

<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>REPLY IN SUPPORT OF MOTION FOR STAY OF PROCEEDINGS</p>	

COMES NOW Defendant City of Fort Collins (“the City”)¹, 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 reply in support of its motion for stay of proceedings:

¹ The Plaintiffs have named as defendants the City Council and “the Administration Branch of the City of Fort Collins,” and suggest in their response to the City’s Motion for Stay that the motion was somehow flawed because it was filed only on behalf of the City of Fort Collins. However, notwithstanding the Plaintiffs’ unsupported arguments to the contrary, the administrative and legislative branches of the City are not legal entities capable of being sued separate and apart from the City of Fort Collins itself. All departments and branches of its government are part of the municipal corporation, such that the City itself is the only proper defendant under the circumstances alleged. *See*, City Charter IV, § 2 and City Code Chapter 2, Article V. Accordingly, the motion for stay is phrased to reflect this legality, and any arguments to the contrary by the Plaintiffs are legally invalid.

1. The City filed a motion for stay of proceedings pending City Council's consideration and possible adoption of a pending ordinance relating to rules of procedure to be applied in cases such as this one, which seeks judicial review under Article VII, Section 1, of the City Charter. As is undisputed, the City Code does not presently set forth specific procedural rules for these types of actions, which do not involve a violation of the City Charter or Code. The proposed ordinance is intended to provide a set of procedures for the Court and litigants to better navigate these types of proceedings.

2. Notwithstanding the many accusations in the Plaintiffs' response to the motion to stay, the fact of the matter is that the City has made clear from the outset of this case that its priority here is to ensure that the Plaintiffs' claims are addressed on their merits rather than on procedural technicalities. Toward this end, undersigned counsel offered to accept service on behalf of the City since it was not properly served with a summons of any kind initially, and also discussed with Plaintiff Colleen Hoffman the need to designate a record of what the Plaintiffs want this Court to review as part of its determination in this action. Likewise, on behalf of the City, undersigned counsel attempted to come to an agreement that the procedure spelled out on Rule 106(a)(4) of the Colorado Rules of Civil Procedure and other applicable rules in the Colorado Rules of Civil Procedure would provide the framework for the similar type of review sought in this court. However, Plaintiffs advised the City that they would proceed with formally serving the City and rejected at that time the proposal for a stipulated set of procedural rules, which prompted the City's filing of the motion for stay.

3. Having this case decided on its merits, in a professional manner and in accordance with a reasonable set of procedural rules guiding all parties remains the City's goal here. The Plaintiffs' response to the motion was the first mention of any kind that they are attempting to put together a set of procedural rules for a potential stipulation. The City remains open to considering those rules if the Plaintiffs want to provide such a proposal. However, the fact of the matter is that this case cannot fairly proceed to a review on the merits until some set of procedures is in place either by stipulation, by ordinance adopted by Council, or by some order of this Court.

4. Further, this Court does not need some specific rule granting it authority to issue a stay of proceedings. It is a fundamental principle of law, as stated by the U.S. Supreme Court and reiterated by our own Supreme Court of Colorado in *Town of Minturn v. Sensible Hous. Co., Inc.*, 273 P.3d 1154, 1159 (Colo. 2012), that the power to grant a stay of proceedings is an inherent power of all courts:

“Courts, in general, have the power to stay proceedings before them. *Landis v. N. Amer. Co.*, 299 U.S. 248, 254-55, 57 S.Ct. 163, 81 L.Ed. 153 (1936). ‘The power to stay proceedings is incidental to the power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’ *Id.*; see generally *In re Application for Water Rights of U.S.*, 101 P.3d 1072 (Colo. 2004) (holding that the water court acted within its discretion in granting a stay of proceedings until the resolution of related federal litigation, due to consideration of comity as well as the relief available to the parties).”

5. The City again asks this Court to exercise that inherent power to grant a stay of proceedings until some set of procedures is in place to guide the parties for a determination of the issues raised by the Plaintiffs. Initially, the City asked for that stay to be in place through April 28th, with the idea being that if City Council adopted the pending ordinance according to the reading schedule then set, that the terms of the ordinance as it then read would make that ordinance apply retroactively to this case.² Contrary to the Plaintiffs' assertions, the retroactive application of procedural laws is not deemed by the Colorado courts to be unconstitutional. See, *Parker v. City of Golden*, 138 P.3d 285, 289-90 (Colo. 2006); *Abromeit v. Denver Career Services Board*, 140 P.3d 44, 50-51 (Colo. 2005). The parties have an obvious disagreement on that issue. However, as the ordinance now stands as amended on first reading, the Plaintiffs are correct that City Council elected to take out the provision regarding retroactive application. Therefore, if that amendment does not change on second reading on April 18, 2017, and the ordinance is adopted without the provision for retroactive application, the reality is that this action will still not have a set of procedural rules to guide the parties until ten (10) days after the ordinance is adopted on second reading, assuming it is adopted. Once the ordinance is in effect, presumably on April 28, 2017, the Court and parties will have rules of procedure to rely on at least going forward in this action.

6. Accordingly, the City asks that the Court grant the City's motion for a stay of proceedings until April 28th. If by that time the parties have not submitted a stipulated set of procedural rules, or City Council has not taken action on the proposed ordinance in a manner which provides a set of procedures for this action, then the City would respectfully request the Court set this case for a case management conference at which the parties and Court discuss the procedure and deadlines that will apply to this case. If the Plaintiff wants to have legal representation enter an appearance during that time, the City would certainly not oppose such an entry of appearance during the time the stay is in effect.

7. Plaintiffs' motion articulates no real prejudice that would come to them from the Court granting this brief stay. One would think they would also have a vested interest in having these procedural issues worked out so that their claims can be decided in a professional and reasonable manner on the merits. Further, the City would represent to the Court that, as of the time of this Reply, the developer of the expansion project for which the Plaintiffs seek review has not yet submitted the plans for the City's approval of the Final Development Plan and final plat for the project, such that there is no prejudice to the Plaintiffs with regard to the contested expansion moving forward any time soon.

8. Finally, to the extent the Plaintiffs wish to discuss a stipulated set of procedural rules or any other issues related to this action, they are welcome to contact either of the counsel listed below. Plaintiffs' response takes issue with the fact that they tried contacting undersigned's office after the motion for stay was filed and learned she was out of town for a week, but they had previously been advised that attorney John Duval was also representing the City in this case. His contact information was clearly listed in the motion. Therefore, this

² Contrary to the Plaintiffs' assertions, the City did not treat this process as a foregone conclusion. In fact, undersigned counsel specifically advised the Plaintiffs of the dates when Council would be considering this ordinance and provided the agenda materials related thereto, so that they could participate in this public process.

complaint of the Plaintiffs, like the many others in the response, is without merit and does not constitute grounds for the Court denying a very reasonable request for the fair disposition of this case.

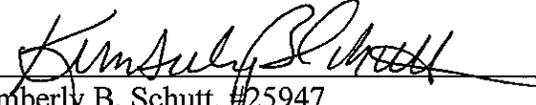
WHEREFORE, the City again respectfully requests the Court to grant a stay of proceedings up to and including April 28, 2017, and for whatever further relief the Court deems just and proper. Again, if the Court should deny the stay, the City would ask the Court to allow twenty-one (21) days from the date of any such denial for the City to file its Answer or other responsive pleading. The City would also request that the Court set this case for a case management conference to occur shortly after the filing of said Answer or other responsive pleading.

DATED this 10th day of April, 2017.

Respectfully submitted,

WICK & TRAUTWEIN, LLC

By:


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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 REPLY IN SUPPORT OF MOTION FOR STAY OF PROCEEDINGS was SERVED via U.S. Mail this 10th day of April, 2017, on the following:

Colleen Hoffman
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A handwritten signature in cursive script, appearing to read "Joseph M. Jones", is written over a horizontal line.