

**RESOLUTION 2020-105
OF THE COUNCIL OF THE CITY OF FORT COLLINS
PROVISIONALLY AND CONDITIONALLY SUBMITTING A CITIZEN-INITIATED
ORDINANCE RELATING TO THE HUGHES STADIUM PROPERTY TO A VOTE OF THE
REGISTERED ELECTORS OF THE CITY AT THE
REGULAR MUNICIPAL ELECTION ON APRIL 6, 2021**

WHEREAS, under Article X, Section 1(a) of the City Charter, the registered electors of the City have the power to propose a measure to the City Council, and if the City Council fails to adopt a measure so proposed, then to adopt or reject such ordinance or resolution at the polls; and

WHEREAS, an initiative petition relating to the purchase by the City, zoning, and use of the property known as the Hughes Stadium property has been submitted to the City, and the City Clerk has certified said petition as sufficient for submission of the initiated ordinance to a vote of the people at the next regular City election on April 6, 2021; and

WHEREAS, the City Clerk has presented said petition to the City Council as provided in Article X, Section 5(f)(4) of the City Charter; and

WHEREAS, under Article X, Section 1(e) of the City Charter, upon presentation of an initiative petition certified as to sufficiency by the City Clerk, the City Council must either adopt the citizen-initiated ordinance without alteration within thirty (30) days or submit said citizen-initiated ordinance, in the form petitioned for, to the registered electors of the City; and

WHEREAS, under Article X, Section 6 of the City Charter, upon ordering an election on any initiative or referendum measure, the Council shall, after public hearing, adopt by resolution a ballot title and submission clause for the measure; and

WHEREAS, the ballot title for the measure must identify the measure as either a city-initiated or citizen-initiated measure; and

WHEREAS the submission clause must be brief, must not conflict with those selected for any petition previously filed for the same election, and must unambiguously state the principle of the provision sought to be added; and

WHEREAS, under Colorado law, only legislative matters, and not administrative matters, are subject to the citizen initiative power granted to the citizens of the State and municipalities in Article V, Section 1(2) and Section 1(9) of the Colorado Constitution, respectively; and

WHEREAS, this citizen initiative power regarding legislative matters and not administrative matters is similarly granted to Fort Collins citizens in City Charter Article X, Section 1(a); and

WHEREAS, some aspects of the initiative petition here appear to address administrative matters and therefore may not be appropriate matters for inclusion in a City ballot measure as a citizen initiative; and

WHEREAS, a determination of what matters in this citizen initiative are legislative and what are administrative is needed in order to ensure that the City Council and City are acting in accordance with the Colorado Constitution and the City Charter in the use of a citizen initiative; and

WHEREAS, Colorado courts have made it clear that “an initiative may be subjected to pre-election judicial review” to determine whether matters addressed in the initiative are administrative or not; and

WHEREAS, although the City Council has acted in this Resolution to place the entire citizen initiative on the ballot, it is doing so only provisionally and conditionally so that the content of the ballot question may be subject to later modification, as needed, based on a judicial determination regarding the proper scope of this citizen-initiated measure; and

WHEREAS, it is the City Council’s intention in adopting this Resolution that this matter be revisited by the Council on or before February 16, 2021, for an update on the judicial proceedings directed in this Resolution and the City Council’s final determination of what portions of this citizen initiative are to be submitted to the City’s electorate and the final wording of the ballot title and submission clause for this measure.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council hereby adopts as findings and determinations the recitals stated above.

Section 2. That there is hereby provisionally and conditionally submitted to the registered electors of the City at the next regular City election to be held on Tuesday, April 6, 2021, the following proposed citizen-initiated ordinance, conditioned upon and subject to subsequent judicial review and City Council modification as set forth in Sections 4, 5 and 6 below:

WHEREAS, the citizens of Fort Collins have shown strong support to preserve and provide open space, natural areas, community separators, wildlife habitat, and trails for today and for the future; and

WHEREAS, Fort Collins citizens currently enjoy their open spaces and natural areas; the recreation they provide, such as walking, hiking, biking, wildlife viewing, bird watching, and fishing; the educational opportunities and programs provided to people of all ages and backgrounds; and the beautiful landscapes and views they provide; and

WHEREAS, open space, natural areas, wildlife habitat, community separators, agricultural lands, and trails benefit all members of the Fort Collins community; and

WHEREAS, conserved open space and natural areas help make Fort Collins a highly desirable place to live, work, and visit; and

WHEREAS, the City of Fort Collins values sustainability in policies, plans, strategies and projects that align with its Triple Bottom Line decision-making philosophy of social, economic and environmental well-being to meet its citizens' present needs and the needs of future generations without compromising the ecosystems upon which we all depend; and

WHEREAS, the citizens of Fort Collins have provided continuous funding for open space and natural areas acquisition and maintenance since first voting for a capital improvement sales tax in 1973 and approving extensions or new revenue sources in every election such a question has appeared on the ballot; and

WHEREAS, Fort Collins has conserved over 40,000 acres of open space and natural areas since 1973; and

WHEREAS, the property formerly home to the Colorado State University's Hughes Stadium is a currently undeveloped 164.56-acre parcel of land that was recently annexed into the city of Fort Collins; and

WHEREAS, the City of Fort Collins has many distinct zoning districts in its land use code; and

WHEREAS, one zoning classification in the Fort Collins land use code is "Public Open Lands," which currently allows for parks, recreation and open lands, and wildlife rescue and education centers, subject to administrative or Planning and Zoning Board review; and

WHEREAS, the Hughes Stadium property is currently zoned as Transition District (T) pursuant to Division 4.12 of its land use code, which is intended for properties for which there are no specific and immediate plans for development; and

WHEREAS, the Hughes Stadium property occupies an area in between the current Maxwell Natural Area and Pineridge Natural Area; and

WHEREAS, the acquisition of the Hughes Stadium Property and conversion into a public open lands area would build upon the City's significant history of preserving open spaces and would provide an invaluable social, economic, and environmental resource for current and future generations of Fort Collins residents; and

WHEREAS, the Hughes Stadium property would represent a crown jewel acquisition for Fort Collins open space; and

WHEREAS, absent acquisition and conservation efforts under this ordinance, the Hughes Stadium property would forever be lost to residential and/or commercial development; and

WHEREAS, the acquisition of the Hughes Stadium property by the City of Fort Collins should occur using existing voter-approved open space sales tax revenue and other funds currently available to the City, financing agreements, grants, partnerships with other local governments, or other available fiscally responsible mechanisms; and

WHEREAS, publicly available information indicates Colorado State University values the Hughes Stadium property at \$10 million, and the City should use that figure as a starting point in its negotiations to acquire the property at its fair market value; and

WHEREAS, the rezoning of the Hughes Stadium property into the Public Open Lands (P-O-L) zoning district pursuant to Article 1, Division 1.3 and Article 4, Division 4.13 of the land use code would be necessary to convert the property into an area for parks, recreation and open lands, and wildlife rescue and education.

NOW THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 1. That the City hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City shall acquire the Hughes Stadium property, a 164.56-acre parcel of land legally described in Section 3 of Fort Collins Ordinance No. 123 (2018) (“Annexing the Property Known as the Hughes Stadium Property Annexation to the City of Fort Collins, Colorado”) at its fair market value for the purpose of using it for parks, recreation and open lands, natural areas, and wildlife rescue and education.

Section 3. That notwithstanding any contrary designation in the April 2019 City Plan or any action taken by the Council subsequent to its annexation of the Hughes Stadium property but before the passage of this Ordinance, the City shall rezone the Hughes Stadium property as Public Open Lands (P-O-L) zoning district pursuant to Division 4.13 of the City of Fort Collins land use code immediately upon passage of this Ordinance.

Section 4. That the City shall not de-annex, cease acquisition efforts, or subsequently rezone 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.

Section 5. That to acquire the Hughes Stadium property, the City shall seek funding from existing sources or future partnerships, including but not limited to the Fort Collins Open Space Yes! sales tax fund, Certificates of Participation, the City’s general fund, Great Outdoors Colorado and other third party organizations providing open space or other types of recreational or land conservation grants, and/or partnerships with other entities such as Larimer County.

Section 6. That the City Council may 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 this Ordinance.

Section 7. That the City shall expeditiously, but no later than two years from the passage of this Ordinance, use best efforts in good faith to acquire the Hughes Stadium property utilizing the financial mechanisms described in Sections 5 and 6.

Section 8. That this Ordinance shall take effect immediately upon passage by the majority of the voters of Fort Collins during the first available regular 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 this Ordinance.

Section 3. That the foregoing ballot title and submission clause for the citizen-initiated ordinance is hereby provisionally and conditionally submitted to the registered electors of the City

at said regular City election, conditioned upon and subject to subsequent judicial review and City Council modification as set forth in Sections 4, 5 and 6 below, in substantially the following form:

PROPOSED CITIZEN-INITIATED ORDINANCE

An ordinance requiring the City of Fort Collins to immediately rezone upon passage a 164.56-acre parcel of real property formerly home to the Hughes Stadium from Transition District to Public Open Lands, and make best efforts in good faith to purchase for fair market value said property expeditiously but no later than two years from the passage of this ordinance, to use said property for parks, recreation, and open lands, natural areas, and wildlife rescue and restoration, and further prohibiting the City from de-annexing, ceasing acquisition efforts or subsequently rezoning the property without voter approval of a separate initiative referred to the voters by City Council, and granting legal standing to any registered elector in the City to seek injunctive and/or declaratory relief in the courts related to City noncompliance with said ordinance.

FOR THE ORDINANCE _____

AGAINST THE ORDINANCE _____

Section 4. The City Council directs the City Attorney to file a declaratory judgment action in Larimer County District Court, and such other legal claims and causes of action as she determines to be appropriate, in order to seek a judicial determination of what aspects of the above-described citizen initiative and submission clause are properly placed on the ballot of the regular City election on April 6, 2021.

Section 5. In the event that there is a judicial determination that portions of the citizen initiative and submission clause are not properly placed on the ballot of the regular City election on April 6, 2021, it is the Council's intent that the ordinance and submission clause as submitted to the ballot above be modified or deemed modified to reflect the order of the deciding court, whether before or after the April 6, 2021 election.

Section 6. The City Manager and the City Attorney are directed to report back to the City Council on this matter on or before February 16, 2021, to provide the Council with the status of the declaratory action filed with the District Court and for the City Council to make a final determination on the wording of the ordinance presented in Section 2 above and the wording of the submission clause presented in Section 3 above that will be submitted to the City's electorate at the City's regular election on April 6, 2021.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this
17th day of November, A.D. 2020.



Mayor

ATTEST:



City Clerk