

June 1, 2021

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

● **CALL MEETING TO ORDER**

Mayor Arndt noted the City is now following guidelines that do not require masks for vaccinated individuals.

● **ROLL CALL**

PRESENT: Pignataro, Arndt, Canonico, Peel, Ohlson, Gutowsky

ABSENT: Gorgol

STAFF: Atteberry, Daggett, Coldiron

● **AGENDA REVIEW: CITY MANAGER**

City Manager Atteberry recommended withdrawing Item No. 6, *Items Relating to the Completion of the 2021 Spring Cycle of the Competitive Process for Allocating City Financial Resources to Affordable Housing and Community Development Activities Utilizing Funds from the Federal Community Development Block Grant (CDBG) Program, Federal HOME Investment Partnerships (HOME) Program, the City's Affordable Housing Fund (AHF) and the City's Human Services Program (HSP), and Appropriating Funding Accordingly*, from the Consent Agenda to allow Councilmember Canonico to recuse herself due to a conflict of interest.

● **PUBLIC COMMENT**

Kimberly Chambers provided statistics on LGBTQIA youth and commented on big positive impacts such as allowing cost-free spaces for young, diverse groups to gather, having gender neutral restrooms in all City facilities, and flying a diverse and inclusive flag at City Hall. She requested Council speak up on how it intends to advocate for the safety and well-being of LGBTQIA youth, residents, and visitors.

G. Inguanta commented on defending the Planned Parenthood facility against pro-life protestors. They suggested increasing the space limit to 200 feet for protestors from the clinic.

Tom Drean opposed public funding of an immigration legal services fund.

Christy (no last name given) opposed a municipal immigration legal services fund.

John (no last name given) opposed a municipal immigration legal services fund.

James (no last name given) opposed a municipal immigration legal services fund.

● **PUBLIC COMMENT FOLLOW-UP**

Councilmember Pignataro asked if there is a memo forthcoming regarding the Planned Parenthood protestor issue. City Attorney Daggett replied staff is working on putting together some information that will hopefully be available next week.

Councilmember Pignataro noted the immigration legal services fund is on Council's agenda in two weeks.

● **CONSENT CALENDAR**

Councilmember Gutowsky withdrew Item No. 5, *First Reading of Ordinance No. 075, 2021, Appropriating Prior Year Reserves in the Community Capital Improvement Program Fund for Public Engagement for the Southeast Community Innovation Center and Pool*, from the Consent Agenda.

Kurt Kastein withdrew Item No. 3, *First Reading of Ordinance No. 073, 2021, Making Supplemental Appropriations of American Rescue Plan (ARP) Act and Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) Funding*, from the Consent Agenda.

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

RESULT:	CONSENT CALENDAR ADOPTED [UNANIMOUS]
MOVER:	Julie Pignataro, District 2
SECONDER:	Susan Gutowsky, District 1
AYES:	Pignataro, Arndt, Canonico, Peel, Ohlson, Gutowsky
ABSENT:	Gorgol

1. **Consideration and Approval of the Minutes of the May 4, 2021 Regular meeting. (Adopted)**

The purpose of this item is to approve the minutes of the May 4, 2021 Regular meeting.

2. **Items Relating to Affordable Housing Fee Credit Requests. (Adopted)**

A. Second Reading of Ordinance No. 070 2021, Authorizing a Fee Credit and Appropriating Prior Year Reserves in the General Fund for the Housing Catalyst Oak 140 Affordable Housing Development.

B. Second Reading of Ordinance No. 071, 2021, Authorizing a Fee Credit and Appropriating Prior Year Reserves in the General Fund for the Volunteers of America Cadence Affordable Housing Development.

This Ordinance, unanimously adopted on First Reading on May 18, 2021, considers requests from two qualifying development projects for fee credits totaling \$350,000. At the discretion of Council, City Code authorizes a fee credit of \$14,000 per qualifying unit of new affordable housing construction, provided that the proposed credits will not jeopardize the financial interests of the City. Fee credits subsidize the development of affordable housing units serving families that earn up to 30% of AMI (or \$22,600 for a family of two). The Council Finance Committee heard this item at their April 16, 2021, meeting and recommend granting these requests.

3. **First Reading of Ordinance No. 074, 2021, Authorizing the City Manager to Accept a Grant Award and Comply with the Terms of the Grant and Appropriating Unanticipated Black and Grey Market Marijuana Enforcement Program Grant Revenue in the General Fund for Police Services. (Adopted)**

The purpose of this item is to appropriate unanticipated grant revenue in the amount of \$41,564 from the Colorado Department of Local Affairs in the General Fund to support investigation and prosecution of black-market marijuana activity.

4. **First Reading of Ordinance No. 078, 2021, Approving Emergency Rule and Regulation No. 2021-01 Permitting Utility Billing Payment Plans for Past Due Amounts on Terms Other Than Those Set Forth in the Fort Collins Municipal Code and Enacted by the City Manager Pursuant to the Local COVID-19 Emergency. (Adopted)**

The purpose of this item is to approve Emergency Rule and Regulation No. 2021-01 enacted by the City Manager in response to resuming normal utility business operations after the COVID-19 pandemic. Emergency Rule and Regulation No. 2021-01 suspends the "full-payment" of outstanding balances requirement of City Code Section 26-713(e) and will allow customers to enter a payment plan to have utility services restored immediately upon payment of a portion of their outstanding balances. The Ordinance also expressly suspends that Code Section.

Section 2-671(a)(6)(a) of the City Code provides that emergency rules and regulations must be confirmed at the earliest practical time by the Council. This Ordinance seeks Council's approval and ratification of Emergency Rule and Regulation No. 2021-01. By enacting this Ordinance ratifying Regulation No. 2021-01, the City's Utility billing will begin a transition back to normal business practices, as defined by Section 26-713(e) of the Municipal Code which requires that any outstanding balance be paid in full before utility services are restored.

5. **Resolution 2021-063 Authorizing the Assignment of the City's Private Activity Bond Allocation for 2021 to Housing Catalyst to Finance the New Construction and Rehabilitation of Affordable Housing Units. (Adopted)**

The purpose of this item is to support the new construction and rehabilitation of affordable housing at two connected locations in the City by assigning the City's 2021 Allocation of Private Activity Bond (PAB) capacity to Housing Catalyst. PAB capacity is required for development projects using state or federal 4% Low-Income Housing Tax Credit financing.

6. **Items Relating to Three Intergovernmental Agreements With the Colorado Department of Transportation for the Award of Settlement Funds and Funding Advancements for Surface Transportation and Economic Recovery Act (FASTER) Capital Funds. (Adopted)**

A. Resolution 2021-064 Authorizing the Execution of Two Intergovernmental Agreements with the Colorado Department of Transportation to Award Volkswagen Settlement Funds for Replacement Electric Vehicle and Infrastructure Purchase.

B. Resolution 2021-065 Authorizing the Execution of an Intergovernmental Agreement with the Colorado Department of Transportation to Award Funding Advancement for Surface Transportation and Economic Recovery Act of 2009 ("FASTER") Funds for Replacement Electric Vehicle and Infrastructure Purchase.

The purpose of this item is to authorize the execution of three intergovernmental agreements (IGAs) with the Colorado Department of Transportation (CDOT). Two of these agreements will result in the receipt of two Volkswagen Settlement awards that were applied for, and awarded, through CDOT's Consolidated Call for Capital Projects in 2019. Additionally, Transfort annually receives the 2021 Funding Advancement for Surface Transportation and Economic Recovery Act of 2009 ("FASTER") capital award funding. This year's award will be used for the purchase of one alternatively fueled vehicle and one depot charger. The combined incoming funds for all awards were appropriated through the 2021 BFO cycle and are accounted for in the approved 2021 Transfort budget.

7. **Resolution 2021-066 Designating Mayor Jeni Arndt to Replace Former Mayor Wade Troxell to Represent the City on the Colorado Attorney General's Local Government Opioid Settlement Funds Stakeholder Working Group. (Adopted)**

The purpose of this item is to appoint Mayor Jeni Arndt to the Colorado Attorney General's Local Government Opioid Settlement Funds Stakeholder Working Group to replace former Mayor Wade Troxell.

8. **Resolution 2021-067 Expressing the City Council's Support for the Fort Collins LGBTQ+ Community with a Display of Rainbow Lights at City Hall. (Adopted)**

The purpose of this item is to express Council's support for the Fort Collins LGBTQ+ community with a display of rainbow lights at City Hall during the month of June, which is Pride month.

● **CONSENT CALENDAR FOLLOW-UP**

Councilmember Ohlson commented on Item No. 7, *First Reading of Ordinance No. 078, 2021, Approving Emergency Rule and Regulation No. 2021-01 Permitting Utility Billing Payment Plans for Past Due Amounts on Terms Other Than Those Set Forth in the Fort Collins Municipal Code and Enacted by the City Manager Pursuant to the Local COVID-19 Emergency*, stating he does not agree with the statement that this item has not been presented to the Energy Board or the Water Commission due to the COVID emergency. He suggested the item could have been presented to the Boards and Commissions as staff was aware of the phasing out of this program.

City Manager Atteberry replied direction had been received from the past Council related to this item.

Deputy City Manager DiMartino replied staff could get more detailed information prior to Second Reading or perhaps later this evening.

Councilmember Ohlson requested clarification regarding the number of units in reference to Item No. 8, *Resolution 2021-063 Authorizing the Assignment of the City's Private Activity Bond Allocation for 2021 to Housing Catalyst to Finance the New Construction and Rehabilitation of Affordable Housing Units*. City Manager Atteberry replied staff would clarify or clear up any errors.

● **COUNCILMEMBER REPORTS**

Councilmember Ohlson stated he believes it is time for Fort Collins to begin reopening its government and for interactions with citizens to resume. He requested information as to the planned timeline for that to occur and stated he does support the ability of Councilmembers and citizens to remain participating remotely if they so choose.

Councilmember Pignataro suggested that issue could be discussed under Other Business.

Councilmember Gutowsky reported on attending the recent Visit Fort Collins gathering.

Councilmember Peel reported on attending a Quail Hollow neighborhood meeting and commended Paul Sizemore on his handling of the meeting. She also reported on a meeting with Tyler Marr regarding cell service, a meeting with Mayor Pro Tem Gorgol regarding resident-owned communities, and on the Memorial Day ceremony during which the Parks Department received an award for work at Veteran's Plaza.

Councilmember Canonico reported on the groundbreaking for Pathways in-patient hospice care facility.

Councilmember Gutowsky commented on the Veteran's Plaza park and the Memorial Day activities.

(Secretary's Note: The Council took a brief recess at this point in the meeting.)

- **CONSIDERATION OF COUNCIL-PULLED CONSENT ITEMS**

9. **First Reading of Ordinance No. 075, 2021, Appropriating Prior Year Reserves in the Community Capital Improvement Program Fund for Public Engagement for the Southeast Community Innovation Center and Pool. (Adopted on First Reading)**

The purpose of this item is to appropriate funds to hire a consultant to conduct public outreach that will be used to provide program plan services for the Southeast Community Innovation Center and Pool that was approved in the BOB 2 (Building on Basics) ballot measure in 2015.

Councilmember Gutowsky requested additional information on the Southeast Community Innovation Center project and public engagement. City Manager Atteberry replied the project is in a ballot-funded list of projects and is required by the ballot measure to be located in the southeast part of town. This item involves funding community engagement to discuss the elements of what citizens would like to see in the project and that would lead to design and construction in 2023-2024. He stated the capital project is approximately \$18 million.

Aaron Harris, Interim Recreation Director, replied the public outreach will involve working with industry professionals to identify the best use of funds for the Southeast Community Center and ensure the best and most current needs of the community are being captured in the space which is unique to the city and northern Colorado.

Councilmember Ohlson disagreed citizens in northern Colorado but outside of the City should have a say in the facility as it was funded by a Fort Collins ballot measure. He questioned why funds are being spent to hire out public outreach efforts when it could be done by staff. He requested that information prior to Second Reading.

Sandra Holt stated a lap pool is the most desired element for this project.

Councilmember Gutowsky asked if a leisure pool as defined in the project description would be available for laps.

City Manager Atteberry commented on staff not having enough bandwidth to do outreach in an effective way.

Harris stated lap lanes are not included as part of the ballot language; however, part of the public outreach is to consider the critical components desired by citizens.

Councilmember Pignataro noted the City has been on a hiring freeze; therefore, staff is stretched thin. She also noted this was one of several projects approved as part of the ballot measure.

City Manager Atteberry discussed the City's history with ballot-funded groups of projects noting they are typically constructed as funding is available rather than having debt issued to build all projects simultaneously. He noted this is one of the last of this group.

Councilmember Ohlson stated he would be voting against this item on First Reading, but that is not necessarily indicative of his future vote. He commended the City on historically delivering capital projects as promised.

Councilmember Pignataro made a motion, seconded by Councilmember Gutowsky, to adopt Ordinance No. 075, 2021, on First Reading.

RESULT:	ORDINANCE NO. 075, 2021 ADOPTED ON FIRST READING [5 TO 1]
MOVER:	Julie Pignataro, District 2
SECONDER:	Susan Gutowsky, District 1
AYES:	Pignataro, Arndt, Canonico, Peel, Gutowsky
NAYS:	Ohlson
ABSENT:	Gorgol

10. **Items Relating to the Completion of the 2021 Spring Cycle of the Competitive Process for Allocating City Financial Resources to Affordable Housing and Community Development Activities Utilizing Funds from the Federal Community Development Block Grant (CDBG) Program, Federal HOME Investment Partnerships (HOME) Program, the City's Affordable Housing Fund (AHF) and the City's Human Services Program (HSP), and Appropriating Funding Accordingly. (Adopted on First Reading)**

- A. Public Hearing and Resolution 2021-062 Approving the Programs and Projects that Will Receive Funds from the Federal Community Development Block Grant Program, the HOME Investment Partnerships Program, the City's Affordable Housing Fund, and the City's Human Services Program.
- B. Public Hearing and First Reading of Ordinance No. 076, 2021, Appropriating Unanticipated Revenue in the Community Development Block Grant Fund.
- C. Public Hearing and First Reading of Ordinance No. 077, 2021, Appropriating Unanticipated Revenue in the HOME Investment Partnerships Program.

The purpose of this item is to approve funding recommendations of the 2021 Spring Cycle of the Competitive Process and appropriate federal dollars.

Resolution 2021-062 will complete the 2021 Spring Cycle of the Competitive Process for allocating \$4,103,056 in City financial resources to affordable housing and public facility projects, human service programs and administration of the programs.

Ordinance No. 076, 2021 and Ordinance No. 077, 2021 appropriate the City's FY2021 Community Development Block Grant (CDBG) Entitlement Grant and FY2021 Home Investment Partnerships Program (HOME) Participating Jurisdiction Grant from the Department of Housing and Urban Development (HUD), and CDBG program income from FY2019 & FY2020 and HOME Program Income from FY2019 & FY2020.

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

Councilmember Ohlson requested additional information regarding the requirements for the spending of federal funds on planning and administration prior to Second Reading. City Manager Atteberry replied 15% of CDBG dollars can be used for administration and program oversight, which are real incurred costs. If the funds do not come from CDBG HUD dollars, they would need to come from the general fund.

Councilmember Ohlson stated he would like to receive a list of staff members and percentages of salaries being covered by these funds. City Manager Atteberry replied he would provide that information.

Councilmember Pignataro made a motion, seconded by Councilmember Gutowsky, to adopt Resolution 2021-062. Yeas: Pignataro, Arndt, Gutowsky and Peel. Nays: Ohlson.

RESULT: RESOLUTION 2021-062 ADOPTED ON FIRST READING [UNANIMOUS]
MOVER: Julie Pignataro, District 2
SECONDER: Susan Gutowsky, District 1
AYES: Pignataro, Arndt, Peel, Gutowsky
NAYS: Ohlson
RECUSE: Canonico
ABSENT: Gorgol

Councilmember Pignataro made a motion, seconded by Councilmember Gutowsky, to adopt Ordinance No. 076, 2021, on First Reading. Yeas: Pignataro, Arndt, Gutowsky and Peel. Nays: Ohlson.

RESULT: ORDINANCE NO. 076, 2021 ADOPTED ON FIRST READING [UNANIMOUS]
MOVER: Julie Pignataro, District 2
SECONDER: Susan Gutowsky, District 1
AYES: Pignataro, Arndt, Peel, Gutowsky
NAYS: Ohlson
RECUSE: Canonico
ABSENT: Gorgol

Councilmember Pignataro made a motion, seconded by Councilmember Gutowsky, to adopt Ordinance No. 077, 2021, on First Reading. Yeas: Pignataro, Arndt, Gutowsky and Peel. Nays: Ohlson.

RESULT: ORDINANCE NO. 077, 2021 ADOPTED ON FIRST READING [UNANIMOUS]
MOVER: Julie Pignataro, District 2
SECONDER: Susan Gutowsky, District 1
AYES: Pignataro, Arndt, Peel, Gutowsky
NAYS: Ohlson
RECUSE: Canonico
ABSENT: Gorgol

● **DISCUSSION ITEMS**

11. **Guardian Self-Storage Project Development Plan Appeal. (Adopted)**

The purpose of this item is to consider an appeal of the Planning and Zoning Commission's Decision, on March 11, 2021, approving the Guardian Self-Storage Project Development Plan #PDP190020, located on the northeast corner of South College Avenue and Fossil Creek Parkway. (The Commission was previously referred to as the Planning and Zoning Board; the current name of Planning and Zoning Commission is used here to avoid confusion.) A Notice of Appeal was filed on March 25, 2021, alleging the Planning and Zoning Commission failed to conduct a fair hearing in that it substantially ignored its previously established rules of procedure regarding staff's recommendation for approval of the project and its possible impact on the decision and that the Commission's decision approving the project is inappropriate because it contradicts adopted plans and policies. The Notice of Appeal further alleged that the Commission failed to properly interpret and apply the South College Corridor Plan, Policy LU 1.4 regarding enclosed storage located away from the South College frontage, and Land Use Code (LUC) Section 3.10.2(A) regarding enclosed storage only permitted below or above ground floor level.

City Attorney Daggett reviewed the appeal process.

Paul Sizemore, Interim Planning, Development, and Transportation Director, provided a staff overview of the proposed project, which is located on the northeast corner of South College Avenue and Fossil Creek Parkway and located in the General Commercial (CG) zone district which does allow enclosed mini-storage as a use subject to a Type II hearing by the Planning and Zoning Commission. He also noted the property is in the Transit-Oriented Development Overlay District (TOD) and is subject to the South College Corridor Plan.

Sizemore detailed the proposed 4-story, 119,000 square foot enclosed mini-storage facility with six parking spaces on 2.2 acres, including two modification requests to allow for ground-floor enclosed storage and to allow parking between the building and Fossil Creek Parkway. He detailed the timeline of the project and appeal and detailed the allegations in the notice of appeal. He provided additional information about the South College Corridor Plan noting it is not regulatory and the Plan provides a vision and policy guidance rather than specific requirements that must be met. He detailed the Planning and Zoning Commission decision and discussed the modification of standard requirements.

Councilmember Pignataro stated she used to live immediately southeast of the proposed development, but she does not believe that presents a conflict of interest.

Mayor Arndt requested input from those Councilmembers who attended the site visit.

Councilmember Ohlson stated he observed the context and the property.

Councilmember Gutowsky concurred with Councilmember Ohlson and stated she also observed the site topography.

Councilmember Peel stated the site visit was helpful to consider the drainage and pedestrian issues.

Ben Thurston, Baseline Engineering, appellant, introduced himself.

Carolynne White, counsel for the party opposing the appeal, Guardian Storage, introduced herself.

Jeff Michaelson, Desmone Architects, introduced himself as an opponent to the appeal.

Amber Lane introduced herself as an interested party due to her status as an indigenous steward. She stated there is to be prior informed consent on issues affecting lands.

City Attorney Daggett stated the Code regulations related to appeal hearings do not specifically provide a basis for Ms. Lane to speak as a party-in-interest.

Councilmember Pignataro commented on the recently formed City equity office that will help deal with some of the issues discussed by Ms. Lane; however, she stated this process cannot be stopped to deal with those issues.

Rich Stave introduced himself as an attendant at the Planning and Zoning Board meeting and as speaking on behalf of the appellant.

Sandra Holt introduced herself as a party-in-interest in support of the appeal.

Ms. White introduced the team of individuals who will be speaking in opposition to the appeal.

Mayor Arndt outlined the time allotments for the hearing presentations.

(Secretary's Note: The Council took a brief recess at this point in the meeting.)

APPELLANT PRESENTATION

Mr. Thurston stated he is representing the property owner immediately north of the subject property, Bruce Odette. He discussed the South College Corridor Plan noting it names storage unit uses as one that detracts from the overall vitality of the corridor. He also discussed the TOD and outlined reasons this site is not appropriate for enclosed storage: the South College Corridor Plan, the TOD overlay zone, and its location on an important corner. He reviewed the staff finding that enclosed mini-storage is a permitted use, which he stated is an incorrect reading of the Code as enclosed mini-storage is prohibited on the ground floor. Additionally, he stated compatibility should be evaluated using the land use policies of the South College Corridor Plan, which states that storage uses are to be located away from the South College frontage. Regarding the staff finding that College frontage lacks established development pattern with an active street front, Mr. Thurston stated the South College Corridor Plan was adopted to change the development pattern and land use over time and allowing storage, a low-activity land use, is a fundamental betrayal of the plan. He also noted the site is within walking distance of the South Transit Center and stated the way to strengthen the investment in transit is to require transit-supporting land uses within the TOD overlay zone.

Mr. Thurston stated the construction of Snead Drive and sidewalks being identified as a benefit of the project is misleading as they are not unique benefits of this project. He stated there is no physical hardship in placing active uses on the ground floor, and though it may not match the applicant's business model, the appropriate conclusion should be that enclosed mini-storage should not be located in the TOD overlay zone. Additionally, he disagreed with the staff finding that this use is similar to an enclosed parking structure and requested Council overturn the Planning and Zoning Board approval of the project.

Rich Stave questioned the building massing compared to the buildings around it. He questioned where the building starts and ends in elevation. He also stated that the public would have access to the drive 24/7 despite the statement the property is not open 24/7. He also questioned the location of the building from South College Avenue noting other buildings in the area are further set back.

Sandra Holt commented on the looming nature of Redtail Ponds and stated this building will be similar. She also discussed traffic issues in the area and commented on the country nature of the neighborhood.

APPLICANT PRESENTATION

Ms. White stated neither the appeal nor the appellants' presentation provided an argument or evidence as to why the Planning and Zoning Commission failed to follow its rules of procedure or failed to provide a fair hearing. She commented on the tract A portion of the property which will remain undeveloped and provide a wetland buffer to the neighborhood and stated that is one of the complicating factors that creates a hardship for development of the property. She commented on the ways in which this project and company differs from a traditional storage use and stated data

shows a tremendous unmet need for off-site storage. She stated the facility will only be open from 6 AM until 10 PM and the traffic impact study shows the use will generate very few car trips.

Ms. White discussed the site challenges including the bifurcation of the property by Snead Drive, significant drainage and storm flow issues, and significant elevation changes. She stated it would not likely be possible to achieve a development that met all applicable City Plan and South College Corridor Plan goals and visions.

Martha Fitzgerald, counsel for the applicant, stated the Planning and Zoning Commission made its ruling based on sizable information after a full and fair hearing. She noted Council's role is to determine whether the Commission properly analyzed the information in the record and the burden to overturn the Commission's decision is on the appellant.

Ms. Fitzgerald went on to discuss the approved modifications of standard regarding parking and the use of ground-floor mini-storage. She noted the Land Use Code specifically states that the process for modifications of standard apply to Article 4. She stated the project alleviates a defined community need and addresses issues on site, which would be unlikely to be developed with a use that would attract a high volume of foot traffic. She also stated the South College Corridor Plan is not legally enforceable.

APPELLANT REBUTTAL

Mr. Thurston stated the most important finding Council needs to make is regarding the way the Land Use Code has been interpreted. He commented on the applicants' assertion that Section 3.10.2, labeled permitted uses, is not a land use provision but rather a development standard. He stated the TOD overlay zone applies to any zone district wherein the TOD overlay zone falls. He argued the storage use is prohibited and should be treated as such and not granted by variance, exception, or exemption.

Mr. Stave commented on the 'squishy' role of the Planning and Zoning Commission and staff in approving a project. He commented on this lot always having been a part of Fossil Creek Meadows and on the desire of residents' to have the quiet nature of the neighborhood maintained.

Ms. Holt stated there are two storage facilities within one mile of this location and questioned whether there is truly a need for additional facilities. She also stated it does not make sense to place a 4-story building in an area of all single-story buildings.

APPLICANT REBUTTAL

Ms. Fitzgerald stated the Land Use Code is the law and the South College Corridor Plan is advisory. She also stated the modifications of standard have been requested per protocol and were approved by the Planning and Zoning Commission. She also commented on the character of the area not being pedestrian-friendly. She noted the appeal alleges the proposed use constitutes a violation of policy LU 1.4 in the South College Corridor Plan; however, she argued guidance cannot be violated. She acknowledged the Code prohibits ground-floor mini-storage, but noted the project requested and was granted a modification. She stated there is no legal basis upon which to overturn the decision of the Commission.

Ms. White noted the South College Corridor Plan aims to 'minimize' non-active uses on South College Avenue and while the legally-binding Land Use Code does prohibit the use, a modification

was duly requested and approved by the Commission. She stated this appeal does not have a proper basis and stated there was a fair hearing and the Commission did not misinterpret applicable Code provisions.

COUNCIL DISCUSSION AND DELIBERATION

Councilmember Pignataro requested staff input regarding the reasons a party may appeal a Planning and Zoning Commission decision. City Attorney Daggett replied there are specific grounds laid out in Chapter 2 of the Code that identify particular types of fair hearing issues, one of which is failure to follow procedures, as is the allegation made in this appeal. The other general ground for filing an appeal is alleging that the decision-maker failed to properly interpret and apply particular applicable provisions of the Code. She discussed the modification of standards requirements that apply in this case and stated the evaluation of whether the modification of standards provision has been properly applied, in terms of the standard itself, is not a ground for appeal in this appeal, though it is not unusual for that to be a basis for appeal.

Councilmember Peel requested staff input regarding whether other developments in the area are transit-oriented. Sizemore replied the TOD overlay zone includes this property; however, the property to the south is outside the overlay zone. He noted office uses are allowed within the TOD overlay zone, as are storage uses; however, the one development standard prohibits the use from being on the ground floor.

Councilmember Peel asked if the South College Corridor Plan is a regulatory, binding document. Sizemore replied the Plan is an adopted plan and policy document adopted by resolution and is not regulatory in nature. City Attorney Daggett noted the Land Use Code is the set of rules adopted by Council to carry out vision documents such as the Corridor Plan; therefore, from a legal standpoint, the Land Use Code takes precedence over any policy plan document.

Councilmember Peel asked how this property was originally platted per Mr. Stave's comments. Mr. Stave replied Fossil Creek Meadows was platted in 1977 within the County and two lots were part of the original plat, one of which is now Discount Tire, the other of which has been empty since and is now the subject of this development proposal. He noted the property has a great deal of challenging topography.

Councilmember Peel asked if the property will be open 24/7 or not. Ms. White suggested the operators provide that information. Stephen Cohen, Guardian Self-Storage, replied the access hours for all properties are 6 AM to 10 PM. Mr. Stave stated the confusion regarding 24/7 access lies in the appearance of the building with ground-floor access and loading docks. Mr. Cohen stated there are not loading docks, but rather loading bays for vehicular access. He stated the doors in the loading bays are protected by electronic security and keypad access that is only usable during operating hours. Additionally, doors on the north side of the building are only accessible with electronic keypads during operating hours.

Councilmember Ohlson suggested Council could require specific hours of operation as ownership may change. He noted Discount Tire changed its hours of operation from what was approved.

Councilmember Canonico asked if staff has followed up to determine whether the identified need for self-storage exists. City Attorney Daggett stated it is important to note questions about the need for the facility are outside the scope of the appeal, though it may be helpful context. Councilmember Canonico stated she was curious about the public benefit provided regarding the

modification request. City Attorney Daggett noted there was not an appeal of the modification of standard.

Councilmember Pignataro asked if the third part of the appeal asserts the procedure for the modification was not done correctly, not that the interpretation that led to the modification was incorrect. City Attorney Daggett replied the appeal asserts that a change to the Land Use Code was needed to allow this; it does not challenge the decision that was made with respect to the standard for a modification.

Councilmember Ohlson asked the developer's representatives about the building façades, colors, and signage noting the photos shown during this meeting were not the same as those shown during the Commission meeting, nor were they as described during the Commission meeting. Ms. White replied the slides that were presented by the architect at the Planning and Zoning Commission meeting were put into her presentation; however, the Power Point program cropped the images. She stated she was not intentionally trying to leave out signage or colors and noted an updated architectural drawing has not yet been prepared and submitted to the City reflecting the changes made per the Planning and Zoning Commission approval.

Mr. Michaelson stated the overwhelming large blue band has been reduced and modified to be a different color and the original blue color will only be behind the signage. He stated new drawings have been submitted to the City. Ms. White noted those drawings were not submitted because they would be considered new evidence as they were not part of the Planning and Zoning Commission meeting.

Councilmember Gutowsky stated this project appears to be out of scale with other parts of the neighborhood and is too close to the frontage with respect to other buildings. She commented the South College Corridor Plan provides guidance that states uses that detract from the overall vitality of the corridor, including storage uses, should be located away from the South College frontage. She also mentioned a comment made by one of the Commission members that they did not want to set a precedent for future projects to disregard the intent of the South College Corridor Plan. She acknowledged the Plan guidance is not codified nor legally binding; however, the Plan includes aspirational and visionary goals to guide mindful development. She stated disregarding the Plan is a violation of what was perceived to be the best way to develop the land and the proposal is a distraction from the overall vitality of the corridor.

Councilmember Pignataro stated she empathizes with the neighborhood; however, she noted an appeal is about procedure and not about the decision that has already been made by the Planning and Zoning Commission.

Councilmember Ohlson mentioned the buildings to the north of this project having been built prior to the TOD overlay zone being formed. He agreed with Councilmember Gutowsky regarding Plans and suggested it is a dereliction of duty to not codify portions of those types of plans. He stated Council can conclude the use on the location is not appropriate due to failure of the Commission to properly interpret and apply Section 3.10.2(A) regarding the prohibition of enclosed mini-storage uses on the ground level. He stated he is not upset with the applicants; however, he is disappointed in the staff decisions related to tree removal among other things and is disappointed in the Planning and Zoning Commission and staff for the decisions made related to scale and mass, though that is not part of this decision. He stated he believes a full and fair hearing was conducted; however, he would vote to support the appeal.

Councilmember Peel expressed empathy for the neighborhood; however, the questions before Council related to whether the Commission failed to conduct a fair hearing, failed to properly interpret and apply the South College Corridor Plan, or failed to properly interpret and apply relevant Land Use Code provisions. She stated she believes the Commission conducted a fair hearing and did not fail to properly interpret and apply the Corridor Plan and applicable Land Use Code provisions.

Councilmember Canonico agreed with Councilmembers Pignataro and Peel stating that while she sympathizes with the neighbors, she does not believe grounds for appeal exist.

Mayor Arndt stated she would not support the appeal based on the narrow interpretation of the three grounds for appeal. She commented on the possible need for more consistent plans and policies. She stated she is unwilling to overturn the decision of the Planning and Zoning Commission.

Councilmember Pignataro noted the last Council appropriated a large sum of money to update the Land Use Code and asked if part of that study is to align it with plans such as the South College Corridor Plan and asked if there is a plan to revise the South College Corridor Plan in the future. Sizemore replied the kind of work mentioned by Councilmember Pignataro is very much in alignment with the scope of the Land Use Code work. He noted phase one of the Land Use Code update, for which funds were appropriated, is focused primarily on residential districts and achieving alignment with the new Housing Strategic Plan. He stated staff intends to seek an appropriation for the second phase of implementing the Land Use Code audit which would involve commercial districts.

Councilmember Pignataro made a motion, seconded by Councilmember Peel, that Council deny the allegation that the Planning and Zoning Commission failed to conduct a fair hearing being that it does not have merit because amending the Corridor Plan or any other policy plan is not an established Planning and Zoning rule of procedure. Yeas: Canonico, Arndt, Pignataro, Peel, Gutowsky and Ohlson. Nays: none.

Councilmember Pignataro made a motion, seconded by Councilmember Peel, to uphold the Planning and Zoning Commission decision because it properly interpreted and applied the South College Corridor Plan Policy LU 1.4 and Land Use Code § 3.10.2(A) because an appeal is limited to an assertion of a failure to interpret and apply relevant provisions of the Code and Charter, and the Corridor Plan is neither part of the Code nor Charter, and it is within the power of the Planning and Zoning Commission to grant a modification to Land Use Code § 3.10.2(A). She further moved that, except as so stated, based on the evidence in the record and presented at this hearing, any remaining issues raised in the appeal are hereby found to be without merit and are denied.

RESULT:	MOTION TO UPHOLD ADOPTED [4 TO 2]
MOVER:	Julie Pignataro, District 2
SECONDER:	Shirley Peel, District 4
AYES:	Pignataro, Arndt, Canonico, Peel
NAYS:	Ohlson, Gutowsky
ABSENT:	Gorgol

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

12. **First Reading of Ordinance No. 073, 2021, Making Supplemental Appropriations of American Rescue Plan (ARP) Act and Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) Funding. (Adopted)**

The purpose of this item is to appropriate grant revenue allocated to Transfort by the Federal Transit Agency (FTA). Transfort was awarded \$1,509,248 and will net the amount of \$1,284,514 in Section 5307 and 5310 CRRSAA Funding. Additionally, Transfort was awarded \$8,964,773 and will net the amount of \$7,626,773 in ARP Section 5307 and 5310 Funding through FTA apportionments to urbanized areas. Both CRRSAA and ARP funding is provided at a 100-percent federal share, with no local match required, and is available to support capital, operating, and other expenses to prepare for and respond to COVID-19. Transfort plans to use these funds to pay for what has been previously allocated from the General Fund for operating assistance, preventative maintenance, capital projects, contracted service costs, and enhancing mobility for seniors and those with disabilities.

(Secretary's Note: This item was considered out of the typical agenda order just following Public Comment Follow-up.)

Kurt Kastein questioned how the appropriations were related to preparation for and response to the COVID-19 pandemic. He requested the City be specific and responsible in spending the COVID funds.

Councilmember Ohlson stated he too had questions on this item and stated a \$10 million item should never be on the Consent Agenda. He also questioned which items were related to COVID and which were not and asked why there was no input provided by the Transportation Board.

Drew Brooks, Transfort and Parking Services Executive Director, stated the two sources of funds are specifically designated through the Federal Transit Administration for transit-specific coronavirus relief. He stated these dollars will be distributed to Fort Collins which will then distribute to other entities within the Transportation Management Area. He noted the specific projects on which the dollars will be spent have yet to be determined.

City Attorney Daggett noted Council may need to suspend the rules to continue the discussion of this item as citizen-pulled items are typically heard at the end of the agenda. Mayor Arndt and other members agreed to suspend the rules to continue discussion of the item.

Councilmember Ohlson stated he would like Second Reading to reflect additional details and clarification. City Manager Atteberry replied staff will make those changes. Brooks noted staff could also go before the Transportation Board regarding this issue.

Mr. Kastein reiterated that just because funds can be used for a certain purpose does not mean they should be and he requested clarification regarding how the funds will be spent in direct response to preparation for or response to the pandemic.

Councilmember Pignataro made a motion, seconded by Councilmember Canonico, to adopt Ordinance No. 073, 2021, on First Reading.

RESULT: ORDINANCE NO. 073, 2021 ADOPTED [5 TO 1]
MOVER: Julie Pignataro, District 2
SECONDER: Tricia Canonico, District 3
AYES: Pignataro, Arndt, Canonico, Peel, Gutowsky
NAYS: Ohlson
ABSENT: Gorgol

● **OTHER BUSINESS**

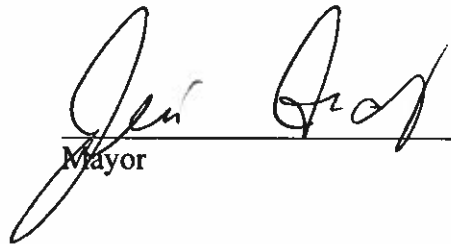
- A. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers
(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)
- B. Motion to designate Mayor Jeni Arndt as the voting delegate for the City at the Colorado Municipal League Annual Business Meeting:

Councilmember Pignataro made a motion, seconded by Councilmember Gutowsky, to designate Mayor Jeni Arndt as the voting delegate for the City at the Colorado Municipal League 2021 Annual Business Meeting.

RESULT: MOTION ADOPTED [UNANIMOUS]
MOVER: Julie Pignataro, District 2
SECONDER: Susan Gutowsky, District 1
AYES: Pignataro, Arndt, Canonico, Peel, Ohlson, Gutowsky
ABSENT: Gorgol

● **ADJOURNMENT**

The meeting adjourned at 10:11 PM.



Mayor

ATTEST:



City Clerk - Interim



