

March 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, citizens, and staff 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 there were no changes to the published agenda.

● **PUBLIC COMMENT**

Mayor Troxell outlined the public participation options.

Rich Stave commented on the Energy Board's discussion about electric rates and asked when the public will be given the opportunity to make public comment on the topic.

Amber Lane discussed the importance of strengthening the nation-to-nation relationships with tribal nations. She also expressed concern about the Climate Action Plan lacking direct actions.

Eric Sutherland discussed the Connexion business plan noting one of its primary conclusions was that Connexion could pay off the debt that was required to initiate the project. He stated the actual revenues and revenue growth do not match what was predicted in the business plan. He stated the enterprise cannot sustain itself financially.

Adam Eggleston expressed support for Connexion as a private citizen. As a representative of the Fort Collins Board of Realtors Government Affairs Committee, he expressed support for Colorado State University's proposed redevelopment of the Hughes Stadium property to help aid in meeting the City's affordable housing goals.

● **PUBLIC COMMENT FOLLOW-UP**

Mayor Troxell summarized the citizen comments.

City Manager Atteberry noted Council will be discussing time of day rates at the meeting scheduled for March 9.

Councilmember Pignataro commented on the need for an instructional video or some other type of explanation of how Council agendas work. City Manager Atteberry replied the first draft of that video has been completed and the final version should be done within a month.

Molly Saylor, Our Climate Future co-lead, stated Ms. Lane is an Our Climate Future ambassador and her input has resulted in a new action guide among other implementation items.

Mayor Troxell requested staff discuss the status of the Connexion rollout. City Manager Atteberry replied Fort Collins will be one of the most connected cities in North America and around the

world at the completion of the broadband project. He noted Loveland, Longmont, and Estes Park are also installing broadband systems and projected population growth in the area is creating the need for a connected region.

● **CONSENT CALENDAR**

Councilmember Gorgol made a motion, seconded by Councilmember Gutowsky, to adopt and approve items 1 through 12 on the Consent Agenda.

RESULT:	CONSENT CALENDAR ADOPTED [UNANIMOUS]
MOVER:	Emily Gorgol, District 6
SECONDER:	Susan Gutowsky, District 1
AYES:	Pignataro, Gorgol, Potyondy, Gutowsky, Summers, Troxell
ABSENT:	Cunniff

1. **Consideration and Approval of the Minutes of the February 2, 2021 Regular meeting and the February 9, 2021 Adjourned meeting. (Adopted)**

The purpose of this item is to approve the minutes from the February 2, 2021 Regular meeting and the February 9, 2021 Adjourned Meeting.

2. **Second Reading of Ordinance No. 029, 2021, Appropriating Unanticipated Philanthropic Revenue in the General Fund Received by City Give for Transfer to the Parks Department for Upgrades to Water's Way Park. (Adopted)**

This Ordinance, unanimously adopted on First Reading on February 16, 2021, appropriates \$6,105 in philanthropic revenue in the General Fund and authorizes a transfer to the Parks Department for amenity upgrades to Water's Way Park as designated by the donors, friends and family of Willy Mergenthaler.

3. **Items Related to Sales Tax and Lodging Tax Code Updates, the Elimination of the Utilities Refund Program, and an Exception to the Outdoor Vendor License Requirement. (Adopted)**

- A. Second Reading of Ordinance No. 030, 2021, Amending Certain Sections of Chapter 25 of the Code of the City of Fort Collins Relating to the Imposition, Collection and Enforcement of the City's Sales, Use and Lodging Taxes.
- B. Second Reading of Ordinance No. 031, 2021, Amending Chapter 15 of the Code of the City of Fort Collins to Establish an Exception for Minor Businesses to the Outdoor Vendor License Requirement.
- C. Second Reading of Ordinance No. 032, 2021, Amending Certain Sections of Chapter 26 of the Code of the City of Fort Collins Eliminating the Utility Refund Program.

These Ordinances, unanimously adopted on First Reading on February 16, 2021, amend City Code to eliminate rebate programs in accordance with the City's 2021 budget, to clarify certain existing provisions, to allow for notice to taxpayers by electronic mail, and to create an exception to the sales tax license and outdoor vendor license requirements for temporary commercial enterprises operated by minors.

4. **Second Reading of Ordinance No. 033, 2021 Adopting the Housing Strategic Plan as an Element of the City's Comprehensive Plan. (Adopted)**

This Ordinance, unanimously adopted on First Reading on February 16, 2021, adopts an update to the Housing Strategic Plan. The updated plan includes three changes identified at First Reading: (1)

incorporates health care and childcare costs in the Introduction; (2) connects housing to other topics in the City's Legislative Policy Agenda policies more broadly; and (3) updates the assumptions contained in the "Ownership Affordability" graph on page 25 to be consistent with similar calculations in the appendix of the plan on page 113.

5. **Second Reading of Ordinance No. 034, 2021, Appropriating Prior Year Reserves for Phase One of the Land Use Code Update to Reorganize the Land Use Code and Complete Housing Revisions as an Implementation Action Recommended in City Plan (2019) and the Housing Strategic Plan (2021). (Adopted)**

This Ordinance, unanimously adopted on First Reading on February 16, 2021, requests an off-cycle general fund appropriation in the amount of \$290,000 for Phase 1 of the Land Use Code (LUC) update. This appropriation will enable staff to draft critical LUC changes and complete a code reorganization that will implement City Plan, implement the Housing Strategic Plan and a quicker win identified by the Ad Hoc Housing Committee, improve housing supply and affordability in Fort Collins, and consolidate, simplify, and increase the user-friendliness of the LUC. Project funding will be supplemented by \$60,000 of grant funds received for the Home2Health initiative for a total project budget of \$350,000. The Council Finance Committee reviewed this appropriation request at its January 25, 2021 meeting and indicated support for consideration by the full Council.

6. **First Reading of Ordinance No. 035, 2021, Reappropriating Funds Previously Appropriated in 2020 But Not Expended and Not Encumbered in 2020. (Adopted)**

The purpose of this item is to reappropriate monies in 2021 that were previously authorized by Council for expenditures in 2020 for various purposes. The authorized expenditures were not spent or could not be encumbered in 2020 because:

- There was not sufficient time to complete bidding in 2020 and therefore, there was no known vendor or binding contract as required to expend or encumber the monies; or
- The project for which the dollars were originally appropriated by Council could not be completed during 2020 and reappropriation of those dollars is necessary for completion of the project in 2021.

Additionally, there may have been sufficient unspent dollars previously appropriated in 2020 to carry on programs, services, and facility improvements in 2021 for those specific purposes. In the above circumstances, the unexpended and/or unencumbered monies lapsed into individual fund balances at the end of 2020 and reflect no change in Council policies.

Monies reappropriated for each City fund by this Ordinance are as follows:

General Fund	\$912,543
Keep Fort Collins Great Fund	226,690
Cultural Services Fund	55,000
Wastewater Fund	35,000
Total	\$1,229,233

7. **First Reading of Ordinance No. 036, 2021, Making a Supplemental Appropriation for Grants to Fort Collins Utilities Commercial Water Customers for Water Conservation Landscape Transformation Projects. (Adopted)**

The purpose of this item is to appropriate unanticipated grant revenue in the amount of \$70,000 awarded by the United States Department of Interior, Bureau of Reclamation ("Reclamation") to the Fort Collins Utilities Water Conservation Division ("Water Conservation"). The funds will support commercial-scale waterwise landscape transformations through the Xeriscape Incentive Program (also known as "XIP"). Eligible participants of the program include but are not limited to homeowners'

associations ("HOAs"), businesses, religious organizations, government entities, schools, and other Fort Collins Utilities commercial water customers.

8. **First Reading of Ordinance No. 037, 2021, Appropriating Prior Year Reserves and Making Supplemental Appropriations for the Utilities Locating Department. (Adopted)**

The purpose of this item is to provide supplemental resources in the 2021 budget for the Utilities Locating Department. Utilities has a regulatory obligation to fulfill underground facility locating requests within 48 hours of notification and the current volume of locating requests exceeds the normal capacity of Department resources. This appropriation will provide additional resources to contract for third party services to meet locating request obligations in 2021.

9. **First Reading of Ordinance No. 038, 2021, Establishing Rental Rates and Delivery Charges for Use of Water Available Under Fort Collins Utilities' Raw Water Interests for 2021 Through March 2024. (Adopted)**

The purpose of this item is to obtain Council approval for the proposed formulas for calculating rental rates and delivery charges for Fort Collins Utilities' (Utilities) raw water supplies for approximately three years, which includes proposed rental rates and delivery charges for fully consumable water. The rates and charges would be effective through March 2024, to address the gap between the end of 2023 and Council approval of new rates and charges in early 2024. Setting the rates and charges via formula ensures Utilities will recoup its costs for rented water while increasing the planning certainty for the water rental community.

Staff is recommending an increase in the rental rate for fully consumable water. This increase will only impact customers of our year-to-year leasing program. The increase reflects the cost of administering these rentals and is in line with market conditions for this type of water. This is the only significant change to the rental rates and delivery charges.

10. **Items Relating to the South Timberline Improvement Project – Stetson Creek to Trilby. (Adopted)**

- A. Resolution 2021-026 Approving an Intergovernmental Agreement with the Colorado Department of Transportation for the Timberline Improvements Project – Stetson Creek Road to Trilby Road.
- B. First Reading of Ordinance No. 039, 2021, Making Supplemental Appropriations and Appropriating Prior Year Reserves for the South Timberline Road Improvements Project - Stetson Creek Road to Trilby Road and Related Art in Public Places.

The purpose of this item is to enable the City to receive and use federal Surface Transportation Block Grant funds for the South Timberline Improvement Project - Stetson Creek to Trilby (the "Project"), to appropriate those funds and Transportation Capital Expansion Fee ("TCEF") Fund reserves to fully fund the Project, and to appropriate Transportation Services Fund reserves to satisfy the City's Art in Public Places program contribution requirements. This will authorize the Mayor to sign an intergovernmental agreement with the Colorado Department of Transportation ("CDOT") to receive and use the federal grant funds and will appropriate \$4,556,542 into the Capital Projects Fund for the Project. These funds will be used for the construction of roadway improvements along Timberline Road from Stetson Creek Drive to Trilby Road. Finally, a transfer of \$18,435 from the Project to the Cultural Services and Facilities Fund will be made for the required Art in Public Places program contribution.

11. **Resolution 2021-027 Authorizing the City Manager to Execute an Agreement with the United States Fish and Wildlife Service to Fund a Temporary Position to Work on the Halligan Water Supply Project. (Adopted)**

The purpose of this item is to approve an intergovernmental agreement (IGA) between the City of Fort Collins (City) and the United States Fish and Wildlife Service (USFWS) to fund a temporary position

in the USFWS office to support work associated with the Endangered Species Act coordination for the Halligan Water Supply Project (Halligan Project or Project).

A critical step in the federal permitting process for the Halligan Project involves consultation with USFWS toward compliance with the Endangered Species Act to address potential impacts from the Halligan Project on federally threatened or listed species. The Halligan Project's point of contact at the USFWS is working under a contract position that will be defunded in March 2021. Defunding of this position could cause delays to the project and increased project costs due to inefficiencies. The IGA would enable the City to continue to fund the position to provide agency staff continuity and avoid further schedule delays due to the federal permitting process.

12. **Public Hearing and Resolution 2021-028, Approving the Programs and Projects that will Receive COVID-19 Response and Recovery Funding from the Federal Community Development Block Grant Program. (Adopted)**

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

13. **Resolution 2021-029 Making Appointments to the Parking Advisory Board of the City of Fort Collins. (Adopted)**

The purpose of this Resolution is to make appointments to the Parking Advisory Board.

● **CONSENT CALENDAR FOLLOW-UP**

Mayor Troxell commented on Item No. 7, *First Reading of Ordinance No. 036, 2021, Making a Supplemental Appropriation for Grants to Fort Collins Utilities Commercial Water Customers for Water Conservation Landscape Transformation Projects*, noting it is a good news item related to leveraging resources and water conservation.

● **STAFF REPORTS**

A. **Staff Report: Cache la Poudre Instream Flow Project Update** (staff: John Stokes, Eric Potyondy)

John Stokes, Community Services Deputy Director, stated the instream flow project aims to increase flows in the Poudre River to provide ecological benefit.

Councilmember Potyondy noted Eric Potyondy is her husband.

Eric Potyondy, City Attorney's Office, detailed the Poudre Flows Plan and discussed the partnering entities. He noted the plan's goal aligns with strategic objectives related to protecting and enhancing natural resources on City-owned properties and protecting the Poudre River itself. He noted this plan focuses on the canyon mouth to the river's confluence with the South Platte River just east of Greeley. He stated the help of the legislature was sought to gain approval for the augmentation plan and a bill was ultimately approved almost unanimously in early 2020.

Potyondy explained the concept of the plan which is to take water that was previously used and consumed by crops for irrigation, add it to the river in which it will be protected while it is there, and at the end of the defined reach, after the water has improved flows, the water can either be left in the river or rediverted for another use. He stated staff is hoping to file its application in water court this month or next, and that process is two to three years. Should it be approved, implementation will occur and a new agreement among partners will likely be put in place.

Mayor Troxell and Mayor Pro Tem Cunniff commended John Stokes on his service to the City in various capacities.

(Secretary's Note: Mayor Pro Tem Cunniff joined the meeting during the previous presentation.)

● **COUNCILMEMBER REPORTS**

Councilmember Gorgol reported on public interviews with the finalists for the Poudre Fire Authority Fire Chief position.

Councilmember Potyondy reported on the Fort Collins Symphony receiving the North American Business Award for Most Regional Orchestra.

Mayor Troxell reported on his participation in City Lab, specifically the Mayor's Innovation Lab. He also reported on the recent Platte River Power Authority Board meeting related to integrated resource planning and on the Northern Colorado Regional Airport strategic planning meeting.

● **DISCUSSION ITEMS**

14. **Second Reading of Ordinance No. 028, 2021, Making Supplemental Appropriations for Year 2 of the Home2Health Project, (Adopted on Second Reading)**

This Ordinance, adopted on First Reading by a vote of 6-0 (Recused: Gorgol), completes the second and final appropriation of unanticipated grant revenue in the amount of \$363,513 awarded by the Colorado Department of Public Health and Environment (CDPHE) through its Health Disparities Grant Program (HDGP). In 2019, Fort Collins was awarded a reimbursable grant of \$795,657 from CDPHE to support the Home2Health initiative. The first appropriation of \$397,828 was approved on consent via Ordinance No. 090, 2019.

(Secretary's Note: Councilmember Gorgol withdrew from the discussion of this item due to a conflict of interest.)

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Potyondy, to adopt Ordinance No. 028, 2021, on Second Reading.

RESULT:	ORDINANCE NO. 028, 2021 ADOPTED ON SECOND READING [6 TO 0]
MOVER:	Ross Cunniff, District 5
SECONDER:	Melanie Potyondy, District 4
AYES:	Pignataro, Potyondy, Gutowsky, Summers, Troxell, Cunniff
RECUSED:	Gorgol

15. **First Reading of Ordinance No. 027, 2021, Approving and Appropriating an Off-Cycle Funding Request Contingent on the Outcome of the April 6, 2021, Election, to Support Initial Implementation of Ordinance No. 026, 2021, Establishing Regulations Regarding Disposable Bags, (Adopted on First Reading)**

The purpose of this item is to consider adoption of an appropriation ordinance which provides \$87,500 in funding to support the 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.

Molly Saylor, Environmental Sustainability Senior Specialist, stated this appropriation, which is contingent upon the ballot measure passing, would help staff get started on transitioning the community to the new rules around plastic and paper bags. She noted a best practice is to ensure environmental policies have adequate resources available for rollout and implementation. She

discussed the input received from the Council Finance Committee and stated that feedback will be considered as staff works with Human Resources to determine the appropriate staffing approach.

Amber Lane stated banning plastic bags is a drop in the hat of what needs to be done and these funds could be better spent on requiring corporations to pay for these programs.

Mayor Troxell asked if there is a sunset provision. Jackie Kozak-Thiel, Chief Sustainability Officer, replied a sunset provision approach should be addressed by City Attorney staff. From a financial plan perspective, Saylor stated the plastic bag ordinance includes a provision that the fee will be reevaluated, and the fee study will be updated every four years.

Victoria Shaw, Finance Senior Analyst, stated research on peer cities has shown a range in behavior shift, and at the current fee level, new core and ongoing costs of the program would be covered by 3% of the current bag volumes being purchased with the fee.

City Attorney Daggett noted Council appropriates operating revenues such as this on an annual basis and during typical two-year budget cycles; therefore, the actual budgeting and funding for the program will be an ongoing funding budget item. She also noted Ordinance No. 026, 2021, refers the ordinance to the voters; however, there is room for Council to review and revisit the program and fee and to apply new approaches if things change.

Mayor Troxell stated it seems it may have been appropriate to consider a sunset provision prior to the consideration of this item.

Mayor Pro Tem Cunniff noted this is not targeting zero waste goals, but rather plastic pollution, and part of the fee revenue would go toward more accurately monitoring plastic bag pollution, particularly in the Poudre River.

Councilmember Summers stated it would have been helpful for that information to have been included in the budget figures. He questioned transparency regarding the projected costs and budget and suggested the formation of a clearer document. City Manager Atteberry replied staff is certainly not attempting to make this information difficult and challenging to decipher and more transparency is always the goal.

Councilmember Summers asked if this appropriation is only for 2021. Saylor replied in the affirmative.

Councilmember Summers asked if there is any reason this is not being considered until after the election. Saylor replied the goal is to be able to have resources to successfully implement the policy and to ensure it is reflective of what has been heard from Council.

Councilmember Summers requested additional detail on how this appropriation would fund the program for the remainder of 2021. Shaw replied the requested appropriation is \$87,500 which represents about 1/10 of the anticipated annual revenue at the proposed fee level. Ongoing annual costs are estimated to be approximately \$270,000 per year and this appropriation would cover about six months of costs to bring on limited staff capacity and resources to effectively roll out the ordinance. She noted ultimate staffing decisions will result from conversations with Human Resources; however, the current plan is up to two staff members with the second one being hourly or contractual.

Councilmember Summers questioned whether this amount needs to be appropriated to distribute bags for something that would not go into effect until 2022.

Councilmember Pignataro noted this was considered separately by the Finance Committee and she asked about those discussions. City Manager Atteberry replied these discussions did occur and he believes this proposal reflects the direction staff has heard from Council.

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

Mayor Pro Tem Cunniff stated he would support the motion and stated making this action prior to ballots going out will help citizens be fully informed on what to expect from the ballot measure.

Councilmember Gorgol stated she would support the motion and noted making this appropriation after the election could be a weeks-long process and this will allow work to begin immediately upon passage of the ballot measure, should that occur.

Mayor Troxell stated he would support the motion with the hope the bag ordinance does not pass.

RESULT:	ORDINANCE NO. 027, 2021 ADOPTED ON FIRST READING [6 TO 1]
MOVER:	Ross Cunniff, District 5
SECONDER:	Susan Gutowsky, District 1
AYES:	Pignataro, Gorgol, Potyondy, Gutowsky, Troxell, Cunniff
NAYS:	Summers

16. First Reading of Ordinance No. 040, 2021, Amending the Land Use Code Regarding Exterior Lighting. (Adopted on First Reading)

The purpose of this item is to approve changes to the exterior lighting standards in the City Land Use Code for new commercial and multi-family development projects. The goals of the update are to ensure adequate light levels for safety and commerce; update technical criteria to align with current industry metrics; better control the various aspects of light pollution (overlighting, glare, light trespass); and require contextually appropriate lighting plans that result in lower lighting in areas with lower nighttime activity (Natural Areas and residential areas), and higher lighting levels in areas with higher nighttime activity (Downtown and commercial corridors).

Kelly Smith, Senior City Planner, stated this Code update regulates exterior lighting on new commercial and multi-family development projects to work toward the goal of achieving a darker night sky. She noted the current Code was adopted in 1997, predating LED technology and a new classification system that allows lighting designers to control all angles of light, resulting in more controlled lighting designs. She discussed the proposed language which includes a flexible-ordinance template that can be adapted to meet the individual needs of communities.

Smith discussed the extensive public engagement process and comments received. She noted the administrative approval requested by the Police Department to add lighting for safety purposes is still pending internal coordination and legal review, and staff anticipates the provision being included during the Energy Code update. She also noted staff has removed some of the redundancies with the Energy Code for clarity and streamlining the process.

Amber Lane asked how much these changes will impact lighting given it only applies to new commercial construction.

Rich Stave agreed Fort Collins does need to deal with excess light pollution and he commented on a lit billboard on I-25 and on ballfield lighting, which is exempt. He also commented on the dangers caused to pedestrians by bright headlights and bright stop lights.

Mayor Troxell noted the Finance Committee discussed this effort as starting with the City organization and requested additional detail on that. City Manager Atteberry replied a full assessment of City facilities will be done and future Councils will see associated budget offers. He noted the city's streetlights are about 37% converted to LED's and the conversions of existing City facilities will be done during renovation and at the time of any new construction. He agreed the City should lead in this area.

Mayor Troxell commented on the importance of understanding impacts to businesses and requested input regarding Ms. Lane's questions. Smith replied these standards would apply to all new commercial and multi-family development as well as any redevelopment or infill projects. Additionally, the language includes different thresholds by which existing development would need to become compliant.

Mayor Troxell asked about motion detected safety lighting for pedestrians in crosswalks. Smith replied that is not addressed in this Code and noted all lighting in the right-of-way is regulated through the Larimer County Urban Area Street Standards. She also noted this Code provides additional lighting allowances that applicants can use to increase the lumens on their development projects, including allowing for additional lighting if projects are at intersections.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Gorgol, to adopt Ordinance No. 040, 2021, on First Reading.

Mayor Pro Tem Cunniff stated this is the next logical step in providing benefits for night sky and stated there are resources available for residents who have concerns about light spilling over from neighboring properties.

Councilmember Gutowsky commended the efforts made by the City to customize these efforts to the community. She asked how single-family residential lighting complaints would be addressed. Smith replied either the Zoning or Building Services Department could assist with those issues.

Mayor Troxell asked if there will be any qualitative testing or charting for overall system improvements related to night sky. Smith replied the monitoring program is still in progress and baseline information about the status is being collected. She stated there are five monitors throughout the city collecting data daily.

Mayor Troxell asked about the details of the monitors. Ginny Sawyer, Senior Project Manager, replied there is one monitor at Soapstone pointing to Fort Collins and the others point straight up. She noted the sky quality cameras can tie to different lighting zones with this new Code.

Mayor Troxell suggested using satellite images as well.

RESULT:	ORDINANCE NO. 040, 2021 ADOPTED ON FIRST READING [UNANIMOUS]
MOVER:	Ross Cunniff, District 5
SECONDER:	Emily Gorgol, District 6
AYES:	Pignataro, Gorgol, Potyondy, Gutowsky, Summers, Troxell, Cunniff

● **OTHER BUSINESS**

Mayor Troxell noted the American Recovery Act, which has currently passed the House but not the Senate, contains \$28 million for Fort Collins, and requested additional information as that becomes available. City Manager Atteberry replied staff has been tracking this closely and it is likely there will be more flexibility and time to utilize these resources should the bill move forward. He stated staff will brief Council as soon as more details emerge.

Mayor Troxell commented on his desire to look at iconic opportunities for community impact.

City Manager Atteberry noted there are likely to be additional sources of funding being made available as part of recovery, in addition to direct allocations, and staff will be looking at how to leverage those.

Motion to adopt Item No. 13.

City Attorney Daggett noted Council inadvertently left Item No. 13, *Resolution 2021-029 Making Appointments to the Parking Advisory Board of the City of Fort Collins*, off its Consent Agenda vote.

Amber Lane asked if tribal nations are being consulted in any of the Boards and Commissions appointment or employee hiring processes.

Mayor Troxell noted the City actively seeks citizens to participate in Boards and Commissions and stated outreach is provided in a variety of ways.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Gorgol, to adopt Resolution 2021-029.

Councilmember Summers congratulated the incoming members of the Parking Advisory Board.

RESULT:	RESOLUTION 2021-029 ADOPTED [UNANIMOUS]
MOVER:	Ross Cunniff, District 5
SECONDER:	Emily Gorgol, District 6
AYES:	Pignataro, Gorgol, Potyondy, Gutowsky, Summers, Troxell, Cunniff

A. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

B. Consideration of a Motion to enter into an Executive Session to discuss legal issues related to the Hughes Property Citizen Initiative Declaratory Judgment Action and the People v. Wiemold appeal from Municipal Court concerning the City's camping ordinance.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Gorgol, that the City Council go into executive session for the purpose of meeting with the City’s attorneys and staff to discuss specific legal questions related to litigation regarding the Hughes Property Citizen Initiative Declaratory Judgment Action and the People v. Wiemold appeal from Municipal Court concerning the City’s camping ordinance, as permitted under City Charter Article Roman Numeral Two, Section 11(2), City Code Section 2-31(a)(2) and Colorado Revised Statutes Section 24-6-402(4)(b).

Amber Lane stated the Hughes Stadium property is on treaty land and CSU acknowledges it came from a land bank. She suggested the land could be granted back to its original stewards as a possible solution to the current dispute.

Rich Stave commented on overnight camping regulations and questioned the regulation of public property.

Mayor Troxell noted this property belongs to Colorado State University and the state.

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

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

C. Possible Consideration of Motions to give direction to the City Attorney and the City Manager on whether to appeal the two lawsuits.

Councilmember Pignataro made a motion, seconded by Councilmember Gorgol, that the Council direct the City Attorney, in coordination with the City Manager, to appeal the District Court’s decision in the Hughes Property Citizen Initiative Declaratory Judgment Action to the Colorado Court of Appeals as it pertains to the property acquisition requirement in the citizen-initiated ordinance and that language be included in that appeal indicating that this allows the next Council to have that option.

Councilmember Pignataro stated there are too many unanswered questions the next Council will need to consider.

Mayor Pro Tem Cunniff stated he agrees with the District Court decision stating the judge carefully considered case law reiterating that these types of things need to be decided on a case-by-case basis.

Councilmember Gorgol stated she has remaining questions about the administrative precedent this would set and commented on the importance of preserving the intent of voters.

Mayor Pro Tem Cunniff stated he had previously suggested Council could pass a resolution requiring staff to return with the administrative actions entertained by the ballot question, regardless of whether a judge finds they are administrative or legislative, if the ballot initiative passes.

Councilmember Potyondy agreed questions remain regarding the administrative versus legislative function; however, she has spoken with voters in her district that feel strongly the ballot initiative as written is what they would like to see on the ballot.

Councilmember Summers expressed concern about citizens feeling the City is suing them. He also stated voters need to be aware that a yes vote will require Council to rezone the property and negotiate an expenditure of funds that will take the purchase of other open spaces off the table.

Councilmember Gutowsky stated she agrees with the decision of the judge and will not be supporting the appeal.

Mayor Troxell stated he would support the appeal to help clarify the administrative aspect of a land purchase and to address broader implications.

The vote on the motion was as follows: Yeas: Gorgol, Troxell and Pignataro. Nays: Summers, Potyondy, Cunniff and Gutowsky.

THE MOTION FAILED.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Summers, that the Council direct the City attorney to not appeal the District Court's decision in the Hughes Property Citizen Initiative Declaratory Judgment Action to the Colorado Court of Appeal.

Councilmember Pignataro stated she would not support this motion as she would like the incoming Council to have an option.

The vote on the motion was as follows: Yeas: Cunniff, Gutowsky, Summers and Potyondy. Nays: Gorgol, Troxell and Pignataro.

THE MOTION CARRIED.

Mayor Pro Tem Cunniff stated he has read the judge's decision in *People v. Wiemold* and agrees the issue was decided incorrectly.

Mayor Pro Tem Cunniff made a motion, seconded by Councilmember Gutowsky, that the Council direct the City Attorney to appeal the District Court's decision in the *People v. Wiemold* appeal from Municipal Court concerning the City's camping ordinance.

Councilmember Pignataro stated she would not support an appeal stating the difference between voluntary and involuntary homelessness is no one's business.

Councilmember Gorgol stated she would not be supporting an appeal as the judge was very specific about the circumstances of the case.

Councilmember Summers agreed with Councilmembers Pignataro and Gorgol.

Mayor Troxell stated he would support the appeal as a matter of clarification.

The vote on the motion was as follows: Yeas: Troxell, Cunniff and Gutowsky. Nays: Potyondy, Pignataro, Summers and Gorgol.

THE MOTION FAILED.

Councilmember Pignataro made a motion, seconded by Councilmember Gorgol, that the Council direct the City Attorney not to appeal the District Court's decision the People v. Wiemold appeal from Municipal Court concerning the City's camping ordinance. Yeas: Pignataro, Summers, Gorgol and Potyondy. Nays: Troxell, Cunniff and Gutowsky.

THE MOTION CARRIED.

RESULT:	MOTION ADOPTED [4 TO 3]
MOVER:	Julie Pignataro, District 2
SECONDER:	Emily Gorgol, District 6
AYES:	Pignataro, Gorgol, Potyondy, Summers
NAYS:	Gutowsky, Troxell, Cunniff

● **ADJOURNMENT**

The meeting adjourned at 10:17 PM.



Mayor

ATTEST:



City Clerk



