

February 6, 2024

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

**PROCLAMATIONS AND PRESENTATIONS
5:00 PM**

A) PROCLAMATIONS AND PRESENTATIONS

None scheduled.

**REGULAR MEETING
6:00 PM**

B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the regular 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 Susan Gutowsky
Councilmember Tricia Canonico
Councilmember Melanie Potyondy
Councilmember Kelly Ohlson

ABSENT

Councilmember Julie Pignataro

STAFF PRESENT

City Manager Kelly DiMartino
City Attorney Carrie Daggett
Interim City Clerk Heather Walls

E) CITY MANAGER'S AGENDA REVIEW

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

- Item 29 – Making Appoints to Boards and Commissions Liaison and Council Committee Appointments.

- Item 30 – Appeal of the Planning and Zoning Commission decision approving the Polestar Development

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.)*

Hania Sakkal, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza. Sakkal listed local organizations which support the resolution.

Sue Ellen Klein, urged Council to adopt a resolution in support of a ceasefire in Gaza and stated the issue is humanity. Klein stated to be silent is to be complicit and Fort Collins leadership needs to be courageous and bold.

Aaron D. Lerner, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza stating the number of people killed thus far is equivalent to 52% of the residents of Fort Collins.

Alex Scott, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza stating it is a local issue as Woodward manufactures components used in the munitions being sent to Israel. Additionally, Scott noted Council has previously adopted resolutions concerning world and national issues.

Dr. Watson Saltis, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza stating the occurrences in Gaza are equivalent to genocide.

Madeline Grigg, Fort Collins resident and teacher, urged Council to adopt a resolution in support of a ceasefire in Gaza and cited statistics indicating an average daily death count of 250.

Ash W., Fort Collins high school senior, discussed lessons about negative events in history that occur to ensure they do not occur again. Ash urged Council to adopt a resolution in support of a ceasefire in Gaza.

Isabella Zapata, Fort Collins residents, urged Council to adopt a resolution in support of a ceasefire in Gaza stating we cannot stand for genocide.

G. Inguata, Fort Collins resident, opposed shutting down the shelter at the Mennonite Church and urged Council to adopt a resolution in support of a ceasefire in Gaza.

Christinia Eala, Fort Collins resident, stated historical trauma will weigh on all of us and urged Council to adopt a resolution in support of a ceasefire in Gaza and opposed shutting down the shelter at the Mennonite Church.

Dory LeCount, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Hayley Lucci-Rimer, urged Council to adopt a resolution in support of a ceasefire in Gaza and provided statistics linking Fort Collins to the conflict. Lucci-Rimer stated the war violates international humanitarian law.

Janie Stein, Fort Collins resident, expressed gratitude for the other speakers and urged Council to adopt a resolution in support of a ceasefire in Gaza.

Victoria Zawitkowski, Fort Collins resident, spoke of the atrocities of the Holocaust and urged Council to adopt a resolution in support of a ceasefire in Gaza. Zawitkowski noted Council adopted several previous resolutions related to national events and stated our city's taxes pay more than \$2 million toward Israel's weapons.

William Timpson, Fort Collins resident, stated violence needs to be ceased and provided examples of wars that ended in ceasefire.

President of the Islamic Center of Fort Collins, spoke in support of a ceasefire to spare lives of innocent children and urged Council to adopt a resolution in support of a ceasefire in Gaza.

Kevin Cross, Northern Colorado Alliance for a Livable Future, expressed horror regarding the Israeli government's response to the Hamas attacks and urged Council to adopt a resolution in support of a ceasefire in Gaza to end the genocide that is occurring.

Jonah Salehi, Chair of the Labor Committee for DSA Fort Collins, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Ashton Schmidke, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza citing Woodward's manufacturing of Israeli weapons and local tax dollars going to Israel.

Elizabeth Lucci-Rimer, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza and commented on parents and children living through the atrocities.

Beth (no last name given), Fort Collins resident, speaking for a friend, spoke of the horror of children being fallout of political disagreement.

Jessica Olson, Fort Collins resident and CSU student, urged Council to adopt a resolution in support of a ceasefire in Gaza stating we should be proud of our community and we should speak for the people who cannot speak for themselves.

Nika Linn, Fort Collins resident, read a letter from a former Fort Collins resident who is currently in the occupied West Bank discussing the atrocities of the ongoing genocide of the Palestinian people. The letter also urged Council to adopt a resolution in support of a ceasefire in Gaza.

Victoria Tochtrop, Fort Collins resident and CSU student, urged Council to adopt a resolution in support of a ceasefire in Gaza and discussed the ethnic cleansing of the Armenian people.

Crystin Hypnar, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza and stated not all Jews support Israel.

Quinn Miller, Fort Collins resident, stated a child is killed in Gaza every 5 minutes. Miller urged Council to adopt a resolution in support of a ceasefire in Gaza and commented on Council's previous adoption of resolutions related to national issues.

Joshua Keen, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza stating Fort Collins should stand for peace and the genocide needs to cease.

Blaine Crowe, Fort Collins resident, played video of names the Palestinian children that have been killed thus far and noted Council adopted a ceasefire resolution for Ukraine.

Claire Kopp, Fort Collins resident, stated we need to acknowledge that our land was taken by force and expressed heartbreak over the suffering and genocide in Gaza. Kopp stated the Israeli occupation needs to stop now and urged Council to divest from connections with companies that support the occupation.

Kimberly Baker Medina, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza stating it is anti-violence, anti-war, and anti-genocide, not anti-Semitic.

Dana Guber, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza stating her family fled the Holocaust.

Brett Pavel, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Shaylee Jennings, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza stating watching the news and images of the injured and dead is horrifying.

Nura Elmagbari, Fort Collins, urged Council to adopt a resolution in support of a ceasefire in Gaza as a plea for humanity.

J Brown, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza and opposed the planned eviction of the unhoused from the Mennonite Church in June.

Connor Flynn, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Sabrina (no last name given), urged Council to adopt a resolution in support of a ceasefire in Gaza and spoke about Fort Collins' direct role in the war.

Quinn Mitchell, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza and shared a video regarding children killed in Gaza.

Rorey King, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Esme Holden, Fort Collins resident, opposed the proposed eviction of unhoused individuals from the Mennonite Church and opposed the sweeping of homeless encampments without warning.

Jase Peter, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Zoe R., Fort Collins resident and Jewish community member, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Kimberly Connor, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza and stated local tax dollars are going directly to fund the Israeli military. Connor noted the resolution also calls for the release of Israeli hostages.

Trevor Rothanzl, Fort Collins resident, urged Council to adopt a resolution in support of a permanent ceasefire in Gaza and relayed experiences of relatives.

Steve Ramer, Fort Collins Mennonite Fellowship pastor and Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Ally Eden, Fort Collins resident and granddaughter of a Holocaust survivor, stated her brother lives in the West Bank. She stated that while she realizes Fort Collins has no jurisdiction over the federal government, there is power in voices and adopting a resolution in support of a ceasefire in Gaza will amplify those voices.

Giselle Hirschfeld, descendent of a Holocaust victim, spoke of ancestral trauma and urged Council to adopt a resolution in support of a ceasefire in Gaza.

Michael May, co-chair of CSU's YDSA, stated over 70 cities have called for ceasefire resolution and urged Council to adopt a resolution in support of a ceasefire in Gaza. May noted 70% of the housing in Gaza has been destroyed.

Kaori Keyser, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Nancy York, Fort Collins native, spoke of the control Israel has over Gaza and stated the current situation is a clear case of genocide. York urged Council to adopt a resolution in support of a ceasefire in Gaza.

August-Carter Nelson, Fort Collins resident and co-chair of the Fort Collins DSA, urged Council to adopt a resolution in support of a ceasefire in Gaza and spoke of the Palestinian experience in America.

Grace Hudgens, Fort Collins resident, spoke of feeling hopeful that a difference can be made and urged Council to adopt a resolution in support of a ceasefire in Gaza.

Jo Carroll, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Linda Breen, Larimer County resident, stated we should all have the courage to stand against genocide. Breen urged Council to adopt a resolution in support of a ceasefire in Gaza.

Stefanie Berganini, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza stating the United States is willfully enabling genocide to happen. Berganini stated all elected officials have a moral responsibility to act.

Louisa Kimmell, Fort Collins resident and Jewish American, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Hannah Spring, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza noting some of the technology being used by Israel is directly tied to Fort Collins corporations.

Lindsey Garchar, Fort Collins resident, stated we are privileged that we can choose whether to engage in the images of the war and expressed horror that our residents contribute nearly \$2.5 million in federal taxes to Israel's weapons and that Fort Collins' corporations make Israel's genocide possible. Garchar also opposed the eviction of those housed at the Mennonite Church.

Sam Seiniger, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Greg Zoda, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza stating a ceasefire confirms that all people have equal worth.

Cheryl Distaso, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza stating the testimony that has occurred this evening should compel that action. Distaso stated this is a matter of stepping up in leadership positions to do anything possible to stop an unfolding genocide and to act with humanity.

Ashley Garchar's sister, Fort Collins resident, read a written statement from Garchar urging Council to adopt a resolution in support of a ceasefire in Gaza.

Shiloh Kenway, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza and stated this is a local issue.

Rich Stave, Fort Collins resident, questioned the transparency and fairness of referees per Item No. 19, *First Reading of Ordinance No. 019, 2024, Amending Article III of Chapter 19 of the Code of the City of Fort Collins Regarding Municipal Court Referees*, and questioned how the public provides input.

Ruth Inglis-Widrick, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza and spoke of being assaulted by an individual who had been abused by his parents. Inglis-Widrick expressed concern about the effect of war on the children in Gaza.

Anne Hudgens, Fort Collins resident, stated governments are often on the wrong side of history. Hudgens commented on reading about the Holocaust as a child and questioning how people could stand by and not act.

Rena Mart, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Terry Iverson, CSU professor and Fort Collins resident, commented on visiting Gaza and on the hospitality of the Palestinian people. Iverson urged Council to adopt a resolution in support of a ceasefire in Gaza.

Sabrina Herrick, Fort Collins resident, discussed the sweep of a homeless encampment outside the Murphy Center in December of 2022 and opposed the eviction of individuals from the Mennonite Church.

Christina Swope, Fort Collins resident, stated she is tired of feeling powerless knowing tax dollars are funding the crimes in Gaza. She stated a ceasefire resolution speaks to the intent of most Fort Collins residents.

Oliver Vollmer, Fort Collins resident, urged Council to adopt a resolution in support of a ceasefire in Gaza.

Joe Kissell, Fort Collins resident, thanked Council for their work and urged Council to adopt a resolution in support of a ceasefire in Gaza noting not one person opposed the resolution tonight.

Public comment concluded at 8:04 p.m.

H) PUBLIC COMMENT FOLLOW-UP

Councilmember Ohlson thanked the speakers and stated Fort Collins has a long history of taking stands on national and global issues. He commented on other resolutions adopted by Council, including one in opposition to apartheid in South Africa and one opposed to the placement of MX missiles in Wyoming, among others. He stated there is nothing legally stopping the Council from taking a stand and stated he would support passing a resolution calling for an immediate and permanent ceasefire in Gaza. He encouraged Council to take the action as soon as possible.

Mayor Pro Tem Francis thanked the speakers and noted the Human Relations Commission is considering this item on Thursday. She recommended letting the Commission do its work and make a recommendation to Council.

Mayor Pro Tem Francis requested an update on the temporary certificate of occupancy at the Mennonite Church. Marcus Coldiron, Chief Building Official, stated Council approved an emergency ordinance allowing facilities to act as community-based shelters during the Covid pandemic and that ordinance ended on October 16, 2022; however, it was determined the use of community-based shelters would be an important resource to maintain, therefore a building permit process was created to continue temporary use of facilities to act as shelters. Since that time, staff has determined the process would be clearer if it were codified; therefore, in the interim, the determination has been made

to allow continued use under the temporary use provisions of the Building Code for these facilities to act as community-based shelters in 2024. Coldiron discussed the Building Code requirements that would typically be necessary for overnight uses.

Councilmember Potyondy thanked the speakers and expressed support for the Human Relations Commission providing a recommendation on the ceasefire resolution.

Councilmember Canonico also thanked the speakers and expressed support for the Human Relations Commission providing a recommendation on the ceasefire resolution.

Clerk's Note: Mayor Arndt called for a break at 8:12 p.m. The meeting resumed at 8:30 p.m.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

Mayor Pro Tem Francis withdrew Item No. 15, *First Reading of Ordinance No. 015, 2024, Appropriating Philanthropic Revenue Received Through City Give for Park Planning and Development to Fund Pickleball Site Feasibility and Community Engagement*, from the Consent Agenda.

J) CONSENT CALENDAR

1. Consideration and Approval of the Minutes of the January 16, 2024 Regular Meeting.

The purpose of this item is to approve the minutes of the January 16, 2024 regular meeting.

Approved.

2. Second Reading of Ordinance No. 001, 2024, Appropriating Prior Year Reserves in the Transportation Capital Expansion Fee Fund for Eligible Reimbursement to the Waterfield Fourth Filing Developer for Construction of Suniga Road, Vine Drive, and Merganser Street Improvements as Part of Waterfield Fourth Filing Phases 1 through 4; and for the Dedication of Suniga Road Right-of-Way.

This Ordinance, unanimously adopted on First Reading on January 16, 2024, appropriates \$1,413,645 of Transportation Capital Expansion Fee (TCEF) Funds for expenditure from the Transportation Capital Expansion Fee Program Budget to reimburse the Waterfield Fourth Filing developer, DFC Waterfield, LLC (Developer), for its oversizing construction of Suniga Road, Vine Drive, and Merganser Drive. As part of Phases 1 through 4 of the Waterfield Fourth Filing, the Developer has constructed Suniga Road as a four-lane arterial, Vine Drive as a collector, and Merganser Drive to City standards as part of its development requirements. Per Section 24-112 of the City Code, the Developer is eligible for reimbursement from TCEF funds for the oversized, non-local portion of Suniga Road, Vine Drive, and Merganser Drive not attributed to the local portion obligation. Additionally, the Developer has dedicated Suniga Road right-of-way as a four-lane arterial from its western boundary to Timberline Road and is also eligible for reimbursement from TCEF funds for the oversized, non-local portion of Suniga Road right-of-way.

Adopted on Second Reading.

3. Second Reading of Ordinance No. 002, 2024, Appropriating Funds for Change Management Resources to Support Legislative Management Software Implementation Funds.

This Ordinance, unanimously adopted on First Reading on January 16, 2024, appropriates \$375,000 of general fund reserves to contract with Prosci, Inc., to provide change management support for the Legislative Management Software project throughout its implementation in 2024. Council Finance Committee recommended this move forward to Council at their December 19 meeting.

Adopted on Second Reading.

4. **Second Reading of Ordinance No. 003, 2024, Authorizing Transfers and Reappropriation of Funds Previously Appropriated for the Utilities' Grid Flexibility Programs.**

This Ordinance, unanimously adopted on First Reading on January 16, 2024, approves the funding of grid flexibility programs through the appropriation of prior year reserves and reappropriation of previously approved Light and Power funds. The ordinance does not appropriate any new funding, but rather optimizes previously appropriated funds to accelerate progress toward Our Climate Future (OCF) goals.

Adopted on Second Reading.

5. **Second Reading of Ordinance No. 004, 2024, Authorizing Transfers of Appropriations and Appropriating Related Funds for the Environmental Services Radon Program.**

This Ordinance, unanimously adopted on First Reading on January 16, 2024, supports the City's Environmental Services Radon program by:

- *Appropriating \$9,000 of unanticipated grant revenue awarded by the Colorado Department of Public Health and Environment (CDPHE); and*
- *Utilizing matching funds in the amount of \$6,000 from existing 2024 appropriations for this grant project.*

In December 2023, CDPHE awarded the City \$9,000 under the CDPHE Indoor Radon grant program. The City will provide an additional \$6,000 in required matching funds. The award funds and City's matching funds will support radon testing and mitigation programs to protect public health for the Fort Collins community.

Pursuant to the State of Colorado Purchase Order Terms and Conditions, and in accordance with Section 1-22 of the City Code, the City Manager has accepted the grant agreement. The \$9,000 are federal funds from the Environmental Protection Agency being passed through to the City by CDPHE.

Adopted on Second Reading.

6. **Second Reading of Ordinance No. 005, 2024, Authorizing Transfers of Appropriations and Appropriating Related Funds for the Timberline Recycling Center Infrastructure and Efficiency Improvements.**

This Ordinance, unanimously adopted on First Reading on January 16, 2024, supports Timberline Recycling Center (TRC) infrastructure and efficiency improvements by:

- *Appropriating \$294,853 of unanticipated revenue awarded by the Colorado Departments of Public Health and Environment's Front Range Waste Diversion Enterprise (FRWD); and*
- *Transfer \$28,393 matching funds from existing appropriations in the Capital Projects Business Unit for the project.*

The grant funds and matching funds will support replacement of equipment that has exceeded its useful life, as well as incorporation of new infrastructure to provide a safe, accessible and functional recycling facility. Contribution to the Art in Public Places (APP) Program is not required due to grant restrictions.

Adopted on Second Reading.

7. Second Reading of Ordinance No. 006, 2024, Authorizing Transfers and Appropriating Related Funds for the Oak Street Stormwater Improvements Project.

This Ordinance, unanimously adopted on First Reading on January 16, 2024, appropriates funding for the construction of the Oak Street Stormwater Improvements Project. It will fund the construction contract with the general contractor; contracts for resident engineering and construction management services, permitting and internal project support and management; construction contingency (~4%) and funding for the Art in Public Places (APP) program. The construction contingency included herein is less than the typical amount that would normally be associated with this size of contract (10-15% is typical). If additional contingency funds are needed in the future, those funds would be requested to be appropriated from the Stormwater Reserve Fund.

The total amount being requested for appropriation is \$39,962,815:

- *Construction Contract \$36,645,015*
- *Construction Support (Resident Engineer, Construction Manager, Permitting and Internal Support) \$1,720,000*
- *Construction Contingency \$1,550,000*
- *APP Program \$47,800*

The Stormwater Utility Enterprise Board adopted Ordinance No. 011, 2023 (First Reading on September 19, 2023, and Second Reading on October 3, 2023) authorizing bond issuance in the Stormwater Fund for the construction of the Oak Street Stormwater Improvements project. Following the sale and closing of the bonds, gross proceeds in the amount of \$40.4M were deposited into the Stormwater Fund reserves on October 31, 2023.

Adopted on Second Reading.

8. Second Reading of Ordinance No. 007, 2024, Amending Article II of Chapter 5 of the Code of the City of Fort Collins to Exempt Plumbing Fixtures from Permits and Inspections.

This Ordinance, unanimously adopted on First Reading on January 16, 2024, amends City Code to exempt plumbing fixture replacements, such as sinks, faucets, drains, showers, tubs, and toilets from the permit requirements under Chapter 5 of the City Code, for the following reasons: Colorado State does not require permits for this type of work, very few fixture replacements are currently done with a permit, there are no concerns with life or safety, and requiring permits creates additional barriers and cost impacts to improving indoor water efficiency.

Adopted on Second Reading.

9. Second Reading of Ordinance No. 008, 2024, Authorizing the Conveyance of a Permanent Non-Exclusive Utility Easement on Property Jointly Owned by the City of Fort Collins and the City of Loveland at the Northern Colorado Regional Airport for the New Airport Terminal Facility.

This Ordinance, unanimously adopted on First Reading on January 16, 2024, authorizes 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 to allow for the installation and maintenance of electrical infrastructure for the new Airport terminal facility.

Adopted on Second Reading.

10. Second Reading of Ordinance No. 009, 2024, 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 January 16, 2024, amends City Code to establish the 2024 salary of the City Manager. Council met in executive session on December 19, 2023, to conduct the performance review of Kelly DiMartino, City Manager, and to consider the salary market analysis for this position.

Adopted on Second Reading.

11. Items Relating to the Fort Collins Police Services Victim Services Unit.

A. First Reading of Ordinance No. 010, 2024, Making a Supplemental Appropriation from the Eighth Judicial District Victim Assistance and Law Enforcement Board in the General Fund for the Fort Collins Police Services Victim Services Unit.

B. First Reading of Ordinance No. 011, 2024, Making a Supplemental Appropriation from the Colorado Division of Criminal Justice Under the Federal Victim of Crime Act in the General Fund for the Fort Collins Police Services Victim Services Unit.

The purpose of these items is to provide funding for the Victim Services Unit of Fort Collins Police Services for victim advocacy services which are required under the Colorado Victim Rights Amendment for victims and witnesses of crime and their supporting family members.

The Victim Services Unit has been awarded a \$70,000 Victim Assistance and Law Enforcement (VALE) grant for the period from January 1, 2024 to December 31, 2024. The VALE grant is awarded through the Eighth Judicial District Board to help fund services provided by the Victim Services team. This grant will fund one part-time victim advocate, as well as 65% of the salary for a contractual 40-hour per week victim advocate.

The Victim Services Unit has also been awarded a 24-month grant in the amount of \$47,959 for the period from January 1, 2023 to December 31, 2024, by the Colorado Division of Criminal Justice under the Federal Victim of Crime Act (VOCA). This grant will help fund services provided by the Victim Services Unit. These funds will be used to pay 35% of the salary for a contractual victim advocate who provides crisis intervention services for sexual assault victims between the school ages of kindergarten through 12th grade.

Adopted both Ordinances on First Reading.

12. First Reading of Ordinance No. 012, 2024, Making a Supplemental Appropriation from the Colorado Division of Criminal Justice Synthetic Opiate Poisoning Investigation and Distribution Interdiction Grant for the Fort Collins Police Services Forensic Services Unit.

The purpose of this item is to support Fort Collins Police Services' Forensic Services Unit work in the prevention and investigation of serious injuries and deaths caused by illegal synthetic opiate poisoning and for disrupting synthetic opiate distribution by appropriating \$40,000 of unanticipated grant revenue from the Colorado Department of Public Safety, Division of Criminal Justice (DCJ).

Adopted on First Reading.

13. First Reading of Ordinance No. 013, 2024, Appropriating Philanthropic Revenue Received by City Give for the Renovation of the Historic Carnegie Library.

The purpose of this item is to request an appropriation of \$214,000 in philanthropic revenue received by City Give for the renovation of the historic Carnegie Library as designated by the donor.

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

Adopted on First Reading.

14. **First Reading of Ordinance No. 014, 2024, Appropriating Philanthropic Revenue Received Through City Give for Youth Sports Programming and Services.**

The purpose of this item is to request an appropriation of \$15,550 in philanthropic revenue received through City Give for Recreation to benefit income-qualified youth sports programming and services.

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

Adopted on First Reading.

15. **First Reading of Ordinance No. 015, 2024, Appropriating Philanthropic Revenue Received Through City Give for Park Planning and Development to Fund Pickleball Site Feasibility and Community Engagement.**

The purpose of this item is to request an appropriation of \$40,000 in philanthropic revenue received by City Give for Park Planning & Development, for site feasibility and community engagement toward a future City-owned pickleball complex.

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

Pulled from Consent. Adopted on First Reading.

16. **First Reading of Ordinance No. 016, 2024, Appropriating Prior Year Reserves in the Recreation Fund for the Mulberry Pool Replacement Feasibility Study.**

The purpose of this item is to appropriate \$78,000 from Recreation Reserves to fund the Mulberry Replacement Feasibility Study. This study is in partnership with Colorado State University Athletics (CSU), who will be funding 50% of the study.

Adopted on First Reading.

17. **First Reading of Ordinance No. 017, 2024, Appropriating Prior Year Reserves in the Recreation Fund for the Purchase of Ponies and Sheds at Lee Martinez Farm.**

The purpose of this item is to appropriate \$72,000 from Recreation Reserves to purchase ponies and replace sheds at the Lee Martinez Farm.

Adopted on First Reading.

18. **First Reading of Ordinance No. 018, 2024, Appropriating Prior Year Reserves for Compensation of the Mayor, Mayor Pro Tem and Councilmembers.**

The purpose of this item is for a General Fund supplemental appropriation to fund 2023-2024 Budget Offer 28.12 - City Council Voter Approved Pay Increase for fiscal year 2024. This budget request was not funded in the 2023-2024 Adopted Budget since the election results of the 2022 City-Initiated Charter Amendment No. 1 (Council Compensation) ballot initiative would not be known until after first reading of the City's annual appropriation ordinance for 2023. The initiative was approved by Fort Collins voters and this action is to appropriate the increased spending in the General Fund to implement the ballot initiative for the salary increases in 2024.

Adopted on First Reading.

19. **First Reading of Ordinance No. 019, 2024, Amending Article III of Chapter 19 of the Code of the City of Fort Collins Regarding Municipal Court Referees.**

The purpose of this item is to amend the City Code to clarify that municipal court referees may hear cases involving camera radar and red light photo citations. Defendants in this type of case would have a choice to have a hearing with a referee in a more informal setting or a hearing in front of a municipal judge. The proposed Code changes would also allow the Chief Judge in the future to authorize referees to hear cases involving other zero-point infractions.

Adopted on First Reading.

20. **Items Relating to Amending City Code to Adjust for Inflation the Following Fees: Capital Expansion Fees; Transportation Expansion Fee; Electric Capacity Fee; Water Plant Investment Fee; Sewer Plant Investment Fee; and Stormwater Plant Investment Fee.**

A. First Reading of Ordinance No. 020, 2024, Amending Chapter 7.5 of the Code of the City of Fort Collins to Increase for Inflation the Capital Expansion Fees and Transportation Expansion Fee.

B. First Reading of Ordinance No. 021, 2024, Amending Chapter 26 of the Code of the City of Fort Collins Regarding Calculation and Collection of Development Fees Imposed for the Construction of New or Modified Electric Service Connections.

C. First Reading of Ordinance No. 022, 2024, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Water Plant Investment Fees.

D. First Reading of Ordinance No. 023, 2024, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Sewer Plant Investment Fee.

E. First Reading of Ordinance No. 024, 2024, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Stormwater Plant Investment Fees.

The purpose of this item is to make annual inflation adjustments effective March 1, 2024, associated with the City's Capital Expansion Fees, Transportation Expansion Fee, Utility Plant Investment Fees, and Electric Capacity Charge.

Adopted on all Ordinances on First Reading.

21. **First Reading of Ordinance No. 025, 2024, Adopting the 2024 Larimer County Regional Transportation Capital Expansion Fee Schedule.**

The purpose of this item is to adopt the 2024 Larimer County Regional Transportation Capital Expansion Fee Schedule.

Adopted on First Reading.

22. **First Reading of Ordinance No. 026, 2024, Authorizing the Purchasing Agent to Enter into a Contract for Professional Services in Excess of Five Years for the Proposed Oak Street Stormwater Improvements Project.**

The purpose of this item is to authorize the City's purchasing agent, pursuant to City Code Section 8-186(a), to enter into contracts greater than five years in length, for professional services for the proposed Oak Street Stormwater Improvements Project. The contract authorized under the proposed ordinance could be extended up to the life of the project. Design for the project began

in 2020, construction is anticipated to begin in 2024 with a 2-year duration, and project close-out may take several months, making the overall duration of the project seven (7) years or more. Under this scenario and without this proposed ordinance, the design contract would expire while the project is under construction, a situation that would result in logistical and cost ramifications for the City and the project.

Adopted on First Reading.

- 23. First Reading of Ordinance No. 027, 2024, Authorizing the Mayor to Execute an Easement Agreement with Larimer County, the City of Loveland and South Fort Collins Sanitation District Regarding an Existing Sewer Line on Long View Farm Open Space.**

The purpose of this item is to seek authorization to approve conveyance of a sewer line easement to South Fort Collins Sanitation District (SFCSD) across Long View Farm Open Space. This easement is intended to formally document an existing sewer line that was installed in 1981 prior to the purchase of Long View Farm Open Space.

Adopted on First Reading.

- 24. First Reading of Ordinance No. 028, 2024, Approving and Authorizing the Execution of an Amendment to a Reciprocal Stormwater Drainage Easement Agreement with Sun Foothills Fort Collins, LLC, and Ratifying the Original Conveyance.**

The purpose of this item is to authorize the amendment of that certain Reciprocal Stormwater Drainage Easement Agreement (the "Original Easement") dated September 7, 2022, recorded at Reception No. 20220061510, Clerk and Recorder's Records, Larimer County, Colorado, by and between the City and Sun Foothills Fort Collins, LLC (the "Owner"), which originally conveyed a stormwater drainage easement to the Owner on City property in exchange for the City's right to retain stormwater on the Owner's property. The Amendment to the Original Easement (the "Amended Easement") will modify the legal description and revise language pertaining to access rights. Approval of the Ordinance would also ratify the Council's prior action in 2022 approving the easement exchange, the ordinance for which was missing its intended exhibits.

Adopted on First Reading.

- 25. First Reading of Ordinance No. 029, 2024, Approving the Conveyance of a Temporary Construction Easement, Dedication of a Permanent, Nonexclusive Water Line Easement, and Dedication of a Permanent, Nonexclusive Sewer Line Easement, all on City Property, for the Benefit of the Sun Foothills Fort Collins Development.**

The purpose of this item is to approve an Ordinance that would authorize the conveyance of the following:

- 1. One (1) temporary construction easement (TCE) to Sun Foothills Fort Collins LLC (the "Owner") for the modification of existing grades and current stormwater drainage facilities;*
- 2. One (1) permanent, nonexclusive water line easement to the Fort Collins-Loveland Water District (the "Waterline Easement"); and*
- 3. One (1) permanent, nonexclusive sewer line easement to the Fort Collins-Loveland Sanitation District (the "Sewer Easement").*

The easements are located on 17 acres of City property located in the North West 1/4 of Section 13, Township 6 North, Range 69 West, Larimer County, Colorado, being currently held as a City of Fort Collins Land Bank property (the "City Property").

Construction pursuant to the TCE will modify existing stormwater facilities. The Waterline Easement and the Sewer Easement are entitlements required by the City so that the Owner may proceed with the development of the adjoining lands.

The easements will include the extension of stubbed water, sewer, and drainage improvements directly onto the City Property resulting in a significant benefit to the City Property.

Adopted on First Reading.

26. Items Relating to the 2024 City Classified Employee Pay Plan as Provided in the Collective Bargaining Agreement with the Fraternal Order of Police.

A. First Reading of Ordinance No. 030, 2024, Adopting the 2024 Amended Classified Employees Pay Plan to Update Classified Positions as Provided in the Collective Bargaining Agreement with the Fraternal Order of Police.

B. First Reading of Ordinance No. 031, 2024, Appropriating Prior Year Reserves in the General Fund for the Cost of Police Services Salary and Benefit Increases as Provided in the Collective Bargaining Agreement with the Fraternal Order of Police.

The purpose of these items is to recommend changes to the 2024 City Classified Employee Pay Plan based on an annual market analysis conducted as agreed upon through the 2022-2024 Collective Bargaining Agreement (Agreement) with the Northern Colorado Lodge #3 of the Fraternal Order of Police (FOP). The Agreement was approved by Council by Resolution on December 7, 2021. The Agreement specifies a salary data collection method and evaluation process that includes market data as of early January each year. This data has been collected and analyzed, resulting in the revised 2024 Amended City Classified Employee Pay Plan.

Adopted both Ordinances on First Reading.

27. Resolution 2024-006 Supporting Grant Application for Local Match Funding in Support of the Midtown Central Corridor Project.

The purpose of this item is to obtain support for the City to apply for the non-federal match requirement included in the Department of Transportation's FY2024 Rebuilding American Infrastructure with Sustainability and Equity (RAISE) discretionary grant program.

Adopted.

28. Resolution 2024-007 Approving the Appointment of Heather Walls as Interim City Clerk Effective February 4, 2024.

The purpose of this item is to appoint Heather Walls as Interim City Clerk.

Adopted.

END OF CONSENT CALENDAR

Mayor Pro Tem Francis moved, seconded by Councilmember Ohlson, to approve the recommended actions on items 1-28 minus item 15 on the Consent Calendar.

The motion carried 6-0.

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

None.

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

Councilmember Potyondy

- Announced a listening session scheduled for February 10th at 11:00 a.m. at the Harmony Library.

Mayor Arndt

- Reported on the Northern Colorado Foundation's report on data concerning northern Colorado and its rollout today during which she served on a panel of area mayors.
- State of the City is scheduled for Monday, February 26 at 6:00 p.m. at the Lincoln Center.

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

15. **First Reading of Ordinance No. 015, 2024, Appropriating Philanthropic Revenue Received Through City Give for Park Planning and Development to Fund Pickleball Site Feasibility and Community Engagement.**

The purpose of this item is to request an appropriation of \$40,000 in philanthropic revenue received by City Give for Park Planning & Development, for site feasibility and community engagement toward a future City-owned pickleball complex.

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

Mayor Pro Tem Francis expressed equity concerns related to part of the Parks Master Plan being prioritized by a donation through City Give noting this donation was funded by the pickleball community.

Nina Bodenhamer, City Give Director, discussed the guardrails that are in place to ensure that donations cannot be used to advance items that are not in the work plan. She stated this particular donation would fund a feasibility study, not a build prioritization, and it would not move the item further along in the work of the Parks Department.

Mayor Pro Tem Francis stated the feasibility study itself moves the item forward.

Mike Calhoun, Parks Director, discussed the local history of pickleball and the need to provide facilities for people to participate in the sport. He detailed the experience with the first courts at City Park. He noted there have been no other promises associated with the feasibility study, should it move forward.

Mayor Pro Tem Francis expressed concern with groups being able to advance their focus through City Give.

Councilmember Canonico asked if pickleball would be moved up in priority if the feasibility study is done. Calhoun replied the Recreate Master Plan notes that pickleball is below the recommended level of service whereas other recreation facilities, such as tennis courts and ball fields, are at the recommended level of service. He noted the community is always surveyed before any plans move forward.

Bodenhamer noted donations through City Give do not circumvent the budget process.

Councilmember Ohlson stated he will support the item on First Reading but will need to consider the issue further prior to Second Reading.

Councilmember Canonico moved, seconded by Councilmember Gutowsky, to adopt Ordinance No. 015, 2024, Appropriating Philanthropic Revenue Received Through City Give for Park Planning and Development to Fund Pickleball Site Feasibility and Community Engagement.

The motion carried 5-1.

Ayes: Mayor Arndt, Councilmembers Canonico, Potyondy, Gutowsky, and Ohlson.

Nays: Mayor Pro Tem Francis.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

29. Resolution 2024-008 Making Board and Commission Liaison and Council Committee Assignments and Making Appointments to Various External Boards and Authorities.

The purpose of this item is to make Councilmember liaison assignments to City boards and commissions and Council committees as well as make appointments to external boards and authorities on behalf of the City.

PUBLIC COMMENT

Rich Stave commented on the importance of oversight of the Planning and Zoning Commission and stated the Council liaison will play an important role.

COUNCIL DISCUSSION

Mayor Pro Tem Francis stated she has been the liaison to the Commission for the past three years and would like to remain in the role to continue the work the Commission has been doing.

Councilmember Gutowsky also expressed interest in the liaison role and read a statement regarding comments that were made at the Council retreat related to her motives for wanting the role. She stated she would like to serve as the liaison to provide an alternative point of view and stated she believes it would enhance the high-performing government to have a new person involved in making appointments to the Commission. However, she stated she does not believe she has the votes to make her the liaison and conceded the appointment to Mayor Pro Tem Francis.

Councilmember Canonico moved, seconded by Councilmember Potyondy, to adopt Resolution 2024-008 Making Board and Commission Liaison and Council Committee Assignments and Making Appointments to Various External Boards and Authorities, inserting the name of Emily Francis as the Planning and Zoning Commission liaison.

The motion carried 6-0.

Clerk's Note: Mayor Arndt called for a break at 8:55 p.m. The meeting resumed at 9:05 p.m.

30. Polestar Village Project Development Plan Appeal.

The purpose of this quasi-judicial item is to consider an appeal of the Planning and Zoning Commission's decision on November 17, 2023, approving the Polestar Village Project

Development Plan (#PDP220010). The Appellants filed a Notice of Appeal on December 1, 2023, with supplemental new evidence filed on December 8, 2023, alleging:

- *That the Planning and Zoning Commission (P&Z) failed to conduct a fair hearing in that they **considered evidence relevant to their findings which was substantially false or grossly misleading**. The Appellants assert that; 1) Polestar used persuasive language during the hearing and presented misleading information as well as non-confirmable statements; and 2) Hearing attendees and council members also did not get to hear all the details of the proposal. The Appellants offer seven points in support of their assertion.*
- *That P&Z failed to conduct a fair hearing in that two members were **biased against the appellant by reason of a conflict of interest** or close relationship that interfered with their independence of judgement.*
- *That P&Z failed to properly interpret and apply relevant provisions of the Land Use Code including subsections:*
 - *3.6.2 (A) and (I) regarding layout and design of streets and drives;*
 - *4.5(A), the Purpose statement of the Low Density Mixed Use Neighborhood (LMN) zone district; and*
 - *4.(B) and (C), permitted and prohibited uses in the Low Density Residential zone district.*

City Attorney Daggett provided an overview of the appeal and the appeal process.

Paul Sizemore, Director of Community Development and Neighborhood Services, noted a name spelling error on page 18 of the verbatim transcript of the Planning and Zoning Commission hearing. He provided an overview of the proposed Polestar project which proposes 20.5 acres of mixed-use neighborhood on an infill property with 144 dwelling units, a neighborhood center, mixed-use buildings, a place of assembly, and agricultural support buildings. Sizemore went on to discuss the timeline of the project and appeal.

Sizemore provided details of the appeal noting it contains three main allegations: that the Planning and Zoning Commission failed to conduct a fair hearing by considering evidence relevant to its findings which were substantially false or grossly misleading, that the Commission failed to conduct a fair hearing because it was biased against the appellant by reasons of conflict of interest or other close business, personal, or social relationships that interfered with a member's independence of judgement, and that there was a failure to properly interpret and apply relevant provisions of the Land Use Code.

Mayor Arndt requested Councilmembers disclose any potential conflicts of interest or other possible reasons for recusal.

Councilmember Ohlson stated he has met the previous owners of the property but has not seen them for years and does not believe he has a conflict.

Councilmember Potyondy stated she knows two of the appellants but did not believe she has a conflict.

The lead appellant, Charles Thompson, introduced himself. Other parties-in-interest in support of the appeal also introduced themselves: Eve Enright, Andrew Katz, Jenny Morse, Gina Santoro, Matt Benson, Melissa Markarian, and Charles Thompson, Sr.

Bob Choate, Polestar Gardens, Inc., Ken Merritt, JR Engineering, Charlie Shoub, Kristina Vrouwenvelder, and Aisha Martinek introduced themselves as parties-in-interest opposed to the appeal.

Mayor Arndt recommended time allotments for presentations and rebuttals. She noted there are two procedural issues that need to be addressed, including that the project applicant objects to the emails included in the appellant's December 8 written submittal stating they constitute new evidence.

Mr. Thompson stated the emails provide evidence that support the claim that proper evidence of the hearing and information about the development were not received.

Mr. Choate opposed the inclusion of the emails as they came after the Planning and Zoning Commission hearing was completed. He stated all neighborhood notification requirements were met.

Mayor Arndt noted new evidence is not generally acceptable.

City Attorney Daggett clarified that the appellant did raise two fair hearing issues and if the emails related to those, they would be admissible, but if they do not, they would not be.

Mayor Pro Tem Francis and Councilmember Potyondy concurred new evidence should not be accepted.

City Attorney Daggett clarified there is a process under the Code for the appellant to submit new evidence, and that was done within the appropriate timeframe. She noted the applicant is not objecting to the main submittal but the emails that were attached.

Senior Assistant City Attorney Brad Yatabe stated the important consideration is that there are two fair hearing allegations and after reading the emails, he does not believe they speak to the allegations directly.

Mayor Pro Tem Francis asked if the emails are already in the Council packet. Yatabe replied in the affirmative.

Mayor Arndt made a ruling that the emails will be accepted as evidence. She outlined the second procedural issue related to the project applicant's objection to the appellant's failure to properly interpret and apply the Land Use Code allegations as insufficient to meet the requirements of the Code and provide adequate notice of the matters on appeal.

Mr. Thompson stated he submitted the Land Use Code provisions that are part of the appeal within the appropriate timeframe and stated he believed the publicly accessible Land Use Code provided enough support.

Mr. Choate argued there were no details provided as to how the Codes were misinterpreted.

Mayor Pro Tem Francis stated it is difficult to make a decision based on what the appellant submitted.

Councilmember Ohlson spoke in favor of allowing the appellant to make his arguments.

City Attorney Daggett outlined the Code language and recommended that if Council proceeds based on its sense of the applicant's reaction, that it confer with the applicant as to whether he has withdrawn his objection or has no further objection.

Mayor Arndt stated she is inclined to follow the Code language.

Councilmembers Canonico and Potyondy concurred and stated it is important that the outlined procedures for appeals are followed.

Councilmember Ohlson stated he would support that as well.

Councilmember Gutowsky stated appellants sometimes lack guidance as to how to process the appeal, and that seems to be the case here. She stated the lack of experience of the appellant should not interfere with the appellants' ability to state their case.

Mayor Pro Tem Francis made a motion, seconded by Councilmember Canonico, that the Council dismiss all of the appellants' failure to properly interpret and apply the Land Use Code allegation listed in the notice of appeal submitted to the City on December 1, 2023, finding that City Code Section 2-49(B)(4) requires that every notice of appeal shall include the grounds for the appeal, including specific allegations of error and a summary of the facts contained in the record on appeal which support such allegations. The allegations that the Planning and Zoning Commission failed to properly interpret and apply the Land Use Code set forth in the appellant's notice of appeal listed only the numbers of certain Land Use Code sections without providing any specific allegations of error or a summary of facts contained in the record supporting such allegations. The information provided did not comply with City Code Section 2-49(B)(4) and did not provide sufficient notice to any part opposed to the appeal to allow such party to sufficiently prepare to address the allegations at this February 6, 2024 appeal hearing. Dismissal of the failure to properly interpret and apply all allegations is required as a matter of fairness to any party opposed to the appeal and to comply with the City's adopted appeal procedure.

Councilmember Ohlson stated he feels badly about the vote but noted a previous Council created an ombudsman position to help regular residents of Fort Collins through the development review process to help level the playing field with applicants who are often represented by legal counsel. He stated he would support the motion, however, because the rules do matter.

Mayor Pro Tem Francis noted Council is working on making the appeal process more fair and equitable, and changes are in the works; however, the Code that is currently in place needs to be followed.

The motion carried 6-0.

Appellant Presentation

Mr. Thompson provided arguments in support of the appeal stating Polestar's presentation during the Planning and Zoning Commission hearing contained inaccuracies and omissions that significantly impacted the decision-making process of the Commission leading to an unfair consideration of the project. He stated Polestar relied on traffic data to downplay the impact on local streets and data collection entailed limited duration and selective monitoring of streets. He questioned the thoroughness of the traffic impact study.

Mr. Thompson outlined the appeal's concerns regarding community outreach misrepresentation. Additionally, he stated Polestar has an HOA, which was not disclosed at the hearing, and current residents of the Roger's Park neighborhood, nor greater Fort Collins, will not be allowed to access the amenities of the proposed new development unless they become members.

Mr. Thompson noted Polestar's hearing presentation started at 10:30 p.m. and was cut short at 11:08 p.m.; therefore, the rushed presentation led to skipped slides containing pertinent information for the Commission's consideration. He also stated Polestar never described themselves as an investment opportunity, which they outline as a selling point on their website.

Mr. Thompson stated it has been misrepresented that Orchard Place will connect to Overland Trail, which the plans do not show but which the Commission seemed to expect. He argued the extended duration of the hearing into the early morning hours contributed to the Commission's fatigue and impaired members' ability to thoroughly assess the proposal and ask pertinent questions. He also stated the lateness of the meeting disadvantaged working class residents of Roger's Park, preventing meaningful participation in the hearing.

Mr. Thompson discussed the appeal's accusation of bias and stated the claims are not meant to be an attack on the character of those members; however, he stated two confessions of conflict of interest by Commission members did raise concerns about their impartiality.

Mr. Thompson noted staff did not find specific comments about fatigue in the record; however, he stated it was certainly alluded to, particularly given the hearing start time of 10:20 p.m. and adjournment at 12:48 a.m.

Eve Enright expressed disappointment she is seeing the same reluctance in Council to help the appellants. She requested Councilmembers keep in mind that they are to be representing residents.

Jenny Morse noted Chair Katz made a specific statement about the non-regulated land transfer that occurred resulting in the access problems to the site.

Mr. Thompson concluded by stating that the appeal asserts that the evidence from the Zoom recording of the Commission hearing reveals falsehoods and misleading information presented by Polestar influencing the Commission's decision-making process unfairly. He stated a reevaluation of the development proposal to ensure a fair and just outcome is necessary. He noted the Roger's Park neighborhood understands the land will develop but would like to see the development be a positive addition to the community.

Applicant Presentation

Mr. Choate stated it is important to recognize that Council's role is not to decide on the development plan, but rather on the appeal. He stated if the Planning and Zoning Commission did not clearly get the decision wrong, he respectfully requested Council defer to the Commission's decision.

Mr. Choate provided background on Polestar and stated the property is not gated and is open to the public. He stated the applicant, Polestar Gardens, is a non-profit entity and one unique aspect is that a substantial portion of the property will be owned as tenants-in-common. He also noted the density being proposed is far less than the allowed density.

In terms of traffic, Mr. Choate noted the City's Traffic Engineers told the project not to include Orchard and Plum in their traffic impact study. Additionally, he stated these roadways are well below half of total capacity after full build out of this development.

Mr. Choate reiterated that the appropriate public notice was provided and Polestar held a neighborhood meeting. He stated there is not a question as to whether Orchard will go through to Overland; rather the question is related to whether that connection would be required with this development, and the answer to that question is very clearly 'no.' He noted Polestar has no ownership of that property or ability to acquire it to be turned into a roadway.

Mr. Choate stated neither Commissioner Shepard nor Commissioner York indicated they had a conflict of interest, rather they disclosed they knew the former owners or others in the area. He noted there is no connection between the former owners and Polestar and stated the disclosures made by the Commissioners do not rise to the level of conflict of interest.

Appellant Rebuttal

Mr. Thompson noted Polestar does not provide affordable housing and stated it is an investment opportunity as per their website. Additionally, he stated that while Polestar claims to be a planned community of like-minded individuals, there will be no application process for home ownership and there is no guarantee the investors will live in the development.

Mr. Thompson questioned whether there will be tax exemptions given there will be a place of worship on the property. He reiterated questions as to why Orchard and Plum were not included in the traffic impact study. He also questioned what is considered to be common areas that are accessible by other members of the community.

Andrea Coy stated she organizes the Roger's Park neighborhood annual event and did attend the first neighborhood meeting, after which she expressed concern about the process and procedures. She expressed concern about the challenges of navigating the appeal process and stated the proposed project does not offer affordable housing as per the City's goals.

Applicant Rebuttal

Mr. Choate argued the tenants-in-common ownership model does allow for more affordability and stated the project is well in line with City Plan. He reiterated this hearing is not about the project but about the appeal.

Brian Dunbar, CSU Institute for the Built Environment Executive Director, spoke on behalf of the applicant team, and stated the Institute has worked with Polestar to develop sustainable design and construction guidelines for the development and noted the project could be much more dense but opted to allow for open spaces. He stated he has found those involved in the development to be eager to establish community connections and commented on the lifelong nature of the homes that will be built. Additionally, he stated the project does provide mixed opportunities of housing, some of which would be more affordable and attainable than others.

Council Questions

Mayor Pro Tem Francis requested clarification on the traffic study. Steve Gilchrist, Traffic Operations, clarified the intent of the traffic study is to determine whether the existing transportation system can handle the additional traffic from a development. He stated traffic studies examine level of service which is based on intersection capacity and this traffic study examined five intersections which were shown to fully function based on level of service standards. He stated the City can require additional studies on adjacent streets based on concerns, and in this case, looked at daily volumes on Louise, Locust Grove, and Kimball.

Councilmember Ohlson asked who sends the neighborhood notices and what checks are in place to assure those are sent out. Sizemore replied administrative staff within Community Services and Neighborhood Development prepare address lists and mailings per the methodology prescribed in the Land Use Code, and the mailing lists are kept as part of the record.

Councilmember Ohlson asked what changes were made to the development based on neighborhood feedback. Mr. Merritt replied the neighborhood meeting was held in May of 2021 via Zoom and there were not many participants. He stated there were no substantial changes to the plan because of that meeting, though there may have been more units in the original plan and one of the internal intersections changed. Additionally, it was determined a heritage cottonwood tree that was going to be removed would be saved with some changes to the plan.

Councilmember Ohlson asked about the comments made related to the community being relocated to Fort Collins. Mr. Merritt replied Polestar originally resided in Hawaii and in 2019, a volcano eruption destroyed their community. In 2020 and 2021, Polestar decided on Fort Collins

for its new location. He noted this is not a closed community and sales and rentals will be open to anyone.

Councilmember Ohlson noted it is irrelevant to this hearing, but asked staff if they are looking at any changes to prevent the land transfer that led to the lack of available land for a roadway connection. Sizemore replied the Code allows for portions of land to be switched around between property owners for agricultural purposes or for the purpose of land assembly for development. He stated it is not something that has been identified as problematic at this point, though it is something that could be examined per Council direction.

Council Discussion

Mayor Pro Tem Francis stated Council is deciding whether a fair hearing was conducted and she is having difficulty finding grounds to indicate the hearing was not fair.

Councilmember Canonico expressed sympathy with the Roger's Park homeowners; however, she did not see any evidence to indicate the Commission's hearing was unfair or members were biased.

Councilmember Potyondy stated the bar for bias is high and fatigue is subjective; therefore, she did not see evidence of a lack of fair hearing.

Councilmember Gutowsky expressed concern that not all slides were presented the night of the hearing and questioned whether the result of the hearing may have been different had they all been presented. She questioned whether the hearing was fair if it was not complete.

Councilmember Potyondy asked if the slides were part of the Commission's packet. Sizemore replied in the affirmative.

Councilmember Ohlson stated he believed the hearing was imperfect but fair. He expressed concern that the appeal process does not offer a level playing field and noted improvements are forthcoming and have been made in the past, citing the change in signage for development properties.

Mayor Arndt concurred the hearing was fair based on the evidence and testimony and she stated she did not see evidence of bias.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, that Council find that the Planning and Zoning Commission conducted a fair hearing in consideration of the Polestar Village PDP, finding that the appellant did not establish with confident evidence in the record that any of the fair hearing issues have merit, and further, that based on the evidence in the record and presented at this hearing, the appeal allegations that the Planning and Zoning Commission failed to conduct a fair hearing contained in the appellant's notice of appeal are hereby denied and dismissed in their entirety.

The motion carried 5-1.

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

Nays: Councilmember Gutowsky.

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.)

Q) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 11:15 p.m.



[Handwritten signature]

Mayor

ATTEST:

Rita R. Kroll

Assistant City Clerk
Chief Deputy