

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue, Fort Collins, CO 80521 Telephone (970) 494-3500	
<p>Plaintiffs: RICHARD BALL, an individual and resident of the City of Loveland, DAVE CLARK, an individual and resident of the City of Loveland; JOHN FOGLE, an individual and resident of the City of Loveland; DONALD OVERCASH, an individual and resident of the City of Loveland; DANIEL MILLS, an individual and resident of the City of Loveland; CHAUNCEY TAYLOR, an individual and resident of the City of Loveland; CHRISTY TAYLOR, an individual and resident of the City of Loveland; and CLAIRE HAENNY, an individual and resident of the City of Loveland</p> <p>v.</p> <p>Defendant: CITY OF LOVELAND</p>	
<p><i>Attorneys for Plaintiffs:</i> Russell W. Sinnett SINNETT LAW OFFICE, LLC P.O. Box 644 Loveland, CO 80539-0644 Phone: 970-800-3751 russell.sinnett@russell970.com Attorney Registration No.: 32723</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p><i>Case No:</i> <i>Division:</i></p>
<p>VERIFIED COMPLAINT</p>	

COMES NOW, Plaintiffs Richard Ball, David Clark, John Fogle, Donald Overcash, Daniel Mills, Chauncey Taylor, Christy Taylor, and Claire Haenny (collectively, “Plaintiffs”), to hereby submit this *Verified Complaint* against the Defendant, City of Loveland, (hereinafter, “the City”), and in support thereof, state and allege as follows:

I. PARTIES

1. Plaintiff Richard Ball, Esq., at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter. Mr. Ball is also a former Loveland City Council member and was a member of the original Home Rule Charter Commission that wrote the Loveland City Charter adopted by the citizens of Loveland upon their vote in a special election on May 21, 1996, and submitted to the Colorado Secretary of State on May 23, 1996.

2. Plaintiff Dave Clark, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter. Mr. Clark is also a former Loveland City Council member.

3. Plaintiff John Fogle, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter. Mr. Fogle is also a former Loveland City Council member.

4. Plaintiff Donald Overcash, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter. Mr. Overcash is also a former Loveland City Council member.

5. Plaintiff Daniel Mills, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter.

6. Plaintiff Chauncey Taylor, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter. Mr. Taylor is also a former Loveland City Council member.

7. Plaintiff Christy Taylor, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter.

8. Plaintiff Claire Haenny, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter.

9. Defendant, the City of Loveland, is a home-rule municipal government situated in Larimer County, Colorado. Defendant acts, in part, through its nine (9) elected members of the City Council (hereinafter, the “Council”) comprised of the Mayor and eight (8) City Councilors. At all times relevant hereto, the Council is authorized to act on behalf of the City under the Municipal Charter of the City of Loveland (hereinafter, the “Charter”). As is relevant to this action, the Council has authority, *inter alia*, to participate in the development and sustainability

of the City on behalf of its citizens through resolutions and ordinances at public meetings of the Council, and to enter into binding contracts involving development projects which include “Urban Renewal.”

10. At all times relevant hereto, the Mayor and the members of the Council were both elected officials and employees of the City and were acting in their official capacity as those actions or inactions of the Mayor or Council Members are set forth below.

II. JURISDICTION and VENUE

11. On January 18, 2024, the above-named Plaintiffs filed their *Verified Complaint* in the Municipal Court for the City of Loveland. *Ball et. al. v. City of Loveland* Case No. 24CV001.

12. On January 29, 2024, the presiding judge for the Loveland Municipal Court entered an order of recusal for the presiding judge and all five (5) municipal court deputy judges (citing personal or professional conflicts) and ordered that pursuant to the Intergovernmental Agreement for Judicial and Administrative services (IGA), the case be presided over by the Greeley Municipal Court and the Honorable Mark C. Gonzales, Municipal Court Judge.

13. On February 5, 2024, Plaintiffs filed their *Amended Verified Complaint* with the Municipal Court to include allegations based upon stipulated facts between the parties in *McWhinney Real Estate Serv., et.al. v. City of Loveland*, Larimer County District Court case number 2023CV30956.

14. On February 8, 2024, the Greeley Municipal Court issued its *Order Accepting Appointment via I.G.A. and Setting Status Conference*. In said order, the case was given a separate case number by the Greeley Municipal Court (Case No. SP24-001) and set the matter for a status conference on March 29, 2024.

15. At the status conference held March 29, 2024,¹ the Municipal Court first inquired of Plaintiffs’ counsel as to the jurisdiction of the Court to hear the case. After hearing argument from both parties’ counsel, the Municipal Court set the matter for a one-hour hearing on April 26, 2024, and ordered the parties to submit a legal memorandum in support of their position prior to the hearing. Plaintiffs’ memorandum on jurisdiction is attached to this *Verified Complaint* as **Exhibit 1**. Defendant’s memorandum on jurisdiction is attached to this *Verified Complaint* as **Exhibit 2**.

16. The claims in this case arise, first and foremost, under the provisions of the Loveland City Charter.

¹ This case was heard together with *Gazlay v. City of Loveland*, Loveland Municipal Court civil action no. 24CV002, Greeley Municipal Court case number SP-24-002.

17. The Loveland Municipal Court is vested with original jurisdiction to hear matters arising under the Charter² or City Ordinances and as they may be subject to, or otherwise not violate, the United States Constitution and the Constitution of the State of Colorado.³

18. On April 26, 2024, after receiving the parties' briefs and hearing argument from both parties, the Court issued its verbal findings and order wherein it declined to exercise subject matter jurisdiction over the *Ball* and *Gazlay* cases. The Municipal Court relied heavily on the opinion *Town of Frisco v. Baum*, 90 P.3d 845 (Colo. 2004), and in particular footnote five (5)⁴ to that opinion regarding a requirement of a "mechanism" ordinance similar to a C.R.C.P. Rule 106 proceeding. *Cf.*, *Price Haskel v. Denver Dept. of Excise & Licenses*, 694 P.2d 364 (Colo. App. 1984) (constitutional challenges are not within scope of review under section (a)(4)); *People ex rel. Orcutt v. District Court*, 445 P.2d 887 (1968) (contentions of unconstitutionality under this rule provide no basis for jurisdiction in the district court under this rule); *see, also, Two G's, Inc. v. Kalbin*, 666 P.2d 129 (Colo. 1983).

19. The District Court, being a court of general jurisdiction and superior to the Municipal Court, may exercise original jurisdiction⁵ in this case. "It is the settled practice of this court not to exercise its original jurisdiction except in cases *public juris*, or in cases where it is shown that a refusal to take jurisdiction would practically amount to a denial of justice." *In re Rogers*, 22 P. 1053, syllabus (Colo. 1890).

20. Venue is appropriate in this Court as the actions of the Council which are the subject matter of this case occurred in the City of Loveland, County of Larimer, State of Colorado and involve Urban Renewal Development in Loveland, Colorado.

21. Venue is appropriate in this Court pursuant to C.R.C.P. Rule 98.

² SECTION 9-2 -- MUNICIPAL COURT; MUNICIPAL JUDGE

(a) There shall be a Municipal Court vested with jurisdiction over matters arising under the Charter and ordinances of the City. The Municipal Court shall be a court of record.

³ SECTION 2-4 -- POWERS OF THE CITY

(a) The City shall have all the power of local self-government and home rule and all power possible for the City under the State Constitution. All such powers shall be exercised in a manner consistent with the United States Constitution, the State Constitution, and this Charter.

⁴ 5. Apparently attempting to provide a procedure for review of civil actions, the Town of Frisco adopted C.R.C.P. 106, which allows for review of governmental action as well as other types of review. Although the town merely adopted C.R.C.P. 106 without change, which renders its application somewhat ambiguous, it appears that the town's intent was to adopt the rule so as to provide a mechanism for review of civil actions in its municipal courts. To the extent that it attempts to do more than provide for review of a civil action such as the one before us, we do not address its application.

⁵ *Original jurisdiction*. Jurisdiction to consider a case in the first instance. Jurisdiction of court to take cognizance of a cause at its inception, to try it, and pass judgment upon the law and facts. BLACK'S LAW DICT., 6th Ed. (West Pub. 1990).

III. FACTUAL ALLEGATIONS

22. Plaintiffs incorporate the allegations set forth above in the paragraphs one (1) through twenty-one (21) above as if fully set forth herein.

23. This case arises from the actions or inaction of the Council regarding the multi-use development known as “Centerra South,” in Loveland. Centerra South is a mixed use, planned community situated on 139 acres of land near the interchange of Interstate 25 and U.S. Highway 34 (or Eisenhower Boulevard).

24. Actions and inaction of the Council, as alleged in the *Verified Complaint* in this case, also formed the basis of and gave rise to *McWhinney Real Estate Serv., et.al. v. City of Loveland*, Larimer County District Court case number 2023CV30956; the *Verified Complaint* in that matter was filed on November 28, 2023.

25. In the *McWhinney* matter, *supra*, the parties filed an *Amended Joint Stipulations of Fact* for the purposes of disposing of the parties’ claims and defenses in summary judgment. See, **Exhibit 3**, attached. The City has already stipulated in a court of record to the following facts, which are adopted by reference and fully incorporated as follows:

a. Stipulated Facts in *McWhinney, et.al. v. City of Loveland*:

1. On July 2, 2002, the Loveland Urban Renewal Authority (“LURA”) was created by Resolution #R-44-2002 of the City of Loveland’s City Council (“City Council”). LURA remains in existence to this day.
2. On January 20, 2004, the City Council passed a resolution approving the US 34/Crossroads Corridor Renewal Plan (the “Crossroads Corridor Plan”).
3. At the January 20, 2004 meeting, the City Council also passed a resolution approving the Centerra Master Financing and Intergovernmental Agreement (the “Centerra MFA”).
4. On September 2, 2008, the City Council passed a resolution approving an amendment to the Crossroads Corridor Plan and the Centerra MFA (the “Amended Centerra MFA”) to incorporate additional land, including 140 acres of legally designated agricultural land near Highway 34 and I-25 (“Centerra South”).
5. The Crossroads Corridor Plan and Amended Centerra MFA contemplate the development of certain identified land (the “Project”), which includes, but is not limited to, Centerra South.

6. The Centerra MFA and Amended Centerra MFA permit public-private financing for the Crossroads Corridor Plan through a time-limited Public Improvement Fee (“PIF”) and Tax Increment Financing (“TIF”).
7. Through TIF, the incremental new tax revenues generated by a redevelopment project are used to cover some or all of the cost of a redevelopment project.
8. Pursuant to C.R.S. section 31-25-107(9)(a), the permissible TIF term is 25 years.
9. The Centerra MFA and Amended Centerra MFA define “URA Term,” by reference to the “Term” of the Crossroads Corridor Plan. The term for the Crossroads Corridor Plan is from January 20, 2004 to January 20, 2029.
10. The Centerra MFA and Amended Centerra MFA expire in 2029—25 years from the effective date of the Centerra MFA.
11. McWhinney Real Estate Services, Inc. is the legal manager of Centerra Properties West, LLC, the developer for the Project identified in the Crossroads Corridor Plan and the Centerra MFA. McWhinney Real Estate Services, Inc. and Centerra Properties West, LLC are referred to together as “McWhinney” or the “Developer.”
12. To effectuate (sic) the development of the property identified in the Crossroads Corridor Plan, McWhinney needed assistance from public partners to offset the costs of extraordinary and regional infrastructure such as interchanges, water, sewer, and gas facilities.
13. McWhinney has not applied for or obtained permits for the development of Centerra South or broke(n) (sic) ground on the project.
14. McWhinney has made public submissions related to the development of Centerra South and spent funds in expectation of breaking ground.
15. McWhinney proposed the creation of a new urban renewal plan to include Centerra South in the spring of 2022 and had ongoing discussions with the City about the idea from summer 2022 into 2023.
16. On January 24, 2023, McWhinney gave a presentation to the City Council.
17. At the January 24, 2023 meeting, the McWhinney presentation addressed its proposed plans related to Centerra South and the new proposed urban renewal plan for Centerra South. McWhinney projected that by April 1, 2023 it would have the “New Centerra South Urban Renewal Plan, New Centerra South-

Specific MFA, New Centerra South Metro Districts, and Millenium GDP Amendment” prepared for approval.

18. At the same meeting, the City also heard presentations about the urban renewal process.

19. On February 25, 2023, a notice was published in the Loveland Reporter-Herald by the City Council regarding a public hearing to discuss the new proposed urban renewal plan for Centerra South to be held on April 4, 2023 at 6:00 P.M.

20. On February 27, 2023, the Loveland Planning Commission heard a presentation on the new proposed urban renewal plan for Centerra South. Attached to the presentation was a draft of the Centerra South Urban Renewal Plan.

21. The new proposed urban renewal plan for Centerra South contemplated development of Centerra South, the 140-acre plot of agricultural land included as a portion of the land in the September 2, 2008 amendment to the Crossroads Corridor Plan and the Amended Centerra MFA.

22. At the February 27, 2023 meeting, the Loveland Planning Commission passed a motion by a 4-2 vote “to recommend to the City Council that the [new Centerra South] Urban Renewal Plan as proposed [at that meeting] is not consistent with the Loveland Comprehensive Plan.”

23. No substantive discussion regarding the approval of the new proposed urban renewal plan for Centerra South was conducted during the City Council meeting held on April 4, 2023. On March 1, 2023, a “Corrected Notice of Public Hearing” was published in the Loveland Reporter-Herald by the City Council regarding a public hearing to discuss the new proposed urban renewal plan for Centerra South and “the proposed minor modification of the [Crossroads Corridor Plan]” to be held on Tuesday, April 18, 2023 at 6:00 P.M. in the City Council Chambers of the Municipal Building 500 East Third Street, Loveland, Colorado.

24. No hearing regarding the approval of the new proposed urban renewal plan for Centerra South was conducted during the City Council meeting held on April 4, 2023.

25. During the April 4, 2023 City Council meeting, Mayor Marsh stated that she did not believe Centerra South was eligible to be used in a new urban renewal plan.

26. On April 17, 2023, the City Attorney stated in an email to Mayor Jacki Marsh that “the City determined recently that negotiations will not be completed by the

April 18, 2023 City Council meeting, but these public hearings are on the April 18, 2023 City Council Agenda.”

27. Final negotiations regarding the new proposed urban renewal plan for Centerra South were not completed as of the April 18, 2023 City Council meeting.

28. No resolutions regarding the modification of the Crossroads Corridor Plan or the new proposed urban renewal plan for Centerra South were presented or put to a vote at the April 18, 2023 City Council meeting.

29. In the April 17, 2023 email, the City Attorney said that the decision to move forward with the April 18, 2023 meeting was to “avoid republishing a hearing notice and restarting the 30-day notice deadline.”

30. On May 2, 2023, the City Council held a public hearing concerning the modification to the Crossroads Corridor Plan and the adoption of a new proposed urban renewal plan for Centerra South.

31. At the May 2, 2023 City Council meeting, the City Council voted to approve two resolutions: Resolution #R-49-2023 and Resolution #R-50-2023.

32. The motion to adopt Resolution #R-49-2023 was passed by a vote of 9-0.

33. The motion to adopt Resolution #R-50-2023 was passed by a vote of 7-2, with Mayor Marsh and Councilor Mallo dissenting.

34. On May 8, 2023, Mayor Marsh refused to sign the resolution adopting the Centerra South Plan. She wrote on the resolution itself, “I cannot sign this resolution, as I believe [the resolution] and the Centerra South URA Plan, as currently written are in violation of Colorado State Statute 31-25-107.”

35. On May 16, 2023, the City Council approved two resolutions approving the Master Finance and Intergovernmental Agreement for Centerra South (the “Centerra South MFA”) and the waiver of surface rights in the Centerra South property. The City Council also approved Resolution #R-53-2023, further amending the Centerra MFA.

36. On May 16, 2023, Mayor Marsh also refused to sign the resolution approving the Centerra South MFA, writing, “Res #R-49-2023, Res #R-50-2023, Res #R-54-2023, Res #R-53-2023 are null and void as they and the proposed Centerra South URA Plan violate Colorado State Statute 31-25-107. Exemption (e) is a grandfather clause and does not permit the creation of a new URA Plan. [Please] refer to testimony by sponsors and co-sponsors of HB10-1107.”

37. Mayor Marsh made the same statement on Resolution #R-55-2023, the waiver of surface rights.
38. On May 23, 2023, Governor Jared Polis vetoed Senate Bill 23-273, “Concerning the Inclusion of Agricultural Land in Urban Renewal Areas.”
39. Negotiations with Larimer County, as provided for under C.R.S. § 31-25-107(9)(a)(II), regarding funding continued into the fall of 2023, when Larimer County agreed to subject its mill levy to the tax allocation provision in the Centerra South Plan.
40. Following Larimer County’s agreement, the tax allocation provisions in the Centerra South Plan were presented to the City Council for approval via Resolution #R-111-2023, which was approved on October 3, 2023.
41. On November 7, 2023, the City held elections.
42. Three new members were elected to the City Council.
43. Further, Loveland voters approved Ballot Question 301. A true and correct copy of this Ballot Question is attached hereto as Exhibit Y.
44. The City Council swore in its final new member at its meeting on November 21, 2023.
45. Six days prior to that meeting, Mayor Marsh sent an email to the City Manager and to the City Attorney regarding two motions to be added to the upcoming City Council meeting.
46. No notice regarding a public hearing on these motions was published in a newspaper having general circulation in the City.
47. These items were added as “New Business” on the City Council’s agenda.
48. No motion was introduced to rescind Resolution #R-111-2023.
49. On November 21, 2023, the City Council voted to rescind Resolution #R-50-2023 and Resolution #R-54-2023.
50. As “New Business” items, each of the two items added by Mayor Marsh were allotted ten minutes for presentation.

51. Mayor Marsh—the presenter for the motions to rescind the prior Resolutions—and Councilwoman Erin Black spoke in support of each of the two new motions.

52. Councilman Dana Foley called a point of order, which Mayor Marsh overruled.

53. Councilwoman Andrea Samson attempted to speak past the permitted time limit on the motion and ask a question to the City Attorney, but Mayor Marsh declined to allow further discussion on the first motion because the time limit had expired.

54. Councilman Foley called for a point of order, noting that the ten minutes for presentation of the first motion had expired without the completion of the vote on that motion. Councilman Foley asked that the first motion be declared dead. Mayor Marsh overruled this point of order.

55. Mayor Marsh and Councilman Troy Krenning stated that the vote on the first motion must finish.

56. After Mayor Marsh overruled his point of order, Councilman Foley left the meeting, abstaining from the vote on the first motion.

57. The first motion passed by a vote of 6-2 with Councilman Foley abstaining.⁶ Councilwoman Samson later stated that she only voted in favor of the motion “because if [she was] on the side that wins, which [she] was, then [she] can bring the item back, and [she had] every intention to do so.”

58. The City Council then proceeded to the second motion—whether to rescind the Resolution that approved the MFA.

59. This time, Mayor Marsh introduced the motion for about five minutes.

60. Ultimately, the second motion passed by a vote of 5-3 with Councilman Foley again abstaining.⁷

61. Neither of the motions [raised by Mayor Marsh] have been submitted to the City’s voters for approval.

⁶ This allegation is factually inaccurate. Councilman Foley’s absence from the room prevents his vote from being counted, where an “abstention” under the Council Rules counts as a “yes” vote. Councilman Foley was not present in Council Chambers when the vote was taken, and therefore could not have “abstained” from the vote.

⁷ See, footnote 6, *supra*.

26. Centerra South, described as a community, includes open or public spaces, attainable housing, office spaces, and retail spaces anchored by a nationwide organic grocery store franchise together with its world headquarters that were to be relocated to Loveland.

27. Centerra South is a development that by definition includes urban renewal or otherwise is an Urban Renewal Plan.

28. The Centerra South project fell under the direction and control of the Loveland Urban Renewal Authority (hereinafter, "LURA"), a public-private partnership that began as early as 2002 with the development of the original Centerra project in the same area of Loveland.

29. On May 2, 2023, and May 16, 2023, the City, through its Mayor and Council, approved resolutions #R-50-2023 and #R-54-2023 respectively. These resolutions created a binding contractual relationship between the City and the various entities involved in the development of Centerra South, as memorialized in a "Master Financing and Intergovernmental Agreement" (hereinafter referred to as the "MFA"), originally executed and approved beginning on January 20, 2004.

30. On October 3, 2023, the Council approved a third resolution, #R-111-2023, a measure that contained final modifications to the specific Centerra South Urban Renewal Plan, as well as a ratification of the original plan from 2004 referenced above. This resolution passed by an 8-1 vote. Notably, Mayor Jacki Marsh cast the sole vote against the final resolution.

31. In the months following the initial approval of Centerra South, citizens began collecting signatures for a ballot measure regarding urban renewal and development projects and the right of Loveland citizens to vote upon and approve or disapprove such development projects adopted as a proposal by the Council. Upon information and belief, Mayor Jacki Marsh, as well as Councilors Erin Black and Jon Mallo signed the Petition.

32. The Urban Renewal ballot measure obtained enough signatures that it was included on the ballot in the City's general elections held November 7, 2023. It became ballot measure 301, which read substantially as follows:

Amendment to Article 15 of the Loveland City Charter to Require Voter Ratification of the Approval or Modification of Urban Renewal Plans by the City Council in Certain Circumstances.

Shall Article 15 of the Loveland City Charter be amended to add Section 15-9 to provide that any council action approving or modifying an urban renewal plan, pursuant to Urban Renewal Law of state statutes, must be subsequently ratified by the registered electors of the City if the approval or modification of the urban renewal plan authorizes the use of or a change to area boundaries, eminent domain, condemnation, tax increment financing, revenue sharing, or cost sharing, and shall such amendment

become effective immediately upon the date of approval by the City's voters?

- Yes
- No

33. As the proposed amendment reads, a "yes" vote would amend the city charter to require voter approval of plans in urban renewal areas and that this requirement become effective immediately; a "no" vote would keep the decisions in the hands of the Loveland URA board and City Council.

34. The City held its general election on November 7, 2023, and ballot measure 301 was approved by the voters.⁸

35. Upon information and belief, the November 7, 2023, vote to pass ballot measure 301 was certified on November 21, 2023, by the Larimer County Clerk and Recorder.

36. Ballot measure 301, by its own terms, became law effective immediately and the Charter was accordingly amended as follows:

Section 15-9 -- URBAN RENEWAL

Any council action approving or modifying an urban renewal plan, pursuant to Urban Renewal Law of state statutes, must be subsequently ratified by the registered electors of the City if the approval or modification of the urban renewal plan authorizes the use of or a change to area boundaries, eminent domain, condemnation, tax increment financing, revenue sharing, or cost sharing.

37. This new amendment to the Charter was valid law and binding upon the new Council when it convened for its regular meeting on the evening of November 21, 2023.

38. In the days prior to the November 21, 2023, meeting, Mayor Marsh submitted two new agenda items, both misleading as to their claimed nature to be addressed at the meeting; the new items added to the agenda were categorized by Mayor Marsh as "new business"⁹ when they clearly were not.

⁸ Notably, Mayor Jacki Marsh was re-elected, and three new Councilors were elected on November 7, 2023. The Mayor and Councilors Black, Light-Kovac, and Mallo were sworn in at the next regular meeting on November 14, 2023. Councilor Krenning was not sworn in until the evening of November 21, 2023, because his background check information had not yet been received by the City from the third party vendor hired to specifically complete a separate background check on candidate Krenning after he refused to provide his consent to the background check completed by all other candidates.

⁹ Procedurally, "new business" items do not require public comment to the extent other Council items typically receive.

- a. Item one was a motion to completely rescind Resolution #R-50-2023 (the prior approval by the Council for the Centerra South Urban Renewal Plan).
- b. Item two was a motion to completely rescind Resolution #R-54-2023 (the prior approval of the MFA).¹⁰

39. The “new business” items were placed on the November 21, 2023, Council agenda when they were not properly published ahead of time, no provisions for public comment were made, and the items did not include any recognition of, or provision for, the newly added section 15-9 to the Charter or the procedures required thereunder. Simply stated, the actions of Mayor Marsh circumvented established, proper procedure of which the Mayor was well aware, and completely ignored the requirements under the newly amended Charter and section 15-9 as it pertains to Urban Renewal Developments and the required approval of the citizens of Loveland by their vote.

40. The Council meeting held November 21, 2023, lasted into the early morning hours of November 22, 2023. The length of the meeting was due, in part, to numerous public comments addressing the Council in the early stages of the meeting about its intent to vote again on Centerra South. Notably, in the ninth public comment from Loveland citizen and Ward 2 resident Linda Brane, she raised the issue of Ballot Measure 301, and that two-thirds of Loveland voters had passed the measure, in her comments to Council that evening before Mayor Marsh moved to rescind #R-50-2023 and #R-54-2023.

41. During the November 21, 2023, meeting, when Mayor Marsh sought to introduce her two intended motions, she imposed improper procedures on those motions designed to prevent any meaningful discussion of the motions by other Councilors, including that each motion would be given only ten (10) minutes of total time for the Council’s consideration of each motion or agenda item related to the Resolutions she sought to invalidate through a new vote.

42. In bringing her first motion (regarding #R-50-2023), Mayor Marsh spoke for eight and a half minutes introducing or explaining her motion. Mayor Marsh allowed Councilor Black to comment on the motion for approximately one (1) minute before Mayor Marsh ended Council comments (interrupting Councilor Black’s comments) and called for a vote on the motion with seconds to spare in the time allotment for the motion.

43. At that point, Councilor Dana Foley demanded a point of order for improper procedure which Mayor Marsh promptly overruled. Similarly, Councilor Andrea Samson interjected with a request to seek input from the City Attorney, Moses Garcia, who was present at the meeting. Councilor Samson’s proposed questions to the City Attorney were similarly stifled by Mayor Marsh through constant interruptions while Councilor Samson sought guidance from the City Attorney.

¹⁰ Notably, the agenda items added by Mayor Marsh did not include the Council’s previous approval of Resolution #R-111-2023, which modified and ratified the Plan. *See*, ¶ 21, *supra*.

44. While Councilor Samson sought the input and advice of the City Attorney, the time for Mayor Marsh's first motion expired without a vote by the Council within the allotted ten (10) minutes and the motion should have been declared defeated. Councilor Foley called for a point of order on that singular procedural fact but was interrupted by the Mayor and Councilor Troy Krenning with demands to continue forward with a vote. At that point, Councilor Foley, stating that he believed the actions and procedure to be illegal, walked out of the Council Chambers so as to be absent from the vote, and that no abstention would be entered as to Councilor Foley.¹¹

45. Mayor Marsh then called for the vote which passed with support of the intentional and willful votes of the Mayor, and Councilors Black, Light-Kovacs, Krenning, and Mallo.¹²

46. The Council then heard, in similar fashion, Mayor Marsh's second motion regarding #R-54-2023, which the Mayor took five (5) minutes to explain. After very limited discussion, Mayor Marsh called the vote and the motion passed with the supporting votes of the same four Councilors: Black, Light-Kovacs, Krenning, and Mallo.

47. In relevant summary, the Mayor used improper procedure in bringing the motions, and the Council rescinded its agreements under #R-50-2023 and #R-54-2023. Stated differently, the Council voted down two resolutions affecting \$1.2 billion of local development partnership commitments after a combined total of less than five minutes of Council comment or debate within the twenty (20) minutes of total time allotted on the Council agenda by Mayor Marsh.

48. Mayor Marsh commented several times on the record that the Council's actions that evening would be considered a breach of the City's agreements regarding Centerra South, exposing the City to a judgment and damages for breach of contract, among other claims.

49. The irregular procedure prompted Councilor Samson to comment, on the record, that it appeared there may have been improper discussion, and possibly an improper agreement, among certain members of Council to coordinate their intent to willfully rescind the Resolutions upon votes which they had predetermined in private meetings or communications.

50. The actions of the Council at the November 21, 2023, meeting—particularly those of Mayor Marsh and Councilors Black, Light-Kovacs, Krenning, and Mallo—were intentional and willful violations of the newly amended Charter.

¹¹ See, footnote 3, *supra*.

¹² Councilor Samson voted for the motion but did so after she made it clear on the record she would vote "yes" with the intent and expectation that the motion would be "brought back" for another vote and a chance to vote it down after full comments from the Council and the advice of the City Attorney could be sought and considered.

51. The Motions described above (as to #R-50-2023 and #R-54-2023) were never slated for a ballot measure or otherwise for approval by the citizens of Loveland through their vote.

52. In short fashion, following the Council's rescission of the Centerra South Agreements, McWhinney Real Estate Services and its affiliated companies involved in the development of Centerra South filed their action against the City alleging breach of contract, unlawful termination of the Urban Renewal Plan and MFA, unlawful procedure by the Council, relief under the Charter provisions, declaratory judgment, and violation of the contract clauses contained in the United States and Colorado Constitutions. *See, McWhinney Real Estate Serv., et. al. v. City of Loveland*, Civil Action No. 2023CV30956, filed with a *Verified Complaint* on January 18, 2024.

IV. FIRST CLAIM FOR RELIEF (Declaratory Judgment)

53. Plaintiffs incorporate the allegations set forth above in the paragraphs one (1) through fifty-two (52) above as if fully set forth herein.

54. Pursuant to the Charter, as well as C.R.S. § 13-51-106¹³ and C.R.C.P. 57, the Court has jurisdiction and the power to declare the rights of the Plaintiffs through Declaratory Judgment.

55. Plaintiffs seek declaratory judgment regarding the willful actions of the Mayor and certain Council members at the November 21, 2023, meeting to rescind and revoke #R-50-2023 and #R-54-2023 as those actions are governed by the Charter and applicable rules, ordinances, or other laws, and as prayed for in this Complaint.

56. Because the questions presented in this Complaint must be answered in favor of Plaintiffs and against the City, the relevant actions or inactions by the Council on November 21, 2023, as they pertain to the rescission of the Resolutions involving Centerra South must be declared invalid, void, and of no effect because those actions directly violated the Charter, and other applicable laws or procedures of the Council itself.

57. Plaintiff further seeks an injunction against the Council from taking any further action regarding the above resolutions until such time as the Court can rule upon the Plaintiffs' claims.

¹³ *See, also, § 13-51-105. Power and force of declaration*

Courts of record within their respective jurisdictions have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

V. SECOND CLAIM FOR RELIEF
(Violation of Due Process)

58. Plaintiffs incorporate the allegations set forth above in the paragraphs one (1) through fifty-seven (57) above as if fully set forth herein.

59. The United States Constitution and the Bill of Rights, specifically the Fourteenth Amendment therein, provide as follows:

U.S. Const. amend. XIV, § 2.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

60. The Constitution of the State of Colorado provides as follows:

Art. II, § 25. Due process of law

No person shall be deprived of life, liberty or property, without due process of law.

61. Due process of law is deemed to be a guaranty against the exercise of arbitrary power. The exercise of arbitrary power by any department of government, or agency thereof, is inconsistent with democracy.

62. Due process of law is summarized as a constitutional guarantee of respect for those personal immunities which are so rooted in the traditions and conscience of the people as to be ranked as fundamental or are implicit in the concept of ordered liberty.

63. Denial of "due process" includes a denial of "equal protection of the law." The contention that a governmental action may abridge the privileges and immunities of citizens and denies equal protection of the law is included within the objection that it denies "due process." They stand or fall together.

64. "Liberty", as used in the Due Process Clause, connotes far more than mere freedom from physical restraint; it is broad enough to protect one from governmental interference in the exercise of a person's intellect, in the formation of opinions, in the expression of them and in action or inaction dictated by that person's judgment, or choice in countless matters of purely personal concern. "Liberty" includes the right to vote. Accordingly, a denial of the right to vote is likewise a violation of due process.

65. As is pertinent in this action, for the evaluation of fairness in procedural due process, Plaintiffs allege: (1) Plaintiffs' private interests have been and will be affected by the official action; (2) Plaintiffs were deprived of their interests through the procedures used by the Council and the probable value, if any, of additional or substitute procedural safeguards will not remedy the deprivation of rights which has already occurred; and (3) the City's interest in the function involved and the fiscal and administrative burdens that any additional or substitute procedural requirement would entail do not supersede the City's ability and obligation to act in accordance with the requirements of due process already established under the Charter, its amendments, and other applicable law.

66. The Council's vote on November 21 involving the rescission of Centerra South violated the due process rights of Plaintiffs in at least two ways:

(1) Plaintiffs were denied process of law when some of the Councilors who were elected by the People of Loveland were stifled and otherwise not allowed to participate in the discussion and have a chance to state on the record their opinions, comments, or objections on behalf of Loveland residents and for themselves in their official capacity; and

(2) Plaintiffs were denied their right under the Charter (section 15-9) to vote on the actions of the Council as they involved an Urban Renewal Project.

VI. THIRD CLAIM FOR RELIEF

(Per Se Violation of C.R.S. § 24-18-103; Breach of Fiduciary Duty by a Public Officer)

67. Plaintiffs incorporate the allegations set forth in the paragraphs one (1) through sixty-six (66) above as if fully set forth herein.

68. Defendant had a duty to the Plaintiffs and to the public in general to carry out its duties for the benefit of the people based on the public's trust and the confidence which the electorate reposes in the integrity of the City, its public officers, elected members of the City government, and employees of the City who must carry out their duties to for the benefit of the resident and citizens of Loveland.

69. Defendant breached the duty of care it owed to the Plaintiffs when the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo violated the Charter, specifically section 15-9, where such conduct departed from their fiduciary duty, and the City is liable to the people of the City for their actions under official color or right or authority.

70. Defendant's conduct in failing to adhere to Charter requirements involving the Centerra South project constitutes liability per se under C.R.S. § 24-18-103, which provides as follows:

§ 24-18-103. Public trust - breach of fiduciary duty

(1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

71. The conduct of the City’s public officials, through its elected officers and employees in violation of C.R.S. § 24-18-103, has in the past and will in the future result in damages to the Plaintiffs, including but not limited to violation of their due process rights, and the requirements of the Charter.

VII. REMEDIES

72. Plaintiffs incorporate the allegations set forth above in the paragraphs one (1) through sixty-four (64) above as if fully set forth herein.

73. Plaintiffs do not seek monetary damages from Defendant.

74. Plaintiffs seek remedies consistent with the provisions of the Charter, the United States Constitution, and the Constitution of the great State of Colorado.

75. Plaintiffs seek equitable relief for the claims set forth above, as follows:

a. *Declaratory Judgment.*

Plaintiffs seek a judgment declaring the actions of the Council taken at the meeting held on November 21, 2023, regarding Centerra South to be null, void, and of no effect because those actions violated the Charter, including section 15-9.

b. *Due Process Violation.*

Plaintiffs seek a judgment declaring the actions of the Council taken at the meeting held on November 21, 2023, regarding Centerra South to be null, void, and of no effect because those acts violated the due process rights of Plaintiffs and certain Councilors whom the Plaintiffs, as citizens of Loveland, elected to represent them.

c. *Breach of Fiduciary Duty.*

Plaintiffs seek a judgment declaring the actions of the Council taken at the meeting held on November 21, 2023, regarding Centerra South to be null, void, and of no effect because those acts were a violation of the fiduciary duties the City and its elected officials and employees, owed to Plaintiffs and certain Councilors whom the Plaintiffs, as citizens of Loveland, elected to represent them.

d. *Remedies Required Under the Charter.*

(1) The Charter itself contains the necessary remedies for the violations set forth above, and specifically upon a judgment that Mayor Marsh, and Councilors Black, Light-Kovacs, Krenning, and Mallo, all elected officials and employees of the City, willfully violated the Charter on November 21 and 22, 2023.

(2) The Charter provides, in pertinent part, the following:

**SECTION 3-3 -- MAYOR AND COUNCIL MEMBERS -
QUALIFICATIONS**

* * *

(c) No person who has been convicted of embezzlement of public funds, bribery, perjury, solicitation of bribery, subornation of perjury, or a willful violation of this Charter, shall be nominated or elected as Mayor or Council member.

* * *

(f) The Mayor and each Council member shall continue to meet the requirements of this section throughout the term of office.
(emphasis added)

(3) A conviction is the establishment of guilt by plea or verdict.¹⁴ A judgment is included or synonymous with a verdict in favor of Plaintiffs in this action.

(4) Declaratory judgment, or otherwise a finding under any of the three claims for relief set forth in this *Amended Verified Complaint*, begins with a finding that the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo willfully and

¹⁴ See, e.g., *People v. Kiniston*, 262 P.3d 942, 944–45 (Colo.App.2011).
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intentionally violated the Charter when they voted to rescind the Centerra South contract, with full knowledge of the amendment to the Charter (section 15-9) which required their decision to be approved by the citizens of Loveland in a special or general election.

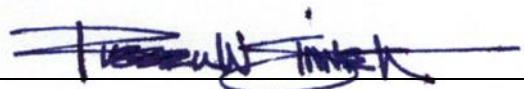
(5) A judgment or verdict in favor of Plaintiffs is a finding that the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo willfully and intentionally violated the Charter.

(6) Plaintiffs seek the remedy set forth in the Charter as to the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo who willfully violated the Charter in that they all be declared ineligible for office effective immediately.

WHEREFORE, Plaintiffs respectfully request judgment in their favor and against Defendant upon the claims above, including declaratory judgment, a finding of willful violation of Plaintiffs' due process rights, and a finding that the City, through the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo, are liable for willful breach of fiduciary duty, a finding that public officials for the City of Loveland willfully breached their fiduciary duties to the public for which the City is ultimately responsible, a finding that Mayor Marsh, as well as Councilors Black, Light-Kovacs, Krenning, and Mallo willfully violated the Charter of the City of Loveland, and an injunction directed to the City Council to stay all proceedings or decisions involving the Centerra South Project, together with any other findings and conclusions of law which are lawful, equitable, proper, and just.

RESPECTFULLY SUBMITTED this 4th day of June, 2024.

SINNETT LAW OFFICE, LLC

By: 
Russell W. Sinnett, #32723
Attorneys for Plaintiffs

VERIFICATION

Verification for Plaintiff John Fogle is submitted as an attachment to this *Verified Complaint*. Verification pages for the remaining Plaintiffs will be submitted when received.