Federal, State and Intergovernmental Relations (FSIR) Meeting
Video Conference Call Meeting
March 19, 2021

Members Present: Council Member Angela Lawson, Chair; Council Member Curtis Gardner, Vice Chair, Council Member Nichole Johnston, Member

Others Present: Luke Palmisano, Rachel Allen, Peggi O'Keefe, Lauri Hettinger, Natasha Campbell, Roberto Venegas, Totsy Rees, Cammie Grant, CM Alison Coombs, Tina Buneta, Scott Newman, Nancy Freed, Shawn Day, Kim Skaggs, CM Crystal Murillo, Kathy Kitzmann,

1. **APPROVAL OF MINUTES:** March 5, 2021 minutes were not approved as written. Judge Day asked for a revision of his opinion on SB21-062. Revision was made and then approved via email.

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2. **CONSENT ITEMS:** None.

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3. **WELCOME AND INTRODUCTIONS:**
Summary of Issue and Discussion: Chair CM Angela Lawson welcomed the committee to the video conference call and introductions were made.

Outcome: Information only.

Follow-up Action: None.

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4. **911 Fee Diversion**

Summary of Issue and Discussion: Tina Buneta, Director of Public Safety Communications said that she and Scott Newman, Chief Officer of IT, have now drafted a letter stating the city's position on the legislation concerning the 911 communication system. In the letter are comments from the Colorado Public Utility Commission as well as a joint comment from El Paso, Eagle and Douglas counties. We are asking the committee endorse and approve these comments for the city to submit them to the FCC. S. Newman said there is one correction he would like to make before submitting. The document now uses the word "citizen", he would like to change it to "caller" CM Johnston, CM Gardner and CM Lawson agreed endorse the letter as well as the proposed change.

Outcome: Committee agreed send out the proposed letter on behalf of the city.

Follow-up Action: Staff will send letter to FCC.

5. Federal Legislative Update

Summary of Issue and Discussion: Lauri Hettinger, federal lobbyist, gave an update on current federal legislation. President Joe Biden signed into law the American Rescue Plan. Right now, it is the Treasury's top priority to get the money out to state and local governments. Guidance and dollar amounts should be available soon.

Congress is working right now on the annual appropriation bills. L. Hettinger and L. Palmisano have been working on getting the city's appropriation requests to Congressman Crow.

Congress is now allowing earmarks or Community Project Funding. The city can now ask for money to go directly to certain projects. L. Hettinger and L. Palmisano have been meeting with city departments to find the right priorities to submit to Congressman Crow. Each member of Congress is limited to 10 earmarks, so the city needs to be strategic in what it asks for.

The next issue Congress will be working on is the Surface Transportation Authorization bill, which provides funding for programs created by the Department of Transportation (DOT). L. Hettinger has submitted the city's priorities in transportation to the senators for consideration. This bill will also allow earmarks.

CM Lawson thanked L. Hettinger for submitting letters to our senators regarding the Surface Transportation Authorization bill. The NLC Transportation Committee that CM Lawson sits on wanted the city to have some contact with the senators in regard to the bill. CM Johnston asked how the city is going to follow up and make sure we are taking advantage of any potential earmarks. L. Palmisano said Cindy Colip, Public Works Director, and Marshall Brown, Aurora Water Director, will be reaching out to their counter parts in Adams and Arapahoe counties to gauge their interest is and what earmarks they might be submitting and see if we can work together. There are a number of check-ins scheduled and L. Palmisano will come report on any updates at the next FSIR meeting.

Outcome: Information only.

Follow-up Action: Information only.

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6. DEFINITIONS OF BILL POSITIONS

Summary of Issue and Discussion: L. Palmisano proposed the following definitions be used to define the positions taken by FSIR and City Council.

Active Support: The FSIR Committee supports the proposed bill as written. The bill directly relates to city priorities or is considered crucial to city operations. The committee feels it is of the utmost importance to be on record supporting the bill. Staff will actively advocate for passage of the bill.

Active Oppose: The FSIR Committee opposes the proposed bill as written. The bill directly conflicts with city priorities, forces an unfunded mandate on the city, interferes with local control, or conflicts with crucial city operations. The committee feels it is of the utmost importance to be on record opposing the bill. Staff will actively advocate for defeat of the bill.

Amend/Pursue Changes Through Bill Sponsor: The committee deems the bill to directly relate to city priorities or be considered crucial to city operations. However, the committee would like to see the bill amended before taking an active support or oppose position. Staff will actively work with committee and council members, CML, stakeholders, and legislative sponsors to amend the bill prior to passage.

Monitor: The committee deems the bill to be important but not crucial. The bill relates to city priorities or may directly affect city operations. Staff will actively track progress on the bill and report back to committee. The committee reserves the right to take an active support or oppose position on the bill at a later point in time.

L. Palmisano said there is no "neutral" position listed. A neutral position on a bill would indicate that it would not have an impact on the city and therefor staff would not even bring the bill to committee. There seems to be no need to include a neutral position for bills that staff is not going to do anything with. L. Palmisano asked if the committee agrees with the positions put forth. CM Lawson said these positions model states lobbying positions. She stated that she has an issue with the neutral position. If one were to take a neutral position one may as well just abstain. With a monitor position, it allows for the bill to be tracked and then once there is enough information the committee can take a more informed position on the bill. CM Gardner said he has no recommended changes. He was looking to get out of this a consistent standard to get everyone on the same page. It is also appropriate that the city use the same language on positions as the state is using. CM Gardner said he is in support of these definitions. CM Johnston said she too supports the definitions. She said removing the neutral position altogether will hopefully eliminate any confusion. CM Lawson said future committees can decide if they want to use these same definitions, but just having a model, like the state's system will bring some consistency. CM Lawson supports the recommended definitions.

Outcome: The Committee unanimously agreed to use these definitions for taking positions on bills going forward.

Follow-up Action: Information only.

7. STATE LEGISLATIVE UPDATE

Summary of Issue and Discussion: Peggi O'Keefe, state lobbyist, gave an update on the state legislation. Senator Winter and Representative Gray held a meeting yesterday with potential stakeholders on the transportation funding and fee legislation that they are looking to bring forward. Details are slim now as the bill is still in draft form. The idea is that they are going to create additional fees from a multitude of sources. Such as electric vehicles, delivery services at the point of sale, rental cars, care-shares and Uber and Lyft. The bill would go into effect in 2023. L. Palmisano said that he has shared the information on this bill with city staff. Governor Polis' office has briefed Mayor Coffman. Mayor Coffman would like the Governor's team to give that same update to the city's transportation staff. L. Palmisano is working to get that on the calendar. T. Rees said word at the Capitol is that there is not a lot of support for this bill after the feedback from stakeholders. The only group that seems to be constantly happy with this bill is the environmental community. This bill may have a long way to go still.
The following are bills presented by staff for the committee to take a position on.

Protecting Opportunities and Workers' Rights Act: SB21-176
The bill seeks to address discrimination or unfair employment practices pursuant to Colorado's anti-discrimination laws related to employment discrimination. Employees would not be required to file a Charge of Discrimination with the Colorado Civil Rights Division prior to filing a lawsuit in court. The bill expands the definition of "employee" and adds new definitions for "harassment", "hostile work environment", and "independent contractor". The bill also specifies that it is a discriminatory or unfair employment practice for an employer to fail to initiate an investigation of a complaint or fail to take prompt remedial action if appropriate. The bill has been assigned to the Senate Judiciary committee and has a hearing date of March 25. City staff recommend an oppose position. Diana Giordano, Human Resources Director, said the bill does expand the employee definition to include independent contractors, which have in the past not been considered part of the city. The bill has similarities to the federal law, the expansion is an area of concern. Particularly the 14-day demand notice of the city and then being able to proceed to litigation. This circumvents CCRD, the traditional process that gives an external perspective on whether or not discrimination or harassment has occurred. This could increase litigation and investigation costs for the city. Another area of concern is the that the supervisory program which the city has, cannot even have a complaint of retaliation against it over 6 years. In HR's opinion the enhancements and definition changes in this bill could lead to increased cost to the city through increased litigation, increased investigations and possible settlements. Kim Skaggs, Assistant City Attorney, expressed the following concerns with the bill:

- Employees would not be required to file a Charge of Discrimination with the Colorado Civil Rights Division prior to filing a lawsuit in court; instead they could simply make a written demand for relief to the employer 14 days before filing a lawsuit. The CCRD has the ability to do fact-finding and has subpoena power, and they can be a neutral decision-maker. Having a neutral decision-maker tell a complainant that they have found no discrimination can go a long way in stopping litigation. By taking that away, I expect many complainants may go straight to the courthouse, and litigation will always incur costs to the City.
- States regarding claims of discrimination, "The Claim nearly always raises questions of fact." This language will extend litigation, even on all but the most tenuous of claims. If a plaintiff in an employment lawsuit gets past a motion to dismiss, which is very easy to do, the City's next chance to dispose of a case without the expense of trial is through a motion for summary judgment, which requires the Court to find that "no genuine issue as to any material fact exists." But this language in the Bill would direct court that simply because a claim was filed, there are questions of fact existing, and the case should proceed to trial.
- States the ONLY WAY to avoid liability when a supervisor is alleged to have harassed an employee (non-quid pro quo) is for the employer to establish that: (1) they have a program with "documented success" in preventing harassment and punishing harassing supervisors, (1) has communicated to its employees the existences of this program, (3) no employee has complained of retaliation in the past 6 years, and (4) the employee did not take advantage of the program. The third criteria—no complaints of retaliation in the past 6 years—will be something that is impossible to achieve for nearly all large employers. We can't control complaints of retaliation even by making certain there is no retaliation. What does it mean for a harassment-prevention program to have "documented success"? I don't know, and the Bill doesn't say, but this would likely force the City to hire an outside company to run this program so that we can prove documented success in court. Currently, nearly all of our harassment training is done in-house by HR or the City Attorney's Office.

- Adds "caregiver status" and "marital status" as protected classes. Caregiver would be defined as "an individual who provides direct and ongoing care to a minor child or care recipient." Care includes preventive care, diagnosis, or treatment. Employees already receive 48 hours of protected leave annually that they can use for this time. Also, if their family member has a serious health condition, they get 12 weeks of protected FMLA leave to use each year. This provision could potentially lead to the equivalent of unlimited FMLA leave for some employees under certain circumstances. This goes beyond that. For example, if we are hiring for a full-time position, and a candidate tells us they cannot work Tuesdays and Thursdays due to caregiving responsibilities, and as a result we hire someone else, that very well could be discrimination based on caregiver status. The bill has no reasonableness requirement or interactive process like the ADA. It has no exceptions.

CM Johnston said she appreciates staff's perspectives. Has staff reached out to the bill sponsors to voice those concerns? L. Palmisano said no, not at this time. CM Johnston said that in her experience Senator Winter is very receptive to feedback and she has been very willing in the past to accommodate local municipalities ideas. CM Johnston went on to say that she likes certain aspects of the bill such as additional documentation even if that means hiring an outside agency. She said she would not want to oppose this bill. She would like to for staff and the FSIR committee to come up with list of their concerns, take them to the bill sponsor and go from there and then the Committee will take a position. CM Gardner had no questions. CM Lawson said she does not oppose this bill. There are some things in the bill that she has concerns about. She agrees with CM Johnston that the city should take their concerns to the bill sponsor. CM Lawson said that she would agree to the position of monitor or pursue changes through the bill sponsor on this bill. The concern is that an employee would still need to have adequate documentation to go to litigation because in most cases large organizations usually win these cases. She would like to know if there is any type of compromise that can be made with this bill. CM Coombs said she agrees with what both CM Lawson and CM Johnston said. Even if staff says there is a mechanism in place to deal with these situations the reality is people are still experiencing harassment and discrimination and the inability to advance their careers due to the fact, they are caregivers. Does it make it harder for the city if these new provisions are in place, potentially yes? But is it also our responsibility to address that? Yes, it is. CM Coombs said she too would like to address some of the concerns, such as definitions. But these seem to be changes pursued through the bill sponsor. R. Venegas said that we can certainly approach the bill sponsors, We are not alone in our concerns about this bill. Some of the elements of this bill are a 180 degree turns in employment law. He said there may or may not be areas for negotiation with the bill sponsor. For example, if the instance of determination of facts is in this bill the city will be in a position where they will have to take most of these cases to trial or settle them. The fiscal note for the city will be quite high and staff would like to make sure the Committee understands the impacts that this might have on the city. Not speaking to the merits of the bill or the instances it is trying to address but to understand the financial impacts. If we do take this to the bill sponsor, the Committee should be aware that there will be other entities expressing their concerns as well. The city will be joining them, not opposing the bill, but looking for areas of compromise. This is a very expansive bill and is a very big change in employment law and there may not be a lot of room for middle ground on these concerns. CM Lawson said she understands but stated that there is always the possibility of compromise and from her position it is worth having those conversations. CM Murillo agreed that it make sense to monitor this bill and to have the conversation regarding concerns with the bill sponsor. L. Palmisano said that this bill introduces some drastic changes in employment law and most

organizations are either opposing or asking for amendments. He suggested the Committee take a monitor position on this bill. This will allow staff to engage with the bill sponsors and then if we are ready to bring some amendments forward, staff will have some time to prepare those. CM Lawson agreed to the monitor position. CM Johnston asked what amendments Adams county was proposing and do we know who is proposing those amendments? L. Palmisano said he has not seen them but will ask Adams county for that information. CM Johnston said that if they take a monitor position on this bill will the city still be engaging in conversations with the bill sponsors? L. Palmisano said yes. The difference between monitor and pursue changes through bill sponsor is that currently we do not have specific amendments to present. Monitor will allow staff to have discussions with the bill sponsor regarding the city's concerns and then consider amendments we could propose. CM Johnston said she agrees to the monitor position. CM Gardner said he takes an oppose position. He does not see where any amount of amendments could get this bill to where he sees it as worthwhile. He thinks it is pretty anti-employer for a lot of reasons. And does not see a path to amending it to get to something acceptable to him.

Nurse Intake of 911 Calls Grant Program: SB21-156
This bill creates a pilot program for the use of nurses in 911 dispatch to help divert incoming 911 calls that do not require emergency medical service to other types of medical care. City staff recommend a monitor position. The bill has been assigned to the Senate Health & Human Services committee and has a hearing date of March 24. L. Palmisano said there were a variety of positions on this bill from staff. Some liked it, some had issues with it being in the department of public safety rather than the department of health and human services. FALCK also has a position on this bill and in light of that, the position on monitor would be best. It allows staff to engage and to see where other stakeholders are on this and then it can come back to FSIR for a more informed position. CM Lawson asked if the change from the city's position of neutral at the CML meeting is because of the changes to our definitions of the positions? L. Palmisano said that he was proposing a neutral position as it related to the CML discussion. But in light of some of staffs concerns and how it relates to the city, it makes sense to monitor this bill. CM Gardner, CM Johnston and CM Lawson agreed to monitor this bill.

Immigration Legal Defense Fund: HB21-1194
The bill creates the Immigration Legal Defense Fund in the Department of Human Services. DHS will award grants from the fund to qualifying nonprofit organizations that provide legal advice, counseling, and representation for, and on behalf of, indigent clients who are subject to an immigration proceeding. City staff recommend a monitor position. The bill has been assigned to the House Judiciary committee and has hearing date of March 30. L. Palmisano said this bill does not directly affect the city. Since Aurora does have a large immigrant population it is certainly a bill we would want to keep track of. CM Johnston said she supports this bill. And would argue that is it does have a direct impact on the city since it does have a large immigrant and refugee population. CM Gardner said he opposes the bill because immigration is a federal issue and does not think the state or the city should be dealing with it. CM Lawson said she takes a monitor position on the bill. She has questions on the bill and would need clarification before taking a position. One question she had is at the very end of the bill it states that once the bill becomes effective if there is objection to the bill it would then have to go to the voters in 2022. T. Rees said that is a standard clause and it allows the citizens of Colorado to petition. CM Lawson said she agrees with the opinion that this bill does not have a direct effect on the city and will take an opposed position on this bill. The committee's position could still be overruled by council as CM Murillo wanted to move this bill forward to full council. CM Murillo said that she thinks this is

completely relevant to what we are doing in the city and is disappointed to hear otherwise. The city does have a large immigrant and refugee population and locally there is an absence of a legal fund to support adequate representation. This takes very little commitment from the city there is no fiscal note for the city. It is a pool of money people could donate to and the idea is to get different organizations to pay into this if they want to. CM Murillo said she would ask for a support position on this bill or monitor as a second option. It does not make sense to oppose since it doesn't hurt our community in anyway but can only help. CM Coombs said this bill is somewhat different then bringing it forward from a city level. There is no expectation of funds or FTE going into this bill. But retains the same intent or spirit which is the right to representation. As the largest population on immigrants and refugees in the state the city does have an interest to support this bill. Although individuals can contribute to a defense fund the impact of the government can play a role in pulling those resources together for greater impact. She hopes that the committee could at least take a monitor position in order to get some questions answered. CM Lawson asked if anyone knows where the $100,000 to fund the bill is coming from. L. Palmisano said he believed is coming from the department of human services, but the lobbyists will follow up. CM Lawson said she does have some additional questions and concerns and will change her position to monitor. She would like to know where the money is coming from, how they are going to structure and monitor the program as well as the sunset for this bill. She will not say that she supports this bill at this time but will change to monitor. Maybe we can get those questions answered when this comes back to committee again. L. Palmisano said that since there are 3 different positions there is no clear guidance for staff on what the committee would like us to do. He suggested one committee member change to a monitor position so staff can move forward. CM Lawson asked if we have three positions does that mean staff will not be able to pursue questions? The committee members cannot always agree. L. Palmisano said if CM Lawson sends him the questions, he is happy to track down the answers in the course of his normal work day. He also said that he will defer to legal as to what the council rules say when the committee does not agree on a position. R. Allen, Assistant City Attorney, said that if a committee member does not let their position known or the majority of the committee members have not all made their positions known, there is no position. CM Lawson asked if this bill can be brought back to the next meeting for further discussion. L. Palmisano said yes, we can bring it back. CM Coombs said she will testify, on her own behalf, in support of this bill when it goes to committee.

Create the Colorado Office Of New Americans: HB 1150
The bill creates the Colorado Office of New Americans (ONA). The ONA serves as the point of contact for immigrant-serving state agencies, private sector organizations, and the public about immigrant issues in Colorado, and has as one of its central purposes the successful integration and inclusion of immigrants and refugees in our state's communities. As its main priority, the ONA is required to implement a statewide strategy to facilitate economic stability and promote successful economic, social, linguistic, and cultural integration by investing in the success of immigrants in Colorado. City staff recommend an active support position. The bill has been assigned to the House State, Civic, Military, & Veterans Affairs committee and has a hearing date of April 8. CM Johnston, CM Gardner and CM Lawson agree with the city's position of support on this bill.

Regional Transportation District Operation: HB21-1186
The bill amends provisions related to the operation of the Regional Transportation District including removing a cap on the amount of all vehicular service the district can allow to be provided by third parties; expanding the types of entities the district can contract with to include nonprofit organizations and local government; repealing the farebox recovery ratios, repealing a

limitation on developments that would reduce parking at a facility or result in a competitive disadvantage to private businesses near the facility; and repealing limitations on the district's authority to charge fees and manage parking at district parking facilities. City staff recommend an active support position. The bill has been assigned to the House Transportation & Local Government committee and has hearing date of March 30. CM Murillo said she is the co-chair of the Accountability Committee and Mac Callison and L. Palmisano have been very involved in crafting the recommendations. The changes in this bill will benefit all municipalities and geographies. Hopefully the Committee has had a chance to read through all the recommendations. One of the changes would be who we can partner with. The bill will expand that to non-profits, local governments and not just private enterprise. Repealing the farebox recovery ratio and some of the other changes this bill will bring is going to give Aurora more flexibility to bring some positive changes to our transportation system in Aurora. CM Gardner, CM Johnston and CM Lawson agreed with the city's position to support this bill.

Military Family Open Enrollment In Public Schools: HB21 1217
The bill requires a school district, district charter school, and institute charter school to accept the school liaison address for the military installation for purposes of demonstrating residency for inbound active duty military members participating in open enrollment; and to grant guaranteed automatic matriculation to the child of an inbound active duty military member while the child remains in the school, and priority preference for younger siblings of the child for enrollment in subsequent school years. City staff recommend an active support position.
The bill has been assigned to the House Education committee and has a hearing date of April 8. CM Gardner, CM Johnston and CM Lawson agreed with the city's position to support this bill.

L. Palmisano gave an overview of the following bills for informational purposes only:

Local Government Authority Promote Affordable Housing Units: HB21-1117
The bill concerns the ability of local governments to promote the development of new affordable housing units pursuant to their existing authority to regulate land use within their territorial boundaries. The city's state priorities as approved by City Council call for support of this bill.
FSIR Position: Active Support
The bill passed through the 2nd reading today.

Protections for Entities During COVID-19: SB21-080
This bill concerns protections for entities that comply with public health guidelines related to COVID-19.
FSIR Position: no position
The bill had a hearing in the Senate Business, Labor and Technology committee on March 8 and was postponed indefinitely.

Outcome: Information only.

Follow-up Action: Information only.

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8. WATER

Summary of Issue and Discussion: Kathy Kitzmann gave an update on the following:

1. SB21-034 Water Resource Financing Enterprise. Aurora Water has an Active Oppose position. This bill was postponed indefinitely on March 11th.
2. HB21-1046 Mutual Ditch. Aurora Water has an Active Support position. This bill was favorably amended and has moved to the House floor with expectation to pass.
3. Tuscan South Gravel Pit update. On March 9th, Adams County approved Aggregate Industries' permit for the Tucson South gravel pit west of Brighton that will provide water storage capacity to Aurora when finished.

Outcome: None.

Follow-up Action: None.

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9. MISCELLANEOUS MATTERS FOR CONSIDERATION
None.

CONFIRM NEXT MEETING
CM Lawson said the Committee will be meeting every 2 weeks during the legislative session. The next meeting is scheduled for April 2, 2021, 1:00 PM WebEx video conference meeting.

Approved: _____
Angela Lawson Date
Committee Chair