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

Council met in Regular Session.

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

----------0----------

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

The meeting was opened with an invocation by Pastor Barbara Radtke, Rose of Sharon Temple.

----------0----------

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

Councilmember Hente called up Item Nos. 3-B-8 and 3-B-9 for separate consideration.

CONSENT CALENDAR

3. The following items were acted upon by unanimous consent of the members present, with the exception of Item Nos. 3-B-8 and 3-B-9, which were acted upon separately:

SECOND PRESENTATION:

A-1. Ordinance No. 09-87 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 08-213 (2009 APPROPRIATION ORDINANCE) IN THE AMOUNT OF $719,024 FOR BOARDING BRIDGE CONTROL REPLACEMENTS AT THE COLORADO SPRINGS AIRPORT" was presented for final passage.

A-2. Ordinance No. 09-88 entitled "AN ORDINANCE AMENDING SECTION 203 (PERMITTED, CONDITIONAL AND ACCESSORY USES) OF PART 2 (COMMERCIAL DISTRICTS) AND SECTIONS 803 (ESTABLISHMENT AND DEVELOPMENT OF AN FBZ ZONE AND RELATIONSHIP TO OTHER CITY REGULATIONS), 805 (FBZ REGULATING PLAN REQUIREMENTS), 806 (REVIEW CRITERIA FOR FBZ REGULATING PLANS) AND 809 (FBZ REGULATING PLAN AND DEVELOPMENT PLAN AMENDMENTS) OF PART 8 (FORM-BASED ZONING DISTRICTS) 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 HOUSEKEEPING CHANGES" was presented for final passage.

A-3. CPC ZC 09-00044: (Quasi-Judicial Matter) Ordinance No. 09-89 entitled "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF COLORADO SPRINGS RELATING TO 6.62 ACRES LOCATED NORTHEAST OF SOUTH ACADEMY BOULEVARD AND MILTON

E. PROBY PARKWAY" was presented for final passage. (R-5/AO and R-1-6000/AO to R-5/AO)

A-4. CPC V 09-00046: Ordinance No. 09-90 entitled "AN ORDINANCE VACATING PUBLIC RIGHT-OF-WAY CONSISTING OF 0.15 ACRE LOCATED NORTHEAST OF SOUTH ACADEMY BOULEVARD AND MILTON E. PROBY PARKWAY" was presented for final passage.

A-5. CPC PUZ 09-00016: (Quasi-Judicial Matter) Ordinance No. 09-91 entitled "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF COLORADO SPRINGS RELATING TO 192.34 ACRES LOCATED SOUTHWEST OF VOYAGER PARKWAY AND SPECTRUM LOOP" was presented for final passage. (PIP-1 and OC/cr to PUD)

FIRST PRESENTATION:

B-1. Resolution No. 163-09 was presented: "A RESOLUTION ACCEPTING AN ADDITIONAL GRANT FROM THE GOVERNOR'S ENERGY OFFICE OF THE STATE OF COLORADO".

B-2. Resolution No. 164-09 was presented: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS, COLORADO APPROVING A SERVICE PLAN FOR THE TUSCANY PLAZA METROPOLITAN DISTRICT".

B-3. Resolution No. 165-09 was presented: "A RESOLUTION TO CHANGE THE FUNDING SOURCE FOR THE TERMINAL SEATING PROJECT, THE INTERIOR SIGNAGE PROJECT, AND THE INTEGRATED OPERATIONS AND COMMUNICATIONS CENTER PROJECT AT THE COLORADO SPRINGS AIRPORT".

B-4. Resolution No. 166-09 was presented: "A RESOLULTION AUTHORIZING THE COLORADO SPRINGS AIRPORT DIRECTOR OF AVIATION TO ACCEPT AND EXECUTE A GRANT IN AN ESTIMATED AMOUNT OF $7,500,000 AND ANY FUTURE GRANT AMENDMENTS FROM THE FEDERAL AVIATION ADMINISTRATION TO REHABILITATE A PORTION OF TAXIWAY G AND A PORTION OF TAXIWAY H AT THE COLORADO SPRINGS AIRPORT".

B-5. Resolution No. 167-09 was presented: "A RESOLUTION TO ACCEPT A GRANT FROM THE STATE OF COLORADO, COLORADO DEPARTMENT OF PUBLIC SAFETY, IN THE AMOUNT OF $99,936 FOR THE COLORADO AUTOMOBILE THEFT PREVENTION AUTHORITY (CATPA) GRANT; AND AUTHORIZING THE CHIEF OF POLICE TO EXECUTE THE CONTRACT TO SUPPORT THE EFFORTS OF THE SOUTHERN COLORADO METRO REDUCE AUTOMOBILE THEFT TASK FORCE THROUGH LAW ENFORCEMENT OVERTIME AND THE ACQUISITION OF LICENSE PLATE READER SYSTEMS".

B-6. Resolution No. 168-09 was presented: "A RESOLUTION TO ACCEPT A GRANT FROM THE FEDERAL TRANSIT ADMINISTRATION IN THE AMOUNT OF $7,487,050 TO FUND TRANSIT SERVICES, CAPITAL, AND PLANNING PROJECTS".

B-7. Resolution No. 169-09 was presented: "A RESOLUTION APPROVING AND ACCEPTING AN INTERGOVERNMENTAL AGREEMENT CONCERNING A COMPETITIVE SELECTION PROCESS FOR YEAR 2009 JOB ACCESS AND REVERSE COMMUTE (JARC) PROGRAM AND NEW FREEDOM (NF) PROGRAM FEDERAL GRANTS".

B-8. **SEE ACTION TAKEN LATER IN THE MEETING.**

B-9. **SEE ACTION TAKEN LATER IN THE MEETING.**

Motion by Purvis, second by Hente, that all matters on the Consent Calendar, with the exception of Item Nos. 3-B-8 and 3-B-9, which were 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

----------0----------

4. **Resolutions of Appreciation**

There were no resolutions.

CITIZEN DISCUSSION

Harry Gautsche spoke in support of the Pioneers Museum remaining open; that while he will support Council's decision through the Budget process, the museum is important to the city.

Lonnie Miera stated he came to City Council two years ago requesting School Crossing Guards and speed control at Chamberlin and Stratton Meadows Elementary schools; followed-up since no action has been taken to date.

Andrea Archer, Colorado Springs Independent Center, Frank Roybal and Altheo Moore expressed concerns and opposition to reduction or elimination of bus service in the community; that it is the primary source of transportation for disabled persons.

Dave Munger, Old North End Neighborhood Boardmember, extended an invitation to City Council to attend the 70 year celebration of Fire Station No. 2.

----------0----------

5. Motion by Herpin, second by Hente, that the Minutes of the Regular Council meeting of July 14, 2009 be approved as written. The motion unanimously carried.

CONSIDERATION OF ITEMS CALLED UP FROM CONSENT CALENDAR SECTION

3-B-8. Ordinance No. 09-93 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 09-33 (2009 AMENDED APPROPRIATION ORDINANCE) FOR THE GENERAL FUND IN THE AMOUNT OF $430,000 FOR THE REFUND OF 2008 PROPERTY TAX REVENUE COLLECTED IN EXCESS OF THE TABOR REVENUE LIMIT" was introduced and read.

Councilmember Hente stated the refund of revenue through Utilities bill credit may not be equitable as some people do not have utility accounts and questioned whether there was a mechanism that could refund property owners rather than utility customers.

Ms. Culbreth-Grath stated while she had similar issues, due to requirements of the law, the utility reimbursement was the closet match.

Councilmember Hente inquired if a credit could be issued at the next invoicing of SWENT customers.

Terri Velasquez, Chief Financial Officer, stated an analysis was provided to the City Manager; SWENT was looked at as an option but due to time constraints the utility reimbursement was the best option.

Motion by Small, second by Purvis, that the ordinance be passed as introduced.

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

Mayor Rivera declared the motion carried.

----------0----------

3-B-9. Resolution No. 170-09 was presented: "A RESOLUTION AUTHORIZING THE CITY OF COLORADO SPRINGS TO ENTER INTO A SUPPLEMENT TO SETTLEMENT AGREEMENT (WOODMEN COMMONS) WITH THE WOODMEN RETAIL CENTER, LLC, A COLORADO LIMITED LIABILITY COMPANY".

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

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

Mayor Rivera declared the motion carried.

UNFINISHED BUSINESS

6. Motion by Hente, second by Gallagher, that James Ramsey, Randy Welsch and Amber Bowden (reclassification from At-large to District 4) be reappointed and Gerrit Slatter and John Nuwer be appointed to terms as members of the Citizens' Transportation Advisory Board, said terms expiring August 27, 2012, August 27, 2012, August 27, 2010, August 27, 2012 and Indefinite, respectively. The motion unanimously carried.

Motion by Hente, second by Gallagher, that Chief Carl Tatum be appointed as a member of the Emergency Services Agency (ESA), said term expiring August 7, 2011. The motion unanimously carried.

UTILITIES BUSINESS

7. Resolution No. 171-09 was presented: "A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF COLORADO,

DEPARTMENT OF REVENUE, MOTOR CARRIER SERVICES DIVISION AND THE CITY OF COLORADO SPRINGS, COLORADO ON BEHALF OF ITS UTILITY ENTERPRISE, COLORADO SPRINGS UTILITIES, CONCERNING COMMERCIAL DRIVERS' LICENSE PROGRAM".

Mason Parsaye, Colorado Springs Utilities (CSU) Energy Construction Operations & Maintenance General Manager, stated CSU has conducted testing for CDL licensing since 1976.

Don Ortega, spoke in opposition to the proposed resolution; that in light of budget issues, the costs involved in maintaining the program should be applied to other programs; that CSU spends approximately $1,500 for each new driver and private companies charge $175 - $375 for similar testing. He stated CSU and the City of Colorado Springs should require certification and CDL licenses before a new employee is hired.

Mr. Parsaye stated a Request for Proposals (RFP) was advertised in 2007 and the majority of vendors who responded were located in the Denver area; that logistically it is more cost effective for CSU to conduct the training.

Jerry Forte, CSU Chief Executive Officer, stated approximately 15 employees are issued a Commercial Driver's License (CDL) annually.

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

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

----------0----------

8. Ordinance No. 09-92 entitled "AN EMERGENCY ORDINANCE OF THE CITY OF COLORADO SPRINGS, COLORADO PROVIDING FOR THE CURRENT REFUNDING OF CERTAIN OUTSTANDING UTILITIES SYSTEM REVENUE BONDS OF THE CITY AND AN ESCROW THEREFOR; PROVIDING FOR THE ISSUANCE AND SALE OF THE CITY OF COLORADO SPRINGS, COLORADO, UTILITIES SYSTEM REFUNDING REVENUE BONDS, SERIES 2009A IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $67,000,000 PAYABLE SOLELY OUT OF THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY OF COLORADO SPRINGS UTILITIES SYSTEM, AUTHORIZING THE EXECUTION BY THE CITY OF AN ESCROW AGREEMENT, A BOND PURCHASE AGREEMENT AND AN OFFICIAL STATEMENT; PROVIDING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY" was introduced and read.

Nancy Brisco, CSU Treasury & Finance Manager, stated the Series 2009A bonds will total $65.9 million dollars and mature November 15, 2009; that the bonds will be used primarily to refund the City's outstanding Utilities System Subordinate Lien Improvements and Refunding Bonds Series 1998A, 2001A and 2003A.

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

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

Mayor Rivera declared the motion carried.

PUBLIC HEARINGS

9. **3215 Austin Bluffs Parkway**

9A. **PD DP 79-00070-A6MN09(RF): (Quasi-Judicial Matter) Public hearing on an appeal by Debra Eiland, PC on behalf of Bouchard & Associates, LLC of the Planning Commission action of June 18, 2009 to deny a minor amendment to Austin Bluffs Business Park Development Plan. The amendment entails the addition and rearrangement of parking spaces to accommodate a change of use on the site from office to day spa and salon. The subject property consists of 0.73 acre, is zoned PBC/cr/SS (Planned Business Center with conditions of record and Streamside Area Overlay) and is located at 3215 Austin Bluffs Parkway.**

Motion by Hente, second by Gallagher, that this item be withdrawn. The motion unanimously carried.

----------0----------

9B. **AR NV 09-00199: (Quasi-Judicial Matter) Public hearing on an appeal by Debra Eiland, PC on behalf of Bouchard & Associates, LLC of the Planning Commission action of June 18, 2009 to deny a non-use variance to the following section of the Code of the City of Colorado Springs 2001, as amended, Section 7.4.203 – Parking: To allow 24 parking spaces where 44 are required. This variance is requested to accommodate a change of use from office to day spa and salon. The subject property consists of 0.73 acre, is zoned PBC/cr/SS (Planned Business Center with conditions of record and Streamside Area Overlay) and is located at 3215 Austin Bluffs Parkway.**

Motion by Hente, second by Gallagher, that this item be withdrawn. The motion unanimously carried.

----------0----------

Councilmember Glenn was excused.

----------0----------

10. **2731 Ron Court**

10A. **CPC NV 09-00021: (Quasi-Judicial Matter) Public hearing on an appeal by Judith Kay of the Planning Commission action of April 16, 2009 to deny non-use variances to the following sections of the Code of the City of Colorado Springs 2001, as amended; Section 7.3.105.N.1 – Private Stables & Corrals: To allow 7,298 square foot lot size where a minimum of 37,000 square feet is required; Section 7.3.105.N.2 – Separation:**

To allow a 5 foot separation from the adjacent building envelope on the north property line where 55 feet is required; Section 7.3.105.N.2 – Separation: To allow a 5 foot separation from the adjacent building envelope on the west property line where 55 feet is required. These variances are requested to allow two miniature horses to remain on the property. The 0.17 acre, R-2 (Two-Family Residential) zoned property is located at 2731 Ron Court.

Dick Anderwald, Land Use Review Manager, introduced the item stating the application did not meet the necessary criteria for approval.

Erin McCauley, Planner I, gave a presentation regarding Staff's denial of the use variance and Home Occupation Permit with equine. She stated the lot features a single-family residence with a detached garage, half of which has been converted into a stable; that the property is fenced around the perimeter with a 6' wooden, privacy fence; that the Planning Commission denial relates to the stabling of the horses; that a home occupation permit was approved with the condition that the equine-learning portion of the program be removed; that the appellant insisted the Planning Commission decision was erroneous because horses are regulated by several sections of the City Code and argued she could not reasonably use the property without the horses. She stated reports were received from surrounding neighbors citing farm-like smells, increases in rodent and insect population and intense use of yard; that staff recommends denial of both appeals.

Attorney Duncan Bremer, representing Judith Kay, stated the City should facilitate home occupations during times of economic downturn.

Judith Kay stated she has worked out of her home for 25 years as a reading tutor/teacher; that she lives at the far end of a cul-de-sac. She described her tutoring business and how children learn from caring for the horses and the environment she exposes them to.

In response to a question from Vice Mayor Small, Ms. Kay stated she received the horses in September, 2007.

In response to a question from Councilmember Herpin, Ms. Kay stated the children attend tutoring sessions once or twice a week.

Renee Dyer, Marty Kemmer Contreras (Mother of one of Ms. Kay's students), Sue McClarren, Nancy Lawrence (Mother of one of Ms. Kay's students), Steve Contreras, Kim Makower, Terry Hamilton and Ms. VanderWay spoke in support citing the following: has lived next door to Ms. Kay for 1 ½ years; son has ADHD and frequently visits Ms. Kay and the horses which has made a big difference in her son; Ms. Kay takes very good care of the horses; has seen a change in her daughter since the horses have been there; son has been through several types of therapies and tutors; son has autism and does not see Ms. Kay for tutoring but for socialization with the horses; supports the variances.

Marjorie Smith, on behalf of Council of Neighbors and Organizations (CONO), Michael McGrath, Humane Society of the Pikes Peak Region, Mary Taylor, Juliet Ofwond, and Ron Schreiber, Attorney for St. Clair Hultsman, spoke in opposition citing the following: Platte Avenue Neighborhood Association opposed; Humane Society opposed due to concerns that area will proliferate throughout the city; has received two complaints generating service of a summons to Ms. Kay; opposition to odors; has asthma, does not oppose animals but feels

she should be able to live in her home without being subject to the horses; difficult to rent properties that have horses; current tenant has no concerns but future tenants may be subject to horses and accompanying concerns; inconvenience to Ms. Kay does not mean she should be permitted to have the horses; not opposed to the tutoring business but to the horses being kept in residential neighborhood.

Mr. Bremer stated if Ms. Kay had resources, she could buy other property, but she does not; that horses are permitted in the zone, it is only the lot size that causes Ms. Kay to be in violation; that the Humane Society officer said there was no problem with the smells on the property; that allergies of horses are related to the dander of the horses and the allergies cannot be activated without contact; that another location does not work due to the financial aspect, the learning standpoint and the practical standpoint. He stated Ms. Kay would lose students and her livelihood if she were forced to move the horses; that there will be hardship to Ms. Kay, the horses and the students if the variances are not granted.

Ms. Massey read the applicable criteria necessary for non-use variance approvals.

In response to a question from Councilmember Heimlicher, Ms. Kay stated before she acquired the horses in 2007, she attended courses relating to the care of the horses and the City Zoning Office advised her to contact her neighbors for consent; that there was no objections after speaking with a couple of her neighbors.

Motion by Gallagher, second by Herpin, to overturn the decision of the Planning Commission and grant the non-use variance.

In response to a question from Councilmember Purvis, Ms. Massey stated the ADA laws and definitions state service animals that provide assistance to medically disabled persons can be approved.

Councilmember Purvis stated in light of that, he would request if this item is approved that the variance be applicable to the current property owner at this address.

Councilmember Gallagher, with the consent of Councilmember Herpin, amended the motion to reflect the variance be approved for Judith Kay only.

Councilmember Hente stated he will not support the motion; that the neighbors and community have an expectation that the City Code will be followed.

A vote being taken on the motion:

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

Mayor Rivera declared the motion failed and the decision of the Planning Commission upheld.

----------0----------

10B. **HOC 09-00018: (Quasi-Judicial Matter) Public hearing on an appeal by Judith Kay of the Planning Commission action of June 18, 2009 to approve, with conditions, a Home**

Occupation Permit for reading tutoring and equine-assisted learning. The 0.17 acre, R-2 (Two-Family Residential) zoned property is located at 2731 Ron Court.

Motion by Small, second by Hente, that the decision of the Planning Commission be upheld and approve a Home Occupation Permit with the exception of equine-assisted learning. The motion unanimously carried. Absent, Councilmember Glenn.

----------0----------

At 4:50 P.M., motion by Heimlicher, second by Martin, that Council adjourn. The motion unanimously carried, and

COUNCIL ADJOURNED

Cindy N. Conway, CMC
Deputy City Clerk