

December 20, 2022

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS & PRESENTATIONS

5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP1.Proclamation Declaring December 21, 2022, as Interfaith Holidays of Light Day.

Mayor Jeni Arndt presented the above proclamation at 5:00 p.m. in the City Council Chambers.

REGULAR MEETING

6:00 PM

B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the meeting to order at 6:00 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 Julie Pignataro
Councilmember Tricia Canonico
Councilmember Shirley Peel
Councilmember Kelly Ohlson

ABSENT

Councilmember Gutowsky

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:

- A staff report has been added to the agenda tonight to report on the referendum process. There were no other changes to the published agenda.
- There are five discussion items, including an appeal.
- All 15 items on the consent agenda were recommended for approval.

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.)

Susan Huse, Fort Collins resident, spoke regarding the petition relating to the adoption of the Land Development Code and urged the Council to delay action on the amendments to the LDC relating to oil and gas.

Frankie Harlin, Fort Collins resident, spoke in opposition to the homeless cleanup at the Murphy Center last week.

Madeleine Grigg, Fort Collins resident, spoke in opposition to the recent sweep of the Murphy Center and the displacement of unhoused people, contrasting it to the exceptions made for businesses during the pandemic due to the difficulties they faced, drawing corollaries to population control.

Adam Eggleston, Fort Collins resident, expressed gratitude for the new Land Development Code and the work of staff over five years in conducting outreach to inform the framework for its development. He shared the benefits of the LDC for housing needs and contrasted it to the costs over benefits of a rental licensing program.

Kelly Evans, Fort Collins resident, spoke regarding the petition for a referendum on the Land Development Code and its conduct in oversimplifying a complex topic with alarmist information, and encouraged residents who signed the petition to learn more about the land use code in depth.

Steve Kuehneman, Fort Collins resident and Executive Director of CARE Housing, spoke in support of the Land Development Code on behalf of a coalition of groups providing affordable housing in Fort Collins.

Jen Bray, Fort Collins resident, spoke as a member of the Affordable Housing Board on her own behalf in support of the Land Development Code, sharing personal stories from her family about people unable to live where they work, as well as the robust engagement on the LDC she was able to participate in.

Rachel Fish, Fort Collins resident, spoke about the treatment of homeless people by the police and City workers, as a resident living near the Murphy Center who has not encountered harassment or concerns from people staying near there. Conducting sweeps of homeless camps does nothing to solve any issues but creates more problems for those who are already in difficult circumstances.

Rev. Melissa St. Clair, Fort Collins resident, senior minister of Heart of Rockies church speaking on her behalf about the recent sweeps near the Murphy Center. She spoke to the work of communities of faith sheltering migrants and the importance of providing that support for all our residents.

Kate Weimer, Fort Collins resident, spoke about her experience onsite at the Murphy Center last week, witnessing punishing community members for being poor. She spoke in support of repealing the camping ban and redirecting some level of police funding for providing services to those who need it. She also added a word of support for the current land use code.

James Tilmant, Fort Collins resident, spoke about his amazement that the Council would adopt the new Land Development Code given the significant changes it ushers in. He spoke regarding his concern about how the new code supersedes existing covenants in HOAs and existing developments rather than just being applicable going forward.

Bobbie Tilmant, Fort Collins resident, spoke about Ordinance No. 114, 2022, implementing the new Land Development Code. She spoke to her belief that everyone believes people can live in the place that they work, sharing also about how she and her husband both worked like dogs to be able to buy their home in a subdivision that now can allow duplexes and larger properties in place of the existing single family homes, significantly altering her neighborhood.

Suzanne Murray, Fort Collins resident, expressed her concerns with the new Land Development Code and stated how pleased she was to be a part of the Preserve Fort Collins petition effort. She spoke about having eight short term rentals in her immediate area, and how challenging that is for the neighborhood. She also shared concerns about the potential for six plexes replacing historic homes in Old Town.

Bill King asked regarding the new Land Development Code what factors led to not putting such an important action on the ballot for citizens and why the Council prefers to reduce citizen involvement.

Makayla Griffith spoke as a neighbor of Fort Collins who volunteers with the homeless at shelters and the heartbreak she felt after the sweep of the Murphy Center.

Lindsey Garchar spoke about the homeless sweeps that have occurred and their concern for homeless neighbors who face these unethical, inefficient and cruel sweeps, especially in the face of upcoming unsurvivable low temperatures. They asked for an end to the sweeps and for more practical approaches to be taken.

Esme Holden, Fort Collins resident, spoke about the ongoing sweeps the City is conducting against unhoused residents. She spoke about her concerns with what she termed so called public space clean up done at the Murphy Center to force the local unhoused community to relocate while also throwing out all of their belonging. She spoke about some of the displaced people who were arrested on warrants as well as facing charges for leaving chattel on sidewalks.

Kiiva, Fort Collins resident, spoke about the ongoing sweeps the City is conducting against the unhoused community, reading from the preamble of the U.S. Constitution and sections of the Colorado State Constitution noting they both support the rights of community members. The City failed to promote general welfare and created a need for further services.

Sabrina, Fort Collins resident, spoke about the ongoing sweeps the City has been conducting against the unhoused portions of our community, noting the concerns raised about costs incurred by the community for those experiencing homelessness do not take into account accurate figures. Sabrina provided information about the costs that are saved by providing housing for people, reducing other ancillary costs.

Sterling Hunter Linville spoke to demand housing justice reform from the Council. They stated most members of Council are taking money from special interests that are also buying off other entities, including nonprofits. They asked if Council members will disclose how much money they have taken from Pat Stryker as well as Super PACs, what tax benefits Pat Stryker has received from the City, and

what each Council member's net worth is. They spoke about the inadequate inaction and corruption of the Council in failing residents.

Mary Alice Grant, Fort Collins resident, spoke about living in a diverse community with diverse needs, and her belief the Land Development Code does not represent many of the citizens in our community. She shared the viewpoint of FoCo Forward calling those who oppose the LDC as NIMBYs is not accurate, and it is the citizen's right to protest via petition, requesting that the Council let us all develop a process together that meets the needs of the greater population.

Patrick Cramer, Fort Collins resident, spoke about the incredible effort seen from the community and volunteers during the Land Development Code petition effort. He noted a number of people wanted to talk during this busy holiday season about their concerns regarding the LDC and their experiences in other communities. He spoke regarding putting a new potential plan together with input from cross sections of the public to develop a truly inclusive plan.

Ross Cuniff, Fort Collins resident, thanked the Council for their work and for listening to speakers tonight on behalf of Preserve Fort Collins. He shared about turning in the petition yesterday and the petition representative's belief in its likely success. He also shared that several of the proposed changes are good and should be supported but are packaged in with other changes that are not sustainable. He encouraged the Council to repeal the Code themselves and then have a dialogue with the community to make changes to craft a new plan that can be taken to the voters.

Lydia Tillman spoke about the homeless sweep last week, noting the eloquent comments of many speakers already tonight. She shared we can do so much better for our community, urging the City to stop the sweeps and focus on housing the unhoused.

Joceyln Lavalley, resident of Fort Collins, spoke about the recent sweeps of homeless camps near the Murphy Center. She noted community members were not given an opportunity to speak at a City Council meeting given the timing of announcing the sweep after the last meeting and conducting it before this one. She encouraged that how we treat the least among us.

Mysticka Stricker-Romero, resident of Wyoming, spoke about first amendment rights, noting they were one of the people arrested at the Murphy Center due to a warrant for a camping ticket, explaining the difficulty in making court dates without transportation leading to warrants, including while dealing with full physical disability. Mysticka requested the City work with the Red Cross to get beds for unhoused residents now.

Sophia Parmenter spoke about the need for help for the unhoused community, addressing stereotypes about the homeless population, sharing figures about those who are part of this community to dispel those stereotypes.

Tenaya spoke to urge the Council to open a temporary shelter with the cold weather coming up, as well as to repeal the camping ban, noting the ban creates more barriers for employment and housing. Working or not working does not entitle you to housing but most unhoused people are working. Long term, Tenaya urged putting more resources towards housing and away from policing the unhoused.

Alex Krausz, Fort Collins resident, spoke regarding seeing good intentions in the Land Development Code yet encouraged the Council to rescind the Code that has been adopted and consider a new decision making process moving forward.

Brian Tracy (not on the sign in), Fort Collins Resident, spoke regarding the Land Development Code, sharing something an 87 year old resident of Fort Collins said, noting sometimes committees and Councils make mistakes and this appears to be one of those times. The petition process was reasonable people exercising their rights.

Dan (not on the sign in), Fort Collins resident, spoke in support of repealing the Land Development Code that was just adopted, as he just learned about it and is concerned with the overall net effect of increased density being something that should be voted on by all residents of the City.

Arlo (not on the sign in) spoke as a community member and service provider and harm reductionist speaking on behalf of themselves, noting a love for the community while working directly with the unhoused population, sharing they are also people who love the community. It is sad to see people who need help and who have things they desperately need thrown away in a sweep. We can't leave anyone behind. Everyone deserves the right to have housing.

H) PUBLIC COMMENT FOLLOW-UP

Mayor Pro Tem Francis requested to have someone speak about Homeless Alliance. Assistant City Manager Rupa Venkatesh shared details about the work being done in partnership between the City and the Murphy Center regarding concerns with growing encampments in the area of the Murphy Center. She also shared the seasonal temporary overflow shelter has been open since December 5 and has not been full yet, and also provided information about the City's commitment to addressing underlying issues around homelessness.

David Rout, Executive Director of the Murphy Center, also addressed Council, acknowledging that the issue is not people camping it is people not having homes, and the issues that compound in the criminal justice system. He also shared we do know there are people who will not stay in shelters for valid reasons. The encampment at the Murphy Center started in July or August. This sort of thing had not previously been an issue, in part because extended hours for the center which ended with the end of funding. What has been occurring since this time is a significant rise in criminal behavior around the center, much of it from outsiders, resulting in people feeling unsafe accessing the center. We do not believe this is a long-term solution to homelessness, but we needed to do something to ensure the safety of people coming to the center as well as those who were camping.

Rupa Venkatesh also spoke to programs in other communities to establish managed safe places, which is something that is being explored in collaboration with partners.

Mayor Pro Tem Francis noted nearly all comments tonight under public comment have in one way or another been about housing.

Councilmember Tricia Canonico thanked everyone for coming out tonight. She also emphasized that because so many people here tonight do work with those experiencing homelessness to encourage everyone to get out of the cold, including taking advantage of services from the Humane Society to provide shelter to pets for 72 hours to allow them and their owners to be able to get out of the cold. She also responded to concerns about Council finances, noting it is possible to see who donated to Council campaigns and Councilmember financial disclosures all on the City's website. She noted Councilmembers are limited to \$75 donations from any individual while the Mayor is limited to \$100.

Clerk's Note: Mayor Arndt called for a 15-minute recess at 7:25 p.m. The meeting resumed at 7:37 p.m.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

J) CONSENT CALENDAR

1. **Consideration and Approval of the Minutes of the November 1, 2022 and November 15, 2022, Regular Council Meetings and the November 22, 2022 Adjourned Council Meeting.**

The purpose of this item is to approve the minutes of the November 1, 2022 and November 15, 2022 regular Council meetings and the November 22, 2022 adjourned Council meeting.

Approved.

2. **Second Reading of Ordinance No. 141, 2022, Making Supplemental Appropriations from the State of Colorado Childcare Operations Stabilization and Workforce Sustainability Grant Program and Reviewing and Approving of the Grant Funding.**

This Ordinance, unanimously adopted on First Reading on December 6, 2022, accepts two State of Colorado grants funded by the American Rescue Plan Act. The Childcare Operations Stabilization and Workforce Sustainability Grant Program will fund childcare enhancements in City childcare programs.

Adopted on Second Reading.

3. **Second Reading of Ordinance No. 142, 2022, Adopting the 2023 Larimer County Regional Transportation Capital Expansion Fee Schedule.**

This Ordinance, unanimously adopted on First Reading on December 6, 2022, adopts the 2023 Larimer County Regional Transportation Capital Expansion Fee Schedule.

Adopted on Second Reading.

4. **Second Reading of Ordinance No. 144, 2022, Designating the Leslie P. and Ruth A. Ware Property, 1801 Sheely Drive, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the Code of the City of Fort Collins.**

This Ordinance, unanimously adopted on First Reading on December 6, 2022, requests City Landmark designation for the Leslie P. and Ruth A. Ware Property at 1801 Sheely Drive. In cooperation with the property owner, City staff and the Historic Preservation Commission have determined the property to be eligible for designation under Standard 3, Design/Construction, for the property's embodiment of the Usonian style of architecture and for the public's interest in the property during the time of construction. The owner is requesting designation, which will provide protection of the property's exterior and access to financial incentives for historic property owners.

Adopted on Second Reading.

5. **Second Reading of Ordinance No. 145, 2022, Amending Chapter 26 of the Code of the City of Fort Collins to Extend and Clarify the Water Annual Allotment Management Program.**

This Ordinance, unanimously adopted on First Reading on December 6, 2022, amends Chapter 26 of the City Code to extend the Allotment Management Program to allow for applications to be filed through December 31, 2024 for the benefit of eligible nonresidential Utilities water customers. The Allotment Management Program serves eligible nonresidential Utilities water customers by waiving excess water use surcharges during the implementation of a landscape project intended to reduce the long-term water use on a property. The ordinance also includes a few language revisions to clarify certain aspects of the program.

Adopted on Second Reading.

6. **Second Reading of Ordinance No. 146, 2022, Amending Section 2-596 of the Code of the City of Fort Collins and Setting the Salary of the City Manager.**

This Ordinance, unanimously adopted on First Reading on December 6, 2022, establishes the 2023 salary of the City Manager. Council met in executive session on November 22, 2022, to conduct the performance review of Kelly DiMartino, City Manager. This Ordinance sets the 2023 salary of the City Manager.

Adopted on Second Reading.

7. **Second Reading of Ordinance No. 147, 2022, Amending Section 2-606 of the Code of the City of Fort Collins and Setting the Salary of the Chief Judge.**

This Ordinance, unanimously adopted on First Reading on December 6, 2022, establishes the 2023 compensation of the Chief Judge. Council met in executive session on November 22, 2022, to conduct the performance review of Chief Judge Jill Hueser.

Adopted on Second Reading.

8. **Second Reading of Ordinance No. 148, 2022, Amending Section 2-581 of the Code of the City of Fort Collins and Setting the Salary of the City Attorney.**

This Ordinance, unanimously adopted on First Reading on December 6, 2022, establishes the 2023 compensation of the City Attorney. Council met in executive session on November 22, 2022, to conduct the performance review of Carrie Daggett, City Attorney.

Adopted on Second Reading.

9. **Second Reading of Ordinance No. 149, 2022, Adopting the Active Modes Plan as a Component of City Plan.**

This Ordinance, unanimously adopted on First Reading on December 6, 2022, adopts the Active Modes Plan.

Adopted on Second Reading.

10. **First Reading of Ordinance No. 150, 2022, Amending Ordinance No. 084, 2022 to Amend the Effective Date of the 2022 Council District-Precinct Map.**

This item amends Ordinance No. 084, 2022, Amending the City of Fort Collins District-Precinct Map, adopted on second reading on July 19, 2022, in order to move forward clarification and amendment of the District-Precinct Map in order to eliminate confusion and practical impacts and inconsistencies in Councilmember districts.

Adopted on First Reading.

11. **Resolution 2022-140 Approving Expenditures from the Art in Public Places Reserve Account in the Cultural Services and Facilities Fund to Commission an Artist to Create an Art Project for the Vine and Lemay Project Pursuant to the Art in Public Places Program and Approving the Art Project.**

The purpose of this item is to approve expenditures from the Art in Public Places (APP) Reserve Account to commission an artist to create art for the Vine & Lemay Project and to approve the art project. The expenditures of \$160,000 will be for design, engineering, materials, signage, fabrication, delivery, installation, and contingency for Joshua Wiener of Flowcus to create the art for the overpass at Vine & Lemay.

Adopted.

12. Resolution 2022-141 Authorizing the Mayor to Execute City-Sponsored 457(b) and Police 401(a) Restated Adoption Agreements.

The purpose of this item concerns an administrative requirement to restate adoption agreements and related documents for City-sponsored 457(b) and Police 401(a) plans. Restatement of the City 457(b) and Police 401(a) adoption agreements is required in order to bring into alignment the internal procedural operation of each Plan with the governing documents controlling the plan. Restating the plans is an administrative action and will have no financial impact on the City or on benefits provided to participating employees. The City's deadline to restate its plan documents is December 31, 2022.

Adopted.

13. Resolution 2022-142 Adopting the 2022 Update to the Three-Mile Plan for the City of Fort Collins.

The purpose of this item is to adopt the annual update of the Three-Mile Plan for the City of Fort Collins. The Three-Mile Plan is a reference document of plans and policies coordinating the general location, character, utilities, infrastructure, and land uses for areas of potential annexation within three miles of the municipal boundary.

An annual update of the Three-Mile Plan is required by Colorado Revised Statutes and highlights applicable plans and policies adopted or amended by City Council over the preceding year.

Adopted.

14. Resolution 2022-144 Superseding and Replacing Resolution 2022-119 Making Appointments to the Natural Resources Advisory Board.

The purpose of this item is to amend the appointment made to Seat E on Resolution 2022-119 to list Lisa Andrews as the appointed member on the Natural Resources Advisory Board. This matches the initial determinations made for appointments by the Council liaison and the decisions communicated to applicants at that time.

Adopted.

15. Resolution 2022-145 Making an Appointment to the Art in Public Places Board

The purpose of this item is to fill a vacancy on the Art in Public Places Board created by the resignation of Miriam Chase.

Adopted.

END OF CONSENT CALENDAR

ADOPTION OF CONSENT CALENDAR

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

The motion carried 6-0.

Absent: Councilmember Gutowsky.

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

None.

L) STAFF REPORTS

City Clerk Anissa Hollingshead provided a brief update on the referendum process following the protest of an ordinance, including what has occurred so far in the protest of Ordinance No. 114, 2022, what to expect next, and what the remaining significant time points are. The presentation included a slide deck which is included in the meeting record.

M) COUNCILMEMBER REPORTS

Councilmember Shirley Peel

- Bill and Jean Jackson through the Community Foundation have established a FoCo Parks Forever fund and are currently doing a dollar-for-dollar match for donations.

Councilmember Tricia Canonico

- Visited Compass Community School with Councilmember Gutowsky last week to share some of the work happening with the Council.

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. 143, 2022, Amending Section 2-73 of the Code of the City of Fort Collins to Allow City Commissions to Conduct Quasi-Judicial Hearings Using Remote Technology.

This Ordinance, unanimously adopted as amended on First Reading on December 6, 2022, amends provisions of Article III of Chapter 2 of the City Code to permit boards and commissions considering quasi-judicial matters to incorporate participation by remote technology into proceedings.

The proposed amendment would enable the presiding officer of the board or commission, upon consultation with the staff liaison, to allow remote participation by members of the public and parties-in-interest. As it was presented at First Reading, the Ordinance would have also allowed remote participation and voting by commission members. Council removed the provision allowing participation and voting by commission members at First Reading, and this change is reflected in the revised ordinance.

Councilmember Francis moved, seconded by Councilmember Canonico, to adopt on second reading Ordinance No. 143, 2022.

The motion carried 6-0.

Absent: Councilmember Gutowsky.

17. First Reading of Ordinance No. 151, 2022, Amending the Land Development Code to Regulate Oil and Gas Facilities and Pipelines.

The purpose of this item is to update the Land Development Code to regulate new oil and gas facilities and pipelines within City limits. These regulations include zoning standards, setbacks, development standards and a process for development review. Per new authority granted through Senate Bill 19-181, these local regulations exceed Colorado Oil and Gas Conservation Commission (COGCC) requirements related to surface oil and gas activities and are designed to ensure the protection of public health, safety, welfare, the environment, and wildlife resources.

Rebecca Everette, Planning Manager, introduced the item. Kirk Longstein, Senior Environmental Planner, presented as set forth in the presentation provided in the Council read before packet.

PUBLIC COMMENT

Rick Casey, Fort Collins resident, spoke in opposition to the passage of the ordinance in its current form and requested a rewrite with more stringent regulations.

Ed Behan, Fort Collins resident, spoke regarding the weaknesses seen in the current ordinance language which have been communicated via documents provided to the Council.

John McDonagh, Fort Collins resident, urged the Council to go back and look at the memos provided by different environmental groups, and specifically spoke to support expanding the regulatory framework beyond just setbacks. He also noted public trust is a limited resource like oil that cannot be replaced once it is used up, urging doing this right the first time it comes up.

Kevin Cross, Fort Collins resident speaking on behalf of the Fort Collins Sustainability Group, spoke in support of broadening the regulatory approach, encouraging expanding insurance requirements to set money aside for decommissioning and repair of any damages. He encouraged reliance on less oil and gas and reducing any new oil and gas development.

Barbara Krupnik-Goldman, Fort Collins resident, spoke in support of the proposals of the Larimer Alliance, including consideration of banning new oil and gas development and drawing down as quickly as we can on current use. The radical thing is continuing to do something known to be damaging to life on our planet.

COUNCIL DISCUSSION

Councilmember Julie Pignataro

- Noted been working on this for so long.
- Did attend recent Air Quality Board and heard their discussion.
- If Council is amenable, would propose moving second reading out to March to leave time for additional discussion.

Mayor Pro Tem Francis asked how delaying second reading is more advantageous to postponing the item all together.

Mayor Arndt asked how a delay or stop in the implementation of the Land Development Code would impact the provisions in this ordinance. Planning Manager Everette noted staff would make changes to the ordinance to allow it to amend the Land Use Code instead of the Land Development Code. City Attorney Carrie Daggett shared it would be possible to either amend the ordinance between first and second reading or to postpone the item and bring back an amended ordinance for consideration.

Councilmember Canonico shared her desire to see this item move forward, with a pause on second reading.

Councilmember Peel stated her preference to see the item postponed and considered for first reading in March.

Planning Manager Everette noted staff would struggle to bring this item back in March given overlapping workload concerns, stating April would be the timeframe that is possible.

Mayor Pro Tem Francis stated her support for adopting the ordinance on first reading tonight and scheduling second reading with a delayed cadence.

Councilmember Kelly Ohlson requested more information from staff, legal, and boards about expanding the regulatory approach before second reading. He would also like to see financial assurances around closing out wells as well as the restoration of the habitat. Councilmember Ohlson asked staff why the downtown district was included with the commercial areas. Planner Longstein shared information about the conversations about the districts and the preponderance of comments focusing on removing mixed residential districts.

Councilmember Peel noted that as part of the process staff was listening to people and incorporating changes accordingly, however there are a lot of concerns in the memo from API that came in late this afternoon that did not appear to be addressed by staff. Planner Longstein noted drafts had been circulated to that group and others, but no feedback was received until the memo. Councilmember Peel requested follow up from staff to the issues raised in that memo.

Councilmember Pignataro moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 151, 2022, with second reading of the ordinance set for April 4, 2022.

The motion carried 6-0.

Absent: Gutowsky.

18. First Reading of Ordinance No. 152, 2022, Amending the Definition of Discrimination in City Code Chapter 13 to Prohibit Discrimination on the Bases of Sexual Orientation, Gender Identity and Gender Expression.

The Ordinance modifies anti-discrimination language in City Code Chapter 13, Article II, to prohibit discrimination on the bases of "sexual orientation, gender identity and gender expression." Absent this new language, our residents in these classes feel unprotected from discrimination, resulting in not including "all" in our growing community. The amendment advances the City of Fort Collins' vision to be a safe and welcoming community for all.

PUBLIC COMMENT

Barb Kistler, Fort Collins resident and president of the Human Relations Commission, read a statement from the HRC.

COUNCIL DISCUSSION

Councilmember Pignataro thanked staff for bringing this item forward so quickly.

Mayor Francis noted her delight in being able to be part of the Council to vote on this item.

Mayor Pro Tem Francis also shared her support.

Councilmember Peel asked about a pending case before the Supreme Court and what that would look like to our Charter depending upon the decision in the case. City Attorney Daggett noted if the Supreme Court issues decisions that contradict Code or Charter provisions, those contradictions would be brought forward to the Council for their awareness and consideration of further action. Senior Assistant City Attorney Jenny Lopez Filkins also responded about the option to wait for that decision.

Councilmember Ohlson stated his support for moving forward tonight and making the changes as they have been presented.

Councilmember Canonico also stated support for moving forward tonight and demonstrating the values of the Fort Collins community.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt on First Reading Ordinance No. 152, 2022, and set second reading for January 17, 2022.

The motion carried 6-0.

Absent: Gutowsky.

19. First Reading of Ordinance No. 153, 2022, Amending Section 2-569 of the Code of the City of Fort Collins to Update and Clarify the Process for Review of Ethics Complaints.

This Ordinance updates the Code provisions describing the ethics complaint process and establishing a new process for screening and investigation of complaints alleging ethics violations by councilmembers. The Ethics Review Board met in November 2021, January 2022, May 2022, and October to discuss options for improvements to the ethics complaint screening and review process. The Ethics Review Board recommended the changes in the Ordinance for adoption.

City Attorney Carrie Daggett presented as set forth in a presentation provided in Council's read before packet earlier in the day.

Councilmember Ohlson thanked the Committee for their work on this topic. He asked about the one year provision and why that was the selected time frame. City Attorney Daggett responded it matches the statute of limitations for code or charter violations.

Councilmember Pignataro noted this is something the Ethics Review Board has been working on at its meetings for some time.

Councilmember Francis moved, seconded by Councilmember Pignataro, to adopt Ordinance No. 153, 2022, on first reading.

The motion carried 6-0.

Absent: Gutowsky.

Clerk's Note: Mayor Arndt called for a 9-minute recess at 8:51 p.m. The meeting resumed at 9:00 p.m.

20. Appeal of the Historic Preservation Commission's Decision Finding 825 North College Avenue Eligible for Landmark Designation.

The purpose of this quasi-judicial item is to consider an appeal of the decision of the Historic Preservation Commission ("HPC") on October 19, 2022, determining that a portion of the property at 825 North College Avenue (historically, the M-K Service Station/North College Standard Service, is eligible for designation as a Fort Collins Landmark.

Appellant, GARA, LLC, the owner of the property, raises two issues on appeal:

First, Appellant argues that the HPC considered evidence relevant to its findings that was grossly misleading. More specifically, Appellant alleges that the HPC was prejudiced by City staff's "overuse and emphasis of the history of the property, which caused a lack of proper consideration as to whether the Quick Lube Building retains sufficient integrity today to qualify as an historic structure."

Second, Appellant argues that the HPC failed to properly interpret and apply provisions of the City Code Section 14-22, which establishes standards for determining the eligibility of structures for designation as landmarks or landmark districts. Specifically, Appellant alleges that the HPC failed to properly determine whether the service station located on the property retained the significance and integrity required for Landmark designation under the Code.

Mayor Arndt announced the item.

City Attorney Carrie Daggett provided a brief overview of the appeal process.

CONFLICTS

Mayor Arndt asked if any Councilmembers wished to disclose any potential conflict of interest issues. No conflicts were disclosed.

SITE VISITS

Councilmember Peel shared her observations at the site visit, seeing a business but not a historical resource with an overall sense of place, time and purpose.

Councilmember Ohlson also participated in the site visit where he got a sense of the site.

PARTIES PRESENT

Tim Goddard, representing GARA LLC, introduced himself and noted there was a procedural issue he would like to bring up. City Attorney Daggett noted that issue would be appropriate to bring up at the designated time in the appeal process.

There were no parties opposed to the appeal present.

TIME ALLOCATIONS

Mayor Arndt announced time allocations, with 20 minutes for a presentation in support of the appeal.

PROCEDURAL ISSUES

Attorney Goddard came forward regarding a request to have an article admitted into evidence of an article he believes the commission members reviewed as part of their decision making, but that was never part of the record and was never provided to the owners.

There are also materials that were submitted following the rules for new evidence. Mayor Arndt ruled the evidence submitted in advance would be admitted.

There was further discussion on the request for the additional inclusion of the article being brought forward tonight. Attorney Goddard noted he did not make the request within the 10 days provided for new evidence to be submitted because the transcript was not available at that time. City Attorney Daggett noted and confirmed with Planning staff excerpts of the article were included in the hearing packet.

Mayor Arndt ruled not to admit the article into evidence, following precedent in past hearings.

Discussion continued on the new evidence. Councilmember Peel asked about whether the article was provided to the Commission. Staff noted a link to the article was added to the presentation; at the time of the hearing the current appellants objected to having the article admitted into evidence and the assistant city attorney advised the commission not to consider the article in its deliberations.

Attorney Goddard objected to the decision to not allow the article as new evidence.

APPELLANT'S PRESENTATION

Attorney Tim Goddard presented the appellant's case. He opened by stating the issue he wanted to bring to the Council was does the architectural design of a building that is common throughout the area and the country qualify as significant under the Code. He also noted the original building had been torn down in the 1930s and was rebuilt and then substantially remodeled subsequently and has only been in its current form since 1977. He referred to the hearing transcript in the agenda packet, pointing to comments by members of the commission specifically referencing an article published by History Colorado that was never made part of the record. The article calls out unornate oblong box service stations to which commissioners compared this building. In their deliberations, this was the primary point called out in the Commission's decision and the motion that was made. Attorney Goddard noted the oblong box style is a term of art, which was introduced to the Commission via the History Colorado article. He also noted it is also well known these gas stations are a dime a dozen. He stated to be a historic building it has to have historic significance to the city of Fort Collins, but asked how it can have historic significance to Fort Collins when they were everywhere.

Attorney Goddard referenced a book and DVDs that were submitted within the 10-day new evidence period but were withdrawn when they were notified any materials submitted could not be returned. He shared the book was filled with historical buildings in Fort Collins as did some videos made by the same professor that include buildings that have been deemed historical buildings, none of which are similar to this building. He therefore requested the Council find that the HPC erred in not considering that this architecture is common in this area and therefore does not have significance specifically to Fort Collins and not the entire United States. He also requested a finding that the building lacks the integrity in remaining design to qualify,

City Attorney Daggett noted a procedural issue in failing to allow the staff presentation prior to the appellant's presentation. She suggested allowing the staff presentation and then additional time for the appellant to respond to information provided by staff.

STAFF EXPLANATION AND PRESENTATION

Paul Sizemore, CDNS Director, presented as set forth in the staff presentation in the agenda packet.

The appellant was provided an additional 10 minutes to respond to the staff explanation and presentation. Attorney Goddard asked Council to look at the official determination made by the HPC and look at the two buildings juxtaposed, noting there is no way to get from the old style of building to the current building without a complete deconstruction and rebuilding. Therefore there is nothing to tie the building to the historic integrity criteria.

COUNCIL QUESTIONS

Mayor Pro Tem Francis asked about the standards that were to be applied to determine significance. Planner Bertolini provided information about allowances for common architecture

within the standards. It is intended to be a semi-professional judgement based on determination of historic significance.

Mayor Arndt asked if this is the same structure. Planner Bertolini noted the staff's judgement this was the same building was based on building permits from 1960 for a significant remodel and addition.

Councilmember Peel asked if the Commission members are allowed to do their own research. City Attorney Daggett responded commission members need to rely on the information presented at the appeal. Councilmember Peel asked for clarification for what specifically the attorney for the appellants is arguing at issue in this instance. Attorney Goddard noted he believes this issue can be part of the argument laid out for the appeal initially on fair hearing issues, although he acknowledged he was not aware of this breach until reviewing the full transcript last week.

Councilmember Peel asked additional questions of staff regarding the contention that the staff's overuse and emphasis on the history of the property answered by Planner Bertolini.

There being no further questions for the appellant or staff, the hearing was closed at 10:00 p.m.

DISCUSSION

Mayor Pro Tem Francis stated the appellant's basis for appeal does not reference the outside research contention being brought up now, and therefore she does not believe there was not a fair hearing.

Councilmember Peel stated in a quasi-judicial hearing only things presented in the record should be considered.

Councilmember Pignataro asked about the timing for receipt of the transcript and if there is a standard for that timing. Planning staff present was not able to provide an answer to that question. City Attorney Daggett provided general information about when transcripts are ordered, following the submission of an appeal.

Councilmember Kelly Ohlson stated he agreed it was a fair hearing.

Councilmember Canonico noted it was unfortunate external information was brought in, but she believes it was a fair hearing.

Mayor Arndt stated agreement it was a fair hearing, but noted it should be a point of emphasis for training for quasi-judicial commissions to ensure the hearing only considers evidence in the record.

Councilmember Pignataro asked if the Council is only allowed to consider the grounds for appeal and if issues that weren't identified in the notice of appeal are final. City Attorney Daggett noted the notice of appeal does define the scope of what is in front of the Council.

The appellant interjected and noted the transcript was not received until November 1, which was after the deadline for filing an appeal. Planner Bertolini noted staff typically orders transcripts shortly after the hearing. He also noted the video of the hearing was produced on November 8. Mayor Arndt summarized and confirmed with staff it appeared there was not access to the transcript or video more than one day prior to the appeal deadline. There was discussion by the Council with concerns about a fair appeal process, but not fair hearing issues. City Attorney Daggett noted that recordings are made of all meetings and can be requested by anyone at any time.

There was discussion about process concerns and consideration around remanding the decision to the HPC for a new hearing for new information to look at.

Mayor Pro Tem Francis moved, seconded by Councilmember Ohlson, that the Council find that the Historic Preservation Commission conducted a fair hearing in their consideration of the eligibility for designation of the property located at 825 North College Avenue finding that the appellant did not establish with confidence evidence in the record that relevant evidence considered by the Commission was substantially false or grossly misleading and I further move that, based on the evidence in the record and presented at this hearing, the appeal allegation that the HPC did not conduct a fair hearing is hereby found to be without merit and is denied.

The motion carried 6-0.

Absent: Councilmember Gutowsky.

Mayor Pro Tem Francis moved, seconded by Councilmember Peel, that the City Council remand the matter for Historic Preservation Commission rehearing with the direction that they provide additional information regarding the events, building and integrity due to the modification of the building. In light of this remand, I further move to dismiss the appeal with respect to all other issues not addressed in the remand to the Commission.

The motion carried 6-0.

Absent: Councilmember Gutowsky.

P) OTHER BUSINESS

A. Consider a motion to direct the City Clerk to add an editor's note to the City Charter.

Councilmember Francis moved, seconded by Councilmember Pignataro, to direct the City Clerk to work with the City's codifier to add an editor's note into the City Charter to be published at Charter Article II, Section 2, to state "With respect to eligibility to be a candidate for, or hold, the office of Councilmember, see also article VII, section 10 and article XII, section 4 of the Colorado Constitution", or substantially similar language the City Clerk may determine appropriate in consultation with the City Attorney, and to include substantially similar language in the City's election guideline materials."

The motion carried 6-0.

Absent: Gutowsky.

B. 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.)

Councilmember Pignataro noted under the minimum wage conversations there was discussion about regional conversations, but she is understanding those conversations are not formal. She requested support to form a regional ask force of elected officials to involve other Northern Colorado municipalities and counties. Senior Project Manager Ginny Sawyer noted work has occurred around additional conversations and collaborations. The request was modified to include within the scope of the existing work occurring to make contact by mid-February to see if there is interest within Northern Colorado for further regional collaboration. Support for this suggestion was obtained.

Q) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 10:31 p.m.

Mayor

ATTEST:

City Clerk

