

DISTRICT COURT, COUNTY OF LARIMER,  
COLORADO

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DATE FILED: December 7, 2020 3:14 PM  
FILING ID: E57DFDC83C11A  
CASE NUMBER: 2020CV30833

**Plaintiff:** THE CITY OF FORT COLLINS, COLORADO,  
a Colorado home rule city and municipal corporation,

v.

**Defendants:** PLANNING ACTION TO TRANSFORM  
HUGHES STADIUM SUSTAINABLY CORP, a  
Colorado nonprofit corporation; and ELENA M. LOPEZ,  
MELISSA ROSAS, AND PAUL PATTERSON, each in  
their official capacity as a petition representative of the  
persons signing the petition for a citizen-initiated ordinance  
relating to the City of Fort Collins rezoning and acquiring  
certain real property

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Case Number: 2020CV \_\_\_\_\_

Division: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY RELIEF PURSUANT TO C.R.C.P. 57 AND  
THE UNIFORM DECLARATORY JUDGMENTS LAW**

Plaintiff City of Fort Collins, Colorado, (the “City”) by and through its attorneys, Carrie M. Daggett, Esq. City Attorney, and John R. Duval, Esq., Deputy City Attorney of the Fort Collins City Attorney’s Office, and Andrew D. Ringel, Esq., of Hall & Evans, L.L.C., respectfully submits this Complaint for Declaratory Relief Pursuant to C.R.C.P. 57 and the Uniform Declaratory Judgments Law, and alleges:

### **INTRODUCTION**

1. On May 12, 2020, the Defendant Planning Action to Transform Hughes Sustainably Corp (“PATHS”) was formed as a Colorado nonprofit corporation for the purpose of organizing and representing Fort Collins area residents who are aligned in the objective of conserving as open space and for other similar uses the property on which Colorado State University’s Hughes Stadium was formerly located (the “Hughes Stadium Property”).

2. To accomplish this objective, PATHS organized and pursued an effort to circulate a petition for a citizen-initiated ordinance to be placed on the ballot at the City’s April 7, 2021, regular election.

3. On August 27, 2020, Elena M. Lopez, Melissa Rosas and Paul Patterson, in their official capacities as representatives of PATHS and as the petition representatives, (collectively, the “Petition Representatives”) submitted to the Fort Collins City Clerk (the “City Clerk”) a “Notice of Intent to Circulate an Initiative Petition related to the Hughes Stadium Property” dated August 27, 2020 (the “Notice of Intent to Circulate”). A copy of the Notice of Intent to Circulate is attached as Exhibit “A” and incorporated herein by reference.

4. The Notice of Intent to Circulate proposed the circulation of a petition calling for an ordinance directing two different and distinct actions: (1) the City Council to rezone the Hughes Stadium Property; and (2) the City to “acquire” the Hughes Stadium Property. The Notice of Intent to Circulate called for the proposed ordinance (the “Initiated Ordinance”) to be placed on the ballot at the City’s upcoming April 6, 2021, regular City election. A copy of the Initiated Ordinance is attached as Exhibit “B” and incorporated herein by reference.

5. On or about September 3, 2020, the Petition Representatives submitted to the City Clerk the form of the petition (the “Petition”) for the Initiated Ordinance to be circulated for signing by registered electors of the City. A copy of the Petition is attached as Exhibit “C” and incorporated herein by reference.

6. On September 4, 2020, the City Clerk approved the form of the Petition in the “Petition Form Approval” dated September 4, 2020, and signed by Chief Deputy City Clerk Rita Knoll. A copy of the Petition Form Approval is attached as Exhibit “D” and incorporated herein by reference.

7. On November 2, 2020, the Petition Representative Melissa Rosas submitted the signed Petition to the City Clerk as evidenced by the “Petition Receipt.” A copy of the Petition Receipt is attached as Exhibit “E” and incorporated herein by reference.

8. After examining the signatures in the signed Petition, the City Clerk issued on November 5, 2020, her “Statement of Initiative Petition Sufficiency” dated November 5, 2020 (“Statement of Sufficiency”). A copy of the Statement of Sufficiency is attached as Exhibit “F” and incorporated herein by reference.

9. The City Clerk certifies in the Statement of Sufficiency that the Petition contains more than the 3,280 valid signatures required for the Initiated Ordinance to be placed on the ballot of the City’s April 6, 2020, regular election.

10. The City Clerk presented the Statement of Sufficiency to the City Council at its Regular Meeting on November 17, 2020, which Regular Meeting was the City Council’s next regular meeting after the City Clerk issued the Statement of Sufficiency.

11. Pursuant to Article X, Section 1(e) of the Charter of the City of Fort Collins, Colorado, (the “Charter”), upon presentation of an initiated petition certified as sufficient by the City Clerk, the City Council shall either “(1) adopt the proposed ordinance . . . without alteration within thirty (30) days, or (2) submit such proposed measure, in the form petitioned for, to the registered electors of the city.”

12. Attached as Exhibit “G” and incorporated herein by reference is a copy of Charter Article X.

13. The initiative power of the City’s registered electors in *legislative* matters *only* is reserved to them in Article V, Sections 1(2) and 1(9) of the Colorado Constitution and in Charter Article X, Section 1(a).

14. At its November 17, 2020, Regular Meeting, the City Council adopted Resolution 2020-105 (the “Resolution”) by which it provisionally and conditionally submitted in Section 2 of the Resolution, subject to this declaratory action, the Initiated Ordinance to a vote of the City’s registered electors at the City’s April 6, 2020, regular election. A copy of the Resolution is attached as Exhibit “H” and incorporated herein by reference.

15. The City Council also provisionally and conditionally set in Section 3 of the Resolution, subject to this declaratory action, the ballot title and submission clause to be submitted to the City’s registered electors for the Initiated Ordinance at the City’s April 6, 2020, regular election, as required by Charter Article X, Section 6(b) (the “Ballot Measure”). [*See the Resolution, Exh. “H”*].

16. The City Council further directed the Fort Collins City Attorney in Section 4 of the Resolution to file this declaratory judgment action to seek a judicial determination as to which matters in the Initiated Ordinance and Ballot Measure are a *legislative* matter appropriate for a citizen initiative under the Colorado Constitution and the Charter and which are an *administrative*

matter *not* appropriate for a citizen initiative under the Colorado Constitution and the Charter. [See the Resolution, Exh. “H”].

17. The City therefore seeks in this action declaratory relief concerning whether the Initiated Ordinance and Ballot Measure include *administrative* matters that are *not* subject to a citizen initiative under Article V, Sections 1(2) and 1(9) of the Colorado Constitution and Charter Article X, Section 1(a) and, more specifically, whether the provisions in the Initiated Ordinance and Ballot Measure requiring the City to “use best efforts in good faith to acquire the Hughes Stadium property” at “fair market value” to use “for parks, recreation and open lands, natural areas, and wildlife rescue and education” and to do so using certain funding sources and mechanisms, are *administrative* and *not legislative* matters and therefore not subject to an initiated ordinance.

18. The City believes the provisions in the Initiated Ordinance and Ballot Measure requiring the City Council to rezone the Hughes Stadium Property to the City’s Public Open Lands District are a *legislative* matter properly subject to the initiative power of the City’s registered electors, but the City nevertheless seeks a judicial determination from the Court confirming its conclusion.

19. In the event this Court determines any *administrative* matters are *not* subject to a citizen initiative under Article V, Sections 1(2) and 1(9) of the Colorado Constitution and Charter Article X, Section 1(a), the City asks this Court to sever the *administrative* matters from the *legislative* matters in the Initiated Ordinance and Ballot Measure to allow only the *legislative* matters to be placed on the City’s April 6, 2020, regular election ballot.

### **PARTIES**

20. The City is a home rule city of the State of Colorado organized and existing with all powers and authority granted to home rule cities in Article XX of the Colorado Constitution.

21. The City’s address is 300 Laporte Avenue, Fort Collins, Colorado, 80521.

22. Defendant PATHS is Colorado nonprofit corporation with the principal office address of 301 South Howes Street, Fort Collins, Colorado, 80522.

23. Petition Representative Elena M. Lopez is a registered elector of the City and resides at 3520 Pradolina Court, Fort Collins, Colorado 80521.

24. Petition Representative Melissa Rosas is a registered elector of the City and resides at 3520 Pradolina Court, Fort Collins, Colorado 80521.

25. Petition Representative Paul Patterson is a registered elector of the City and resides at 2936 Eindborough Drive, Fort Collins, Colorado 80525.

26. The Petition Representatives are each designated in the Petition as a “petition representative” who represents the signers of the Petition in all matters affecting the Petition, as provided in Charter Article X, Section 5(e).

### **JURISDICTION AND VENUE**

27. This Court has subject matter jurisdiction in this action as provided in C.R.C.P. 57 and in the Uniform Declaratory Judgments Law in Article 51 of Title 13 of the Colorado Revised Statutes.

28. The Colorado Supreme Court has held that a pre-election declaratory judgment action is an appropriate remedy for a home rule city to pursue for a judicial determination of whether the matters proposed in a citizen-initiated ordinance are *legislative* matters appropriate for a citizen-initiated measure or *administrative* matters *not* appropriate for a citizen-initiated measure. *City of Idaho Springs v. Blackwell*, 731 P.2d 1250, 1253 (Colo. 1987).

29. Venue is proper in this Court pursuant to C.R.C.P. 98(a) because the real property subject to the Initiated Ordinance is located in Larimer County, Colorado, and pursuant to C.R.C.P. 98(c)(1) because the Plaintiff, Defendant PATHS and the Petition Representatives all reside in Larimer County, Colorado.

### **GENERAL ALLEGATIONS**

30. The Hughes Stadium Property was annexed into the City’s boundaries in 2018 by the City Council’s adoption of Ordinance No. 123, 2018 (the “Annexation Ordinance”). A copy of the Annexation Ordinance is attached as Exhibit “I” and incorporated herein by reference.

31. The Hughes Stadium Property is a 164.554-acre parcel of land legally described in Section 3 of the Annexation Ordinance.

32. At the time of annexation, the City Council also adopted Ordinance No. 124, 2018, (the “Zoning Ordinance”) to zone the Hughes Stadium Property by including it in the City’s Transition District. A copy of the Zoning Ordinance is attached as Exhibit “J” and incorporated herein by reference.

33. In 2018, when the Hughes Stadium Property was annexed and zoned by the City, it was owned by Colorado State University (“CSU”). Upon information and belief, the Hughes Stadium Property is still owned by CSU, but CSU may now have contracted to sell it to a private party.

34. The Hughes Stadium was built on the Hughes Stadium Property by CSU in 1968 and used since then by CSU primarily as an outdoor college football stadium until the Stadium was demolished by CSU in 2018.

35. The Hughes Stadium Property is currently vacant land, but CSU has publicly indicated that it intends to develop or allow others to develop the Property for primarily residential uses.

36. Under its current zoning of Transition District, as this District is established in Division 4.12 of the City's Land Use Code, the Hughes Stadium Property's only permitted use, without a variance approved by City Council, are the uses that existed on it in 2018 when it was annexed and zoned in 2018 by City Council in the Annexation Ordinance and the Zoning Ordinance.

37. A copy of Division 4.12 of the City's Land Use Code establishing the Transition District is attached as Exhibit "K" and incorporated herein by reference.

38. Section 3 of the Initiated Ordinance requires the City Council, immediately upon passage of the Initiated Ordinance, to rezone the Hughes Stadium Property to the Public Open Lands District established in Division 4.13 of the City's Land Use Code. [See Initiated Ordinance, Exh. "B"].

39. Section 4 of the Initiated Ordinance prohibits the City from de-annexing or subsequently rezoning the Hughes Stadium Property "to any designation other than Public Open Lands without voter approval of a separate initiative referred to the voters by City Council." [See Initiated Ordinance, Exh. "B"].

40. If the Hughes Stadium Property is rezoned to the Public Open Lands District, Division 4.13 of the City's Land Use Code would only allow the Property to be used for: (i) a neighborhood park; (ii) other parks, recreation and open lands; (iii) cemeteries; (iv) minor public facilities; (v) composting facilities; (vi) resource recovery; (vii) agricultural activities; (viii) wireless telecommunication facilities; (ix) golf courses; (x) wildlife rescue and education centers; (xi) community facilities; and (xii) small-scale and medium-scale solar energy systems, as all these uses are defined in the City's Land Use Code.

41. A copy of Division 4.13 of the City's Land Use Code establishing the Public Open Lands District is attached as Exhibit "L" and incorporated herein by reference.

42. The Colorado Supreme Court has held that a home rule city's rezoning of real property is a *legislative* matter subject to the initiative powers reserved to its registered electors in Article V, Section 1 of the Colorado Constitution and as also reserved in its home rule charter. *Margolis v. District Court*, 638 P.2d 297, 304-05 (Colo. 1981).

43. Section 2 of the Initiated Ordinance requires the City to acquire the Hughes Stadium Property "at its fair market value for the purpose of using it for parks, recreation and open lands, natural areas, and wildlife rescue and education." [See Initiated Ordinance, Exh. "B"].

44. Section 1 of the Initiated Ordinance states that “the City hereby makes and adopts the determinations and findings contained in the recitals” of the Initiated Ordinance, which includes the next-to-last recital requiring the City to use \$10 million “as a starting point in its negotiations to acquire the property at fair market value.” [See Initiated Ordinance, Exh. “B”].

45. Section 4 of the Initiated Ordinance prohibits the City from ceasing efforts to acquire the Hughes Stadium Property “without voter approval of a separate initiative referred to the voters by City Council.” [See Initiated Ordinance, Exh. “B”].

46. Section 5 of the Initiated Ordinance requires the City to seek funding for its acquisition of the Hughes Stadium Property from certain identified funding sources or future partnerships including, without limitation, those listed in Section 5. [See Initiated Ordinance, Exh. “B”].

47. Section 6 of the Initiated Ordinance allows the City Council to “refer ballot measures to the voters for the purpose of seeking additional funding only if existing sources of funding or future partnerships are insufficient for the preservation of the Hughes Stadium property as described in” the Initiated Ordinance. [See Initiated Ordinance, Exh. “B”].

48. Section 7 of the Initiated Ordinance requires the City to “expeditiously, but no later than two years from the passage” of the Initiated Ordinance, to “use best efforts in good faith to acquire the Hughes Stadium property using the financial mechanisms described in Sections 5 and 6” of the Initiated Ordinance. [See Initiated Ordinance, Exh. “B”].

49. Section 8 of the Initiated Ordinance states it will “take effect immediately upon passage by the majority of the voters of Fort Collins during the first available city election and any registered voter in Fort Collins has legal standing to petition for injunctive and/or declaratory relief related to City noncompliance with the provisions” of the Initiated Ordinance. [See Initiated Ordinance, Exh. “B”].

50. In the City’s view, the provisions in Sections 1, 2, 4, 5, 6 and 7 of the Initiated Ordinance requiring the City to acquire the Hughes Stadium Property using the funding sources, future partnerships and financial mechanisms as designated in Sections 5 and 6 are characteristic of *administrative* matters the Colorado Supreme Court has held are *not* subject to the initiative powers the registered electors of home rule cities have under Article V, Sections 1(2) and 1(9) of the Colorado Constitution and under initiative provisions in their home rule charters like those of the City in Charter Article X, Section 1(a). *Vagneur v. City of Aspen*, 295 P.3d 493, 504-11 (Colo. 2013).

51. The City seeks a declaration from this Court concerning whether the provisions in Sections 1, 2, 4, 5, 6, and 7 of the Initiated Ordinance are in fact *administrative* matters *not* subject to the initiative powers of the registered electors of home rule cities under Article V, Sections 1(2) and 1(9) of the Colorado Constitution and under the City’s Charter Article X, Section 1(a).

52. In the event this Court determines any *administrative* matters *not* subject to a citizen initiative under the Colorado Constitution and the City’s Charter, the City asks this Court to sever the *administrative* matters from the *legislative* matters in the Initiated Ordinance and Ballot Measure to allow only the *legislative* matters to be placed on the City’s April 6, 2020, regular election ballot.

**CLAIM FOR RELIEF**

(Review Pursuant to C.R.C.P 57 and the Uniform Declaratory Judgments Law)

53. Plaintiff incorporates herein by reference its allegations in paragraphs 1 through 52 above.

54. A controversy exists between the parties as to whether the provisions in Sections 1, 2, 4, 5, 6 and 7 of the Initiated Ordinance requiring the City to acquire the Hughes Stadium Property using the funding sources, future partnerships and financial mechanisms designated in Sections 5 and 6 are *administrative* matters *not* subject to the initiative powers the City’s registered electors have under Article V, Sections 1(2) and 1(9) of the Colorado Constitution and under Charter Article X, Section 1(a).

55. These provisions in Sections 1, 2, 4, 5, 6 and 7 of the Initiated Ordinance do not propose or constitute the adoption of a law or public policy of general applicability but instead seek to mandate a specific proposal for the City to contract with a third party to purchase a particular parcel of land, to use that land for certain limited purposes, to pay for these things from designated funding sources and partnerships using certain financial mechanisms to secure such funding, and to begin negotiations to acquire the land by offering \$10 million.

56. These provisions in Sections 1, 2, 4, 5, 6 and 7 of the Initiated Ordinance are, therefore, *administrative* matters *not* subject to the initiative powers the City’s registered electors have under Article V, Sections 1(2) and 1(9) of the Colorado Constitution and under Charter Article X, Section 1(a).

57. The City does not dispute that the provisions in Sections 3 and 4 of the Initiated Ordinance requiring the City Council, immediately upon passage of the Initiated Ordinance, to rezone the Hughes Stadium Property to the Public Open Lands District pursuant to Division 4.13 of the City’s Land Use Code and prohibiting the City from de-annexing or subsequently rezoning the Hughes Stadium Property “to any designation other than Public Open Lands without voter approval of a separate initiative referred to the voters by City Council,” are properly characterized as *legislative* matters subject to the initiative powers the City’s registered electors have under Article V, Sections 1(2) and 1(9) of the Colorado Constitution and under Charter Article X, Section 1(a).

58. The City requests a declaration from this Court that the provisions in Sections 3 and 4 of the Initiated Ordinance are properly characterized as *legislative* matters subject to the

initiative powers of the City's registered electors under the Colorado Constitution and the City's Charter.

59. The City is requesting the Court to revise the Initiated Ordinance to exclude and sever from it the provisions in Sections 1, 2, 4, 5, 6 and 7 and in the next-to-last recital that require the City to acquire the Hughes Stadium Property, to use it for the specified purposes, to pay for the Property from designated funding sources and partnerships using certain financial mechanisms, and to begin negotiations to acquire the Property by offering \$10 million, as all are more specifically described above in paragraphs 43 through 48 of this Complaint.

60. The Initiated Ordinance, as so revised, should only include the provisions in its Sections 3 and 4 and related recitals that pertain to the City Council rezoning the Hughes Stadium Property to the Public Open Lands District and prohibiting the City from de-annexing or subsequently rezoning the Hughes Stadium Property "to any designation other than Public Open Lands without voter approval of a separate initiative referred to the voters by City Council."

61. The City is also requesting the Court to revise the Ballot Measure to similarly exclude and sever from it the provisions addressing the requirements and prohibitions pertaining to the City acquiring the Hughes Stadium Property as described above in paragraphs 40 through 45 of this Complaint, but to continue to include in the Ballot Measure the provisions pertaining to the City Council rezoning the Hughes Stadium Property to the Public Open Lands District and prohibiting the City from de-annexing or subsequently rezoning the Hughes Stadium Property "to any designation other than Public Open Lands without voter approval of a separate initiative referred to the voters by City Council."

62. The *administrative* matters in the Initiated Ordinance and the Ballot Measure are severable from the *legislative* matters in them and the Court has the authority to revise the Initiated Ordinance and the Ballot Measure to remove the *administrative* matters from them as requested in this Complaint. *City of Colorado Springs v. Bull*, 143 P.3d 1127, 1138-39 (Colo. App. 2006).

63. Severing the *administrative* matters from the Initiated Ordinance and the Ballot Measure are an appropriate remedy here because: (i) standing alone, the remaining *legislative* matters in them can be given legal effect; (ii) deleting the administrative matters would not substantially change the spirit of the Initiated Ordinance; (iii) and it is evident from the content of the Initiated Ordinance and the circumstances surrounding its proposal that the Defendant PATHS, the Petition Representatives, and the registered electors signing the Petition would prefer the Initiated Ordinance to stand as altered and put forward to a vote of the City's registered electors, rather than have the Initiated Ordinance invalidated in its entirety.

64. The City Council's Resolution has only provisionally and conditionally submitted the Initiated Ordinance and Ballot Measure to the registered electors at the City's April 6, 2021, regular election, so the City can bring this action, and the City has only until February 16, 2021, for any revisions to be made to the Initiated Ordinance and Ballot Measure for those revisions to be made in time for presentation to the registered electors at the April 6, 2021, election. The City

therefore requests that if a hearing must be conducted for the Court to rule in this action that the Court exercise its power under C.R.C.P. 57(m) to order a speedy hearing and advance any such hearing on the Court's calendar.

### **PRAYER FOR RELIEF**

WHEREFORE, for the foregoing reasons, the Plaintiff City of Fort Collins, Colorado, respectfully requests the Court to grant the following relief:

A. Find and declare that the provisions in Sections 1, 2, 4, 5, 6 and 7 and in the next-to-last recital of the Initiated Ordinance that require the City to acquire the Hughes Stadium Property, to use it for the specified purposes, to pay for the Property from designated funding sources and partnerships using certain financial mechanisms, and to begin negotiations to acquire the Property by offering \$10 million, as all are more specifically described above in paragraphs 43 through 48 of this Complaint, are *administrative* matters *not* subject to the initiative powers the City's registered electors have under Article V, Sections 1(2) and 1(9) of the Colorado Constitution and under Charter Article X, Section 1(a);

B. Find and declare that the provisions in Sections 3 and 4 of the Initiated Ordinance requiring the City Council, immediately upon passage of the Initiated Ordinance, to rezone the Hughes Stadium Property to the Public Open Lands District pursuant to Division 4.13 of the City's Land Use Code and prohibiting the City from de-annexing or subsequently rezoning the Hughes Stadium Property "to any designation other than Public Open Lands without voter approval of a separate initiative referred to the voters by City Council," are *legislative* matters subject to the initiative powers the City's registered electors have under Article V, Sections 1(2) and 1(9) of the Colorado Constitution and under Charter Article X, Section 1(a);

C. Revise the Ballot Initiative and Ballot Measure to exclude and sever from them the provisions in Sections 1, 2, 4, 5, 6 and 7 and in the next-to-last recital that require the City to acquire the Hughes Stadium Property, to use it for the specified purposes, to pay for the Property from designated funding sources and partnerships using certain financial mechanisms, and to begin negotiations to acquire the Property by offering \$10 million, as all are more specifically described above in paragraphs 43 through 48 of this Complaint;

E. That if a hearing is needed in this action, that the Court exercise its power under C.R.C.P. 57(m) to order a speedy hearing and advance any such hearing on the Court's calendar in time for the City Council to meet its February 16, 2021, deadline to place the final versions of the Initiated Ordinance and the Ballot Measure on the City's April 6, 2020, regular election ballot; and

D. For such other and further relief as the Court deems just and proper under the circumstances.

Dated this 7th day of December, 2020.

Respectfully submitted,

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