

<p>FORT COLLINS MUNICIPAL COURT 214 N. Mason Fort Collins, CO 80521 Phone: (970) 221-6800</p> <hr/> <p>Plaintiffs: COLLEEN HOFFMAN, RICK HOFFMAN, and ANN HUNT,</p> <p>v.</p> <p>Defendants: THE CITY COUNCIL OF THE CITY OF FORT COLLINS, the governing body of a Colorado municipal corporation; and THE ADMINISTRATION BRANCH OF THE CITY OF FORT COLLINS, by and through its City Manager, Darin Atteberry.</p>	<p>COURT USE ONLY</p>
<p>Kimberly B. Schutt, #25947 WICK & TRAUTWEIN, LLC 323 South College Avenue, Suite 3 P.O. Box 2166, Fort Collins, CO 80522 Phone Number: (970) 482-4011 E-mail: kschutt@wicklaw.com FAX Number: (970) 482-8929</p> <p>John R. Duval, #10185 FORT COLLINS CITY ATTORNEY'S OFFICE P.O. Box 580 Fort Collins, CO 80522 Phone: (970) 221-6520 Email: jduval@fcgov.com</p>	<p>Case Number: 2017-CIVIL01</p>
<p>MOTION FOR STAY OF PROCEEDINGS</p>	

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FORT COLLINS MUNICIPAL COURT

COMES NOW the above-named defendant, City of Fort Collins (“the City”), by and through its counsel, Kimberly B. Schutt of Wick & Trautwein, LLC, and John R. Duval of the Fort Collins City Attorney’s Office, and respectfully submits the following motion for stay of proceedings:

1. Undersigned counsel first advises the Court that she has attempted to confer with the plaintiffs about the relief requested in this motion, and has had several email communications with lead Plaintiff Colleen Hoffman in that regard. The Plaintiffs have not specifically stated a position on the motion, and have suggested they want to wait until after the upcoming City Council election to determine whether or not to agree to a stay. However, the City advised the Plaintiffs that it needs to proceed with the filing of this motion and cannot wait until after the election to do so, and Plaintiffs have not provided any further statement as to their position.

2. The City was served with a Complaint and Summons in this matter on March 20, 2017. The Complaint filed by the three individual plaintiffs alleges an abuse of discretion on the part of the City Council with regard to its approval of the Landmark Apartments Expansion Project Development Plan PDP #160013. The Plaintiffs have sought review in the municipal court pursuant to Article VII, Section 1, of the City Charter. Plaintiffs also seek injunctive relief.

3. As plaintiffs allege in their Complaint, the relief they are seeking is akin to the type of review/relief provided in state district court under C.R.C.P. 106 and C.R.C.P. 65 of the Colorado Rules of Civil Procedure. Although the City's Charter gives the municipal court original jurisdiction to hear appeals of this nature, the City Code does not presently set forth specific procedural rules for these types of actions, which do not involve a violation of the Charter or City Code.

4. Before the Plaintiff's Complaint was filed, City staff has been considering whether the City should formally adopt the Colorado Rules of Civil Procedure to be applicable to civil actions falling under the municipal court's original jurisdiction that do not involve violations under the City Charter or Code, which violations are governed by the rules of procedure adopted in City Code § 19-3. As a result of the filing of this action, City staff has presented to City Council for its consideration, proposed Ordinance 052, 2017, a copy of which is attached hereto as *Exhibit A* (the "Ordinance"). The Ordinance was scheduled for first reading at the City Council's meeting on March 21, 2017, but was postponed by Council until March 28, 2017. A second reading is scheduled for the City Council meeting on April 18, 2017. Assuming the Council adopts the ordinance as now scheduled, it would go into effect 10 days later (April 28th).

5. As proposed in Section 4 of the Ordinance, the Colorado Rules of Civil Procedure adopted in the Ordinance will be retroactive in effect with respect to applicable civil actions filed in this Court on or after January 1, 2107 and, therefore, applicable to this civil action when so adopted. The retroactive application of procedural rules, as opposed to the retroactive application of certain substantive laws, is not considered to be unconstitutional under Article II, Section 11 of the Colorado Constitution as the adoption of a law "retrospective in its operation." *City of Golden v. Parker*, 138 P.3d 285, 289-90 (Colo. 2006); *Abromeit v. Denver Career Services Board*, 140 P.3d 44, 50-52 (Colo. App. 2005).

5. Both the Plaintiffs' Complaint and Summons allude to this lack of a procedural framework for this type of action filed in municipal court. Undersigned counsel contacted the Plaintiffs to advise them of Ordinance and its anticipated retroactive application to these proceedings, attempting to obtain a stipulation to have this action proceed according to the Colorado Rules of Civil Procedure in the meantime. The intent of the proposed stipulation was to allow the parties to have an agreed-upon procedural framework so the matter could proceed expeditiously and the Court could focus its attention on a resolution of the substance and merits of the appeal. However, the Plaintiffs declined to enter such a stipulation.

6. Accordingly, the City hereby moves the Court for a stay of these proceedings until April 28, 2017, when the Ordinance is expected to take effect and apply retroactively to these proceedings. Said stay, which is not of unreasonable duration, would allow for the Court to do what the City was attempting to accomplish by way of stipulation; namely, to focus on the

merits of Plaintiffs' appeal of the City Council's action by providing a clear procedural framework for this case to proceed.

7. As undersigned counsel has advised Plaintiff Colleen Hoffman by telephone, it will be necessary for the Plaintiffs to specify what record they want the Court to review as part of this appeal. To date, they have not designated any record. If they were to do so, the City could take the necessary steps to prepare the record, at the Plaintiffs' cost, while the stay is in place, so that the matter would be ready to proceed on or after April 28th, without any significant impact on the Plaintiffs.

WHEREFORE, the City respectfully requests the Court to grant a stay of proceedings up to and including April 28, 2017, and for whatever further relief the Court deems just and proper. If the Court should deny the stay, the City would ask the Court to allow 21 days from the date of any such denial for the City to file its answer or other responsive pleading.

DATED this 24th day of March, 2017.

Respectfully submitted,

WICK & TRAUTWEIN, LLC

By:


Kimberly B. Schutt, #25947
Attorneys for Defendant

And

John R. Duval, #10185

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing MOTION FOR STAY OF PROCEEDINGS was SERVED via U.S. Mail this 24 day of March, 2017, on the following:

Colleen Hoffman
1804 Wallenberg Drive
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Rick Hoffman
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Ann Hunt
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A handwritten signature in black ink, appearing to read "Joseph D. Miller", written over a horizontal line.