COLORADO SPRINGS, COLORADO
CITY COUNCIL CHAMBERS
CITY HALL - 107 N. NEVADA AVENUE
APRIL 28, 2009 – 1:00 P.M.

Council met in Regular Session.

There were present: Mayor Rivera, Councilmembers Gallagher, Glenn, Heimlicher, Hente, Herpin, Martin and Small. Absent, Councilmember Purvis. Councilmember Purvis arrived during the meeting. Also present, City Manager Culbreth-Graft and Deputy City Attorney Massey.

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1. **Invocation and Pledge of Allegiance.**

The meeting was opened with an invocation by Bernie Herpin, District 4 City Councilmember.

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2. **Changes to Agenda/Postponement.**

Councilmember Hente called-up Item No. 4-A-6 for separate consideration.

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9. **The City Clerk reported that on January 16, 2009 there was filed with her a petition for the annexation of White Acres. She stated that she has examined or caused to be examined the above mentioned petition and has determined that the petition is in substantial compliance with Section 31-12-107(1), C.R.S. The City Clerk herewith communicates such to City Council and recommends that the petition be referred to the City Administration for review.**

Motion by Herpin, second by Hente, that this item be withdrawn. The motion unanimously carried. Absent, Councilmember Purvis.

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Councilmember Purvis arrived.

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3. **Election of Vice Mayor.**

Motion by Heimlicher, second by Hente, that Larry Small be nominated to fill a two-year term as Vice-Mayor. The motion unanimously carried.

CONSENT CALENDAR

4. The following items were acted upon by unanimous consent of the members present, with the exception of Item No. 4-A-6, which was acted upon separately:

SECOND PRESENTATION:

A-1. Ordinance No. 09-43 entitled "AN ORDINANCE REPEALING AND REORDAINING PART 12 (CROSS CONNECTION CONTROL) OF ARTICLE 4 (WATER CODE) OF CHAPTER 12 (UTILITIES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, RELATING TO CROSS CONNECTIONS" was presented for final passage.

A-2. Ordinance No. 09-44 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 08-213 (2009 APPROPRIATION ORDINANCE) FOR THE GENERAL FUND IN THE TOTAL AMOUNT OF $75,000 FOR RECREATION SERVICES FROM THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUND" was presented for final passage.

A-3. Ordinance No. 09-45 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 09-33 (2009 AMENDED APPROPRIATION ORDINANCE) FOR THE SUPPORT SERVICES FUND IN THE AMOUNT OF $1,175,000 FOR FUEL PURCHASES RELATED TO FLEET SERVICES" was presented for final passage.

A-4. CPC LUM 09-00018: Ordinance No. 09-46 entitled "AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN – 2020 LAND USE MAP OF THE CITY OF COLORADO SPRINGS RELATING TO THE PORTION OF SOUTH CIRCLE DRIVE FROM AIRPORT ROAD ON THE NORTH TO MONTEREY ROAD ON THE SOUTH AS A MATURE/REDEVELOPMENT CORRIDOR" was presented for final passage.

A-5. CPC ZC 08-00001: (Quasi-Judicial Matter) Ordinance No. 09-47 entitled "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF COLORADO SPRINGS RELATING TO 2.71 ACRES LOCATED AT 315 31ST STREET" was presented for final passage. (PIP-2/HS/CU to PBC/CR)

A-6. **SEE ACTION TAKEN LATER IN THE MEETING.**

FIRST PRESENTATION:

B-1. Resolution No. 97-09 was presented: "A RESOLUTION TO ACCEPT A GRANT FROM THE UNITED STATES DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT IN THE AMOUNT OF $1,043,089 FOR THE PROVISION OF ELIGIBLE SERVICES UNDER THE HOMELESS PREVENTION AND RAPID RE-HOUSING PROGRAM; AND, AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE THE CONTRACT FOR ACCEPTANCE OF GRANT FUNDING TO COVER RENTAL COST FOR PERMANENT SUPPORTIVE HOUSING AND OPERATING COSTS FOR TRANSITIONAL HOUSING SERVICES FOR CHRONICALLY HOMELESS INDIVIDUALS".

B-2. Resolution No. 98-09 was presented: "A RESOLUTION APPROVING A FIRST AMENDMENT TO THE APRIL 30, 2008 INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS AND THE TOWN OF CASTLE ROCK, EL PASO

COUNTY, COLORADO AND THE REGIONAL TRANSPORTATION DISTRICT FOR FRONT RANGE EXPRESS (FREX) SERVICE".

B-3. Ordinance No. 09-52 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 08-213 (2009 APPROPRIATION ORDINANCE) FOR THE GRANTS FUND IN THE AMOUNT OF $1,540,184 FOR THE OPERATION OF THE FRONT RANGE EXPRESS (FREX)" was introduced and read.

B-4. Resolution No. 99-09 was presented: "A RESOLUTION ACCEPTING A COLORADO COMMUNITY FOREST RESTORATION GRANT FOR OAK BRUSH REMOVAL IN GARDEN OF THE GODS PARK".

B-5. Ordinance No. 09-53 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 09-33 (2009 AMENDED APPROPRIATION ORDINANCE) FOR THE GENERAL FUND IN THE TOTAL AMOUNT OF $85,000 FOR THE PURPOSE OF AUTHORIZING TWO ADDITIONAL FULL-TIME EQUIVALENT EMPLOYEES IN THE OFFICE OF THE CITY AUDITOR" was introduced and read.

Motion by Hente, second by Purvis, that all matters on the Consent Calendar, with the exception of Item No. 4-A-6, which was acted upon separately, be passed, adopted and approved by unanimous consent of the City Council.

Ayes: Gallagher, Glenn, Heimlicher, Hente, Herpin, Martin, Purvis, Rivera, Small
Noes: None
Absent: None

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5. **Resolutions of Appreciation**

Resolution No. 100-09 was presented: "A RESOLUTION RECOGNIZING THE PERFORMING ARTS FOR YOUTH ORGANIZATION ON ITS 40TH ANNIVERSARY AND HONORING ITS FOUNDERS AND DEDICATED VOLUNTEERS".

Motion by Small, second by Hente, that the resolution be adopted.

Ayes: Gallagher, Glenn, Heimlicher, Hente, Herpin, Martin, Purvis, Rivera, Small
Noes: None
Absent: None

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Bryan Forget, of Coronado High School, Kaci Ellison, of Doherty High School and Selina Sounakhene, of Sand Creek High School, were introduced as representatives of the Mayor's 100 Teens.

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Jody Krisko, Parks, Recreation and Cultural Services Program Coordinator, introduced members of the Pikes Peak Youth Council.

Ms. Ellison reviewed the Pikes Peak Youth Council's achievements for this year.

CITIZEN DISCUSSION

There were no citizen comments.

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6. Motion by Hente, second by Purvis, that the amended Minutes (title change for Item No. 7) of the Regular Council meeting of April 14, 2009 and the Special Called Session of April 21, 2009 be approved as amended and written. The motion unanimously carried.

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Mayor Rivera was excused.
In the absence of Mayor Rivera, Vice Mayor Small presided over the meeting.
Councilmembers Hente and Herpin were excused.

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CONSIDERATION OF ITEMS CALLED UP FROM CONSENT CALENDAR SECTION

4-A-6. Ordinance No. 09-49 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 08-213 (2009 APPROPRIATION ORDINANCE) FOR THE TOPS FUND IN THE AMOUNT OF $25,000 FOR THE ACQUISITION OF APPROXIMATELY 15 ACRES OF REAL PROPERTY KNOWN AS PARCEL 1 OF THE WHITE ACRES PROPERTY" was presented for final passage.

Motion by Purvis, second by Heimlicher, that the resolution be adopted.

Ayes: Gallagher, Glenn, Heimlicher, Martin, Purvis, Small
Noes: None
Absent: Hente, Herpin, Rivera

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Mayor Rivera returned.
Councilmembers Hente and Herpin returned.
Councilmember Purvis was excused.

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UNFINISHED BUSINESS

7. Ordinance No. 09-48 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 08-213 (2009 APPROPRIATION ORDINANCE) FOR THE 2009 GRANTS FUND IN THE AMOUNT OF $44,913,000 FOR THE WOODMEN ROAD WIDENING PROJECT" was brought up on second presentation.

Motion by Heimlicher, second by Small, that the ordinance be finally passed.

Ayes: Heimlicher, Herpin, Martin, Rivera, Small
Noes: Gallagher, Glenn, Hente
Absent: Purvis

Mayor Rivera declared the motion carried.

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Councilmember Purvis returned.

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8. CPC CA 09-00009: Ordinance No. 09-50 entitled "AN ORDINANCE AMENDING SECTION 105 (ESTABLISHMENT OF ZONE DISTRICTS) OF PART 1 (BASIC PROVISIONS) AND SECTION 201 (DEFINITIONS ENUMERATED) OF PART 2 (DEFINITIONS) AND SECTION 301 (PURPOSE) OF PART 3 (LAND USE TYPES AND CLASSIFICATIONS) OF ARTICLE 2 (BASIC PROVISIONS, DEFINITIONS, LAND USE TYPES AND CLASSIFICATIONS), SECTION 105 (ADDITIONAL STANDARDS FOR SPECIFIC USES ALLOWED IN RESIDENTIAL ZONES) OF PART 1 (RESIDENTIAL DISTRICTS) AND SECTION 501 (PURPOSE) OF PART 5 (OVERLAY DISTRICTS) OF ARTICLE 3 (LAND USE ZONING DISTRICTS) AND SECTION 102 (GENERAL STANDARDS) OF PART 1 (GENERAL STANDARDS), SECTION 202 (GENERAL REGULATIONS) OF PART 2 (OFF-STREET PARKING), SECTION 305 (APPLICATION OF LANDSCAPING REQUIREMENTS) OF PART 3 (LANDSCAPING STANDARDS) SECTION 402 (APPLICABILITY) OF PART 4 (SIGN REGULATIONS) AND SECTION 603 (ZONES ALLOWED) OF PART 6 (COMMERCIAL MOBILE RADIO SYSTEMS (CMRS) REGULATIONS) OF ARTICLE 4 (SITE DEVELOPMENT STANDARDS) AND SECTION 502 (DEVELOPMENT AND MINOR DEVELOPMENT PLANS) OF PART 5 (CONCEPT PLANS, DEVELOPMENT PLANS AND MINOR DEVELOPMENT PLANS), SECTION 1103 (RELIEF) OF PART 11 (ADMINISTRATIVE RELIEF) AND SECTION 1403 (TEMPORARY USE REVIEW CRITERIA) OF PART 14 (TEMPORARY USES) OF ARTICLE 5 (ADMINISTRATION AND PROCEDURES) AND SECTION 101 (VESTED PROPERTY RIGHTS) OF ARTICLE 9 (VESTED PROPERTY RIGHTS) AND ESTABLISHED OF A NEW PART 8 (FORM-BASED ZONING DISTRICT) OF ARTICLE 3 (LAND USE ZONING DISTRICTS) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO FORM-BASED ZONING DISTRICTS" was brought up on second presentation.

Motion by Small, second by Heimlicher, that the ordinance be finally passed.

Then, motion by Gallagher, to amend A1 – change to 67%.

The motion died for lack of a second.

A vote being taken on the original motion that the ordinance be finally passed.

Ayes: Glenn, Heimlicher, Hente, Herpin, Martin, Purvis, Rivera, Small
Noes: Gallagher
Absent: None

Mayor Rivera declared the motion carried.

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9. **SEE ACTION TAKEN EARLIER IN THE MEETING.**

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10. Motion by Hente, second by Gallagher, that Don Magill be re-appointed to a term as a member of the Development Review Enterprise Customer Advisory Committee, said term expiring April 10, 2012. The motion unanimously carried.

Motion by Hente, second by Gallagher, that William McAllister be appointed to a term as a member of the Emergency Services Agency (ESA), said term expiring September 26, 2011. The motion unanimously carried.

Motion by Hente, second by Gallagher, that Steve Hook (Alternate) and Jan Doran (Alternate) be appointed to terms as members of the Initiative Review Committee, said terms indefinite. The motion unanimously carried.

Motion by Hente, second by Gallagher, that Daniel Mullin and Tim Cassibry be appointed and Cindy Corsaro, Richard Hansen and William Pate be re-appointed to terms as members of the Public Safety Sales Tax Oversight Committee (PSST OC), said terms expiring May 14, 2011, May 14, 2010, My 14, 2012, May 14, 2012 and May 14, 2012, respectively.

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Mayor Rivera was excused.
In the absence of Mayor Rivera, Vice Mayor Small presided over the meeting.

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NEW BUSINESS

11. Ordinance No. 09-51 entitled "AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF COLORADO SPRINGS, COLORADO, OF ITS SALES AND USE TAX REVENUE REFUNDING BONDS, SERIES 2009, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $42,800,000 FOR THE PURPOSE OF REFUNDING THE REMAINDER OF THE CITY'S OUTSTANDING SALES AND USE TAX REVENUE BONDS, SERIES 1999, PROVIDING FOR THE SALE OF SAID SERIES 2009 BONDS; PLEDGING CERTAIN SALES AND USE TAX REVENUES OF THE CITY FOR THE PAYMENT OF SAID SERIES 2009 BONDS; PROVIDING CERTAIN COVENANTS AND OTHER DETAILS CONCERNING THE SERIES 2009 BONDS AND THE SALES AND USE TAX REVENUES; PROVIDING THE FORM OF SUCH SERIES 2009 BONDS AND OTHER DETAILS WITH RESPECT TO SUCH BONDS AND THE PAYMENT THEREOF; APPROVING OTHER DOCUMENTS RELATING TO SUCH SERIES 2009 BONDS;

DECLARING AN EMERGENCY; AND PROVIDING THE EFFECTIVE DATE OF THIS ORDINANCE" was introduced and read.

Terri Velasquez, Chief Financial Officer, summarized the item and answered questions.

Motion by Hente, second by Gallagher, that the ordinance be introduced, read and finally passed, adopted and approved as an emergency ordinance.

Ayes: Gallagher, Glenn, Heimlicher, Hente, Herpin, Martin, Purvis, Small
Noes: None
Absent: Rivera

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Mayor Rivera returned.
Councilmember Glenn was excused.

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PUBLIC HEARINGS

12. **Horizon View**

12A. **AR DP 08-00133: (Quasi-Judicial Matter) Public hearing on an appeal by James W. Kin of Gaddis, Kin & Herd, P.C. on behalf of the Rawles Open Space Neighborhood regarding the Planning Commission action of March 19, 2009 for the Horizon View development plan consisting of 5 acres located at 1635 Mesa Road.**

James Mayerl, Senior Planner, reviewed the property characteristics and specifics to the plan such as decreases in lot coverage, building heights, increased set backs and vegetation preservation.

Jason Alwine, William Guman and Associates, reviewed the project description and project development standards and addition of new water line and sewer system along Mesa Road to Caldera Drive.

Bill Guman, representative of the applicant, reviewed the Code provisions that were compatible with this project; only 50% of the site is being considered for development, the remainder will remain undeveloped due to the adjacent park.

Bruce Warren, standing in for Jim Kin, letter on file from Mr. Kin stating Mr. Warren's presence; question is compatibility; Zoning code is not implemented on an infill project.

Ed Flitton, attorney, reviewed the Development Plan requirement of Sections 7.5.202 and 7.5.202(c) and Chapters 2, 6 and 7 of the City Code, 2000 Supreme Court; requesting denial due to Code and Comprehensive Plan regarding compatibility.

Jean Armstrong Jones lived in the Commons area for 60 years, wants low density preserved and open character maintained.

Jane Warren has lived in the area for 30 years; showed video of the rural area; area was planned this way and should stay this way; five homes on 2.5 acres violates the spirit and nature of the neighborhood.

Mr. Flitton stated the compatibility is measured by adjacency; Rawles Open Space is the adjoining property, sets back from Mesa Road of 100' or more, low profile houses, view corridor; displayed homes with various grades, five lots on 2.5 acres with varying heights; showed video with heights more than 13', most 30' and 25'.

Chuck Donnelly, Palmer Land Trust, Dave Munger, Council of Neighbors & Organizations (CONO) president, Pam Hamamoto, Mark Cunningham and Tad Forster spoke in opposition citing the following comments: closer, denser and taller than other homes along Mesa Road; opposes development; questions what is a neighborhood, wants opportunity to participate in that discussion; this is a neighborhood with commonalities of a small neighborhood that should be preserved; former Colorado Springs Utilities (CSU) employee; looked at pavement and concerned about water line developer is proposing; no sewer lines will fit in the Mesa Road right-of-way; incompatible development, choice densities, Mesa area unique; has attended many open meetings at Holmes Junior High; purchased his lot based on open density; two homes with septic tanks feasible on the five-acre lot.

Rebuttal:

Mr. Guman stated he was perplexed by the change from the Mesa Road neighborhood to the Rawles neighborhood and the boundary lines for open space; considered entire two miles, not 1.2 mile stretch of it, showed different development by same owners of the Rawles area with same density and building heights; not part of Rawles Open Space area; reviewed other homes in the area by PowerPoint regarding height and setback.

Brent Schubloom, CSU Systems Extension Manager, stated the water lines along Mesa Road are present, sewer line on east side of road, separate requirements for water and wastewater lines; if properly constructed and executed, it can be built.

Vice Mayor Small commented everything is different in character from adjacent property, not compatible with existing neighborhood.

Councilmember Martin wants the work with the neighbors to begin early in the process.

Councilmember Herpin expressed conflict between two sets of private rights.

Kristine Hembre buys homes, fixes them and sells; is a doctor and office is one mile away; wanted to share the land her home is located on.

Motion by Small, second by Martin, to overturn the decision of the Planning Commission and uphold the appeal.

Then, motion by Herpin, second by Gallagher, that this matter be continued to the City Council meeting of June 23, 2009; presentation of modified plan. The motion unanimously carried. Absent, Councilmember Glenn.

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12B. **AR FP 08-00134: (Quasi-Judicial Matter) Public hearing on an appeal by James W. Kin of Gaddis, Kin & Herd, P.C. on behalf of the Rawles Open Space Neighborhood regarding the Planning Commission action of March 19, 2009 for the Horizon View final subdivision plat consisting of 5 acres located at 1635 Mesa Road.**

Motion by Small, second by Martin, to overturn the decision of the Planning Commission and uphold the appeal.

Then, motion by Herpin, second by Gallagher, that this matter be continued to the City Council meeting of June 23, 2009; presentation of modified plan. The motion unanimously carried. Absent, Councilmember Glenn.

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At 4:42 P.M., motion by Herpin, second by Martin, that Council adjourn. The motion unanimously carried, and

COUNCIL ADJOURNED

Kathryn M. Young

Kathryn M. Young, CMC, CERA
City Clerk