

February 2, 2021

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

(Secretary's Note: Due to the COVID-19 crisis and state and local orders to remain safer at home and not gather, all Councilmembers, staff, and citizens attended the meeting remotely, via teleconference.)

● **ROLL CALL**

PRESENT: Pignataro, Gorgol, Potyondy, Gutowsky, Summers, Troxell, Cunniff
STAFF: Atteberry, Daggett, Coldiron

● **AGENDA REVIEW: CITY MANAGER**

City Manager Atteberry stated Item No. 12, *Resolution 2021-016 Making Council Liaison, Council Committee and City Representative Appointments*, has been changed to remove the North College Urban Renewal Ad Hoc Committee for further discussion and to add Councilmember names as appropriate. Additionally, he stated Council may consider a motion to adjourn into Executive Session after the staff presentation for Item No. 13, *Items Related to Regulation of Disposable Bags and Mitigation of Other Sources of Single Use Plastic Pollution*.

Mayor Troxell outlined the public participation options.

● **PUBLIC COMMENT**

Cheryl Distaso commented on the January 25th Our Home event stating she found the event and focus of Homeward 2020 to be problematic as there is no concrete definition of what 'rare, short-lived, and non-recurring' means in the context of homelessness. She also expressed concern about the lack of day shelter provided in the community and stated non-congregate shelter should be provided.

Rick Casey, Fort Collins Sustainability Group, commented on the carbon inventory report and stated the City could make significant progress in its emissions reduction goals by pressuring Broadcom, the largest producer of greenhouse gasses in the community.

Adam Eggleston expressed concern the Housing Strategic Plan does not have enough substance or detail to have an impact on affordable housing. He commented on the need for changes to the U+2 ordinance.

Rich Stave expressed concern about the number of vehicles around Fort Collins with expired license plates or no license plates. He also expressed concern about the COVID data and air exchange at the congregate homeless shelter.

Eric Sutherland stated the fourth quarter report on Connexion has yet to be released and stated timely information would be helpful. He stated previous reports have not contained enough detail and contended the project has been a failure.

● **PUBLIC COMMENT FOLLOW-UP**

Mayor Troxell summarized the citizen comments.

Mayor Pro Tem Cunniff asked about the current plan for Connexion quarterly updates. City Manager Atteberry replied quarterly updates for all utilities are planned to be coordinated and continued with an increase in the included data. He disagreed with Mr. Sutherland's characterization of Connexion's performance.

Mayor Pro Tem Cunniff asked about Broadcom's plans to reduce emissions. Lucinda Smith, Environmental Services Director, stated staff has been staying connected with Broadcom regarding the inventory and the company has been very cooperative. She noted this emissions category, industrial process and product use, are typically regulated at state or federal levels, not local levels. She stated Broadcom has been voluntarily installing some abatement devices to try to reduce emissions and is also participating in the state's environmental leadership program.

Smith noted Broadcom is beginning to connect with the Colorado Department of Public Health and Environment (CDPHE) as a stakeholder as part of the recent passage of a bill dealing with the management of greenhouse gases at the state level.

Councilmember Gorgol noted the Homeless Advisory Committee is still looking into a day shelter solution and asked if emergency shelter protocols are still in place. City Manager Atteberry replied in the affirmative. He noted an inspection of the air handling system has occurred at the congregate shelter. Jackie Kozak-Thiel, Chief Sustainability Officer, replied Building Services did an inspection at the Blue Spruce shelter specifically looking at air quality and provided approval for the system. She noted Council approved an emergency day use shelter at Westminster Presbyterian Church to serve as a day shelter on inclement weather days. She also noted the Homelessness Advisory Committee is continuing to work on 24/7 shelter options.

Mayor Troxell commented on Homeward 2020's efforts at putting data systems in place to understand and track individuals which helps to keep a focus around the definition of 'rare, short-lived, and non-recurring.' He also noted Mason Place has just opened allowing for permanent housing for many individuals.

Mayor Troxell requested information as to Mr. Stave's question about expired license plates. Deputy Police Chief Greg Yeager, replied Police Services enforces vehicle registration dates and there are seven dedicated officers who deal solely with traffic laws and motor vehicle collisions and many more that conduct traffic enforcement. He noted that enforcement action is taken for expired registrations or insurance if vehicles are pulled over.

City Manager Atteberry stated the new Connexion report will be monthly rather than quarterly and will come out tomorrow. He commented on Connexion's strong customer base, affordability, reliability, and accessibility.

● **CONSENT CALENDAR**

Rich Stave withdrew Item No. 10, *Resolution 2021-014 Authorizing and Approving the City's Participation in the Metro Mortgage Assistance Plus Program and Authorizing the Execution of a Delegation and Participation Agreement with the City and County of Denver in Connection Therewith*, from the Consent Agenda.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Gutowsky, to adopt and approve all items not withdrawn from the Consent Agenda.

RESULT:	CONSENT AGENDA ADOPTED [UNANIMOUS]
MOVER:	Ross Cunniff, District 5
SECONDER:	Susan Gutowsky, District 1
AYES:	Pignataro, Gorgol, Potyondy, Gutowsky, Summers, Troxell, Cunniff

1. **Consideration and Approval of the Minutes of the January 5, 2021 Regular Meeting and the January 6, 2021 and January 12, 2021 Special Meetings. (Adopted)**

The purpose of this item is to approve the minutes of the January 5, 2021 Regular Meeting and the January 6, 2021 and January 12, 2021 Special Meetings.

2. **Second Reading of Ordinance No. 018, 2021, Adopting the 2021 Classified Employee Pay Plan. (Adopted)**

This Ordinance, unanimously adopted on First Reading on January 19, 2021, recommends the 2021 Classified Employee Pay Plan for most classified employees. City classified employees' pay and pay ranges will remain the same as in 2020 due to the financial uncertainty caused by COVID-19. In addition, this item recommends changes to the 2021 Classified Employee Pay Plan for employees who are in the collective bargaining unit described in the 2019-2021 Collective Bargaining Agreement (the "Agreement") between the City and the Northern Colorado Lodge #3 of the Fraternal Order of Police. The Agreement was approved by Council by Resolution 2018-095 on October 2, 2018. The Agreement requires the City to complete an annual market analysis for positions in the collective bargaining unit. The Agreement specifies a salary data collection method and evaluation process that includes market data as of early January. This data has been collected and analyzed, resulting in the 2021 Classified Employee Pay Plan.

3. **Second Reading of Ordinance No. 019, 2021, Annexing the Property Known as the Springer-Fisher Annexation No. 1 to the City of Fort Collins, Colorado. (Adopted)**

This Ordinance, unanimously adopted on First Reading on January 19, 2021, annexes the first of two sequential tracts of land known collectively as the Springer-Fisher Annexations. Springer-Fisher Annexation No. 1 consists of 71.34 acres and establishes the required 1/6 contiguity with existing City limits. Springer-Fisher Annexation No. 1, located northwest of the East Mulberry Street and Greenfields Court intersection, would incorporate the property into Fort Collins' municipal boundaries, as well as incorporating portions of the property into the Residential Neighborhood Sign District. A related item to zone the annexed property is presented as the next item on this Agenda.

This annexation request conforms with the State of Colorado Revised Statutes as they relate to annexations, the City of Fort Collins Comprehensive Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreements.

4. **Second Reading of Ordinance No. 020, 2021, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Springer-Fisher Annexation No. 1, and Approving Corresponding Changes to the Residential Neighborhood Sign District Map. (Adopted)**

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2017-017.

This Ordinance, unanimously adopted on First Reading on January 19, 2021, applies zoning to the property included in the first of two sequential annexations. Springer-Fisher Annexation No. 1 is located northwest of the East Mulberry Street and Greenfields Court intersection. The proposed zoning for this annexation is General Commercial (C-G), Neighborhood Commercial (N-C), Employment (E), Low Density Mixed-Use Neighborhood (L-M-N), and Medium Density Mixed-Use Neighborhood (M-M-N). The surrounding properties are existing commercial and industrial land uses currently zoned in Larimer County as C-Commercial and I-Industrial zoning districts to the east, south

and west. The abutting City limit to the north is zoned Low Density Mixed-Use Neighborhood (L-M-N). Staff also recommends placement of the portions of the Springer-Fisher Annexation No. 1 that are zoned L-M-N and M-M-N into the Residential Neighborhood Sign District.

5. **Second Reading of Ordinance No. 021, 2021, Annexing the Property Known as the Springer-Fisher Annexation No. 2 to the City of Fort Collins, Colorado. (Adopted)**

This Ordinance, unanimously adopted on First Reading on January 19, 2021, annexes the second of two sequential tracts of land collectively known as the Springer-Fisher Annexations. Springer-Fisher Annexation No. 2 consists of 5.46 acres, establishes the required 1/6 contiguity with the Springer-Fisher Annexation No. 1, and is located northwest of the East Mulberry Street and Greenfields Court intersection. The annexation would incorporate the property into Fort Collins' municipal boundaries. A related item to zone the annexed property is presented as the next item on this Agenda.

This annexation request conforms with the State of Colorado Revised Statutes as they relate to annexations, the City of Fort Collins Comprehensive Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreements.

6. **Second Reading of Ordinance No. 022, 2021, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Springer-Fisher Annexation No. 2. (Adopted)**

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2017-017.

This Ordinance, unanimously adopted on First Reading on January 19, 2021, applies zoning to the property included in the second of two sequential annexations, Springer-Fisher Annexation No. 2. Springer-Fisher Annexation No. 2 is located northwest of the intersection of East Mulberry Street and Greenfields Court. The proposed zoning for this annexation is General Commercial (C-G). The surrounding properties are existing commercial and industrial land uses currently zoned in Larimer County as C-Commercial and I-Industrial (I) to the east, south and west.

7. **First Reading of Ordinance No. 023, 2021, Appropriating Philanthropic Revenue Received by City Give and Authorizing a Transfer to be Used for Ongoing COVID-19 Community Relief and Recovery. (Adopted)**

The purpose of this item is to appropriate \$100,000 in philanthropic revenue in the General Fund City Give Reserves for Covid-19 community relief and recovery received from donor Broadcom, Inc. The intent of the charitable gift, facilitated and secured by City Give and as designated by Broadcom Inc., is to support the critical and expanded needs of essential community services and organizations resulting from the pandemic.

It is the donor's determination the City possess unique knowledge of urgent community gaps and can serve as a critical gateway as to how monies can be effectively and immediately applied to local Covid-19 relief and recovery. Per the donor's designation, the City will distribute \$50,000 of the total gift to two community partners: CARE Housing to be used toward eviction prevention and on-site learning hubs to provide Internet access and academic support to K-12 students, and Meals on Wheels in support of their mission to provide meals to homebound seniors. The remaining \$50,000 will be awarded at \$25,000 each to the Utilities Payment Assistance Program in the Utility Customer Service & Admin Fund and to the Digital Access and Equity Program in the General Fund in support of the City's partnership with Code for America.

8. **First Reading of Ordinance No. 024, 2021, Appropriating Unanticipated Revenue in the Community Development Block Grant Fund for COVID-19 Response and Recovery. (Adopted)**

The purpose of this item is to appropriate unanticipated Community Development Block Grant (CDBG) funding in the amount of \$760,023 from the Department of Housing and Urban Development (HUD) for COVID-19 response and recovery.

9. **First Reading of Ordinance No. 025, 2021, Vacating Portions of Grant Avenue Alley Right-of-Way. (Adopted)**

The purpose of this item is to vacate a portion of an alley right-of-way (ROW). The original grant of the Grant Avenue alley ROW is contained in the West Side Addition Plat, Book 1, Page 19 of Larimer County Clerk and Recorder Records. The residents of 420 and 428 Grant Avenue have initiated a conceptual review under the City's Development Review process. In this review process, staff became aware that portions of the City's right-of-way for the North Grant Avenue alley had never been opened for public access and remain undeveloped and blocked by fences and well-established landscaping. At this time, only telecommunication lines run through this portion of the alley ROW, and the vacation reserves a utility easement over a portion of the vacated alley ROW to accommodate this existing utility use.

10. **Resolution 2021-015 Approving an Exception to the Competitive Purchasing Process for the Purpose of Extending the Contract with the Fort Collins Convention and Visitors Bureau, Inc. for Convention and Visitor Services. (Adopted)**

The purpose of this item is for Council to consider approval of an exception to the competitive purchasing process to extend the contract with the Fort Collins Convention and Visitors Bureau, Inc., d/b/a Visit Fort Collins, the City's current Convention and Visitor Services vendor. The current five-year agreement with Visit Fort Collins under RFP 8256 Convention & Visitor Services terminates on March 31, 2021. Due to extenuating circumstances precipitated by the COVID-19 pandemic, this Resolution seeks an exception to the City Code requirement for use of a competitive purchasing process to extend the agreement for one additional one-year term ending on March 31, 2022. An RFP will be initiated in late 2021 or early 2022 so that a vendor may be selected competitively and a new contract executed before April 1, 2022.

Exception to Competitive Bidding Rationale: Code Section 8-161(d)(1)(b). Although there exists more than one (1) responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the City, will otherwise injure the City's financial interests or will substantially impede the City's administrative functions or the delivery of services to the public.

● **CONSENT CALENDAR FOLLOW-UP**

Councilmember Gorgol commented on Item No. 7, *First Reading of Ordinance No. 023, 2021, Appropriating Philanthropic Revenue Received by City Give and Authorizing a Transfer to be Used for Ongoing COVID-19 Community Relief and Recovery*, which distributes \$100,000 of CARES funding to eviction prevention, utility assistance, internet access, and meals for homebound seniors. She also commented on Item No. 10, *Resolution 2021-014 Authorizing and Approving the City's Participation in the Metro Mortgage Assistance Plus Program and Authorizing the Execution of a Delegation and Participation Agreement with the City and County of Denver in Connection Therewith*, noting this is a down payment assistance program that will help fill a gap in the community.

Mayor Troxell noted Item No. 10 has been pulled and will be discussed further under Citizen Pulled Consent Items.

● **STAFF REPORTS**

A. Remington Street Project (staff: Heather McDowell)

Heather McDowell, Engineering Capital Projects Manager, discussed the Remington Stormwater Outfall Project noting it supports specific outcomes in two strategic objectives: safe community and environmental health. She stated the overarching goals for the project were to provide flood mitigation in the Spring Creek Basin, to make an important stormwater connection between College and Prospect and Spring Creek, and to provide water quality for stormwater runoff and set up for future extensions from the system. She discussed the location of the project and detailed the work on the project that occurred in 2020.

● **COUNCILMEMBER REPORTS**

Councilmember Gorgol noted Poudre Fire Authority is in the process of hiring a new Chief and there will be forthcoming public participation opportunities. She commended Mayor Troxell, City Manager Atteberry, and staff on the State of the City address.

Councilmember Pignataro commended the State of the City address. She discussed the Homeward 2020 closing discussion and reported on the recent National League of Cities Information Technology and Communications Committee meeting. She commended Lucinda Smith on her recent receipt of the 2020 Clean Air Excellence Award from the U.S. Environmental Protection Agency.

Councilmember Gutowsky commended the State of the City address and commented on a documentary called 2020 Hispanic Community Voices: The Impact of COVID-19.

Mayor Troxell commented on a recent call with Congressperson Neguse on the CARES 2021 funding that is being discussed, forthcoming infrastructure bills, and a forum on the wildfires. He also reported on the National League of Cities Transportation Infrastructure Services Federal Advocacy Committee's discussion around upcoming infrastructure bills. He also reported on an interview with Cheddar TV, an internet streaming channel, discussing the introduction of drones to communities.

● **DISCUSSION ITEMS**

11. **Resolution 2021-016 Making Council Liaison, Council Committee and City Representative Appointments. (Adopted as Amended)**

The purpose of this item is to fill the following vacancies resulting from the resignation of former Mayor Pro Tem Kristin Stephens:

1. *Councilmember liaison assignments for the:*
 - a. *CDBG Commission,*
 - b. *Transportation Board, and*
 - c. *Youth Advisory Board, and*
2. *Ad Hoc Direct Reports Compensation Committee,*
3. *Council Election Code Committee (Alternate),*
4. *Council Ethics Review Board,*
5. *Council Futures Committee (Alternate),*
6. *Legislative Review Committee (Alternate),*
7. *Library Trustee Selection Committee,*
8. *North College Urban Renewal Ad Hoc Committee (Alternate),*
9. *North I-25 Coalition,*

10. North I-25 Coalition Working Group: I-25 Funding Committee, and
11. Regional Transportation Coordination Task Force Policy Advisory Committee.

This item also fills a vacant Councilmember seat on the Poudre Heritage Alliance Board due to Councilmember Gutowsky's voluntary resignation.

City Clerk Coldiron stated this Resolution makes Council liaison, committee, and representative appointments needed due to former Mayor Pro Tem Stephens' departure from Council. She noted a vacancy remains for the alternate to the Ethics Review Board and Councilmember Pignataro expressed interest in filling the position left open by Councilmember Gutowsky on the Poudre Heritage Alliance Board. She noted the North College Urban Renewal Ad Hoc Committee was removed from this Resolution for further discussion on whether that should move under the purview of the Urban Renewal Authority.

Mayor Pro Tem Cunniff stated he would be willing to serve as the Ethics Review Board alternate.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Gutowsky, to adopt Resolution 2021-016 as amended on February 2, 2021.

RESULT:	RESOLUTION 2021-016 ADOPTED AS AMENDED [UNANIMOUS]
MOVER:	Ross Cunniff, District 5
SECONDER:	Susan Gutowsky, District 1
AYES:	Pignataro, Gorgol, Potyondy, Gutowsky, Summers, Troxell, Cunniff

12. **Items Related to Regulation of Disposable Bags and Mitigation of Other Sources of Single Use Plastic Pollution. (Postponed to Date Certain)**

- A. *First Reading of Ordinance No. 026, 2021, Amending Chapter 12 of the Code of the City of Fort Collins to Establish Regulations Regarding Disposable Bags and Mitigation of Other Sources of Single Use Plastic Pollution.*
- B. *First Reading of Ordinance No. 027, 2021, Approving and Appropriating an Off-Cycle Funding Request, Contingent on the Outcome of the April 2021 Election, to Support Initial Implementation of Ordinance No. 026, 2021, Establishing Regulations Regarding Disposable Bags.*

The purpose of this item is to consider adoption of an Ordinance regulating the distribution of disposable bags and future mitigation of other sources of single-use plastic pollution (the "Disposable Bag Ordinance") and Ordinance No. 027, 2021, making an appropriation to support implementation of the Disposable Bag Ordinance with outreach and engagement and provision of free reusable bags to the community (the "Appropriation Ordinance").

The Disposable Bag Ordinance:

- *Prohibits distribution of disposable plastic bags by large grocers to customers at point-of sale and imposes a \$0.12 fee on disposable paper bags distributed by large grocers to customers at point-of sale;*
- *Allocates the \$0.12 fee equally between the vendor and the City, with the City's share of the fee being committed to support the City's plastic pollution mitigation and solid waste and litter reduction program (the "Waste Reduction Program") as defined, and the vendor share being committed to pay the vendor's cost to implement the disposable bag fee program and encourage customer use of disposable bags;*
- *Includes an exemption from the bag fee for low-income customers; and*

- *Expressly reserve's Council authority and states Council's intent to make future modifications to address stakeholder input or unforeseen circumstances, regulate single-use plastic items in addition to disposable plastic bags, and extend regulations to other vendors in the City.*

The Appropriation Ordinance provides \$87,500 in funding to support initial 2021 roll-out of the Disposable Bag Ordinance and the Waste Reduction Program, including outreach and engagement and making free bags available to the community.

A resolution referring Ordinance No. 026, 2021, to the voters at the April 2021 regular municipal election will be presented for consideration at the time of consideration of second reading of Ordinance No. 026, 2021.

Molly Saylor, Sustainability Services, stated Council and staff have been working to craft a disposable bag ordinance that balances the need to address plastics pollution while also keeping the pandemic in mind. She noted this item also includes an appropriation ordinance that will help staff begin to transition the community to the new regulations, should they pass. Saylor also noted the ordinance currently includes language reserving Council the right to continue working on other plastics items in the future.

Saylor detailed the ordinance which would ban plastic bags and place a twelve-cent fee on paper bags at large grocers beginning May 1, 2022. She stated the fee revenue will be split evenly between the City and grocers with the City's portion being applied to a new plastic pollution mitigation and solid waste direction program. She noted there is an income-based fee exemption and she provided additional details on that exemption.

Rich Stave expressed concern this appears to be a tax and suggested plastic and paper bags should be allowed to be reused. He also questioned whether there is a specific purpose for the revenue that would be collected.

Emily Gallishotte opposed the proposed ordinance stating it puts an undue burden on the working-class people of the community who are not responsible for the vast majority of pollution.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Potyondy, that Council go into Executive Session for the purpose of discussing with the City's attorneys and appropriate management staff specific legal questions related to potential litigation regarding the proposed regulations regarding disposable bags and the manner in which the particular policies, practices, or regulations of the City related to the regulation of disposable bags may be affected by existing or proposed provisions of federal, state, or local law, pursuant to City Charter Article II, Section 11(2), City Code Section 2-31(a)(2), and Colorado Revised Statute Section 24-6-402(4)(b). Yeas: Troxell, Pignataro, Potyondy, Gorgol, Summers, Gutowsky and Cunniff. Nays: none.

(Secretary's Note: The Council went into Executive Session at this point in the meeting.)

Councilmember Summers noted all Councilmembers are concerned about pollution of any type and stated the issue is about how to arrive at a desired outcome, which in this case is to have everyone use reusable bags. He read a state law stating no unit of local government shall require or prohibit the use or sale of specific types of plastic materials or products, or restrict or mandate containers, packaging, or labeling, for any consumer product. He stated he believes this applies to Fort Collins. He noted the state will be taking up a bill that would repeal that law and will also be taking up a bill that would prevent stores and retail food establishments from providing single-use plastic carry-out bags, among other items, at the point of sale.

Mayor Troxell asked what types of public outreach and engagement occurred for this item. City Manager Atteberry replied the difficulties with COVID as well as the short timeframe have made some outreach difficult. Saylor discussed the public survey and results noting there have been over 700 responses. She noted the survey was the primary outreach mechanism. She stated Boards and Commissions were not visited as it was not possible with the given timeframe.

Mayor Troxell stated the public outreach efforts were not as robust as they should have been. He commented on the repeal of the citizen-initiated bag fee in 2014 and noted the two speakers were both opposed to the regulation. He suggested the Council make a resolution and strong statement to the upcoming Council.

Councilmember Pignataro asked if individuals can bring their own paper or plastic bags to stores. Saylor replied the ordinance does not prohibit that.

Councilmember Pignataro asked where plastic bags can be recycled. Saylor replied plastic film recycling does exist in Fort Collins. Caroline Mitchell, Environmental Program Manager, replied most plastic film is recycled by a company called Trex which turns it into plastic lumber along with sawdust. She discussed the recycling process and noted the film at the recycling center is taken to Waste Not Recycling which processes the film at its facility in Greeley.

Councilmember Pignataro asked what would occur with the revenue generated by the paper bag fee. Saylor replied this ordinance would create a program that would capture all activities related to plastic pollution and litter mitigation. The fee revenue would be applied to this program and would be used to cover the most direct administration, enforcement, and outreach costs, as well as possibly broader systems costs.

Victoria Shaw, Finance Analyst, noted this is a fee, not a tax; therefore, the City is not allowed to recover or generate more revenue than associated costs. She also noted there will be a periodic process to revisit the fee to ensure it remains at an appropriate level.

Councilmember Pignataro asked about the last date an item could be pulled from the printed April ballot. Chief Deputy City Clerk Rita Knoll replied February 16 would be the last date.

Councilmember Pignataro stated she has spent some time speaking to the current state representatives about the bills mentioned by Councilmember Summers. She noted there is no guarantee as to what the bill will contain after it goes through the process; however, most lawmakers seem to support eliminating the preemption thereby allowing home rule cities to make regulations they feel are best for their communities. She stated she is eager to see how the voters respond to this item.

Councilmember Gorgol requested additional information regarding equity and the plan for expanding past government equity for exemptions. Saylor replied there is a proposal for a "Be Our Guest" policy that would provide a stock of reusable bags that stores could make available to customers at no charge to anyone an employee would see as experiencing a barrier that had not been covered in the ordinance. She noted that would be at the discretion of the employee and training would be provided to stores.

Councilmember Gorgol stated this is a step in the right direction; however, she expressed concern about people having to admit they may need that assistance and about putting that responsibility on employees.

Mayor Pro Tem Cunniff asked if there is any conflict with referring the bag fee to the ballot given the 2014 citizen initiative. City Attorney Daggett replied in the negative and noted it is Council's prerogative to move forward with an ordinance and to choose to refer it to voters.

Mayor Pro Tem Cunniff asked if Council would be able to make changes without having to go back to voters should this be approved and a conflict with the state law is later found. City Attorney Daggett replied in the affirmative.

Mayor Troxell asked if this item is more of a referendum or vote for an enactment. City Attorney Daggett stated Council would be adopting the ordinance and referring it to voters; therefore, it would be a referendum.

Councilmember Gutowsky asked what would occur if the bag revenue outpaced expenses. Saylor replied the City cannot collect revenue that exceeds the associated costs of delivering the service, or program associated with this ordinance, because this is a fee. She stated staff is confident the fees can be transferred to associated costs given the way the categories have been defined, at least for the first several years of the program.

Councilmember Gutowsky noted the fee would not be implemented until 2022 allowing for ample roll-out time. Saylor replied in the affirmative and noted there is an associated ordinance that would borrow funding from future revenues to roll out the program starting in 2021, should this be approved by voters.

Councilmember Potyondy asked if there is any data as to the percentage of plastic film that is being diverted for recycling. Saylor replied that would be a difficult statistic to determine as there is no real way to assess what is lost to the environment. She noted there is a great deal of plastic film still going to the landfill.

Councilmember Potyondy stated aggressive action needs to be taken on minimizing plastic either at a state or local level; however, she stated the disproportionate impact on low-income residents must be addressed in a progressive, creative fashion. She stated putting pressure on businesses to reduce plastic use could be valuable as well.

Councilmember Summers stated data from the Environmental Protection Agency shows plastic at landfills is less than 1% of the total. He also stated efforts to divert plastic film to be recycled is always a good idea.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Pignataro, to approve Ordinance No. 026, 2021, on First Reading.

Mayor Pro Tem Cunniff stated he appreciated the dialogue on this item and commented on whether the state legislature adequately established a rationale for a state preemption of local control in this area. He stated he is interested to hear about specific proposals related to equity and stated a voter-approved measure could be bolstered by state legislation. He commented on the importance of asking the state to clarify the preemption to grant full authority to future Councils.

Councilmember Gorgol made a motion to amend, seconded by Councilmember Summers, to include language that would expand the exemption to not solely focus on government participation programs.

City Attorney Daggett suggested setting up an expectation in the language that the City Manager could establish lists of other types of programs and eligibility that might be added to those listed on an ongoing basis.

Councilmember Summers suggested the possibility of using the fee revenue to provide reusable bags to anyone so income-qualification would not be necessary.

Mayor Pro Tem Cunniff suggested language specifically related to equity-related waste reduction initiatives, which could include providing reusable bags, but could also include other things. City Attorney Daggett noted the definition of the waste reduction program includes a fairly extensive list of the types of activities for which the bag revenues could be used and providing reusable bags is part of that list.

Mayor Pro Tem Cunniff stated the language is not specifically evocative of the equity issue. He suggested there is also an important component of having some flexibility of earmarking the fee partly for equity programs in the definitions of waste reduction program. He also noted some of the language could be altered prior to Second Reading.

Councilmember Gorgol stated there should be a specific focus on reaching those who may not qualify for a government programs exemption. Additionally, she stated options need to be available for those who may not be able to transport reusable bags.

Councilmember Potyondy concurred and stated there are populations who need to have disposable bags available. She supported the idea of having the “Be Our Guest” program.

Councilmember Summers commented on the convenience of plastic bags with handles for individuals with disabilities.

Councilmember Potyondy mentioned a constituent’s comment related to the higher environmental impact of canvas bags over other lightweight options.

Mayor Troxell stated it is difficult to argue against the current bags when considering embedded energy and stated he would not support the amendment nor the main motion as the most equitable outcome is to not pass the main motion.

Councilmember Gutowsky asked about best practices related to equity in other communities in Colorado who have instituted a similar measure. Lucinda Smith, Environmental Services Director, replied staff has looked at how other communities have handled bag fee exemptions and the language is much narrower than this proposal, generally relating to exemptions being provided for participants in state or federal food assistance programs.

City Attorney Daggett provided her language edits based on the proposed amendment and stated more refined language could be provided for Second Reading. Councilmembers Gorgol and Summers accepted the language as accurately capturing the amendment.

Mayor Pro Tem Cunniff and Councilmember Pignataro accepted the amendment as friendly.

Councilmember Gorgol commented on the importance of adopting an item that is right for Fort Collins with a focus on equity and outreach. She noted the final decision will ultimately be up to

the voters and she thanked Councilmember Summers for mentioning the need to consider individuals with mobility issues.

Mayor Troxell requested additional information as to whether this is a referendum. City Attorney Daggett replied it would be a referred ordinance and Council would have the option to amend the language after voter approval. She stated Council would adopt the ordinance on first and second reading, then refer it to the voters via resolution.

Mayor Troxell asked if there is a current state law that preempts local governments from enacting bans on plastic bags. City Attorney Daggett replied there is room for argument in the extent of the law, what activities it prohibits, and whether home rule cities have local authority. She also noted there are other jurisdictions that have also moved forward with this type of regulation arguing that they have authority to do so in the face of the statute mentioned.

Mayor Troxell stated there are some troublesome aspects to the motion given the preemption.

Mayor Pro Tem Cunniff stated his interpretation of the statute is different and placing the action in the hands of voters is important.

Councilmember Gutowsky thanked Councilmember Pignataro for her information on the upcoming state bill and noted there is no guarantee of how that will progress. She stated she will support the ordinance as she is not convinced Fort Collins is preempted from putting this issue on the ballot.

Mayor Troxell reiterated he will oppose the motion stating that is the most equitable solution. He expressed concern this rushes the process and expressed concern there was not enough public outreach. He opposed the timing and policy of this vote and stated there are better opportunities for plastics pollution prevention.

RESULT:	ORDINANCE NO. 026, 2021 [5 TO 2]
MOVER:	Ken Summers, District 3
SECONDER:	Ross Cunniff, District 5
AYES:	Pignataro, Gorgol, Potyondy, Gutowsky, Cunniff
NAYS:	Summers, Troxell

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Pignataro, to adopt Ordinance No. 027, 2021, on First Reading.

Councilmember Summers questioned what will be done with these funds during such a challenging budget year. He also questioned what work will need to be done to communicate the policy to the public should it pass in April and asked how additional expenses have been covered up to this point. Saylor replied the budget offer is for a classified staff person to roll out the program with the community and grocers, including working with grocers to create a grocer fee revenue plan. The funds would also aid in conducting equitable communications and engagement campaigns, coordinating and distributing free reusable bags to low and medium income households, and continuing to develop the comprehensive approach regarding plastics overall. She stated there will also be preparation for the administration elements of the ordinance.

Shaw stated the funds would be borrowed from the General Fund Reserves in 2021 to seed the start-up costs to ensure the program will be successful when it is rolled out in 2022. She stated it is anticipated the program revenues generated from the fee, beginning in 2022, will essentially break even with the new core costs of the program, and in 2023, it is anticipated the Reserves could be repaid and expansion into the other cost categories could occur.

Councilmember Summers asked why bags that are not going to be used until 2022 would be distributed in 2021. Saylor replied there are logistics and time involved in getting bags where they need to go. She noted community service partners will also be involved.

Councilmember Summers expressed concern about fully funding this with Reserves and not having it go through more of a budget process. He questioned how the City will be dictating the program to grocers.

Councilmember Summers made a motion, seconded by Mayor Pro Tem Cunniff, to table consideration of this item to the Council meeting following a discussion at the Finance Committee meeting.

Mayor Pro Tem Cunniff noted this would place consideration of First Reading of this item on the March 2, 2021 agenda.

Mayor Troxell asked if this postponement would impact the previously approved ordinance. City Attorney Daggett replied in the negative.

Mayor Pro Tem Cunniff supported having the discussion in Finance Committee.

Councilmember Pignataro asked how much money is involved in the 2021 seed money. Shaw replied it is \$87,500 and she noted the costs included in the seed money are aligned with the ongoing costs assumed to administer the ordinance. Those were modeled as part of the fee study that looked at the low and high end scenarios for total cost and how potential revenues could be absorbed from \$800,000 to \$1.4 million which address the new core programmatic cost, absorbing some existing ongoing costs that are currently absorbed by various departments, and allowing for program expansion to include equitable engagement.

Mayor Troxell asked when mid-cycle budget adjustments would happen in 2021. City Manager Atteberry noted there is typically a mid-cycle adjustment at the end of the first year of the usual two-year budget; however, a mid-cycle adjustment has not been contemplated for this single-year budget. He noted Council has the prerogative to do a mid-course appropriation or correction at any point. Travis Storin, Interim Chief Financial Officer, concurred with that assessment.

RESULT:	POSTPONED TO MARCH 2, 2021 [UNANIMOUS]
MOVER:	Ken Summers, District 3
SECONDER:	Ross Cunniff, District 5
AYES:	Pignataro, Gorgol, Potyondy, Gutowsky, Summers, Troxell, Cunniff

● **CONSIDERATION OF CITIZEN-PULLED CONSENT ITEMS**

13. **Resolution 2021-014 Authorizing and Approving the City's Participation in the Metro Mortgage Assistance Plus Program, and Authorizing the Execution of a Delegation and Participation Agreement with the City and County of Denver in Connection Therewith. (Adopted)**

The purpose of this item is to consider a Resolution allowing residents of Fort Collins to participate in a down payment assistance program administered by the City and County of Denver, by approving an agreement between the City of Fort Collins and Denver delegating to Denver the authority to operate the program within Fort Collins. This program expands the range of down payment assistance available in the City to households earning up to \$150K (most current programs administered by City partners only go up to 80% AMI) at no cost to the City. This responds to the Council priority of Affordable and Achievable Housing.

Rich Stave questioned the source of these funds and asked why it requires a Council vote if no City resources are being expended.

Mayor Troxell requested an overview of the program. Sue Beck-Ferkiss, Sustainability Services, replied this is a down payment assistance program for individuals who have enough income to qualify for a mortgage but need one time assistance with down payment and closing cost funds. She stated the program is provided by the City and County of Denver and provides assistance to middle-income ranges rather than only affordable income ranges. She stated Denver is acting as a housing finance authority in this case and they put individuals in contact with lenders who provide first and second mortgages, the second being the assistance which is forgivable over three years. She stated the assistance is funded through capital markets that Denver has access to as a housing finance authority.

Councilmember Summers asked if the assistance is in the form of a forgivable second mortgage. Beck-Ferkiss replied in the affirmative. Andrew Jackson, City and County of Denver, stated the second mortgage, which is the assistance, is forgiven incrementally with each first mortgage payment and the second mortgage is completely forgiven after three years of first mortgage payments.

Councilmember Summers stated the reason Council needs to act on this is because this is an intergovernmental agreement which requires Council action.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Gorgol, to approve Resolution 2021-014.

Councilmember Pignataro thanked Mr. Stave for the questions and commended the program.

RESULT:	RESOLUTION 2021-014 ADOPTED [UNANIMOUS]
MOVER:	Ross Cunniff, District 5
SECONDER:	Emily Gorgol, District 6
AYES:	Pignataro, Gorgol, Potyondy, Gutowsky, Summers, Troxell, Cunniff

● **OTHER BUSINESS**

Motion To Adjourn To February 9, 2021.

Mayor Pro Tem Cunniff stated Council is currently awaiting a decision from a judge on the petition regarding the Hughes parcel ballot initiative on which portions are administrative and therefore not able to be placed on a ballot. He requested Council support bringing forward a resolution for

Council consideration at the same meeting during which the ballot language is set to direct staff, in a contingent way, to take those administrative actions if the judge finds some of the language to be administrative in nature.

Mayor Troxell suggested there may be a need to wait until the outcome of the election.

Mayor Pro Tem Cunniff stated this type of resolution may be at least informative for the public as citizens contemplate the ballot measure.

Mayor Troxell asked about the case law related to these types of administrative actions. City Attorney Daggett replied staff believes the case law strongly indicates the acquisition provisions of the ballot measure are administrative and should not go to the voters under the Colorado Supreme Court's adopted jurisprudence around citizen initiatives in Colorado. She stated staff is hoping to have a decision from the judge prior to Council finalizing the ballot language on February 16.

Mayor Troxell asked if Mayor Pro Tem Cunniff would be comfortable having staff prepare a memo on some type of separate resolution. Mayor Pro Tem Cunniff replied that would be fine if there is an option to use this discussion to ask staff to bring forward a resolution.

Councilmember Pignataro requested additional clarification on Mayor Pro Tem Cunniff's request. Mayor Pro Tem Cunniff replied Council could adopt a resolution that directs the City Manager to enter into negotiations with Colorado State University based on the administrative provisions that were stripped from the ballot measure if the judge finds the acquisition language cannot be part of the ballot language and the zoning aspect of the ballot language passes. He stated he envisions Council considering this resolution on February 16 when the ballot language would be set.

Councilmember Pignataro asked if it would be possible to adjourn this meeting to next Tuesday in the event a decision has been made by the judge.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Pignataro, to adjourn to Tuesday, February 9, 2021, to consider such other business as may come before Council.

Rich Stave questioned the reason for the adjournment and stated it is confusing when both a meeting and worksession occur at the same time. He asked if there will be another opportunity for public input.

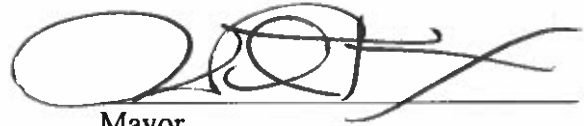
Mayor Troxell noted Council is awaiting a decision by a judge related to the citizen-initiated ballot language and adjourning would allow for time to get that judgement.

Mayor Troxell stated he would not support the motion as he believes there are other options and a special meeting could be called if necessary.

RESULT:	ADOPTED [6 TO 1]
MOVER:	Ross Cunniff, District 5
SECONDER:	Julie Pignataro, District 2
AYES:	Pignataro, Gorgol, Potyondy, Gutowsky, Summers, Cunniff
NAYS:	Troxell

• **ADJOURNMENT**

The meeting adjourned at 10:06 PM.



Mayor

ATTEST:



City Clerk

