful, it is not yet known how the funding would go although there is an assumption the Prospect Energy funding for this would be utilized. Canonico advocated for delaying until we have that hearing.

Councilmember Peel clarified the distinction between dry wells that were never producing, as well as a plugged and abandoned well. The intent of making the setback 150 feet for fully reclaimed wells was to incentivize this as a policy objective.

Councilmember Pignataro asked if this is delayed six months, would the process of adopting reverse setbacks have to start over. Longstein indicated since there was existing ordinance language developed, that could be brought forward again in the same or similar format if Council did not direct changes before it was considered again.

Councilmember Gutowsky asked for clarification on the Saunders project. Longstein indicated their application was considered complete in late August and would be considered under the existing standards.

Councilmember Ohlson shared frustration with how long Council wrestles with health and safety issues, noting staff supports moving forward tonight, as does Planning and Zoning Commission 7-0, as does the Natural Areas Advisory Board as well as other bodies, which actually points out how weak this proposal is and recommends several additional changes.

Councilmember Canonico stated she is not opposed to this but has consideration for people already living within these setbacks and would like to see a resolution.

Mayor Arndt concurred, and also reiterated her support for buying out these wells and plugging them for the good of the community.

Councilmember Ohlson stated opposition to excluding existing homes due to the health and safety concerns.

Mayor Pro Tem Francis requested clarifications regarding the ECMC 211 hearing process and timing. Longstein indicated it would take 4-6 months to schedule a hearing, and then a decision would need to be made and the wells then plugged and abandoned and inspected. Once wells were plugged and abandoned, the reverse setback would change to 150 feet.

Councilmember Ohlson asked what led to developing the 150-foot setback for plugged and abandoned wells. Longstein shared peer city setback buffer comparisons and indicated it was a suggestion from industry working in that field that is the distance needed for equipment to access the site.

In response to a prompt from Councilmember Pignataro, Longstein provided an overview of the discussion and information shared at the Air Quality Advisory Board meeting regarding the recommendation for a 5-year span for testing of plugged and abandoned wells, rather than continuing in perpetuity.

There was discussion amongst the Council regarding areas of consensus for taking action.

Mayor Pro Tem Francis moved, seconded by Councilmember Ohlson, to adopt on first reading Ordinance No. 116-2023 Amending the Land Use Code Regarding Buffering Between Buildings with Occupiable Space and Oil and Gas Facilities.

Councilmember Pignataro requested clarification of what would practically be different before moving forward with option 1 versus option 2a.

The motion carried 6-1.

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

Nays: Councilmember Peel.

Clerk's Note: Mayor Arndt called for a 10-minute break at 9:35 p.m. The meeting resumed at 9:48 p.m.

20. Items Implementing Recommendations from the Ad Hoc Committee on Boards and Commissions.

- A. First Reading of Ordinance No. 117, 2023, Amending Chapter 2, Article III, Division 1 of the Code of the City of Fort Collins to Add City Council Liaison Responsibilities.*
- B. First Reading of Ordinance No. 118, 2023, Amending Chapter 2, Article III, Division 2 of the Code of the City of Fort Collins to Modify Type 1 Advisory Board Composition and Functions and Eliminate One-Year Terms.*
- C. First Reading of Ordinance No. 119, 2023, Amending Chapter 2, Article III, Division 3 of the Code of the City of Fort Collins to Eliminate One-Year Terms of Type 2 Advisory Boards.*
- D. First Reading of Ordinance No. 120, 2023, Reorganizing Chapter 2, Article VII, Divisions 1 and 2 of the Code of the City of Fort Collins to Consolidate the Ethical Rules of Conduct and Board of Ethics Sections with a Complaint Process for Violations of the Code of Conduct.*
- E. Resolution 2023-084 Approving Amendments to the Respectful Workplace Policy and Renaming it the Anti-Discrimination and Anti-Harassment Policy.*
- F. Resolution 2023-085 Approving a Code of Conduct for City Councilmembers and Board and Commission Members.*
- G. Discussion and Direction to Staff Regarding Ex-officio Members.*

The purpose of these items is to consider resolutions and amendments to various divisions of Chapter 2 of the Municipal Code to reflect the recommendations of the Ad Hoc Committee on Boards and Commissions.

Assistant City Manager Rupa Venkatesh introduced the item and then presented as set forth in the slide deck in the agenda packet. Also present for questions were Public Engagement Specialist Davina Lau and Senior Assistant City Attorney Jenny Lopez Filkins.

PUBLIC COMMENT

Stefanie Berganini, Fort Collins resident, shared appreciation for these recommendations, including shifting to minimum of two-year terms; adding an ex officio member of the Affordable Housing Funding Board from Housing Catalyst; and the broader definition of what gender looks like in the reshaping of the Women and Gender Equity Board.

Rich Stave, Fort Collins resident, commented regarding the term ex officio and suggested instead of making ex officio members, there should be equal opportunity for the public to attend board meetings. Stave also brought forward the issue of Super Board meetings and the need to ensure the general public is allowed to attend with proper meeting announcements.

COUNCIL DISCUSSION

Councilmember Pignataro asked about public comment at board meetings and if there were recommendations to be incorporated for time limits for comments. Staff indicated that recommendation would be incorporated in the Boards and Commissions manual that will come to Council for adoption on September 19.

In response to a question from Council, Specialist Lau indicated all board and commission meetings, including Super Issue meetings, are publicly noticed on the City event calendar and open to the public to attend, although there may not always be public comment.

Mayor Pro Tem Francis stated support for removing the addition of ex officio members to boards at this time until there is a consistent policy developed before the end of the year. Mayor Arndt concurred.

Councilmember Ohlson shared appreciation for the suggestion on ex officio members. Ohlson also shared he would not be voting for Ordinance 117 because of concerns about changes to the Council liaison responsibilities and number 3 diminishing the role of the second member of an interview team. There was discussion by the Council on this point.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 117-2023 Amending Chapter 2, Article III, Division 1 of the Code of the City of Fort Collins to Add City Council Liaison Responsibilities.

The motion carried 6-1.

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

Nays: Councilmember Ohlson.

There was discussion around how to handle ex officio members, both currently in the code and recommended for addition to the code. Councilmembers discussed removing all ex officio members from any board and commission until a consistent policy is developed.

Mayor Pro Tem Francis moved, seconded by Councilmember Gutowsky, to adopt on first reading Ordinance No. 118-2023 Amending Chapter 2, Article II, Division 2 of the Code of the City of Fort Collins to Modify Type 1 Advisory Board Composition and Functions and Eliminate One-Year Terms, with the additional change to amend section 2-114 to change the number of members of the Women and Gender Equity Board from 9 to 7 and to remove all references to ex officio members.

The motion carried 7-0.

Mayor Pro Tem Francis moved, seconded by Councilmember Gutowsky, to adopt on first reading Ordinance No. 119-2023 Amending Chapter 2, Article III, Division 3 of the Code of the City of Fort Collins to Eliminate One-Year Terms of Type 2 Advisory Boards.

The motion carried 7-0.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 120-2023 Reorganizing Chapter 2, Article VII, Divisions 1 and 2 of the Code of the City of Fort Collins to Consolidate the Ethical Rules of Conduct and Board of Ethics Sections with a Complaint Process for Violations of the Code of Conduct.

The motion carried 7-0.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt Resolution 084 Approving Amendments to the Respectful Workplace Policy and Renaming it the Anti-Discrimination and Anti-Harassment Policy.

The motion carried 7-0.

Councilmember Ohlson shared concerns regarding Resolution 2023-085.

Mayor Pro Tem Francis moved, seconded by Councilmember Gutowsky, to adopt on first reading Resolution 085 Amending the Land Use Code to Include Regulations for Areas and Activities of State Interest, including staff recommendations of 2a and 2 b.

The motion carried 6-1.

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

Nays: Councilmember Ohlson.

21. First Reading of Ordinance No. 121, 2023, Amending the Land Use Code to include Regulations for Making Water Adequacy Determinations.

The purpose of this item is to adopt Land Use Code provisions to add specific regulations outlining how the City will make water adequacy determinations for development. The proposed regulations are divided into three different categories for: (1) established potable water supply entities; (2) new, or other potable water supply entities; and, (3) non-potable water supply entities. The goals of these changes include: complying with Colorado state statutory requirements (Section 29-20-301, et seq., C.R.S.); ensuring development has an adequate water supply; providing City staff with guidance to make these determinations and applicants with certainty on the requirements; and ensuring that growth and development in the City occur in a planned and coordinated manner. Other than minor, non-substantive clarifications, the proposed regulations are the same as those discussed at the June 6, 2023, Work Session. The Planning & Zoning Commission has recommended adoption of the proposed regulations (4-2 vote).

PDT Deputy Director Paul Sizemore introduced the item before turning the presentation over to Interim Planning Manager Clay Frickey who presented as set forth in the slide deck in the agenda packet. Also present for questions were Assistant City Attorney Eric Potyondy and Senior City Attorney Brad Yatabe.

PUBLIC COMMENT

Rich Stave, Fort Collins resident, suggested tossing this ordinance out as it doesn't seem to add value for Fort Collins residents. Water is always going to be an issue.

Mike Schied, General Manager East Larimer Water District (ELCO), stated appreciation for the additional work and staff collaboration on this item and support for its current state.

COUNCIL DISCUSSION

Councilmember Peel asked to confirm that existing water provider entities would not be charged in the development review process, but a new provider would. Staff confirmed a new provider would need to pay a review fee to cover staff work to evaluate their application. Peel commended staff in putting this packet together well organizationally in presenting the information and different views and inputs.

Mayor Arndt asked how in the 1041 process we are adding bureaucracy and time, and whether there would be a time limit on this process? Staff confirmed there would be, and clarified how staff would take a consultant's report and review that and all of this would be done during the course of the development review process.

Councilmember Gutowsky asked if there is a plan in place for default by a developer as a new water provider? Staff indicated that would be a pretty unprecedented scenario but would think it may be possible to see if the existing provider would like to take it over. It was emphasized that the financial analysis and review component is essential.

Mayor Pro Tem Francis moved, seconded by Councilmember Ohlson, to adopt on first reading Ordinance No. 121-2023 Amending the Land Use Code to Include Regulations for Making Water Adequacy Determinations.

The motion carried 6-1.

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

Nays: Councilmember Peel.

P) OTHER BUSINESS

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

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

None.

- OB 2. **Consideration of a motion to cancel the Tuesday, November 7, 2023, Regular Council meeting:**

"I move, pursuant to City Code Section 2-28(a), that Council cancel its regular meeting on Tuesday, November 7, 2023, due to the election that day."

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, that Council cancel its regular meeting on Tuesday, November 7, 2023, due to the election that day.

The motion carried 7-0.

- OB 3. **Consideration of a motion to cancel the Tuesday, January 2, 2024, Regular Council meeting:**

"I move, pursuant to City Code Section 2-28(a), that Council cancel its regular meeting on Tuesday, January 2, 2024."

Mayor Pro Tem Francis moved, seconded by Councilmember Ohlson, that Council cancel its regular meeting on Tuesday, January 2, 2024.

The motion carried 7-0.

- OB 4. **Motion to adjourn this meeting until after the completion of the Electric Utility Enterprise Board business:**

Mayor Pro Tem Francis moved, seconded by Councilmember Ohlson, that Council adjourn this meeting until after the completion of the Electric Utility Enterprise Board business.

The motion carried 7-0.

The meeting adjourned to the Electric Utility Enterprise Board meeting at 11:03 p.m.

At 11:07 p.m., following the Electric Utility Enterprise Board meeting, the Council meeting resumed. The same members were present at the resumption of the meeting as in the initial roll call.

Q) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 11:07 p.m.

Mayor

ATTEST:

City Clerk

DRAFT