

# AGENDA ITEM SUMMARY

May 21, 2019

City Council

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## STAFF

Carrie Daggett, City Attorney

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## SUBJECT

Possible Motion Directing the City Attorney on Next Steps Related to Litigation Regarding the City's Public Nudity Ordinance.

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## EXECUTIVE SUMMARY

The purpose of this item is for Council to provide possible direction to the City Attorney on the next steps she should take related to pending litigation challenging the City's public nudity ordinance.

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## STAFF RECOMMENDATION

The purpose of this item is for Council to provide possible direction to the City Attorney on the next steps she should take related to pending litigation challenging the City's public nudity ordinance.

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## BACKGROUND / DISCUSSION

In October 2015, the City Council adopted Ordinance No. 134, 2015, amending Section 17-142 of the City Code, which addresses public nudity and prohibits toplessness by females in public places, with certain exceptions. The plaintiffs, a group named Free the Nipple - Fort Collins ("FTN"), and two individuals named Brittiany Hoagland and Samantha Six, sued the City in May 2016 challenging Section 17-142 based on claims that it violated the First and Fourteenth Amendments of the U.S. Constitution and the Equal Rights Amendment of the Colorado Constitution. The plaintiffs sought a preliminary injunction against enforcement of Section 17-142 against female toplessness, and District Court Judge Brooke Jackson granted a preliminary injunction based on the Fourteenth Amendment claim in February 2017. He had previously dismissed the First Amendment claim. The City appealed this preliminary injunction decision, and after oral arguments on that appeal in January 2018, the three-judge panel of the U.S. Court of Appeals for the Tenth Circuit issued an order on February 15, 2019, upholding Judge Jackson's preliminary injunction. The ruling cited that the Equal Protection Clause of the US Constitution prohibits Fort Collins and other governments from restricting toplessness in public by females only.

The City may seek review of this decision by the U.S. Supreme Court but must move forward soon in order to do so. This item is intended to give the City Council an opportunity to discuss next steps in the litigation with the City Attorney. If it chooses to give direction, Council will do so through the adoption of a motion.

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## CITY FINANCIAL IMPACTS

This litigation is expected to result in further costs to the City regardless of the specific procedural path taken.