

<p>FORT COLLINS MUNICIPAL COURT  214 N. Mason  Fort Collins, CO 80521  Phone: (970) 221-6800</p> <hr/> <p><b>Plaintiffs: Eric Sutherland; and J&amp;M Distributing  d/b/a Fort Collins Muffler and Automotive  v.</b></p> <p><b>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.</b></p> <p><b>Intervenor: NEXT CHAPTER PROPERTIES, LLC,  an Illinois Limited Liability Company.</b></p>	<p>COURT USE ONLY</p>
<p>Kimberly B. Schutt, #25947  WICK &amp; TRAUTWEIN, LLC  323 South College Avenue, Suite 3  P.O. Box 2166, Fort Collins, CO 80522  Phone Number: (970) 482-4011  E-mail: <a href="mailto:kschutt@wicklaw.com">kschutt@wicklaw.com</a>  FAX Number: (970) 482-8929</p>	<p>Case Number:   2018-CIVIL01</p>
<p><b>CITY'S RESPONSE TO PLAINTIFFS' MOTION FOR CLARIFICATION</b></p>	

COMES NOW the City of Fort Collins (“the City”), on behalf of the City Council of the City of Fort Collins and the improperly named “Administration Branch of the City of Fort Collins,” through its counsel, Kimberly B. Schutt of Wick & Trautwein, LLC, and respectfully submits the following response to the Plaintiffs’ Motion for Clarification filed Wednesday, November 21, 2018:

1. On Wednesday, November 21, 2018, the Municipal Court Clerk served on the parties an Amended Scheduling Order, indicating the Court was “working assiduously” on a ruling and would now do so no later than Tuesday, November 26, 2018. The Order indicated the Plaintiffs’ failure to make any citations to the extensive record had expanded the time needed for the Court to review and rule on the issues in this case.

2. Plaintiff Eric Sutherland immediately sent an email to counsel for the parties, as well as the Court Clerk, taking issue with the Court’s order and seeking counsel’s position on proposed motion for clarification. Less than two hours later, without giving any meaningful time

for Counsel to respond, Plaintiff Sutherland filed a motion taking issue with the Court's statement that it is "working assiduously" on a ruling. The motion asserted the Court "should not even be working at all" and asked the Court clarify why review of the record was even necessary. The motion, not supported by any citations to the rules of procedure or other supporting legal authority, consisted largely of accusations against the City of Fort Collins.

3. Suffice it to say the City defendants strongly dispute the accusations made by Plaintiffs. Notwithstanding those assertions, however, the Plaintiffs' position that no record was required in this matter is directly contrary to the well-accepted standard of review employed in an action under C.R.C.P. 106(a)(4), the rule pursuant to which the Plaintiffs specifically sought relief here. Indeed, C.R.C.P. 106(a)(4)(I) expressly states that the Court's review of the issues in such an action "shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, *based on the evidence in the record before the defendant body or officer*" [emphasis added]. Since the Plaintiffs failed to fulfill their obligation to provide a record for that purpose, the City was forced to do so in order for this Court to conduct a meaningful review on the merits, pursuant to the applicable standard.


4. It is an understatement to say that the Plaintiffs' motion for clarification is inappropriate and not helpful to resolving the issues they have raised in this case. It is truly frivolous and groundless, and has once again unnecessarily expanded these proceedings and wasted valuable time and resources of all involved.

WHEREFORE, the City defendants respectfully request the Court strike the motion and consider appropriate sanctions against the Plaintiffs for having unnecessarily expanded the scope of these proceedings.

DATED this 23<sup>RD</sup> day of November, 2018.

Respectfully submitted,

WICK & TRAUTWEIN, LLC

By:   
Kimberly B. Schutt, #25947  
Attorneys for the Defendants

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing CITY'S RESPONSE TO THE PLAINTIFFS' MOTION FOR CLARIFICATION via email to the addresses listed below, this 23<sup>rd</sup> day of November, 2018, on the following:

Eric Sutherland  
3520 Golden Currant  
Fort Collins, CO 80521

*Via email to [sutherix@yahoo.com](mailto:sutherix@yahoo.com)*

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