

Council met in Regular Session.

There were present: Mayor Rivera, Councilmembers Gallagher, Hente, Herpin, Martin, Paige, Purvis and Small. Absent, Councilmember Glenn. Councilmember Glenn arrived during the meeting. Also present, Interim City Manager Cox and City Attorney/Chief Legal Advisor Kelly.

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

The meeting was opened with an invocation by Karen Fallahi, Baha'I Faith.

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

Mr. Cox called up Item No. 3-A-4 for separate consideration.

Councilmember Paige called up Item Nos. 3-B-6, 3-B-7, 3-B-8 and 3-B-12 for separate consideration.

Councilmember Gallagher called up Item No. 3-B-15 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-A-4, 3-B-6, 3-B-7, 3-B-8, 3-B-12 and 3-B-15 which were acted upon separately:

SECOND PRESENTATION:

- A-1. Ordinance No. 10-104 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 09-148 (2010 APPROPRIATION ORDINANCE) IN THE AMOUNT OF \$26,658 FOR THE CITY-FUNDED CIP CONSTRUCTION FUND" was presented for final passage.
- A-2. Ordinance No. 10-105 entitled "AN ORDINANCE CREATING A NEW SECTION 112 (MAYORAL RUN-OFF ELECTIONS) OF PART 1 (CONDUCT OF ELECTIONS) OF ARTICLE 1 (GENERAL MUNICIPAL ELECTIONS) OF CHAPTER 5 (ELECTIONS) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO PROCEDURES FOR MAYORAL RUN-OFF ELECTIONS" was presented for final passage.
- A-3. CPC PUZ 09-00127: (Quasi-Judicial Matter) Ordinance No. 10-106 entitled "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF COLORADO SPRINGS RELATING TO 47 ACRES LOCATED SOUTH OF VAN BUREN STREET AND CENTENNIAL BOULEVARD" was presented for final passage. (PUD/SS/HS/cr to PUD/SS)

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A-4. SEE ACTION TAKEN LATER IN THE MEETING.

FIRST PRESENTATION:

- B-1. The City Clerk reported that on December 20, 2010 there was filed with her a petition for the annexation of Fontana Addition Annexation. 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 communicated such to City Council and recommended that the petition be referred to the City Administration for review and recommendation.
- B-2. The City Clerk reported that on December 20, 2010 there was filed with her a petition for the annexation of Vintage Addition No. 1 Annexation. 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 communicated such to City Council and recommended that the petition be referred to the City Administration for review and recommendation.
- B-3. The City Clerk reported that on December 20, 2010 there was filed with her a petition for the annexation of Vintage Addition No. 2 Annexation. 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 communicated such to City Council and recommended that the petition be referred to the City Administration for review and recommendation.
- B-4. The City Clerk reported that on December 20, 2010 there was filed with her a petition for the annexation of Vintage Addition No. 3 Annexation. 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 communicated such to City Council and recommended that the petition be referred to the City Administration for review and recommendation.
- B-5. Designating the City Clerk's Office as the public place for posting of public notices for public meetings.
- B-6. **SEE ACTION TAKEN LATER IN THE MEETING.**
- B-7. **SEE ACTION TAKEN LATER IN THE MEETING.**
- B-8. **SEE ACTION TAKEN LATER IN THE MEETING.**
- B-9. Resolution No. 1-11 was presented: "A RESOLUTION TO ACCEPT A GRANT FROM THE COLORADO DEPARTMENT OF REVENUE, LIQUOR ENFORCEMENT DIVISION FOR FUNDING IN THE AMOUNT OF \$40,000; AND, AUTHORIZING THE CHIEF OF POLICE TO EXECUTE THE CONTRACT TO CONDUCT COMPLIANCE CHECKS OF LIQUOR ESTABLISHMENTS AND PROMOTE EDUCATION AND AWARENESS PERTAINING TO UNDERAGE DRINKING IN OUR COMMUNITY".
- B-10. Resolution No. 2-11 was presented: "A RESOLUTION APPROVING THE 2011 JOINT FUNDING AGREEMENT BETWEEN THE U.S. GEOLOGICAL SURVEY AND THE CITY OF

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COLORADO SPRINGS FOR A CONTINUATION OF THE WET WEATHER MONITORING PROGRAM OCCURRING WITHIN THE FOUNTAIN CREEK AND MONUMENT CREEK DRAINAGE BASINS".

B-11. Resolution No. 3-11 was presented: "A RESOLUTION TO AMEND RESOLUTION NO. 197-09 INCREASING THE SAND CREEK BASIN DRAINAGE FEE".

B-12. **SEE ACTION TAKEN LATER IN THE MEETING.**

B-13. Ordinance No. 11-1 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 10-103 (2011 APPROPRIATION ORDINANCE) FOR THE HUMAN SERVICES COMPLEX FUND IN THE AMOUNT OF \$1,200,000 AND THE SENIOR PROGRAMS SPECIAL FUND IN THE AMOUNT OF \$800,000 TO ALLOW PAYMENT OF FUNDS ASSOCIATED WITH THE TRANSFER OF HUMAN SERVICES COMPLEX AND THE COLORADO SPRINGS SENIOR CENTER TO THE HOUSING AUTHORITY OF THE CITY OF COLORADO SPRINGS" was introduced and read.

B-14. Resolution No. 4-11 was presented: "A RESOLUTION EXTENDING AND AMENDING THE INTERGOVERNMENTAL AGREEMENT ("IGA") BETWEEN THE CITY AND THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT ("BID") DATED FEBRUARY 10, 2009".

B-15. **SEE ACTION TAKEN LATER IN THE MEETING.**

B-16. Resolution No. 5-11 was presented: "A RESOLUTION AMENDING RESOLUTION NO. 37-10 APPOINTING STEVEN W. COX AS INTERIM CITY MANAGER FOR THE CITY OF COLORADO SPRINGS TO ADD CONCURRENT RESPONSIBILITIES AS FIRE CHIEF".

Motion by Hente, second by Martin, that all matters on the Consent Calendar, with the exception of Item Nos. 3-A-4, 3-B-6, 3-B-7, 3-B-8, 3-B-12 and 3-B-15 which were acted upon separately, be passed, adopted and approved by unanimous consent of the City Council.

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

4. **Resolutions of Appreciation**

There were none.

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Mayor Rivera recognized the Finance Department for receiving a Certificate of Achievement in Excellence for financial reporting; that the certificate has been received annually for the past 20 years.

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Victoria Suha and Thomas Price, of Palmer High School, were introduced as representatives of the Mayor's 100 Teens.

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CITIZEN DISCUSSION

Sam Masias requested Council allot time for him to speak at the next City Council meeting regarding intolerance and racism in the community.

Loring Wirbel, Bill Sulzman and Mary Sprunger-Froese spoke to recent trends in tax incentive appeals for non-profit and for-profit companies; dangerous precedent set with United States Olympic Committee (USOC) and the Economic Development Corporation's (EDC) agreement with the Space Foundation; wants transparency in the EDC deal with the Space Foundation; consider ramifications of future decisions.

Cheryl Dalton, Colorado Wildfire and Incident Management Academy representative, Greg Heule, Public Information Officer, and Todd Richardson, Incident Commander, presented details of their organization and the Winter Academy held in Colorado Springs this week for Wildland Fire & Incident Management; that students represent approximately 18 states and training is done globally; thanked City Council for community support; that the organization has also trained with Fort Carson military personnel.

Charles Guy expressed concerns over the potential sale of Memorial Hospital; that City Council needs more time to study options and give serious consideration to the process.

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5. Motion by Hente, second by Gallagher, that the Minutes of the regular Council meeting of December 14, 2010 and the Special Called Session of December 17, 2010 be approved as written. The motion unanimously carried. Absent, Councilmember Glenn.

CONSIDERATION OF ITEMS CALLED UP FROM CONSENT CALENDAR SECTION

- 3-A-4. CPC CA 10-00043: Ordinance No. 10-107 entitled "AN ORDINANCE AMENDING SECTION 109 (CONFLICTING PROVISIONS) OF PART 1 (BASIC PROVISIONS) OF ARTICLE 2 (BASIC PROVISIONS, DEFINITONS AND LAND USE TYPES AND CLASSIFICATIONS), SECTION 302 (DEFINITIONS OF USE TYPES) OF PART 3 (LAND USE TYPES AND CLASSIFICATIONS) OF ARTICLE 2 (BASIC PROVISIONS, DEFINITIONS AND LAND USE TYPES AND CLASSIFICATIONS), SECTION 105 (ADDITIONAL STANDARDS FOR SPECIFIC USES ALLOWED IN RESIDENTIAL ZONES) OF PART 1 (RESIDENTIAL DISTRICTS), SECTIONS 103 AND 203 (PERMITTED, CONDITIONAL AND ACCESSORY USES) AND 205 (ADDITIONAL STANDARDS FOR SPECIFIC LAND USES) OF ARTICLE 3 (LAND USE ZONING DISTRICTS), SECTIONS 203 (PARKING SPACE REQUIREMENTS BY USE) OF PART 2 (OFF-STREET PARKING STANDARDS) OF ARTICLE 4 (SITE DEVELOPMENT STANDARDS), AND SECTION 1503 (HOME OCCUPATION PERMIT STANDARDS AND CRITERIA) OF PART 15 (HOME OCCUPATIONS) OF ARTICLE 5 (ADMINISTRATION AND PROCEDURES), ALL OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO MEDICAL MARIJUANA LAND USE REGULATIONS" was brought up on second presentation.

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Larry Larsen, Senior Planner, gave a presentation and stated per Council's motion on first reading, changes were made to the ordinance which include the insertion of 24-hour care in the definition of a drug or alcohol treatment facility, the land use table was amended to allow grow operations and product manufacturing as permitted uses in all commercial districts, and to further address medical marijuana centers, cultivation and infused products as an accessory use in residential zones pursuant to outlined criteria, grandfathered existing businesses located within OR and OC zones, and established a 400' separation for centers applicable to all K-12 schools, child care facilities and drug and alcohol treatment facilities only.

Kamal Patterson, MMJ Center permittee, stated due to his landlord's foreclosure on the property his business is located, he is being forced to close at the current location as the receiver is not willing to allow the center to remain. He requested City Council's consideration to allow his center to move to another location due to circumstances out of his control; that the consequence could result in the center closing its doors.

Wynetta Massey, Deputy City Attorney, stated Mr. Patterson's land use issue and landlord lease is a separate process from the pre-application process; that there is no provision in place for transferring, adding, or expanding a business that existed in July of 2010; that the City is at a loss to create a process unless directed by City Council or until a licensing ordinance is in place.

City Council gave Administration direction to allow Mr. Patterson to relocate his existing business.

Tanya Garduno, Colorado Springs Medical Cannabis Council President, and Mark Slaw thanked City Council for its efforts in moving forward; that the State is permitting modifications, adding locations and transfers of ownership and requested City Council give its consideration and approve the same addendums as the State; requested timeline for an ordinance to be adopted for licensing at the local level.

Mayor Rivera stated any modifications to current business registrations will not be granted at this time; that Mr. Patterson's request was an exception due to unusual circumstances; that Ms. Garduno is encouraged to submit requests to the City Attorney's office for review and recommendation to City Council; that the Administration has been given a sense of urgency to complete a licensing ordinance.

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

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

Mayor Rivera declared the motion carried.

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3-B-6. Resolution No. 6-11 was presented: "A RESOLUTION AUTHORIZING SUBMISSION OF PASSENGER FACILITY CHARGE (PFC) APPLICATION #18 TO THE FEDERAL AVIATION

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ADMINISTRATION INCREASING THE TOTAL PFC FUNDS TO BE COLLECTED FOR CAPITAL IMPROVEMENTS AT THE COLORADO SPRINGS AIRPORT".

Mark Earle, Aviation Director, entered his appearance and answered questions.

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

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

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3-B-7. Ordinance No. 11-2 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 10-103 (2011 APPROPRIATION ORDINANCE) IN THE AMOUNT OF \$903,000 FOR THE SECURITY CHECKPOINT EXPANSION PROJECT AT THE COLORADO SPRINGS AIRPORT" was introduced and read.

Motion by Gallagher, second by Hente, that the ordinance be passed as introduced.

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

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3-B-8. Ordinance No. 11-3 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 10-103 (2011 APPROPRIATION ORDINANCE) IN THE AMOUNT OF \$11,564,361 FOR THE CONSTRUCTION AND INSTALLATION OF THE CHECKED BAGGAGE INSPECTION SYSTEM AT THE COLORADO SPRINGS AIRPORT" was introduced and read.

Motion by Gallagher, second by Hente, that the ordinance be passed as introduced.

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

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3-B-12. Resolution No. 7-11 was presented: "A RESOLUTION RENEWING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS AND EL PASO COUNTY, COLORADO, FOR FACILITIES BUILDING MAINTENANCE SERVICES".

In response to a question by Councilmember Paige regarding the day porter services, Curt Decapite, Procurement Services Manager, stated the day porter services include general maintenance of facilities; that the agreement consolidates existing half-time positions into one full-time position which is a cost savings to the City.

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

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

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3-B-15. Resolution No. 8-11 was presented: "A RESOLUTION AUTHORIZING THE ACQUISITION OF FIVE PROPERTIES FOR SOUTHERN DELIVERY SYSTEM PROJECT IMPROVEMENTS".

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

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

Mayor Rivera declared the motion carried.

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Councilmember Glenn arrived.

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UNFINISHED BUSINESS

6. **Anderson Property**

6A. Withdrawal of Ordinance No. 10-86 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 09-148 (2010 APPROPRIATION ORDINANCE) FOR THE TOPS FUND IN THE AMOUNT OF \$185,652 FOR THE ACQUISITION OF 74.2608 ACRES OF REAL PROPERTY KNOWN AS THE ANDERSON PROPERTY LOCATED WITHIN THE CORRAL BLUFFS AREA".

Kurt Schroeder, Parks, Trails and Open Space (TOPS) Manager, stated this item was before Council on October 26, 2010 and following first reading of the ordinance, a discrepancy between the survey and title commitment was found; that those issues and concerns have been worked through, however, this ordinance will be withdrawn and a new ordinance will be introduced.

Sarah Bryarly, TOPS Landscape Architect, gave a presentation and stated the proposed ordinance for acquisition reflects a revision in acreage from the original surveyed area of 80 acres to 81.4 acres; that the purchase price is slightly increased; that funding will be drawn from the 2011 TOPS budget; that the Right of First Refusal for the cell tower site was previously a concern expressed by Council, and the property owner has now agreed to provide the City the Right of First Refusal for \$2,000; that El Paso County Parks Department is unable to participate in a joint purchase of the property at this time; that the property will not be opened to the public until the master plan is completed.

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Doug Bruce spoke in opposition citing the following: the land is outside city limits; objects to the government acquiring more land.

Jeff Cahill, Corral Bluffs Alliance Board member, thanked City Council for its positive decision in this venue.

Motion by Purvis, second by Hente, that the ordinance be withdrawn.

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

Mayor Rivera declared the motion carried.

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- 6B. Resolution No. 9-11 was presented: "A RESOLUTION AMENDING RESOLUTION NO. 194-10 AUTHORIZING THE ACQUISITION OF REAL PROPERTY KNOWN AS THE ANDERSON PROPERTY WITHIN THE CORRAL BLUFFS AREA".

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

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

Mayor Rivera declared the motion carried.

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- 6C. Ordinance No. 11-4 entitled "AN ORDINANCE AMENDING ORDINANCE NO. 10-103 (2011 APPROPRIATION ORDINANCE) FOR THE TOPS FUND IN THE AMOUNT OF \$189,150 FOR THE ACQUISITION OF 75.664 ACRES OF REAL PROPERTY KNOWN AS THE ANDERSON PROPERTY LOCATED WITHIN THE CORRAL BLUFFS AREA AND IN THE AMOUNT OF \$2,000 FOR THE RIGHT OF FIRST REFUSAL ON THE ADJACENT 5.74-ACRE CELL TOWER SITE" was introduced and read.

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

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

Mayor Rivera declared the motion carried.

NEW BUSINESS

7. Resolution No. 10-11 was presented: "A RESOLUTION TO APPROVE AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS AND LOWE'S HIW, INC.".

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Bob Cope, Economic Development Senior Analyst, gave a brief presentation and stated in June, 2010, Lowe's requested an economic incentive to commit and strengthen its case to construct a Lowe's store at 701 North Academy Boulevard, and in October 2010, Lowe's notified the City of a limited window to move forward with project; that Staff has made extensive efforts to facilitate the project; that the proposed agreement provides a five year sales tax sharing agreement with a total cap of \$50,000 per year, and a commitment to break ground by date certain; that the project is significant to revitalization of the Academy Boulevard corridor and will stimulate the economy of the community; that due to economic conditions, the project has been on hold since 2008;

Mark Stoner, Lowe's Director of Real Estate, gave a brief description of sales estimates.

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Councilmember Martin was excused.

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Doug Bruce and Dave Sarton, Sperry and Mock store owner, spoke in opposition of the proposed sales tax incentives stating a smaller business would not receive the same incentive; that there is a dividing point between one tax structure and another; that it is hard to believe a sales tax break is the lynchpin for the deal; that Lowe's should compete with other business owners.

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

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

Mayor Rivera declared the motion carried.

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Councilmembers Glenn and Small were excused.

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PUBLIC HEARING

8. **AR NV 10-382 (RF): (Quasi-Judicial Matter) Public Hearing on an appeal by Loretta Tebedo regarding the Planning Commission's denial of a Nonuse Variance in the R-1 6000/AO (Single-Family Residential with Airport Overlay) zone district to allow a two-foot front yard setback and a two-foot side yard setback for the existing detached carport located at 1119 Fosdick Drive.**

Dick Anderwald, Planning and Development Team Leader, gave a brief overview and stated following a complaint to Code Enforcement, the homeowner was directed to apply for a variance; that the matter was referred to the Planning Commission and it determined the three

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criteria necessary to grant the Nonuse Variance were not met. He introduced Planner Rachel Teixeira.

Rachel Teixeira, Planner, provided details of the appeal and stated the carport was built in 2010; that Code Enforcement cited the property owner in August, 2010 for violation of the zoning code and required setbacks; that Planning Commission denied the request at its November, 2010 meeting; that notification was sent to adjacent property owners without any opposition; that Staff recommended denial to the Planning Commission.

Motion by Gallagher, second by Hente, to grant the appeal and overturn the decision of the Planning Commission; that there are exceptional conditions due to on-street parking limitations, that reasonable use of the property is prohibited without the variance, and there is no adverse impact to the existing neighborhood. The motion unanimously carried. Absent, Councilmembers Glenn, Martin and Small.

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At 4:15 P.M., motion by Small, second by Herpin, that Council adjourn. The motion unanimously carried, and

COUNCIL ADJOURNED



**Cindy N. Conway, CMC
Deputy City Clerk**