

DISTRICT COURT, COUNTY OF LARIMER,  
COLORADO

Larimer County Justice Center  
201 Laporte Avenue, Suite 100  
Fort Collins, Colorado 80521-2762  
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**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: 2020 CV 30833

Division: 3B

**MOTION TO AMEND JUDGMENT**

Plaintiff City of Fort Collins, Colorado, (the “City”), by and through its undersigned attorneys, and Defendants Planning Action to Transform Hughes Stadium Sustainably Corp, Elena M. Lopez, Melissa Rosas and Paul Patterson (collectively, the “Defendants”), by and through their undersigned attorney, submit this Motion to Amend Judgment pursuant to C.R.C.P. 59 (this “Motion”):<sup>1</sup>

## **I. INTRODUCTION**

The Court issued its “Order Denying in Part and Granting in Part Motions for Summary Judgment” on February 3, 2021 (the “Order”). The Court also issued its “Final Judgment” concerning the Order on the same date (the “Judgment”). The City and Defendants (the “Parties”) are jointly filing this Motion to ask the Court to amend or otherwise clarify the Order and Judgment in two respects.

First, City’s undersigned counsel does not believe he understood he was conceding for the City and did not intend to concede for it at oral argument on February 2, 2021, that *all* of Section 4 in the Initiated Ordinance was legislative as explained below in Section II and requests the Court to revisit this issue. More specifically, it was not understood or intended by the City to concede that the phrase “cease acquisition efforts” in Section 4 was legislative.

Defendants do not take a position on whether the City conceded the “cease acquisition efforts” language in Section 4 was legislative, but do not believe it is necessary for the Court take any further action on the issue because its Order is consistent with said language being legislative. Nevertheless, the City asks the Court to determine whether the phrase “cease acquisition efforts” in Section 4 is legislative or administrative based *solely* on the February 2, 2021, oral argument and the Parties’ pleadings, motions and briefs currently filed, and to amend its Order and Judgment

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<sup>1</sup> Due to the need for a ruling on this Motion as soon as possible, following the filing of this Motion, counsel for the City, emailed this Court’s Clerk to advise of the filing of this Motion.

accordingly. The City contends the phrase is administrative and Defendants contend it is legislative. The City and Defendants agree the remainder of Section 4 is legislative.

Second, the City asked the Court in the Prayer for Relief of its Complaint [Compl., p. 10 ¶¶ B and C] the Motion for Summary Judgment (the “MSJ”) [MSJ, pp. 20-22], and its Reply [Reply, p. 16] to sever the administrative provisions not only from the Initiated Ordinance, but to also sever the administrative provisions from the ballot title and submission clause the City Council adopted in in Section 9 of its Resolution 2020-105 (the “Ballot Measure”), which Resolution is attached as Exhibit 9 to MSJ. The Order and Judgment do not address the Ballot Measure. The Parties are asking the Court to amend its Order and Judgment to set the wording for the Ballot Measure by ordering one of the two alternatives described below in Section III be placed on the ballot for the City’s electors to consider at the City’s April 6, 2021, regular election.

The Parties further agree that, by stipulating to this Motion and regardless of how the Court decides this Motion, they shall not be deemed to have waived any of the arguments they have otherwise preserved in this action concerning the legislative or administrative character of the Initiated Ordinance or for any other issues argued by them in this action. It is the Parties’ intent in this Motion for the Court to amend the Order and Judgment to be consistent with the record before it, if deemed proper by the Court, and to ensure the Ballot Measure is consistent with the Initiated Ordinance as revised by the Court.

## **II. SECTION 4 OF THE INITIATED ORDINANCE**

The Court states in its Order:

The City seeks very specific relief. As to sections 1, 2, 4, 5, 6, 7, and in the next-to-last recital, it seeks a declaration that those provisions “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).” Compl., Prayer for Relief ¶ A. Then, it requests injunctive relief, in the form of an order directing that 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....” *Id.* ¶ C. (**The Court notes that, at oral argument, the City modified its request for relief because now it believes that Section 4 is legislative** and because it doesn’t object to the recitals being part of the Initiated Ordinance subject to their having no legal effect. Defendants’ didn’t object to such a declaration either.)

**Conversely, as to sections 3 and 4**, the City seeks a declaration 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 4 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 ....**” *Id.* ¶ B. (Emphasis added.) [Order, pp. 3-4.]

As the Court quotes above from paragraph B of the Claim for Relief from City’s Complaint, and as the City stated in Plaintiff’s Motion for Summary Judgment (the “MSJ”) [MSJ, p.20.], the City has always agreed these provisions in Section 4 are legislative: “[t]hat the City shall not de-annex . . . or subsequently rezone the Hughes Stadium property to any designation other than Public Lands without voter approval of a separate initiative referred to the voters by City Council.” However, the City did not intend to concede at oral argument its contention in the Complaint and MSJ, as reflected in Exhibit 15 of the MSJ, that the requirement in Section 4 that the City shall not “cease acquisition efforts” to acquire the Hughes stadium property without voter approval in a new initiative submitted by City Council to the City’s electors is administrative.

The City’s undersigned counsel apologizes to the Court for any confusion on this issue. Perhaps the undersigned counsel did not clearly hear the Court’s question about this issue or misunderstood the intent of the Court’s question, but since the City has always agreed most of Section 4 is legislative, except for the phrase “cease acquisition efforts,” the undersigned counsel may have mistakenly assumed your question took into account this exception since Section 4 is admittedly mostly legislative in character. Particularly since this is what the City had previously stated in the

Complaint and MSJ, and as also shown in the proposed changes to the Initiated Ordinance in Exhibit 15 of the MSJ, which Exhibit is attached hereto.

The City therefore asks the Court to amend its Order and Judgment to eliminate its findings related to the City's counsel conceding at oral argument that *all* of Section 4 is legislative. As previously stated, the City asks that if the Court so determines, that it should then decide whether the phrase "cease acquisition efforts" is legislative or administrative based *solely* on the Parties' February 2, 2021, oral argument and the pleadings, motions and briefs currently filed, and to amend its Order and Judgment accordingly. Again, the City contends it is administrative and the Defendants contend it is legislative consistent with the Court's findings elsewhere in the Order.

### **III. BALLOT MEASURE**

Since the Court's Order and Judgment provide that Sections 5, 6 and 7 of the Initiated Ordinance are to be severed from the Ordinance, the Parties ask the Court to revise the Ballot Measure so it is consistent with the Order and Judgment as amended or not amended under this Motion.

Therefore, if the Court grants the City the relief it requests above in Section II. on the issue of whether the City conceded all of Section 4 in the Initiated Ordinance is legislative and the Court decides the phrase "cease acquisition efforts" in Section 4 is administrative, the Parties request the Court amend its Order and Judgment to order the Ballot Measure to read:

#### **PROPOSED CITIZEN-INITIATED ORDINANCE**

Shall the City enact an ordinance requiring the City Council of the City of Fort Collins to immediately rezone upon passage of the ordinance a 164.56-acre parcel of real property formerly home to the Hughes Stadium from the Transition District to the Public Open Lands District, and requiring the City to acquire the property at fair market value 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 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.

YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_

However, if the Court either: (i) does not grant the City the relief it requests above in Section II. on the issue of whether the City conceded all of Section 4 in the Initiated Ordinance is legislative, or (ii) the Court grants the City such relief but decides the phrase “cease acquisition efforts” in Section 4 is legislative, the Parties request the Court amend its Order and Judgment to order the Ballot Measure to read:

**PROPOSED CITIZEN-INITIATED ORDINANCE**

Shall the City enact an ordinance requiring the City Council of the City of Fort Collins to immediately rezone upon passage of the ordinance a 164.56-acre parcel of real property formerly home to the Hughes Stadium from the Transition District to the Public Open Lands District, and requiring the City to acquire the property at fair market value 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.

YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_

**IV. CONCLUSION**

In conclusion, the Parties respectfully request the Court to grant this Motion in the manner as described above. The Parties reiterate and agree that in stipulating to this Motion they are not waiving in any future appeal any of the arguments they have otherwise preserved in this action concerning the legislative or administrative character of the Initiated Ordinance and for any other issues they have

argued. The Parties' intent of this Motion being to amend the Order and Judgment to be consistent with the record before this Court, if deemed proper by the Court, and to ensure the Ballot Measure is consistent with the Initiated Ordinance as revised by the Court.

Dated this 5<sup>th</sup> day of February, 2021.

Respectfully submitted,

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**ATTORNEY FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 5th day of February, 2021, a true and correct copy of this Motion to Amend was filed via the Colorado Courts e-filing system and served to the following parties:

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*/s/ Cary J. Carricato*

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Cary J. Carricato, Paralegal