

Applicant Response to Appellants
Received: November 4, 2024

November 4, 2024

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Ms. Delynn Coldiron
Fort Collins City Clerk
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RE: Fort Collins Rescue Mission Response to Appeals of August 28, 2024, Planning Commission
FDP Approval

Dear Ms. Coldiron and Ms. Daggett:

This letter is intended for review by the Fort Collins City Council and the Applicant Team respectfully requests that you provide it to them prior to the Hearing and make it publicly available by adding it to the Agenda Packet, and thus, the record.

On November 6, 2024, the Fort Collins Rescue Mission Final Development Plan Project (the “**Shelter**”) will be in front of the Fort Collins City Council (“**City Council**”) on appeal by two separate parties. The Planning Commission unanimously approved this Shelter on August 28, 2024, finding that it complied with all applicable Municipal Code and Land Use Code criteria (collectively the “**Code**”). This letter is intended to explain why the appeals (each herein referred to as the “**Jones Appeal**” or “**Mendoza Appeal**” and collectively referred to as the “**Appeals**”), are without merit.

First, regarding the “unfair hearing” allegation in the Mendoza Appeal, this argument is based on a fundamental misunderstanding of the Land Use Code. Second, with regards to allegations of misinterpretation and application of the LUC, it is in fact the Appellants who demand that City Council misinterpret the Land Use Code in contravention of the FCRM’s due process and equal protection rights based on facts not in evidence. The Fort Collins Rescue Mission (the “**FCRM**”), by and through undersigned counsel, presents the following analysis to demonstrate how the Planning Commission unanimously reached the correct decision in approving the Shelter; and thus, why that decision should be upheld.

I. Unfair Hearing / New Evidence

The FCRM Objects to the Introduction of Any New Evidence.

The Appeals contain arguments and “New Evidence” that there was an unfair hearing at Planning Commission because the Planning Commission did not have certain additional evidence relevant to “overflow” shelters. This appeal is based on a fundamental misunderstanding of the application and the Transitional Land Use Code (the “LUC”).

The FCRM Shelter application was approved under the LUC Section 4.22.B.3.b.2 for a “homeless shelter,” (“Shelter”). LUC Section 4.22.B.3.b.2 allows as a permitted use “Homeless shelters (**excluding overflow shelters**).” Thus, by definition, the Planning Commission approved a Shelter with no overflow allowed. Only if the FCRM had brought the application under LUC Section 4.22.B.1.d.2, for a “Seasonal Overflow Shelter,” could this evidence have been relevant. In fact, this issue was directly addressed by the Planning Commission Chair at the Hearing and received an unequivocal answer that there would be no more than 250 beds.¹

Based on this fundamental misunderstanding of the LUC provision governing the Shelter application, the Mendoza Appeal cites to additional evidence that was not included in the record at the Planning Commission Hearing. This includes evidence in the Coloradan Article, an inapplicable parking study from California, and additional photographs purportedly of the project site. This new evidence does not aid the City Council in determining whether or not the Project meets the criteria in the Code because it is not applicable to the relevant Code provision Section 4.22.B.3.b.2. As a matter of procedural fairness and equity, no new evidence should be considered by the City Council on Appeal unless it comports with the Municipal Code Sections 2-55(b), 2-49, and 2-48(b)(2)(c). Section 2-55 instructs that, “No new evidence shall be presented to the City Council before or during an appeal hearing, and no new evidence shall be considered on appeal except for limited circumstances.” The “circumstances” in which New Evidence is allowed is if it comports with Section 2-48(b)(2)(c) (identified by the Appellant) which allows the New Evidence when, “[t]he board, commission . . . considered evidence **relevant to its findings** which was substantially false or grossly misleading.”

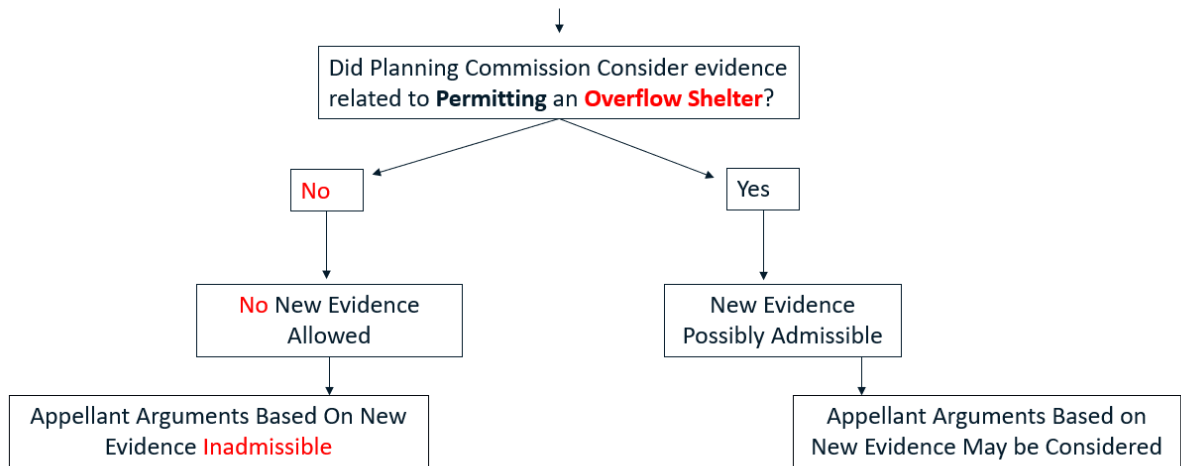
As there was no request, nor approval granted for a “seasonal overflow shelter,” any evidence related to “seasonal overflow shelters,” or “500 shelter beds” to support such overflow is irrelevant and in and of itself, grossly misleading when injected into the appeal process regarding the Shelter approval. In fact, the clear evidence before the Planning Commission, when asked by Chair Stackhouse to clarify if there would

¹ Fort Collins Rescue Mission Planning Commission Hearing, August 28, 2024, at 3:28.

be “more than two-hundred and fifty beds, the unequivocal response was, “Absolutely no. I want to be clear about that.”²

New “Evidence” IS False & Misleading

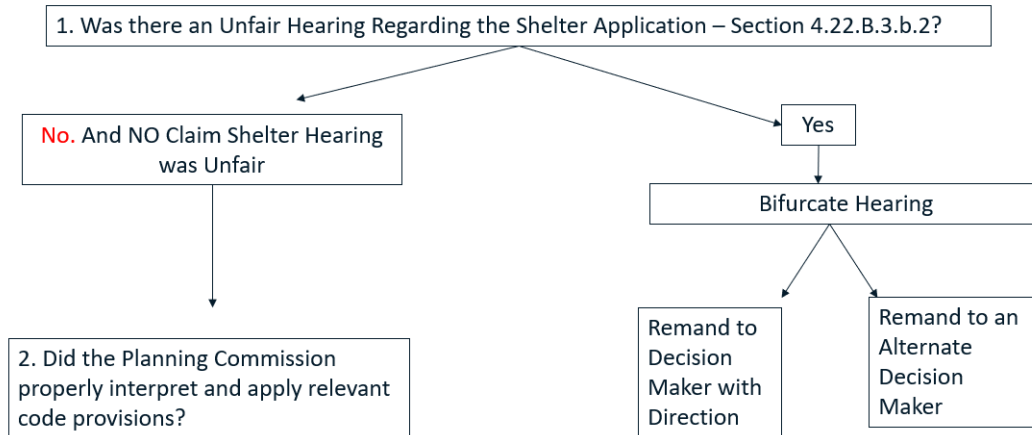
To Admit New Evidence, Council must find that Planning Commission considered evidence relevant to its findings which was **substantially false** or **grossly misleading**.



When an “unfair” hearing argument is alleged, Council must bifurcate the appeal. First, it must determine if in fact there was an “unfair hearing.” If there was, the matter can be remanded to the Planning Commission with instructions or remanded to an alternate decision maker if the Planning Commission will not provide a fair hearing on remand. If, however, Council finds that there was a fair hearing, its second step is to turn to the analysis of whether the Code was properly interpreted.

² August 28, 2024, Transcript of Planning Commission Hearing P.45 ll 31-33.

Appropriate Procedural Process



The basis of the unfair hearing argument contained in the Mendoza Appeal is New Evidence related to approval of an “overflow shelter,” which **is not** the application the Planning Commission or the City Council have before them. Thus, City Council should find that the fair hearing challenge is without merit and move directly to the analysis regarding whether the Planning Commission properly interpreted the Code to the Shelter application.

Because the following claims in the Mendoza Appeal are based on inadmissible New Evidence, they should not be reviewed by Council:

- 3.2.2.K. Access, Circulation and Parking.
- 3.4.1 Environmental Impacts.
- 3.5.1 J- Operational/Physical Compatibility Standards.
- 4.22.B – Service Commercial District Permitted Uses.

Why the Staff Report and the City Attorney's Office choose not to identify the New Evidence embedded in the Mendoza Appeal and how it should be handled by City Council is unclear.

II. Reviewable Appellant Arguments under the LUC

The Summary of the Code Criteria implicated in the Appeals that are not based on New Evidence, and thus, appropriate for review are:

1. 1.2.4 Applicability of the LUC;
2. 3.5.1.J(A)&(J) Operational/Physical Compatibility Standards;
3. 4.22.B Service Commercial District Permitted Uses; and
4. 5.1.2 Definitions. "Compatibility."

Arguments based on Inadmissible "New Evidence" of "500 overflow shelter beds," California Parking Studies, and unverified pictures that **should not** be reviewed are:

1. 3.2.2.K Access, Circulation and Parking;
2. 3.4.1 Environmental Impacts
3. 3.5.1 (J) Operational/Physical Compatibility Standards

III. Appellate Challenges & FCRM Responses

While the FCRM believes that the arguments of the Mendoza Appeal based on New Evidence identified above should not be reached by City Council, should Council disagree, FCRM argues in the alternative as to why all Code provisions raised in both Appeals were appropriately interpreted by the Planning Commission and the approval should be upheld.

1. **First, Appellants' argument related to LUC Section 1.2.4, 3.5.1, and 5.1.2 regarding "compatibility" asks City Council to ignore Code Section 1.3.1 – Establishment of Zone Districts in interpreting "compatibility."**

1.a. Court Instruction Related to Code Interpretation and Construction.

Appellants argue that LUC 1.2.4 regarding "Applicability" and 3.5.1 "Building and Project Compatibility" must be read in harmony with the general definitional section of 5.2.1. Appellants are correct in emphasizing "harmony" when referring to Code interpretation. Ironically, Appellants' proposed interpretation requires that City Council disregard LUC Section 1.3.1 and 4.22 of the Code and leads to illogical and unharmonious results.

To properly interpret a municipal code, the courts will turn to rules of statutory construction.³ In arriving at the correct interpretation of a municipal code, therefore, courts look to the legislative declaration or purpose. Additionally, municipal codes should be given “the construction and interpretation which will render it effective in accomplishing the purpose for which it was enacted.”⁴ Courts also read the “statutory [code] design as a whole, giving consistent, harmonious, and sensible effect to all of its parts.”⁵ But reviewing courts, and by extension City Councils, acting in their quasi-judicial capacity, should avoid constructions that lead to “illogical or absurd results.”⁶

The LUC states that in order to carry out the purposes of the Code, the City is divided into zone districts, which includes the Service Commercial District (“C-S”) of 4.22. The purpose of the C-S District 4.22 is to provide a transition from “high traffic commercial corridors where a range of uses is encouraged” for “commercial operations on a highway, arterial street or rail spur, to less intensive use areas or residential neighborhoods. This designation is only for areas that have been designated under an adopted subarea plan.” (The subarea plan relevant here is the North College Corridor Plan). The C-S District allows for an array of uses including bars, taverns and nightclubs, medical and retail marijuana centers, places of worship, childcare centers, grocery stores/supermarkets, veterinary clinics, hospitals, fast food restaurants, shelters, residential uses (including multi-family) and major vehicle repair and service stations. Thus, by definition, the C-S District allows for shelters, commercial businesses and high-density residential uses in the same district.

The LUC was adopted after public comment and hearing by the City Council in 1997 and re-adopted in 2023. Notably, the Commercial Service zone district was re-adopted without change in the new LUC of 2024. Appellants’ arguments would require the repeal of the Service Commercial Zone District - an argument he never raised and for which relief was never sought.

Appellant Mendoza’s argument essentially states that even though shelters and residential uses are allowed in the same zone district, shelters should not be allowed near other entirely different districts that contain residential components. Appellant Mendoza’s argument ignores the plain language of City Council Ordinance No. 159, 2020 which amended the zoning of the Hickory Mobile Home Park. That Ordinance stated in relevant part:

- WHEREAS, . . . the City Council has conducted a public hearing, considered the Staff Report, the Planning and Zoning Board recommendation and the findings, and the evidence from the

³ *Town of Erie v. Eason*, 18 P.3d 1271, 1275 (Colo. 2001).

⁴ *City and County of Denver School District No. 1 v. Dener Classroom Teachers Ass’n*, 407 P.3d 1220, 1223 (Colo. 2017); citing *Zaba v. Motor Vehicle Div., Dep’t of Revenue*, 516 P.2d 634, 637 (Colo. 1973).

⁵ *Denver School District No. 1*, 407 P.3d 1223; citing *Young v. Brighton Sch. Dist. 27J*, 325 P.3d 571, 576, (Colo. 2014).

⁶ *Denver School District No. 1*, 407 P.3d 1223; citing *Johnson v. People*, 379 P.3d 323, 327 (Colo. 2016).

public hearing and has determined that the property that is the subject of this Ordinance (the Hickory Mobile Home Park) should be rezoned as hereinafter provided; and

- WHEREAS, . . . the City Council has also analyzed and proposed rezoning against the considerations established in Section 2.9.4(H)(3) of the Land Use Code and determined that the proposed H-H zoning (a) **is compatible with the existing and proposed uses surrounding the subject property** and is an appropriate zone district for the property; . . . and (c) represents a logical and orderly development pattern.

With regards to the 250 beds, the only evidence in the record demonstrated the dire need for the Shelter and the inadequacy of current resources, spoke of the compatibility of the Shelter's Trauma Informed Design with the Code and North College Corridor subarea plan, integration of the Shelter into the community through operational standards and a strong working relationship with other service providers including the police, and the compliance with all structural and building requirements. No evidence was presented regarding why any other number of beds would be appropriate or how those numbers were calculated. City Council must be cognizant of the fact that fear and speculation related to possible future behavior is not evidence.

In the Service Commercial District the Shelter is a use by right. As noted in the record by the Senior Assistant City Attorney, it has been the Planning Commission's practice to review compatibility as related to the built environment. Thus, the Planning Commission did not misinterpret the Code when finding that the Shelter, commercial and residential uses are compatible uses. To do so would have required the creation of new rules and interpretation of the Code only applicable to the Shelter in violation of the applicant's due process and equal protection rights. not be allowed in the same zone district.

With regards to the 250 beds, the only evidence in the record demonstrated the dire need for the Shelter and the inadequacy of current resources, spoke of the compatibility of the Shelter's Trauma Informed Design with the Code and North College Corridor Sub-area plan, the integration of the Shelter into the community through operational standards and a strong working relationship with other service providers including the police, and the compliance with all structural and building requirements. City Council must be cognizant of the fact that fear and speculation related to possible future behavior **is not evidence.**

Thus, the Planning Commission did not misinterpret the Code when finding that the Shelter, commercial and residential uses are compatible uses, or they would not be allowed in the same zone district. Both Appellants' Code interpretations, lead to illogical and conflicting results.

1.b. Response to Mendoza New Evidence and Challenge Pursuant to 3.5.1(l)

** FCRM objects to Council's Consideration of this Criteria as it is based on New Evidence that should not be accepted. However, in the alternative, the FCRM argues the following:*

Appellant Mendoza's argument warning the City Council that this Project could become an "overflow shelter" is not true nor legally possible. An "overflow shelter" use is not allowed pursuant to the terms of the application, so it will not be allowed here. The entire purpose of having 250 beds is that there won't be a need for the overflow shelters in this area. There is no evidence to support that the Fort Collins Shelter will be used as an overflow shelter for Denver. Lastly, City Council cannot make decisions based on speculation, fear or an application not before it. City Council must make its decision based on the evidence in the record; and the only evidence in the record is that the Shelter is highly compatible within the Commercial Service Zone District.

2. The Project Meets Criteria 3.2.2.K – Access, Circulation and Parking.

** FCRM objects to Council's Consideration of this Criteria as it is based on New Evidence that should not be accepted. However, in the alternative, the FCRM argues the following:*

Similar to the analysis above, the Appellants state that the reason this criterion is not met is because of the number of beds. The FCRM wants to clarify that the final application staff reviewed and the Planning Commission reviewed was for 250 beds as testified to by the FCRM expert traffic engineer, Cassie Slade of Fox Tuttle Transportation Group, at the hearing.⁷ Initial discussions by the Homeless Advisory Committee years prior discussing a 500-bed capacity are irrelevant to the Code Criteria and were not part of this Project application, nor is the FCRM discussing any plan for such an expansion in the future. As needed as a 500-bed facility might be, the FCRM has no ability to finance or staff such a project and the current building design would not accommodate 500 beds. Were a miraculous amount of funding to magically appear to double the size of the Shelter, the FCRM would have to seek approval through a public process to build such an addition.

The FCRM did not make contradictory statements at Planning Commission about vehicle usage. The statement at Planning Commission was that "people using the beds are not likely to have vehicles." The fact that Staff stated that there was "not a particular basis" for the number of parking spots is not the same as saying there is "no basis" to support the parking study numbers. There is no requirement in the LUC regarding the amount of parking required to support shelters. Thus, City Staff and the FCRM had to work through an alternative compliance model to ensure parking was appropriate. By definition, all parking studies are educated estimates. They are meant to predict future traffic patterns within a reasonable range. This is exactly with the FCRM parking study did, what the parking expert testified to at the Planning Commission Hearing, and what the alternative compliance standard required. Further FCRM's guests will not be allowed to live in their vehicles on shelter property. The entire purpose of the shelter is so people have a place to go and aren't sleeping in their cars. The goal of the Shelter is to get people experiencing homelessness off the street and into a safe, warm environment, especially in anticipation of the colder winter months. This Project will enable Fort Collins to do just that. It is hypocritical of the

⁷ Fort Collins Rescue Mission Planning Commission Hearing, August 28, 2024, at P. 45 ll 19-26.

Appellant to argue that there are too many Shelter beds on the one hand and claim that not enough parking will lead to people sleeping in cars on the other. The uncontroverted testimony was that no one will be allowed to sleep in their cars on the Shelter site and that Fort Collins' Staff said, there were "no vehicle traffic issues related" with the Project.⁸

3. This Project meets Criteria LUC 3.4.1: Natural Habitats and Features.

** FCRM objects to Council's Consideration of this Criteria as it is based on New Evidence that should not be accepted. However, in the alternative, the FCRM argues the following:*

The Appellant claims that Planning Commission failed to consider environmental impacts and again presents the false narrative of 500 beds. Under the false assumption of a 500-bed capacity, the Appellant also fails to identify any specific negative "environmental impacts" the Shelter's 250 beds would have. Rather, the record is full of evidence that the design of the Shelter complies with all Natural Habitat Buffer Zones, provides extensive landscaping and is in compliance with all setbacks. The Project fully meets the purpose of this section which is: "to ensure that when property is developed consistent with its zoning designation, the way in which the proposed physical elements of the development plan are designed and arranged on the site will protect the natural habitats and features both on the site and in the vicinity of the site." The only evidence in the record is that this criterion was met.

4. Next, Appellants' argument related to LUC Section 3.5.1(A) and (J) asks City Council to read these provisions out-of-context from Article 4 and 3.5.1 (B)-(H).

4.a. LUC Section 3.5.1(A) Purpose

LUC Section 3.5.1 Subsection (A) states that the purpose of this Section is to ensure that the physical and operational characteristics of proposed buildings and uses are compatible when considered within the context of the surrounding area. However, this section also states that they should be read in conjunction with the more specific *building standards contained in this Division 3.5 and the zone district standards contained in Article 4*. Therefore, Subsection (A) specifically references Article 4 Zone District Standards and requires consideration of, in this case, the Commercial Service District approved uses. Thus, Planning Commissions observance that compatibility of the Shelter with residential and commercial uses as described in the CS District was entirely appropriate. Subsections 3.5.1 (B)-(H) then direct the decision-maker to review such physical characteristics of the building such as: (i) surrounding Architecture - which notably Appellant agrees the project is compatible with (ii) building size, height, bulk, mass, and scale - which there is ample evidence in the record to support and which the Planning Commission spent significant time analyzing.

⁸ Fort Collins Rescue Mission Planning Commission Hearing, August 28, 2024, P. 45 ll 12-13.

4.b. LUC 3.5.1(J) Operational/Physical Compatibility Standards

The Subsection (J) criterion is meant to address the operational and physical compatibility of the Shelter as a structural building, not speculative future behaviors. The plain language of Subsection (J) states:

Operational/Physical Compatibility Standards. Conditions may be imposed upon the approval of development applications to ensure that new development will be compatible with existing neighborhoods and uses. Such conditions may include, but need not be limited to, restrictions on or requirements for: (1) hours of operation and deliveries; (2) location on a site of activities that generate potential adverse impacts on adjacent uses such as noise and glare; (3) placement of trash receptacles; (4) location of loading and delivery zones; (5) light intensity and hours of full illumination; (6) placement and illumination of outdoor vending machines; (7) location and number of off-street parking spaces.

Physical Compatibility.

The Appellant attacks the physical compatibility of the Project without acknowledging the purpose of the Service Commercial District or the North College Corridor Subarea Plan that applies to this area and with which the FCRM is highly compatible.

The Service Commercial Area is supposed to function as a transition from the more industrial to downtown aesthetic. The Service Commercial Area is not supposed to be representative of suburban residential. Specifically, the Project seeks to further this provision “character will be contemporary semi-industrial, combined with familiar, traditional Old Town . . . character. . . Architectural design featuring exposed structural elements, brick instead of concrete block, corrugated or ribbed metal . . . and palette colors rather than beige, will create urban places that complement Downtown and offer a distinct alternative to standardized suburban development.” The Shelter directly meets these standards as is further supported in the application and presentation materials before the Planning Commission.

The North College Corridor Plan’s Land Use Activity Goal 3 specifically states that it is to “Maximize Multiple story Buildings.” The North College Corridor Plan’s Section 3.1 states that “the City and URA will encourage multi-story buildings, and additional height in one-story buildings, in development projects.” As detailed in the record – the design of the building shows its strong alignment with this applicable subarea plan.

Operational Compatibility.

The Appellants raise arguments about operational hours and deliveries. In response to this, the FCRM emphasized how having a place for people to go both day and night greatly reduced interactions between guests of the Shelter and neighborhood residents and local businesses. Though it is a much more expensive way to operate, the FCRM has found that being able to invite its unhoused neighbors inside its building

throughout the day is a pressure valve release for the neighboring community. This will also allow Fort Collins to keep the sidewalks and property lines clear. In 2021, after only a handful of months of switching to the 24/7 model, upwards of 60 men obtained employment, some even at the neighboring places of business. And, from June of 2023 through July of 2024, over 70 of the FCRM guests exited shelter and homelessness to enter more stable housing. Lastly, FCRM encourages City Council to watch the Planning Commission hearing. Appellant's argument that FCRM relied on "calling the police" to ensure compatibility is a complete mischaracterization of the testimony of both the FCRM and the Fort Collins Police Department.

The Fort Collins Police Department voluntarily spoke at the Planning Commission Hearing regarding the department's ability to support this Project at its proposed 250 bed size, as well as to describe the operational relationship between the department and the FCRM. Fort Collins Police Chief Swoboda stated, "as we are looking at this Shelter and our response . . . you know the Police Department is equipped to show and handle any kind of call in the entire city. We are very well-equipped organization; we handle amazing people who are great problem solvers. So any issue that comes up we will be able to address."⁹ Additionally, testimony from the police department included this statement, "at the current shelter when something is reported, staff are forthcoming with information, we do have a really good relationship with them. They are reporting criminal activity on or around the property. And like Seth had said earlier, we do have a great working relationship with them. We don't constantly have to patrol the area as it stands right now, but we do respond to the calls as they come."¹⁰ And finally, the police testified that they have a "great relationship with the FCRM, their staff, Seth. We communicate regularly about all the issues. If we are having an ongoing issue, Seth is a phone call away; he's very receptive, their staff is very receptive to concerns or issues if they have them, and vice-versa."¹¹

Operational Compatibility and Trauma Informed Design

In addition to the other ways this Project is compatible, the FCRM added in additional design element of trauma informed design ("TID"). The Planning Commission received extensive information in relation to the TID of this building and that information is available to the City Council as well. In sum, the purpose of trauma informed design is to balance safety with the building use and design integration with the community. A few key elements of TID are: (i) a place for guests to store belongings so that items are not on streets and sidewalks (ii) a covered and spacious lobby and intake area to allow for smooth check-in and minimal congestion (iii) 70 indoor and outdoor cameras for Active security and increased staff for passive security and (iv) 2 types of fences - a 6' opaque fence along the public facing sides and a 6' steel picket fence along southern dry creek side.

⁹ Fort Collins Rescue Mission Planning Commission Hearing, August 28, 2024, Transcript at P. 25, ll 9-13 ("Seth" is a reference to the Director of the FCRM)

¹⁰ Fort Collins Rescue Mission Planning Commission Hearing, August 28, 2024, at P. 25, ll 22-26.

¹¹ Fort Collins Rescue Mission Planning Commission Hearing, August 28, 2024, at P. 27 ll 25-28.

** FCRM objects to Council's Consideration of this Criteria as it is based on New Evidence that should not be accepted. However, in the alternative, the FCRM argues the following:*

Appellant Mendoza's arguments related to trash removal and package delivery somehow making the Shelter incompatible in a commercial zone district are somewhat baffling. Why the Shelter would not be allowed to have the same trash removal schedule or package delivery as a commercial building or multi-family housing unit in a Service Commercial zone district is perplexing. Suffice to say there was no evidence in the record to support an argument for incompatibility based on these baffling theories as there was no evidence presented by the opponents as to how trash and delivery services for the Shelter would differ in any meaningful way from other commercial or residential buildings in the area.

Appellant Mendoza's argument warns the City Council that this Project could become an overflow shelter for the Denver Rescue Mission. This is not true. An overflow shelter use is not allowed in this zone district, so it will not be allowed here. The entire purpose of having 250 beds is that there won't be a need for the overflow shelters. There is no evidence to support that the Fort Collins Shelter will be used as an overflow shelter for Denver. Further, the Denver Rescue Mission Shelter has many differentiating factors from this Project. The Denver shelter does not implement trauma informed design and is located in a very busy area constrained by a smaller building. This Project was designed to avoid those issues. Lastly, City Council cannot make decisions based on speculation, you must make your decision based on the evidence in the record. Thus, the Planning Commission appropriately interpreted and applied all applicable code provisions when it approved the FCRM FDP.

5. Appellants' Proposed Conditions Are Legally Invalid

The Appellant Jones proposes limiting the quantity of overnight beds to 41. There is no evidentiary reason to limit the number of beds, and it is unclear how this arbitrary number was calculated. There are currently 159 beds (between the current shelter and overflow), so Appellants suggest that the number of currently available beds should be dramatically reduced despite the uncontroverted evidence that the need exceeds the current shelter capacity. Second, if the Service Commercial Zone district would allow for a multi-family unit in its zone district alongside single-family residential, there is no rational nexus for this occupancy limitation unless you are treating unhoused people as guilty of criminal acts they have not engaged in, been charged with, or convicted of. There was absolutely no data in the record to support any argument that people experiencing homelessness commit more crimes than other Fort Collins residents. Again, this argument attempts to regulate speculative future behavior through the Code.

Appellant Jones' request that higher security patrols in the neighborhood and "other conditions" as suggested by residential neighbors is unsupported by the Police Department's testimony. City Council is cautioned against directing the Police Department how to spend its resources and staff its posts through land use code regulation. City Council is also cautioned against conditioning approval on random last-minute requests that provide the FCRM with due process in the form of notice and violate the tenants of

equal protection in requiring conditions not applicable to any other residential approval based solely on alleged future behavior.

Finally, Council must consider the recent passage of House Bill 2024-1007 Concerning Residential Occupancy Limits (the “Bill”). The Bill states:

(3) A LOCAL GOVERNMENT SHALL NOT LIMIT THE NUMBER OF PEOPLE WHO MAY LIVE TOGETHER IN A SINGLE DWELLING BASED ON FAMILIAL RELATIONSHIP. LOCAL GOVERNMENTS RETAIN THE AUTHORITY TO IMPLEMENT RESIDENTIAL OCCUPANCY LIMITS BASED ONLY ON:

(a) DEMONSTRATED HEALTH AND SAFETY STANDARDS, SUCH AS INTERNATIONAL BUILDING CODE STANDARDS, FIRE CODE REGULATIONS, OR COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WASTEWATER AND WATER QUALITY STANDARDS; OR

(b) LOCAL, STATE, FEDERAL, OR POLITICAL SUBDIVISION AFFORDABLE HOUSING PROGRAM GUIDELINES.

While the direct applicability of this Bill to a Shelter has not been formally addressed, there is certainly a strong argument that the City is in violation of this Bill if it chooses to indulge the Appellant’s demands for occupancy limitations based on the fact that Shelter occupants are experiencing homelessness; as clearly the Shelter structure itself has been found to meet all International Building Code Standards, Fire Code Regulations, and Department of Health and Environment Wastewater and Water Quality standards.

6. Conclusion

In conclusion, to quote the Appellant, “This appeal is not discounting [that] there is a need for this population to be served, and that we as a community should serve this population. This appeal does not have an answer to this problem.” The Fort Collins City Council has the answer, and the answer complies with all applicable Code criteria. Fort Collins City Council has an incredible opportunity to address a critical community need that adheres to the recommendations of the Homeless Advisory Committee, meets the current and relevant policy objectives, and satisfies all of the applicable Code requirements.

Based on the evidence in the record and the unanimous approval of the Planning Commission, we ask that City Council uphold the unanimous decision of the Planning Commission to approve the FCRM Project.

We specifically ask that this letter be provided to the Members of City Council prior to the Hearing and added to the record via an addition to the published Agenda Packet.

November 4, 2024
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Sincerely,

A handwritten signature in cursive script, appearing to read "C. Havelda", followed by a horizontal line extending to the right.

Claire Havelda

cc: Seth Forwood

Attachments:

House Bill 2024-1007 & Fort Collins Ordinance 2020 No. 159

31724476.1

An Act

HOUSE BILL 24-1007

BY REPRESENTATIVE(S) Rutinel and Mabrey, Bacon, Boesenecker, deGruy Kennedy, English, Epps, Froelich, Garcia, Hernandez, Jodeh, Kipp, Lindsay, Lindstedt, Marvin, Mauro, McCormick, Ortiz, Parenti, Ricks, Sirota, Velasco, Vigil, Weissman, Willford, McCluskie, Herod, Martinez; also SENATOR(S) Exum and Gonzales, Buckner, Coleman, Cutter, Danielson, Fields, Hinrichsen, Jaquez Lewis, Marchman, Michaelson Jenet, Priola, Winter F.

CONCERNING RESIDENTIAL OCCUPANCY LIMITS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 29-20-111 as follows:

29-20-111. Local government residential occupancy limits - short title - legislative declaration - definition. (1) THE SHORT TITLE OF THIS SECTION IS THE "HOME (HARMONIZING OCCUPANCY MEASURES EQUITABLY) ACT".

(2) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT OCCUPANCY LIMITS AND THE INCREASED AVAILABILITY OF HOUSING ARE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

MATTERS OF MIXED STATEWIDE AND LOCAL CONCERN.

(3) A LOCAL GOVERNMENT SHALL NOT LIMIT THE NUMBER OF PEOPLE WHO MAY LIVE TOGETHER IN A SINGLE DWELLING BASED ON FAMILIAL RELATIONSHIP. LOCAL GOVERNMENTS RETAIN THE AUTHORITY TO IMPLEMENT RESIDENTIAL OCCUPANCY LIMITS BASED ONLY ON:

(a) DEMONSTRATED HEALTH AND SAFETY STANDARDS, SUCH AS INTERNATIONAL BUILDING CODE STANDARDS, FIRE CODE REGULATIONS, OR COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WASTEWATER AND WATER QUALITY STANDARDS; OR

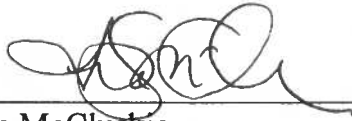
(b) LOCAL, STATE, FEDERAL, OR POLITICAL SUBDIVISION AFFORDABLE HOUSING PROGRAM GUIDELINES.

(4) AS USED IN THIS SECTION, "LOCAL GOVERNMENT" MEANS A HOME RULE OR STATUTORY CITY, HOME RULE OR STATUTORY COUNTY, TOWN, TERRITORIAL CHARTER CITY, OR CITY AND COUNTY.

SECTION 2. Effective date. This act takes effect July 1, 2024.

SECTION 3. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate

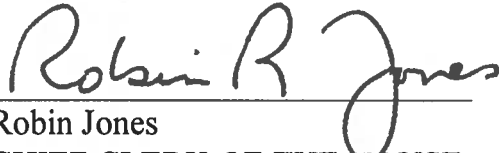
preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.



Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Steve Fenberg
PRESIDENT OF
THE SENATE

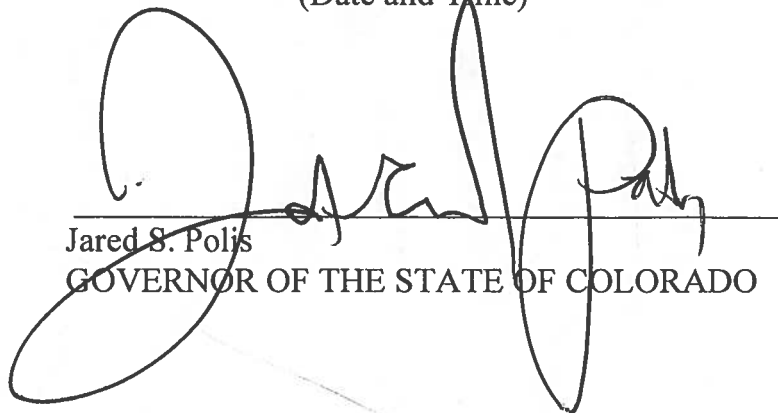


Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED Monday April 15th 2024 at 12:15 pm
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

ORDINANCE NO. 159, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS BY CHANGING THE ZONING
CLASSIFICATION FOR THAT CERTAIN PROPERTY KNOWN
AS THE HICKORY VILLAGE MOBILE HOME PARK REZONING

WHEREAS, Division 1.3 of the Fort Collins Land Use Code (the "Land Use Code") establishes the Zoning Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code establishes procedures and criteria for reviewing the rezoning of land; and

WHEREAS, City Council seeks to preserve and support existing manufactured housing communities in Fort Collins such as the Hickory Village Mobile Home Park ("Hickory Village"); and

WHEREAS, in accordance with the foregoing, the City Council has conducted a public hearing, considered the Staff Report, the Planning and Zoning Board recommendation and the findings, and the evidence from the public hearing and has determined that the property that is the subject of this Ordinance should be rezoned as hereinafter provided; and

WHEREAS, the City Council has further determined that the proposed rezoning is consistent with the City's Comprehensive Plan as required by Section 2.9.4(H)(2) of the Land Use Code; and

WHEREAS, to the extent applicable, the City Council has also analyzed the proposed rezoning against the considerations established in Section 2.9.4(H)(3) of the Land Use Code and determined that the proposed M-H zoning (a) is compatible with existing and proposed uses surrounding the subject property and is an appropriate zone district for the property; (b) is not anticipated to significantly impact the natural environment; and (c) represents a logical and orderly development pattern.

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

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


Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by changing the zoning classification from Low Density Mixed Use ("LMN") Zone District, to the newly created Manufactured Housing Community ("M-H") Zone District, for the following described property in the City known as the Hickory Village:

ALL HICKORY VILLAGE, FTC

Section 3. That the property known as the Hickory Village shall remain included in the Residential Sign District adopted pursuant to Section 3.8.7.1(M) of the Land Use Code.

Section 4. The City Manager is hereby authorized and directed to amend said Zoning Map in accordance with this Ordinance.

Introduced, considered favorably on first reading, and ordered published this 1st day of December, A.D. 2020, and to be presented for final passage on the 15th day of December, A.D. 2020.



Mayor

ATTEST:



City Clerk




Passed and adopted on final reading on this 15th day of December, A.D. 2020.



Mayor

ATTEST:



City Clerk

