

October 15, 2024

**COUNCIL OF THE CITY OF FORT COLLINS, COLORADO**

**Council-Manager Form of Government**

**Regular Meeting – 6:00 PM**

**PROCLAMATIONS AND PRESENTATIONS**

**5:00 PM**

**A) PROCLAMATIONS AND PRESENTATIONS**

PP 1. **Declaring October 20th as Community Media Day.**

PP 2. **Declaring October 13th-19th as National Veterinary Technician Week.**

PP 3. **Declaring the Month of October as Domestic Violence Awareness Month.**

PP 4. **Declaring the Month of October as Arts and Humanities Month.**

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

**REGULAR MEETING**

**6:00 PM**

**B) CALL MEETING TO ORDER**

Mayor Pro Tem Emily Francis called the regular meeting to order at 6:00 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 Pro Tem Emily Francis led the Pledge of Allegiance to the American Flag.

**D) ROLL CALL**

**PRESENT**

Mayor Pro Tem Emily Francis  
Councilmember Susan Gutowsky  
Councilmember Julie Pignataro  
Councilmember Melanie Potyondy  
Councilmember Kelly Ohison  
Councilmember Julie Pignataro

**ABSENT**

Mayor Jeni Arndt (Excused)

**STAFF PRESENT**

Deputy City Manager Tyler Marr  
City Attorney Carrie Daggett  
City Clerk Delynn Coldiron

## **E) CITY MANAGER'S AGENDA REVIEW**

Deputy City Manager Tyler Marr provided an overview of the agenda, including:

- No changes to the published agenda.
- 16 items on the consent agenda.
- 2 discussion items
  - Water Supply Requirements, surcharge, and allotments
  - Sanctuary on the Green appeal

## **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.)*

Kelly Evans, Fort Collins resident, Director of Neighbor to Neighbor, spoke in favor of water supply requirements that support affordable housing. Evans stated housing affordability is the number one issue facing Fort Collins and addressing water use and costs is one of many solutions needed to address it.

Kevin Cross, Fort Collins Sustainability Group, listed several organizations, including his, that recommend a third-party review of Platte River Power Authority's Integrated Resource Plan (IRP) and have found it troubling that nothing has been done related to this to date. Cross noted the request is for a review of the need to build a new gas plant, not for a review of whether any gas generation is needed in the near term. Cross stated Council is responsible for setting rates and for meeting sustainability goals.

Alex Scott provided a letter that has been published in the New York times and provided examples of what doctors, nurses and paramedics have seen in Gaza based on what was written. Scott stated Council's lack of support for a ceasefire resolution has forced the city to de facto support the war.

Nancy Eason, Fort Collins resident, discussed a district court verdict in California related to fluoridation and read some of the findings from that case establishing that fluoride is damaging to human health. Eason stated the verdict orders the EPA to take regulatory action to eliminate the unreasonable risk to the health of children posed by the practice of water fluoridation. Eason urged Council to direct that fluoridation be stopped.

Michelle Neals, Fort Collins resident, also discussed the court ruling related to fluoridation and commented on the impact this has on the health of children, especially related to lowering IQ. Neals urged Council to direct that fluoridation be stopped.

Scott Swartzendruber, Fort Collins resident, also discussed the court ruling related to fluoridation and urged Council to direct that fluoridation be stopped. Swartzendruber stated fluoride is poisoning our children.

Kimberly Conner, Fort Collins resident, requested Council approve a ceasefire resolution for Gaza and now Lebanon, and stated the government is complicit in the war if we do nothing. Conner stated that neutrality would involve issuing a resolution and that silence kills.

Michele Pullaro, business owner in downtown Fort Collins, thanked Councilmember Potyondy for acknowledging her concerns mentioned at the last meeting regarding homeless individuals loitering outside her business. Pullaro acknowledged that Police Services have responded to her several times, but stated Council needs to take action and make changes to the public nuisance ordinance.

Adam Hirschhorn, Fort Collins resident, read several items related to what is occurring in Gaza in the form of a resolution and urged Council to support a ceasefire resolution. Hirschhorn stated he will be represented by Saul Goodman and Casey Novak moving forward related to this issue.

Nola MacDonald, Fort Collins resident, stated she would be emailing a link to a video that speaks to water fluoridation and commented on the credentials of the doctor that speaks in the video and the amount of research she has been involved in related to this issue. She stated that the information confirms what has already been mentioned related to fluoridation impacting the IQ of children and stated that just as lead exposure was taken seriously, this item should be as well.

Erin Ramler, Wellington resident and Fort Collins business owner, stated the California ruling related to fluoridation has already encouraged changes in many jurisdictions and encouraged Council to direct staff to stop water fluoridation immediately.

#### **H) PUBLIC COMMENT FOLLOW-UP**

Councilmember Pignataro asked Deputy City Manager Marr to comment on the City's response to the fluoridation issue and asked if the topic would need to go to the ballot again if changes were to be made. Deputy City Manager Marr replied it would not need to go to the ballot again. Jill Oropeza, Water Utility Senior Director of Science and Planning, stated staff members have been responding to the recent court case as well as the National Toxicology Program report that was released in August and have been working with the legal staff and others on an appropriate response.

Oropeza stated the City is continuing fluoridation as directed by CDPHE and will wait until Council, the EPA, or CDPHE issues additional guidance before making any changes. It is expected CDPHE will issue guidance in the coming days.

Councilmember Ohlson commented on the 2005 election during which he opposed fluoridation stating he did not believe it was the role of the government to place a chemical in drinking water, and his position has not changed. He stated he would welcome the opportunity to move forward with a policy change if other Councilmembers were so inclined.

Councilmember Potyondy agreed she would be interested in looking further at this, though her mind is not made up.

#### **I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION**

None.

#### **J) CONSENT CALENDAR**

##### **1. Second Reading of Ordinance No. 139, 2024, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Safe Routes to School Zach Elementary School Crossings Project and Related Art in Public Places.**

*This Ordinance, unanimously adopted on First Reading on October 1, 2024, provides supplemental appropriations to the Safe Routes to School (SRTS) Zach Elementary School Crossings Project (Project). If approved, this item appropriates:*

- 1. \$176,760 from Transportation Capital Expansion Fee (TCEF) reserves to the Project;*
- 2. \$277,750 from Transportation Services Fund reserves to the Project;*

3. \$4,410 (0.8% of TCEF and Transportation Services Fund reserves contribution) from TCEF reserves (\$1,750) and Transportation Services Fund reserves (\$2,660) to the Art in Public Places (APP) program;
4. \$90 (0.2% of TCEF and Transportation Services Funds contribution) for maintenance of art from the Transportation Services Fund reserves to the APP program.

***Adopted on Second Reading.***

2. **Second Reading of Ordinance No. 140, 2024, Making Supplemental Appropriations from the State of Colorado for the Universal Pre-School Program at the Northside Aztlan Community Center.**

*This Ordinance, unanimously adopted on First Reading on October 1, 2024, appropriates unanticipated revenue of \$30,469 from the State of Colorado in 2024 to help fund the Universal Pre-school (UPK) program at the Northside Aztlan Community Center through the Recreation Fund.*

***Adopted on Second Reading.***

3. **Second Reading of Ordinance No. 141, 2024, Appropriating Revenue from a Funding Advancements for Surface Transportation and Economic Recovery Grant and the Colorado Department of Transportation Americans with Disabilities Act Grant and Appropriating Prior Year Reserves and Authorizing Transfers for the US 287 and Triangle Drive Signal Installation Project and Related Art in Public Places.**

*This Ordinance, unanimously adopted on First Reading on October 1, 2024, appropriates the following funds to the US 287 and Triangle Drive Signal Installation Project (Project):*

1. \$682,211 in Funding Advancements for Surface Transportation and Economic Recovery (FASTER) funds to the Project;
2. \$183,843 in CDOT Americans with Disabilities Act (ADA) funds;
3. \$688,897 from Transportation Capital Expansion Fee (TCEF) reserves to the Project;
4. \$6,686 (0.8% of TCEF contribution) from TCEF reserves to the Art in Public Places (APP) program;
5. 0.2% of TCEF contribution for maintenance of art from the Transportation Services Fund reserves to the APP program.

*The funds will be used to design and install a new traffic signal as well as bicycle and pedestrian improvements connecting Triangle Drive to the northeast towards the Lakeview on the Rise development. There is severe crash history at this intersection and in 2023 CDOT committed FASTER funding to the City for signal improvements. CDOT has also committed funding for pedestrian improvements to bring the intersection into compliance with ADA requirements.*

***Adopted on Second Reading.***

4. **First Reading of Ordinance No. 142, 2024, Appropriating Philanthropic Revenue Received by City Give in 2024 and Prior Year Reserves for Various Programs and Services as Designated by the Donors.**

*The purpose of this item is to request an appropriation of \$53,890 in philanthropic revenue received by City Give. These miscellaneous gifts to various City departments support a variety of programs and services and are aligned with both the City's strategic priorities and the respective donors' designation.*

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

**Adopted on First Reading.**

5. **First Reading of Ordinance No. 143, 2024, Making Supplemental Appropriations and Authorizing Transfers of Appropriations for Various Transit Services Grants and Revenue.**

*The purpose of this item is to appropriate grant revenue and the corresponding local match for Transfort.*

**Adopted on First Reading.**

6. **First Reading of Ordinance No. 144, 2024, Making a Supplemental Appropriation of Grant Funds from the Edward Byrne Memorial Justice Assistance Grant Program for Fort Collins Police Services.**

*The purpose of this item is to support Fort Collins Police Services in work performed as a member of the Northern Colorado Drug Task Force.*

*The Northern Colorado Drug Task Force is managed by Larimer County Sheriff Department, with both Fort Collins Police Services and Loveland Police being members. These member agencies support a broad range of activities to prevent and control drug-related crimes.*

*Larimer County applied for and was awarded \$50,647 through the Edward Byrne Memorial Justice Assistance Grant (JAG) program in support of operating the Northern Colorado Drug Task Force (Attachment 3). The City of Fort Collins, City of Loveland and Larimer County entered an intergovernmental agreement (Attachment 2), demonstrating the allocation of the \$50,647 awarded under JAG in support of the Northern Colorado Drug Task Force. Fort Collins Police Services received \$15,807 to support personnel costs and other operating costs directly attributed to the Northern Colorado Drug Task Force.*

**Adopted on First Reading.**

7. **Items Relating to the Safe Streets and Roads for All Grant Awards.**

A. *Resolution 2024-122 Authorizing the Mayor to Sign a Grant Agreement with the Federal Highway Administration under the Fiscal Year 2023 Safe Streets and Roads for All Grant Program.*

B. *First Reading of Ordinance No. 145, 2024, Making Supplemental Appropriations for Projects Funded Through the Safe Streets and Roads for All Grant Program.*

*The purpose of this item is to support FC Moves in expanding on the City's current Active Modes Plan and Vision Zero Plan, specifically through a:*

- *Bikeway study that serves to identify specific safety concerns and potential countermeasures, and to understand feasibility and network impacts of lane reductions on the arterial network.*

- *Demonstration activity that tests the effectiveness of temporary vertical protection along Centre Avenue, between Centre Drive/Bay Drive and Worthington Circle, to inform future projects citywide.*

*FC Moves in collaboration with Traffic Operations, Engineering, and Streets applied to the Federal Highway Administration's Fiscal Year 2023 (FY23) Safe Streets and Roads for All (SS4A) grant program, seeking funds in support of the bikeway study that includes (1) public and stakeholder engagement to understand barriers to active transportation on the corridors bounded by College Avenue, Horsetooth Road, Overland Trail and Laporte Avenue; (2) corridor safety audits to identify crash patterns and infrastructure that reduce the risk of bike and pedestrian crashes; and (3) data analysis and countermeasure selection. In addition, funds in support of the demonstration activity that include installation of temporary flexible posts and curbing along Centre Avenue, and associated data collection were requested under the FY23 SS4A grant program.*

*In support of funding the required 20% match under the FY23 SS4A grant program, FC Moves requested matching funds under the Colorado Department of Local Affairs Local Match (LOMA) grant program.*

*Both the Federal Highway Administration and Colorado Department of Local Affairs (DOLA) responded favorably to the requests for funds, with \$964,480 being award under the FY23 SS4A grant program and \$241,120 being awarded under DOLA's LOMA grant program. Total project costs for both the bike study and demonstration activity, totaling \$1,205,600, are funded in full through these grant awards from the FY23 SS4A grant program and DOLA's LOMA grant program.*

*The Resolution for consideration will authorize the Mayor to sign the Intergovernmental Agreement (IGA) with the Federal Highway Administration to receive grant funding to support the bike study and the demonstration activity.*

*As demonstrated by the LOMA grant agreement (Attachment 3) by accepting the LOMA funding from DOLA, the City agrees to all terms and conditions, including use of the \$241,120 as non-federal match to the FY23 SS4A grant.*

*The Ordinance for consideration will appropriate the \$964,480 in federal funds from the FY23 SS4A grant program and \$241,120 in state funds from the LOMA grant program.*

***Resolution Adopted and Ordinance Adopted on First Reading.***

- 8. First Reading of Ordinance No. 146, 2024, Making a Supplemental Appropriation of Colorado Division of Criminal Justice Grant Revenues for Various Restorative Justice Services Programs.**

*The purpose of this item is to appropriate grant revenue to fund Restorative Justice programs within Community Development and Neighborhood Services ("CDNS"). Additional grant funds in the amount of \$13,000 have been awarded from the Colorado Division of Criminal Justice ("DCJ") Juvenile Diversion fund for the continued operation of City Restorative Justice programs, including RESTORE for shoplifting offenses and Restorative Justice Conferencing for other offenses. The grant funds are in addition to a grant awarded to Restorative Justice Services earlier this year from DCJ in the amount of \$40,428, for a total award of \$53,428. The first \$40,428 award was included in the Annual Adjustment Ordinance No. 134, 2024, was passed on Second Reading on October 1, 2024. No match is required and the grant period is July 1, 2024, to June 30, 2025.*

***Adopted on First Reading.***

- 9. First Reading of Ordinance No. 147, 2024, Making a Supplemental Appropriation in the 2050 Tax Parks Rec Transit OCF Fund for Evaluation of the Inflation Reduction Act Tax Credits.**

*The purpose of this item is to appropriate \$100,000 from 2050 tax revenue to contract with external consultants to evaluate the cost/benefit of the City pursuing Inflation Reduction Act (IRA) tax credits.*

***Adopted on First Reading.***

10. **First Reading of Ordinance No. 148, 2024, Updating Section 4-142 of the Code of the City of Fort Collins Regarding Sterilization of Adopted Animals to Align with State Law.**

*The purpose of this item is to update the local Fort Collins Animal Code to align with Colorado Revised Statutes (C.R.S.) Section 35-80-106.4.*

***Adopted on First Reading.***

11. **First Reading of Ordinance No. 149, 2024, Approving an Amended and Restated Ground Lease Agreement Between the Cities of Loveland and Fort Collins and Discovery Air, LLC, for Property at the Northern Colorado Regional Airport.**

*The purpose of this item is to approve an amended and restated ground lease between the City of Fort Collins, the City of Loveland, and Discovery Air LLC at the Northern Colorado Regional Airport. The parties have an existing ground lease agreement with Discovery Air, LLC, at the Northern Colorado Regional Airport. The parties desire to amend and restate the lease substantially similar to the form attached hereto. Approval of the Amended and Restated Ground Lease between the cities of Loveland and Fort Collins (the "Agreement") is reserved to the City Councils because there are non-standard lease terms in the Agreement.*

***Adopted on First Reading.***

12. **First Reading of Ordinance No. 150, 2024, Authorizing the Advertisement and Future Sale of the Real Property Located at 945 East Prospect Road.**

*The purpose of this item is to authorize the advertisement and future sale of the City-owned property located at 945 East Prospect Road (the "Property"). The Property was originally acquired by the City's Engineering Department for roadway widening purposes, and the City will exclude from the sale of the Property approximately 1540 square feet, being the area necessary to construct the future road improvement project (the "Reserved ROW").*

***Adopted on First Reading.***

13. **Resolution 2024-123 Authorizing Disabled Resource Services to Retain Community Development Block Grant Funding to Apply Towards the Acquisition of a New Public Facility.**

*The purpose of this item is to obtain authorization from Council to allow Disabled Resource Services to sell their current building located at 1017 Robertson, which was acquired with \$385,000 in Community Development Block Grant funding, and to retain the funding provided by the City to re-invest in a new public facility. These funds were provided as a Due on Sale Loan, which triggers repayment upon the sale of the existing building. Approval by City Council is required to allow Disabled Resource Services to transfer the funding to a new building.*

***Adopted.***

14. **Resolution 2024-124 Approving Fort Fund Grant Disbursements.**

*The purpose of this item is to approve Fort Fund grants from the Cultural Development and Programming Account and the Tourism Programming Account for the selected community events*

*in the Program Support Grant – September Deadline category, based upon the recommendations of the Cultural Resources Board.*

**Adopted.**

15. **Resolution 2024-125 Supporting a Grant Application for Gray and Black-Market Marijuana Enforcement Funding for Fort Collins Police Services.**

*The purpose of this item is to obtain support for the City to apply for grant money to support enforcement of gray and black-market marijuana activity for Fort Collins Police Services.*

**Adopted.**

16. **Resolution 2024-126 Adopting Findings of Fact in Support of the City Council’s Decision on Appeal to Uphold the Planning and Zoning Commission Approval of the College & Trilby Multifamily Community Project Development Plan #PDP220009.**

*The purpose of this item is to make Findings of Fact and Conclusions regarding Council's decision at the October 1, 2024, College and Trilby Multifamily Community Project Development Plan appeal hearing dismissing the failure to properly interpret and apply allegations and thereby upholding the Hearing Officer's decision to approve the Project Development Plan.*

**Adopted.**

#### **END OF CONSENT CALENDAR**

**Councilmember Pignataro moved, seconded by Councilmember Canonico, to approve the recommended actions on items 1-16 on the Consent Calendar.**

**The motion carried 6-0.**

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

**Nays: none.**

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

Councilmember Pignataro asked about the firm that was hired per Item No. 9, *First Reading of Ordinance No. 147, 2024, Making a Supplemental Appropriation in the 2050 Tax Parks Rec Transit OCF Fund for Evaluation of the Inflation Reduction Act Tax Credits*. Deputy City Manager Marr replied that information could be provided prior to Second Reading.

Councilmember Pignataro asked why there was no public outreach on Item No. 10, *First Reading of Ordinance No. 148, 2024, Updating Section 4-142 of the Code of the City of Fort Collins Regarding Sterilization of Adopted Animals to Align with State Law*, and suggested the larger adoption agencies should at least be made aware of the change. Deputy City Manager Marr replied staff would follow up in writing.

Councilmember Ohlson asked about the reduction in lease revenue per the renegotiated agreement in Item No. 11, *First Reading of Ordinance No. 149, 2024, Approving an Amended and Restated Ground Lease Agreement Between the Cities of Loveland and Fort Collins and Discovery Air, LLC, for Property at the Northern Colorado Regional Airport*. Deputy City Manager Marr replied staff would follow up prior to Second Reading.



## L) STAFF REPORTS

None.

## M) COUNCILMEMBER REPORTS

Councilmember Potyondy

- Commended City staff who have been running 15-minute city events in all Council districts. She provided more information related to this Council priority and noted she attended an event in her area. She stated the events are a great way to educate people and collect feedback.

Councilmember Gutowsky

- Stated she attended a 15-minute city event as well and stated it was well organized and gave an idea on how to develop commercial centers to serve the surrounding residents. She stated she was also impressed with the plan for renovation and maintenance to ensure existing commercial areas are kept up.

Mayor Pro Tem Francis

- Stated she attended the 15-minute city event in her area as well and that this was the last event scheduled.

Councilmember Canonico

- Participated in an affordable housing event held by BizWest which was an opportunity for elected officials, staff, and others to come together to discuss what can be done in this space.

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

None.

## O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

### 17. **Items Relating to Water Supply Requirement Fee and the Excess Water Use Surcharge, and Pre-1984 Nonresidential Annual Allotments.**

- A. *First Reading of Ordinance No. 151, 2024, Amending Chapter 26 of the Code of the City of Fort Collins to Review Miscellaneous Water Fees and Charges, Including the Water Supply Requirement Fee and Excess Water Use Surcharge.*
- B. *First Reading of Ordinance No. 152, 2024, Amending Chapter 26 of the Code of the City of Fort Collins Regarding Annual Water Allotments for Nonresidential Water Services.*

*The purpose of this item is to seek approval for both the adjustments to the Water Supply Requirement (WSR) fee amount and methodology and assignment of allotments to pre-1984 nonresidential accounts.*

Jill Oropeza, Water Utility Senior Director of Science and Planning, introduced Jen Dial, Utilities Water Resources Manager. Oropeza stated the proposed updates to the City's water supply requirements and assignment of pre-1984 non-residential water allotments include a set of methodologies that reflect City values, enable sound water supply management, and provide tools to rely upon for years to come.

Jen Dial, Utilities Water Resources Manager, noted the water supply requirement fee methodology has come before Council at three work sessions, and the assignment of allotments to pre-1984 non-residential customers was discussed at two work sessions. Dial stated this item includes two ordinances, one setting the water supply requirement fee to \$63,800 per acre foot based on a hybrid cost base methodology, with a surcharge fee of \$15.59 per thousand gallons over the allotment, and one assigning allotments to pre-1984 non-residential customers.

Dial reviewed the water supply requirement hybrid methodology which is broken into two components: the buy-in and the incremental component, which work together to form the total cost to increase the reliability of our water supply to meet demand through 2065. Dial outlined the history of the water supply requirement fee and discussed the public outreach process.

In terms of assigning allotments to pre-1984 non-residential customers, Dial stated there are about 1,000 accounts that came into the City pre-1984 that do not have an allotment and assigning them would increase fairness and equity. Dial outlined the staff recommendation for calculating these allotments and stated most customers will not be dramatically impacted and will be allowed a one-year grace period during which surcharges would not be assessed.

#### PUBLIC COMMENT

Joe Rowan, Fort Collins resident, stated the City is not currently buying water as it has an excess of what can be stored. Rowan suggested nothing should be done until Halligan Reservoir is built and questioned the \$63,800 water supply requirement fee. Rowan also stated not adopting this item would be one way of limiting the cost of infrastructure to enable lower cost housing development.

Councilmember Potyondy requested staff respond to Rowan's comments. Dial replied the City is not making a profit by collecting the water supply requirement fee and stated the fee is based on the amount that is paid for the water right and ensures the demand for new development in the future can be met.

Councilmember Ohlson asked if the methodology used to assign allotments to pre-1984 non-residential customers is different than what was used to assigned allotments to post-1984 customers. Dial replied customers received allotments based on tap size until 2022. The proposed method looks at historic use to determine what amount of water is actually needed as it may not match the tap size and takes the greater of average historic use or tap size to provide allotments. Dial acknowledged it is a different methodology than what was used post-1984.

Councilmember Ohlson suggested the historic use number could be skewed as the users may have used way more water than they needed to. Dial replied that is possible but stated the five-year average aimed to evaluate the use for its recent history.

Councilmember Ohlson asked how much impact this will have on water conservation. Dial replied staff is attempting to incentivize conservation while still having the opportunity to collect some surcharges which go toward purchasing additional storage and water rights, though the amount collected from surcharges is minimal in the larger picture.

Deputy City Manager Marr added there is currently no incentive for these accounts in the conservation space as they do not have a ceiling for water use. Marr stated the intent was not to be punitive, which is why staff is suggesting taking the larger of the tap size or five-year historical average.

Councilmember Pignataro thanked staff for meeting with a resident in District 2 whose HOA has done everything possible to try to conserve and is concerned they will be consistently going over the allotment given those efforts and the past rainy year. She asked if staff has plans to look at things systematically moving forward or if examinations of accounts will solely be done on a

complaint basis. Dial replied staff will be sending quarterly letters to customers outlining water use compared to allotments and will be collecting feedback to look at individual accounts. Additionally, Dial stated the surcharges could be waived in 2026 if deemed necessary.

Councilmember Pignataro asked how staff sees the new structure impacting affordable housing in getting the water rights needed to build. Dial replied Fort Collins will have one of the lower fees in northern Colorado and stated it is anticipated the fee will likely increase over the next few years depending on the cost to build Halligan. Dial stated the fee is positive for affordable housing as it is lower compared to neighbors and is lower than the current fee. Deputy City Manager Marr noted that staff is trying to strike a balance in this case and this is a cost-based approach for what the City already has and a market-based approach for what will be needed.

Councilmember Gutowsky asked if it is certain that lowering the costs for developers will pass on lower costs to ratepayers. Dial replied because the City is decreasing existing fees, ratepayers will potentially see a half percent increase in rates to cover the costs.

Mayor Pro Tem Francis noted the approach was not based on lowering water fees for affordable housing, but based on a fair approach to determining a water tap fee.

Councilmember Canonico thanked staff for their work on this item and for taking Council's comments to heart to find a new way to look at the issue.

Councilmember Potyondy stated she would be supporting this as it is critical to ensure adequate water supply moving forward.

Councilmember Ohlson stated he has problems with both items and thought the original formula was fairer. However, he stated he will support the ordinances as the fees are decreasing, and while the pre-1984 allotment calculation may not be ideal, staff did good work on the item. He expressed concern the changes do not ensure people will not waste water.

Councilmember Gutowsky stated she will support both items as well and commended the fact that staff is willing to be flexible afterwards and look at anomalies that might exist.

Mayor Pro Tem Francis stated she will also support both items as well and stated the hybrid system makes sense. She noted this is an iterative process and also commended the work on the pre-1984 accounts.

Councilmember Ohlson noted staff could consider throwing very wet years out of the average to help ensure the number is more accurate. He requested staff provide an analysis of the City's fees compared to neighboring communities.

***Councilmember Pignataro moved, seconded by Councilmember Gutowsky, to approve Ordinance No. 151, 2024, Amending Chapter 26 of the Code of the City of Fort Collins to Review Miscellaneous Water Fees and Charges, Including the Water Supply Requirement Fee and Excess Water Use Surcharge, on First Reading.***

***The motion carried 6-0.***

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

***Nays: none.***

***Councilmember Pignataro moved, seconded by Councilmember Potyondy, to approve Ordinance No. 152, 2024, Amending Chapter 26 of the Code of the City of Fort Collins Regarding Annual Water Allotments for Nonresidential Water Services, on First Reading.***

***The motion carried 6-0.***

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

**Nays: none.**

*(Clerk's Note: Mayor Pro Tem Francis called for a break at 7:24 p.m. The meeting resumed at 7:36 p.m.)*

**18. Sanctuary on the Green Project Development Plan Appeal.**

*The purpose of this quasi-judicial item is to consider an appeal of the Hearing Officer's decision of July 24, 2024 with a July 28, 2024 supplement, approving the Sanctuary on the Green Project Development Plan, PDP210018.*

*The Appellants filed a Notice of Appeal on August 8, 2024, alleging:*

- *That the Hearing Officer failed to conduct a fair hearing in that they **substantially ignored his previously established rules of procedure.***

*The Appellants assert that the Applicant did not diligently pursue approval of their development application as required by Section 2.2.11 of the Land Use Code. The Appellants claim the development application for Sanctuary on the Green should have lapsed on April 17, 2024, as a result. The Appellants further argue that the City's changing interpretation of the lapse date for this development application demonstrated an improper bias benefitting the Applicant.*

- *That the Hearing Officer failed to conduct a fair hearing in that they **considered evidence relevant to his findings which was substantially false or grossly misleading.***

*The Appellants assert that: "The Hearing Officer relied largely on the Staff Report and a letter from the Applicant's lawyer when issuing his decision. Evidence that the plan is in compliance with NSP [Northwest Subarea Plan] is cherry-picked in both of these documents."*

- *That the Hearing Officer failed to conduct a fair hearing in that they **failed to receive all relevant evidence offered by the Appellants.***

*The Appellants assert that: "The City erred in failing to provide the Hearing Officer with 342 pages of public comment in advance of the July 15, 2024, hearing, creating an unfair hearing." The comments were received and publicly available, but city staff inadvertently did not directly forward those to the hearing officer until staff was made aware of the error.*

- *That the Hearing Officer **failed to properly interpret and apply relevant provisions of the Land Use Code – specifically the following Land Use Code sections:***
  - *2.2.11 – Lapse*
  - *1.2.2 – Purpose*
  - *3.5.1 – Building and Project Compatibility*
  - *4.5(E) – Low Density Mixed-Use Neighborhood Development Standards*
  - *Northwest Subarea Plan*

*Note: The Transitional Land Use Regulations apply to the project, because the project was submitted before May 17, 2024. All references in this AIS to "Land Use Code" or "LUC" refer to sections of the Transitional Land Use Regulations.*

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

## STAFF PRESENTATION

Kim Meyer, Interim Director of Community Development and Neighborhood Services, provided an overview of the project location and proposed project for 212 residential units with an overall density of just over five units per acre. Meyer discussed the timeline and history of the project and detailed the appeal allegations related to the Hearing Officer's failure to conduct a fair hearing, consideration of substantially false or grossly misleading evidence, failure to receive all relevant evidence provided by the appellants, and failure to properly interpret and apply relevant provisions of the Land Use Code.

Mayor Pro Tem Francis asked Councilmembers to disclose what they observed during the site visit.

Councilmember Potyondy commented on observing the physical characteristics of the property which is bordered by existing neighborhoods, including a ditch and bike path, several trees, and the traffic on Taft Hill Road. She noted neighbors who attended the site visit commented on the history of the property and culture of the neighborhoods, which will be disregarded as they are ancillary to the purpose of this hearing.

Councilmember Gutowsky commented on observing various physical characteristics of the property.

Councilmember Ohlson stated he drove by the property sometime over the weekend trying to get the lay of the land. He noted he was alone and talked to no one.

Mayor Pro Tem Francis noted she has driven by the property numerous times and has ridden the bike path that borders the north side of the property.

Laura Larson, appellant, identified herself and stated she would be splitting time between herself and her attorney.

Andrew Pipes, attorney representing adjacent property owners, identified himself.

Kristin Decker, land use attorney representing the applicant, identified herself.

Sam Coutts, Ripley Design, part of the development team, identified himself.

David Pressler, CNA Companies, developer of the property, identified himself.

Tucker Hughey, Osmosis Architecture, part of the development team, identified himself.

Omar Lopez, part of the development team, identified himself.

Mayor Pro Tem Francis outlined the time allotments for presentations and rebuttals.

Kristin Decker requested a 30-minute presentation period. Council denied the request.

## APPELLANT PRESENTATION

Laura Larson, Sanctuary Fields Neighborhood Network, requested Council adhere to the Land Use Code and Northwest Subarea Plan's prohibition against incompatible development and overturn the Hearing Officer's decision to approve this high-rise, high-density development next to single-family, single-story neighborhoods. Larson stated the Hearing Officer did not properly consider the guidance of the Northwest Subarea Plan regarding the Land Use Code requirement of compatible building mass, and instead based the decision on misrepresentations of the abutting

properties that were given by the developer. Additionally, Larson stated City staff failed to follow their own policies in numerous ways, including not providing over 340 pages of neighborhood input to the Hearing Officer prior to the hearing.

Larson stated nothing has changed with the plan since 2022 and this decision contradicts the same Hearing Officer's 2022 decision that found the proposal did not conform to the Northwest Subarea Plan. Larson also stated the Hearing Officer did not include consideration of the district court's written ruling in July of 2023 which centered on the predictability standard for property owners that was determined by the creation of the Northwest Subarea Plan and has been established as legal precedent in Colorado. Larson noted the Subarea Plan was codified as part of the Land Use Code when it was approved in 2006.

Larson stated City staff and the developer have misrepresented the developer's collaboration with neighbors in each public hearing. Additionally, Larson stated the Hearing Officer incorrectly stated in the ruling that the developer has responded to concerns by locating the three-story row houses only in the interior of the development, when the architectural design map shows the buildings next to single-story, single-family homes on the east and northwest sides of the site. Larson stated the development will increase traffic and pollution against the foothills and will reduce natural light to the existing properties.

Larson stated the Hearing Officer's decision was based on faulty and incomplete information, including misrepresentation of the homes abutting the site, misinterpretation of the development proposal's design, and lack of consideration of written comments submitted by neighbors and the public. Larson stated the plan was not properly vetted as to the compatibility standards laid out in the Northwest Subarea Plan, and City staff did not provide written input submitted by neighbors in a timely manner as dictated by their own policies for the Hearing Officer to properly consider the information before the decision deadline. Larson requested Council overturn the Hearing Officer's decision to approve the proposal.

Andrew Pipes, attorney for the appellant, stated the existing neighbors are substantially opposed to this proposal, which has not changed since 2021. Pipes commented on the definition of dwellings in the Land Use Code and stated the maximum height of a one-family dwelling, or single-family attached dwelling, in the Code, is two and a half stories. Pipes also discussed the location of the proposed three-story buildings on the site and stated the Northwest Subarea Plan states housing should be a maximum of two stories, with one story preferred. Additionally, Pipes commented on the application lapsing.

## APPLICANT PRESENTATION

Kristin Decker, land use attorney for the applicant, stated the record provides evidence that the application did not lapse under Section 2.2.11 of the Land Use Code and that established rules of procedure were followed. Additionally, Decker stated the Hearing Officer did receive the three hundred plus pages of public comment which is clearly incorporated in the decision. Decker noted the applicant requested an administrative interpretation of the height standard and utilized that interpretation in the design of the project. Additionally, Decker noted the Code requires an administrative interpretation be appealed to the Zoning Board of Appeals within 14 days of the interpretation, which was made in July of 2018.

Sam Coutts, Ripley Design, stated there is no evidence in the record to support that any of the claims are substantially misleading or false. Coutts stated the Northwest Subarea Plan was analyzed on a chapter-by-chapter basis by the applicants and the project was found to be in compliance with the Plan. Coutts outlined the changes that have been made to the project proposal over time and discussed compatibility standards, which he noted extend well beyond just building height.

## APPELLANT REBUTTAL

Larson stated the applicant's presentation repeated the point of the appeal and compared three-story homes to two-story homes that do not abut the property. Larson reiterated that the homes that do abut the property are single-story homes. Additionally, Larson stated the original plan to include an assisted living facility was found to be illegal as it was in the floodplain; therefore, that change was not an accommodation to the neighborhood. Larson also stated the applicant removed the multi-family component of the project to avoid a Type II hearing with the Planning and Zoning Commission.

Larson stated it is nearly impossible for a Hearing Officer who has not visited the site and is unfamiliar with the community to recognize the complexities of the area.

Pipes commented on the passion held by the neighborhood around this development and stated the character and feel of the project do not match the existing neighborhood. Pipes reiterated the neighbors are not opposed to development but want a development that comports with the Subarea Plan and keeps the general look and feel of the neighborhood.

Pipes stated the residents did not feel heard by the Hearing Officer and commented on the 14-day time period during which an appeal of an administrative interpretation must occur stating that is an unreasonable request of community members. Pipes stated there have been no substantive changes to the plan since 2019 and reiterated the single-story nature of the surrounding properties.

## APPLICANT REBUTTAL

Coutts discussed the project's transition of height and density and stated the senior living facility that was originally included in the plan was assuming the floodplain issues would be mitigated via a City project. Additionally, Coutts stated the project was determined to have met all applicable Land Use Code criteria by the Hearing Officer, and the Hearing Officer stated the Northwest Subarea Plan lacks sufficient guidance or standards on which to deny the project.

David Pressler commented on the changes that have been made to the project in response to neighborhood requests and stated the only two items of contention that remain are density and the three-story product. Pressler stated that since 2019, the project has removed 87 multi-family units, reoriented buildings to provide an increased natural habitat buffer zone and open space, decreased the height of 36 of the three-story units to two stories, and decreased ten of the two-story attached units to single story. Pressler stated any further reduction in the number of units or product types would not be allowed under the LMN zoning requirements or feasible to provide affordable housing price points.

## COUNCIL QUESTIONS

Councilmember Pignataro noted the project lapsing was not discussed at the original hearing and, therefore, wondered if that was an appealable issue. City Attorney Daggett replied an issue can be raised on appeal that was not raised in front of the Hearing Officer, though it is challenging as the evidence related to the issue is slim.

Councilmember Potyondy asked staff if the project application lapsed. Frickey replied the application did not lapse.

*(Clerk's Note: Mayor Pro Tem Francis called for brief break at this point in the meeting to deal with technical issues.)*

Councilmember Ohlson requested clarification as to the size of the site and amount of open space. Frickey replied the developed area acreage includes some elements of common space and the 29.73-acre number is the developable area once the natural habitat buffer zones and streets are

netted out. Councilmember Ohlson stated grass between buildings is not generally considered open space.

Councilmember Ohlson asked if the new Land Use Code addresses building height in feet, not stories. Frickey replied in the affirmative and stated the new Code should be clearer.

Larson stated the applicant has clearly stated five feet of fill will be needed to bring the property out of the floodplain, which is why the building will be 45 feet tall from the ground height of her property.

Councilmember Canonico asked if height compatibility is based on the entire area or just abutting properties. Frickey replied staff generally consider compatibility first based on abutting properties then on the broader area.

Councilmember Gutowsky requested additional information on the reduction in density. Pressler replied the original 2018 proposal included 371 dwelling units. In 2019, the plan had 268 units and removed the senior living facility. The final change in 2021 removed the multi-family component and reduced the number of units to 212.

Councilmember Gutowsky asked if height was reduced. Pressler confirmed some of the buildings were decreased in height.

Councilmember Gutowsky asked if there is a reason why there are so many three-story buildings that all seem to be along Taft Hill Road and not in the center of the development. Pressler replied there are standards related to the adjacency of different building footprints and models and stated the end caps have been reduced in height on any buildings that are closest to adjacent neighborhoods; however, the theme of the plan is to gain some density moving east closer to downtown.

Councilmember Gutowsky stated the existing homes in the surrounding neighborhoods are all single-story and the project seems incompatible with the rural edge guidelines. Frickey noted the rural edge guidelines do not apply to this area of the Subarea Plan and only apply to the Residential Foothills and Urban Estate zone districts, not to the Low-Density, Mixed-Use zone district, which is what is assigned to this property.

Councilmember Gutowsky stated this is a rural and very iconic area and disagreed that the project is compatible. Frickey clarified that section of the Subarea Plan does not apply; the remainder of the Plan is relevant.

## COUNCIL DISCUSSION

Mayor Pro Tem Francis provided a reminder that Council's role is to consider whether the Hearing Officer correctly applied the Land Use Code and conducted a fair hearing.

Councilmember Pignataro thanked staff, the appellant, and the applicant for their preparation. In terms of the fair hearing issue, she stated she does not see there was a lapse for several reasons. She commended the Hearing Officer's report and stated she did not believe substantially false or grossly misleading information was considered. Councilmember Pignataro also noted the Hearing Officer provided a two-page supplemental finding after considering the three hundred plus pages of public comments which made it clear why those comments did not change his ruling.

Councilmember Potyondy concurred with Councilmember Pignataro regarding the fair hearing issue and stated the Hearing Officer was thorough and had a good understanding of the information presented.

Councilmember Canonico also concurred and stated the concern about a lapse was well explained and captured in the record as was the issue of compatibility.



Councilmember Ohlson agreed there was a fair hearing, but stated it is a gray area for him.

Councilmember Gutowsky agreed there was a fair hearing; however, there is much more to appeals, including the human element, though Council cannot let this interfere with the strict interpretation of what they are looking at. Councilmember Gutowsky commented on the iconic nature of the area and noted residents have dealt with flooding issues for decades as they love living there. She commended the neighbors for their passion and the work they have done up to this point.

Mayor Pro Tem Francis agreed there was a fair hearing, there was not a lapse, and the information provided was not misleading.

***Councilmember Pignataro moved, seconded by Councilmember Potyondy, that Council find that the Hearing Officer conducted a fair hearing in consideration of the project development plan for Sanctuary on the Green, PDP210018, because the Hearing Officer did not ignore previously established rules of procedure, the Hearing Officer did not consider evidence relevant to his decision that was substantially false or grossly misleading, and the Hearing Officer did not improperly fail to receive all relevant evidence offered by the appellants.***

***The motion passed 6-0.***

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

***Nays: none.***

Councilmember Ohlson stated this turned out to be a much closer call for him than he anticipated and commented on the hard work that went into developing the Northwest Subarea Plan, with which he stated the project is incompatible given the building heights. He stated there are many positives with the development; however, at this point, he stated he would vote to support the appeal.

Councilmember Pignataro commented on the Hearing Officer's statements and the applicants' representation of the project's compliance with the Northwest Subarea Plan. She commended the plan and the concessions that have been made for the neighbors and to ensure the Subarea Plan applied. She noted the Hearing Officer's report included four pages as to how the proposal meets the 15 purposes of the Land Use Code.

Councilmember Potyondy stated the Hearing Officer's report provided a robust explanation of things like building height, the Land Use Code expectations, and compliance with the Northwest Subarea Plan; therefore, she stated he appropriately interpreted the Code.

Councilmember Canonico concurred and thanked the applicants for attempting to work with neighbors to make the development more compatible. She stated the Hearing Officer made the correct decision.

Councilmember Gutowsky stated the footprint of the development is too large and questioned whether the Hearing Officer had enough understanding of the details. She stated the Subarea Plan was developed to provide protections for an area so residents know the integrity of the neighborhoods will be maintained when development occurs and stated approving this project would lead to residents questioning whether they could trust that subarea plans will be followed in the future. Councilmember Gutowsky expressed concern with the fact that the Hearing Officer did not have complete information prior to making an initial decision.

Mayor Pro Tem Francis agreed the Land Use Code was properly applied and stated the context for the Subarea Plan is for a large area of the City and the applicable sections were incorporated into the project.

***Councilmember Pignataro moved, seconded by Councilmember Canonico, that the Hearing Officer properly interpreted and applied the requirements of the Land Use Code on each of the interpretation application grounds for appeal, and further to uphold the Hearing Officer's approval of the project development plan.***

***The motion passed 4-2.***

***Ayes: Mayor Pro Tem Francis, Councilmembers Canonico, Pignataro, and Potyondy.***

***Nays: Ohlson and Gutowsky.***

**P) RESUMED PUBLIC COMMENT (if applicable)**

**Q) OTHER BUSINESS**

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

*N/A.*

**OB 2. Consideration of a Motion to Reschedule the Regular meeting scheduled for Tuesday, November 5, 2024 to Monday, November 4, 2024:**

***Councilmember Pignataro moved, seconded by Councilmember Canonico, that in accordance with Section 2-28 of the City's Municipal Code, to change the date for the first regular Council meeting in November to Monday, November 4, 2024, due to the national election being held on Tuesday, November 5.***

***The motion passed 6-0.***

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

***Nays: none.***

**OB 3. Consideration of a Motion to Call a Special Meeting on Wednesday, November 6, 2024:**

***Councilmember Pignataro moved, seconded by Councilmember Potyondy, that in accordance with Section 2-29 of the City's Municipal Code, that Council call a Special Meeting to be held at on November 6, 2024, at 300 Laporte Avenue, in Council Chambers, starting at 6:00 p.m., for the purpose of hearing the Rescue Mission appeals.***


***The motion passed 6-0.***

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

***Nays: none.***

**R) ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 9:44 p.m.

  
\_\_\_\_\_  
Mayor Pro Tem

ATTEST:

  
\_\_\_\_\_  
City Clerk

