

ORDINANCE NO. 107, 2019  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROVING A SETTLEMENT AGREEMENT IN THE FORT COLLINS MENNONITE  
FELLOWSHIP v. CITY OF FORT COLLINS LAWSUIT AND, AS CONTEMPLATED UNDER  
THE AGREEMENT, AMENDING THE CONDITIONS PREVIOUSLY IMPOSED IN CITY  
COUNCIL RESOLUTION 2018-104 THAT APPROVED THE FORT COLLINS  
MENNONITE FELLOWSHIP'S EXTERNAL STORAGE LOCKERS MINOR AMENDMENT

WHEREAS, the Fort Collins Mennonite Fellowship (the "Fellowship") is a religious institution and the owner of its church building located in Fort Collins at 300 East Oak Street (the "Property"); and

WHEREAS, Steve Ramer ("Ramer") is the Fellowship's lead pastor; and

WHEREAS, in early 2018, the Fellowship developed plans as part of its ministry to install lockers on the outer back wall of its building on the Property with the intention of making these lockers available to individuals experiencing homelessness (the "Locker Program"); and

WHEREAS, in April 2018, the Fellowship filed an application with the City under the minor amendment process in the City's Land Use Code ("LUC") seeking approval of the Locker Program as an accessory use on the Property (the "Application"); and

WHEREAS, on July 19, 2018, the City's Planning and Zoning Board (the "P & Z Board") conducted a noticed public hearing on the Application and approved "External Storage Lockers Minor Amendment MA180033" (the "Minor Amendment") with the one condition that the Fellowship install a security camera to monitor activities around the lockers and retain the camera recordings for seven days (the "Security-Camera Condition"); and

WHEREAS, certain parties-in-interest challenged the P & Z Board's approval of the Minor Amendment (the "Appellants") by timely filing a notice of appeal to appeal that decision to the Fort Collins City Council (the "Council"); and

WHEREAS, the Appellants contended in their notice of appeal that the P & Z Board failed to properly interpret and apply certain sections of the LUC in approving the Minor Amendment (the "Notice of Appeal"); and

WHEREAS, on October 9, 2018, the Council conducted a noticed public hearing on the Appellants' appeal in accordance with Chapter 2, Article II, Section 3 of the City Code; and

WHEREAS, at the hearing, the Council considered the Notice of Appeal, reviewed the record on appeal from the P & Z Board, received new evidence and heard the presentations and arguments of the Appellants and the Fellowship; and

WHEREAS, after doing so, the Council adopted a motion finding that the P & Z Board properly interpreted and applied the LUC in approving the Minor Amendment, concluding that the

Appellant's appeal was without merit and denying the appeal, and imposing three new conditions on the Minor Amendment in addition to the existing Security-Camera Condition; and

WHEREAS, the Council added the following three new conditions to the Minor Amendment: (i) locker access shall be limited to between the hours of 6 am to 8 pm daily, (ii) a Fellowship representative must be present at all times during which the locker access is allowed and (iii) the Fellowship shall restrict access to the lockers outside the time when locker access is allowed (collectively, the "Council Conditions"); and

WHEREAS, the Security-Camera Condition and the Council Conditions shall be jointly referred to herein as the "Existing Conditions"; and

WHEREAS, on October 16, 2018, the Council adopted Resolution 2018-104 to formalize in writing its decision on October 9, 2018, denying the Appellants' appeal and adding the Existing Conditions to the Minor Amendment ("Resolution 2018-104"); and

WHEREAS, on November 6, 2018, the Fellowship and Ramer (jointly, the "Plaintiffs") filed a lawsuit against the City and the Council in the United States District Court for the District of Colorado, which is captioned *Fort Collins Mennonite Fellowship, et al. v. The City of Fort Collins, et al.*, Case No. 1:18-cv-02867, challenging the imposition of the Existing Conditions on the Minor Amendment (the "Litigation"); and

WHEREAS, the Plaintiffs assert in the Litigation several different claims including claims under both federal and Colorado law, including the federal Religious Land Use and Institutionalized Persons Act in 42 U.S.C. §2000cc ("RLUIPA"); and

WHEREAS, several of the Plaintiffs' claims under both federal and state law allow the Plaintiffs to recover their attorney fees and costs if they are the prevailing party; and

WHEREAS, at its November 27, 2018, meeting, the Council directed the City Attorney to pursue settlement discussions with the Plaintiffs and their lawyers; and

WHEREAS, the Plaintiffs' and the City's lawyers thereafter engaged in several months of settlement negotiations with the understanding that any settlement reached would need to be approved by the Council at a noticed public hearing to be effective; and

WHEREAS, as a result of these negotiations, the parties reached a tentative settlement on most, but not all, issues; and

WHEREAS, in an attempt to resolve the remaining issues still in dispute, the parties conducted a settlement conference on May 6, 2019, mediated by the United States Magistrate Judge assigned to the Litigation; and

WHEREAS, as a result of that settlement conference, the Plaintiffs and the City reached a tentative settlement agreement on all issues, which agreement is set forth in the Settlement

Agreement attached as Exhibit “A” and incorporated herein by reference (the “Settlement Agreement”); and

WHEREAS, Sections 1, 2 and 3 of the Settlement Agreement provide that the Settlement Agreement shall not be effective unless the Council adopts on first reading on August 20, 2019, and on second reading on September 3, 2019, an ordinance approving the Settlement Agreement and amending Resolution 2018-104 by replacing the Existing Conditions in their entirety with the “Amended Conditions” set forth in the Exhibit “A” attached to the Settlement Agreement (the “Amended Conditions”); and

WHEREAS, the Settlement Agreement also provides that when this Ordinance becomes final, non-appealable and non-referable, the Litigation will be dismissed with prejudice and the City will pay \$60,000 to the Plaintiffs’ lawyers as reimbursement for some of the attorney fees and costs the Plaintiffs have incurred in this Litigation, a compromise amount negotiated between the Plaintiffs and the City; and

WHEREAS, on or before August 5, 2019, the City Clerk mailed the “Public Hearing Notice” attached as Exhibit “B” and incorporated herein by reference to provide notice of the Council’s August 20, 2019, public hearing for the first reading of this Ordinance (the “Hearing Notice”); and

WHEREAS, the City Clerk mailed the Hearing Notice to all current property owners within 800 feet of the Property and to anyone else who provided a comment to the P & Z Board at its July 19, 2018, hearing on the Application, which includes those persons who submitted emails, letters or spoke at that hearing; and

WHEREAS, at its August 20, 2019, meeting the Council conducted a public hearing concerning the Settlement Agreement and the first reading of this Ordinance, and at that hearing received the comments of all persons who wished to speak to the Council about the Settlement Agreement and Ordinance; and

WHEREAS, after careful review of the Settlement Agreement and this Ordinance, consideration of the costs, risks and benefits to the City in continuing with the Litigation and consideration of the comments from all those who spoke at the August 20, 2019, hearing, the Council finds and concludes that it is in the City’s best interest and necessary for the public’s health, safety and welfare to resolve this Litigation in all respects by adopting this Ordinance to approve the Settlement Agreement and to replace the Existing Conditions with the Amended Conditions concerning the Minor Amendment; and

WHEREAS, in doing so, the Council intends to cause a final resolution and settlement of the Litigation, to amend Resolution 2018-104 as hereafter provided and to conduct its proceedings to approve this Ordinance to the full extent authorized by law (including, without limitation, as authorized in RULIPA § 2000cc-3(e)), notwithstanding any provision to the contrary in the LUC or the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the Settlement Agreement is hereby approved.

Section 3. That the City Council hereby authorizes the Mayor to enter into the Settlement Agreement on the City Council's behalf in substantially the form attached as Exhibit "A," subject to minor modifications as the Mayor, in consultation with the City Manager and City Attorney, may determine to be necessary and appropriate to protect the interests of the City or to the effectuate the purposes of this Ordinance.


Section 4. That notwithstanding any provision in the City Code or the LUC to the contrary, Resolution 2018-104 is hereby amended by the replacement of the Existing Conditions in their entirety with the following Amended Conditions:

1. The operating hours of the Locker Program will be from 6 a.m. to 9 p.m. A Fellowship representative need not be present at the lockers during these operating hours.
2. The Fellowship shall restrict locker access during non-operating hours by a using a securely locked metal bar reasonably capable of blocking access and use of the lockers without unlocking the bar. However, a locker-user may access and use the lockers during non-operating hours with the assistance and direct supervision of a Fellowship representative. Once such access and use are completed, the Fellowship representative shall ensure that the metal bar is in place and securely locked for the remaining non-operating hours.
3. As an alternative to using a locked metal bar to block access to and use of the lockers during non-operating hours, the Fellowship may use other means to block such access provided: (a) the City's Director of Community Development and Neighborhood Services Department ("Director") has determined that the proposed alternative means is at least as effective as the locked metal bar in denying access to and use of the lockers; and (b) the Director has issued his or her written approval of the Fellowship's use of the alternative means.
4. The Fellowship must provide the City's Zoning Department with the contact information at which two authorized Fellowship representatives are available twenty-four hours a day, seven days a week, including their names, cell-phone numbers with texting capabilities, email addresses, work and home phone numbers, and work and home addresses. These Fellowship representatives must be persons to whom the Fellowship has granted the authority to make decisions concerning the use of the lockers and they cannot be locker-users.

5. The Fellowship must post a sign at the entrance of the Fellowship's building and on the lockers stating the contact cell-phone numbers of the Fellowship representatives.
6. If any of the contact information changes for the Fellowship's representatives, the Fellowship shall promptly notify the City's Zoning Department of the change(s) and update the sign if the change is to a posted cell-phone number.
7. The Fellowship shall install and maintain a security camera at a location that provides a high-quality and clear view of the lockers, their numbers and of users as they access the lockers. The camera shall be operated twenty-four hours a day, seven days a week with its video capable of being monitored in real time, retained at least seven days and accessible remotely by cell phone and over the Internet.
8. The Fellowship shall post and maintain a clearly visible sign at the lockers stating the hours of locker operation and the following: "UNAUTHORIZED ACCESS TO LOCKERS IS NOT PERMITTED. VIOLATORS MAY BE PROSECUTED."
9. Locker-users must sign a locker-use agreement that identifies the express hours of operation and the use restrictions as outlined in these conditions, and shall contain the phrase, "UNAUTHORIZED ACCESS TO LOCKERS IS NOT PERMITTED. VIOLATORS MAY BE PROSECUTED." The agreement shall also provide that failure to comply with the locker-use agreement, following a warning, may result in removal from the Locker Program.
10. If Fort Collins Police Services ("FCPS") or a member of the public has reason to believe that a locker-user is impermissibly accessing his or her locker as outlined in these conditions, the FCPS may contact a Fellowship representative to inform him or her of that complaint. The Fellowship representative shall endeavor to respond to the FCPS contact within thirty (30) minutes. If the Fellowship representative does not respond within thirty (30) minutes, FCPS officers, in their discretion, may proceed with enforcing any relevant State laws or City ordinances.

Section 5. That except as specifically amended in Section 4 above, Resolution 2018-104 shall remain unchanged and in full force and effect.

Introduced, considered favorably on first reading, and ordered published this 20th day of August, A.D. 2019, and to be presented for final passage on the 3rd day of September, A.D. 2019.

  
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Mayor

ATTEST:

  
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City Clerk



Passed and adopted on final reading on the 3rd day of September, A.D. 2019.

  
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Mayor

ATTEST:

  
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City Clerk

