

COLORADO SPRINGS, COLORADO
CITY COUNCIL CHAMBERS
CITY HALL – 107 N. NEVADA AVENUE
JUNE 25, 2013 – 1:00 P.M.

Council met in Regular Session.

There were present: President King, President Pro Tem Bennett, Councilmembers Collins, Gaebler, Knight, Martin, Miller, Pico and, Snider. Also present, Chief of Staff Neumann, City Attorney/Chief Legal Officer Melcher, and Legislative Counsel Massey.

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1. **Call to Order.**

City Clerk Johnson called the roll. All Councilmembers were present.

2. **Invocation and Pledge of Allegiance.**

The meeting was opened with an invocation by Dr. Steven Todd, Former President, Colorado Association of Evangelicals.

3. **Changes to Agenda/Postponements.**

- A. Legislative Counsel Massey stated CSU had requested to postpone Item 5-B-3, a resolution related to execution of a water lease between CSU and Emerald Valley Ranch, LLC, to July 9th.
- B. Withdraw the added item for Mayor's Business, Confirmation of Public Works Director.
- C. Request by City Attorney to rearrange items 16 (Public Comment), 17 (Added Item Agenda), and 18 (Executive Session) so that they would appear in this order: 18 (Executive Session), 17 (Added Item Agenda), and, 16 (Public Comment).
- D. President King stated that there had also been a request to pull item 5-B-4 from the Consent Calendar.

Councilmember Knight asked why the need to move the Public Hearing until after the Executive Session. Ms. Massey stated that City Attorney Melcher had made the request for timeliness due to outside Counsel was present to address an Executive Session matter. President King stated they would keep the Agenda in its current order.

Motion by Bennett, second by Gaebler, to approve the request to postpone item 5-B-3 to July 9th and to withdraw the added item for Confirmation of a Public Works Director.

Ayes: Bennett, Gaebler, King, Knight, Martin, Pico, Snider

Noes: Collins, Miller

Absent: None

The motion passed on a 7-2 vote.

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4. Councilmember Comments.

Councilmember Martin and Snider acknowledged the passing of former City Councilwoman Judy Noyes. President King stated that it seems appropriate for Council to honor those prior Councilmembers when they pass.

CONSENT CALENDAR

5. The following items were acted upon by unanimous consent of the members present, with the exception of item 5-B-4, which was called up for separate consideration:

SECOND PRESENTATION:

- A-1. CPC PUZ 13-00009: (Quasi-Judicial Matter) Ordinance No. 13-33 entitled: “An Ordinance amending the zoning map of the City of Colorado Springs relating to 4.98 acres located at 2450 Lower Gold Camp Road [from PUD (Planned Unit Development – eight dwelling units per acre of human service facility with a 30-foot maximum building) to PUD (Planned Unit Development – 10 dwelling units per acre with a 32-foot maximum building height)]” was presented for final passage.

FIRST PRESENTATION:

- B-1. Approval of the Minutes of the Regular Council Meeting of June 11, 2013.
- B-2. Resolution No. 64-13 was presented: “A Resolution acknowledging an in-kind land donation of a 2.2-acre parcel from Donald F. Hanes and Betty Jo Hanes to the City of Colorado Springs.”
- B-3. Postponed, see Item 3-A.
- B-4. See action taken later in the meeting.

Motion by Bennett, second by Pico, to approve the remaining items on the Consent Calendar.

Ayes: Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, Snider
Noes: None
Absent: None

The motion passed unanimously on a 9-0 vote.

6. Recognition.

Resolution No. 66-13 was presented: “A Resolution of Appreciation designating July as Park and Recreation month.”

By a voice vote, the Resolution was unanimously adopted.

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Karen Palus, Director of Parks, Recreation and Cultural Services, accepted the Resolution and spoke on behalf of the Department. She described the three pillars towards which the National Park and Recreation Association is focused: conservation, health and wellness, and social equity. She stated our Parks and Recreation programs were ranked 14th in the nation by The Trust for Public Land.

Brian Kates, Supervisor of the Meadows Park Community Center, described the partnership that will be launched in July to promote our parks system as an avenue for public health. Aligning with the medical community and with support of Colorado College, the County Health Department, Kaiser Permanente, and Live Well, the promotional “*Prescription for Parks*” script pad will list ways to stay active and healthy on one side of the pad, and on the other, a map of the parks system.

7. **Citizen Discussion.**

- Charles Barber spoke to the stormwater and infrastructure issues at North Circle Drive and Palmer Park Boulevard. He also addressed the need for emergency electrical backup systems to support fire response needs.
- Valeriu Borlovan spoke regarding water rates.
- Doug Bruce spoke regarding City governance and Council roles and rules.
- Howie Kent, with the help of a sign language interpreter, spoke against a ban of Retail Sales of Marijuana.
- Walter Lawson spoke to the need to initiate early aerial attack as a first priority in fighting wildfires.
- Black Forest Fire Department Chief, Bob Harvey, expressed deep appreciation to the City of Colorado Springs for showing up during their community’s most dire moment of need. He stated the response was phenomenal.

8. **Mayor's Business.**

Chief of Staff Neumann provided an update on stormwater projects that roughly total \$11 million and the expected next steps. She announced that Dave Lethbridge, the Interim Public Works Director, will soon be at the helm to focus on such projects.

ITEMS CALLED OFF CONSENT CALENDAR

- B-4. Resolution No. 65-13 was presented: “A resolution approving the intergovernmental agreement to plan and study the feasibility of a proposed Hydroelectric Power Plant at the Pueblo Dam River Outlet between the City of Colorado Springs, the Southeastern Colorado Water Conservancy District and the Board of Water Works of Pueblo, Colorado.”

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Councilmember Collins asked if this is a backup plan for the Drake Power Plant and then asked about the cost. Bruce McCormick, CSU's Chief Energy Services Officer, responded that if the study finds it is feasible that power can be produced at an economical rate, this would be a source for power to be supplied to the SDS pump station; and, as to the cost, an early feasibility assessment is essentially in the range of \$18 million.

Councilmember Miller asked whether this generation process would result in an energy deficit. Mr. McCormick responded that it is taking advantage of the natural drop in the water through the dam that would generate the power needed.

Mr. Bruce spoke against the Resolution.

President King asked why it was necessary to have an IGA rather than just do a Resolution for this particular issue. Mr. McCormick answered that the IGA simply formalizes the agreement of the responsibilities of each of the parties and was requested by all parties involved. Councilmember Pico clarified this is the study; the \$18 million will be a separate appropriation if the study pans out.

Motion by Bennett, second by Pico, to adopt the Resolution.

Ayes: Bennett, Gaebler, King, Knight, Martin, Pico, Snider

Noes: Collins, Miller

Absent: None

The motion passed on a 7-2 vote.

UTILITIES BUSINESS

9. Resolution 67-13 was presented: "A resolution authorizing the use of eminent domain to condemn certain rights of way for Southern Delivery System project improvements."

Lyman Ho, CSU's Acquisition Manager of SDS, provided an overview of eminent domain and described the location of the subject properties.

Mr. Bruce spoke against the SDS project.

Councilmember Miller acknowledged the 5th amendment and its provision for just compensation. He stated he believed that just compensation would be provided and that the resolution will comply with both the US Constitution and the Colorado Constitution.

Motion by Bennett, second by Snider, to adopt the Resolution.

Ayes: Bennett, Gaebler, King, Knight, Martin, Miller, Pico, Snider

Noes: Collins

Absent: None

The motion was adopted on an 8-1 vote.

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UNFINISHED BUSINESS

10. CPC ZC 13-00026: (Quasi-Judicial Matter) Ordinance No. 13-34: “An Ordinance amending the zoning map of the City of Colorado Springs relating to 24.68 acres located south of Bradley Road between Marksheffel Road and Meridian Road [from R-1 6000 (Single-Family Residential) to PF (Public Facility)]” was presented for final passage.

Larry Larsen, Sr. Planner, City Land Use Review, stated staff recommendation was for approval of the zone change.

Motion by Pico, second by Gaebler, to approve the Ordinance.

Ayes: Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, Snider

Noes:

Absent:

The motion passed unanimously on a 9-0 vote.

11. Ordinance No. 13-35: “An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for a supplemental appropriation to the General Fund in the amount of \$455,000 for the purpose of legislative management software and security measures” was presented for final passage.

Chief of Staff Neumann requested Council to move forward with the appropriation.

Councilmember Knight asked to address a prior subject with Chief of Staff Neumann relative to the Mirage Channel and the funding source for that project. She clarified that those funds were previously approved for 2013 Capital Projects for stormwater.

Councilmember Collins spoke against the security and stated she will not be in support of the ordinance.

Councilmember Gaebler asked to bifurcate the ordinance to allow voting on each measure separately. Council agreed.

Councilmembers Martin, Miller, Pico, and Snider spoke in support of moving forward with the legislative software.

President King asked about timing of implementation and how it relates to filling the Council Administrator’s position, whether it might be wise to take more time considering other vendor options and software capabilities. Councilmember Knight agreed it might be advantageous to wait to align with the 2014 budget and have the new Council Administrator’s input.

City Clerk Johnson and Sr. Economic & Vitality Specialist Cox, responded relative to the vendors, software costs, system capabilities and potential for improved transparency.

Mr. Bruce spoke against the software.

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Motion by Gaebler, second by Martin, to approve the \$155,000 appropriation for legislative software.

Ayes: Bennett, Gaebler, Martin, Miller, Pico, Snider
Noes: Collins, King, Knight
Absent: None

The motion passed on a 6-3 vote.

President King opened discussion on the second element of the appropriation in the amount of \$300,000 for security measures for the City Administration Building and City Hall.

Councilmember Martin stated she had originally questioned the need for enhanced security measures, but after additional review, she fully supported the measure.

Councilmember Pico stated he was reluctant to fully support the appropriation for the Security measures and moved to amend the motion to support only card readers, and some cameras at City Administration only. Ms. Massey stated that it would not be appropriate to split the \$300,000 for Security measures as allocated in the already bifurcated ordinance. Councilmember Martin stated she did not accept the amendment to her motion.

Councilmember Knight asked to understand a point of order for amending multiple measure ordinances. Ms. Massey responded to his question.

Mr. Bruce spoke against the security measures.

Motion by Martin, second by Bennett, to approve the \$300,000 appropriation for the Security measures portion of the Ordinance.

Ayes: Bennett, Gaebler, Knight, Martin, Snider
Noes: Collins, King, Miller, Pico
Absent: None

The motion passed on a 5-4 vote.

12. Ordinance No. 13-36: "An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for a supplemental appropriation to the Trails, Open Space and Parks (TOPS) Fund (Parks Category) in the amount of \$4,242,000; to the Parkland Dedication Ordinance (PLDO) fund in the amount of \$250,000; and to the Conservation Trust Fund (CTF) in the amount of \$1,442,000 for multiple projects and services associated with the Parks, Recreation and Cultural Services Department" was presented for final passage.

Karen Palus, Parks, Recreation, and Cultural Services requested Council approve the Ordinance so they may move forward and start work on the projects immediately.

Councilmember Miller asked whether TOPS Oversight Committee had weighed-in on the matter. Ms. Palus responded they had and provided their overwhelming support.

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Councilmember Martin described that this is a well-deserved action on behalf of our City's Parks system.

Councilmember Collins described her lack of support stating she would rather see the funds going to streets and public infrastructure needs. Councilmember Gaebler responded that the funds are designated for Parks related items, so they can't be spent on Public Works. Ms. Palus acknowledged all of the funds presented today are only for Parks, Recreation, and Cultural Service efforts.

Mr. Bruce spoke against the ordinance.

Motion by Bennett, second by Gaebler, to approve the Ordinance.

Ayes: Bennett, Gaebler, King, Knight, Martin, Miller, Pico, Snider

Noes: Collins

Absent: None

The motion passed on an 8-1 vote.

13. CPC V 13-00007: Ordinance No. 13-37 entitled: "An Ordinance vacating Public Alley Right-of-Way consisting of 0.43 acre generally located North of Woodmen Road and East of Black Forest Road. Bounded by Chasewood Loop on the West and South, Sierra Meadows Drive on the North and Springwood Terrace on the East" was introduced and read.

Larry Larsen, Sr. Planning, Land Use Review Division, addressed the three concerns Council had when the item was first presented on May 28: 1) Why no recommendation for City Planning Commission – a memo from the City Attorney's Office included in Council's packet confirmed the department had followed Code requirements for staff review followed by presentation to Council; 2) Were the city gas and utilities relocated – yes they had with all costs absorbed by applicant and developer; and, 3) Relative to whether or not the alley actually existed – Mr. Larsen acknowledged there was once an alley there; but, it had been removed.

Motion by Bennett, second by Snider, to approve the Ordinance.

Ayes: Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, Snider

Noes: None

Absent: None

The motion passed unanimously on a 9-0 vote.

14. CPC ZC 13-00015: (Quasi-Judicial Matter) Ordinance No. 13-38: "An Ordinance amending the zoning map of the City of Colorado Springs relating to 4.6 acres located at 120 Troy Hill Road [from PIP-2/AO-APZ-1/UV (Planned Industrial Park with Airport Overlay-Accident Potential Zone 1 with Use Variance) to M-1/AO-APZ-1/cr (Light Industrial with Airport Overlay – Accident Potential Zone 1 with conditions of record)]" was introduced and read.

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Mr. Mike Shultz, Land Use Review Department, described the item having been pulled off the May 14th agenda due to a processing issue. The item was taken back to the Airport Advisory Commission for their review and approval at May 28th meeting at which time approval was given with an additional request that a note be included in the Development Plan indicating that if there is any vertical development and/or storage above 40 feet, it receive an FAA permit. The applicant agreed and the note will be included in the Development Plan. Conditions of Record will continue going forward as approved as part of the Planning Commission decision at their June 20th meeting.

Councilmember Miller stressed his concerns about adhering to Code and obtaining the required Airport Advisory Commission's review. He requested a copy of the Planning Department's buck slip that lists the departments that review items when such issues are coming for Council's consideration. Mr. Shultz acknowledged they can provide Council with the list.

Councilmember Collins asked about public assembly prohibition and whether there were any consideration for a traffic light at Troy Road. Mr. Shultz responded a traffic light is currently under review.

Ms. Massey provided the definition for civic uses stating you cannot have a facility for a civic use in this type of zone.

Mr. Bruce spoke against the request.

Motion by Bennett, second by Snider, to approve the Ordinance.

Ayes: Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, Snider

Noes: None

Absent: None

The motion passed unanimously on a 9-0 vote.

NEW BUSINESS

15. Resolution No. 68-13 was presented: "A Resolution providing written notice of termination of the intergovernmental agreement concerning the El Paso County Emergency Services Agency, dated the 10th day of November, 2011."

Interim Fire Chief Smith described the background of the IGA for Emergency Services and the reasoning for the termination of the IGA between the City and the County. He explained that this is an effort to create a system that is dynamic in order to meet the demands of the changing healthcare laws and how emergency services will be managed. They are also looking to recover some of the money that is expended in responding to approximately 56,000 emergency calls each year, of which 65-70% are emergency service calls.

Councilmember Pico asked whether there was an option to have the contract cover the outside area of Colorado Springs and be able to also cover the County and other agencies that are out there. Mr. Smith acknowledged that they have a provision in the contract that if other's want to

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join the RFP they can. Also that ESA has a response agreement where other cities or districts can piggy-back onto the ESA contract and that we can put the same type of provision in our contract. Councilmember Pico stated he wanted to be assured this does not shut down services to the County or other cities that are currently participating in ESA, that the option is still open to participate in this way. Mr. Smith confirmed that was correct.

Mr. Bruce spoke in support of this item.

Mr. Lawson spoke against the speedy haste of termination with no public input.

Councilmember Gaebler would like to ensure Council is more involved with the rest of the process going forward.

Councilmember Miller described his concern that they may be making a decision in the blind without benefit of more information. Councilmember Knight agreed that they should have more information before taking action and spoke to the need to work together regionally.

Motion by Bennett, second by Gaebler, to approve the Resolution.

Ayes: Bennett, Collins, Gaebler, King, Martin, Pico, Snider

Noes: Knight and Miller

Absent: None

The motion passed on a 7-2 vote.

PUBLIC HEARING

16. CPC UV 13-00012: (Quasi-Judicial Matter) Public hearing on an appeal by Wendell Lueders of Aspen Sign Company on behalf of Victory Chapel Ministries Inc. regarding the denial by the City Planning Commission on May 16, 2013 for an application of a use variance to add a 72 sq. ft. Electronic Message Center component to the existing freestanding sign in a "Civic" use classification located at 3150 South Academy Boulevard, within the PBC/AO/CU (Planned Business Center with Airport Overlay and Conditional Use) zoned property that contains 7.06 acres.

Peter Wysocki, Planning & Development Director and Interim Public Works Director introduced Kurt Schmitt, Sign Specialist for the City, who provided a presentation for background purposes.

Councilmember Knight asked regarding zone designation and undue property loss. He asked to confirm the designation was by use and not by zone. Mr. Wysocki responded that each instance is unique.

Councilmember Collins confirmed the site is commercially zoned.

Councilmember Bennett spoke to support the appeal and allow the electronic messaging sign.

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Councilmember Miller asked whether there could be a stipulation for when the lights must be turned off to respect the neighboring mobile home park residents. Mr. Schmitt responded there is no time limit in the code. Mr. Wysocki added that Council has a right to modify the approval as they see fit. Ms. Massey confirmed that Council may add reasonable conditions as long as it links to criteria.

Planning Commissioner Woods provided background on the split vote decision of the Planning Commission. He described the Planning Commission's concerns as to the impact on the residential area and distraction to drivers. On the other side, this substantially cleans up the area, and coincides with the push to modernize and improve the whole area. He confirmed this is essentially a commercial use and is in character with the surrounding neighborhood.

Councilmembers Knight and Snider asked for confirmation that the residents of the mobile home park received a copy of the mailing. Mr. Schmitt responded, yes, on three separate occasions via post card mailings.

Ms. Massey asked Council if any member has had any ex parte communications with either the applicant or the public on this matter and, if so, please disclose if that communication would have any influence on their ability to make a fair and impartial decision on the matter. Councilmember Miller commented that he, and other Councilmembers, had received an e-mail on this matter, but he did not respond. No additional statements were made.

Appellents:

Wendell Lueders with Aspen Sign Company, spoke in support of the electronic sign and described the background on the initial placement of the sign.

Paul Jones, Associate Pastor at Victory World Outreach, Mr. Douglas Bruce, Mr. Richard Marshall, Mr. John Law, and Mr. Mark Slaugh, spoke in support of the sign.

Mr. Bruce spoke in support of the sign.

Mr. Richard Marshall spoke in support of the sign while describing his troubled past and how the church has positively impacted his life.

Mr. Jason Wisniewski spoke in support of the sign and explained that the sign's photocell and how the ambient light adjusts brightness down according to natural light conditions.

Mr. John Law spoke in support of the sign.

Mr. Mark Slaugh spoke in support of the sign.

Opponents:

Mr. Larry Barrett, representing Scenic Colorado, spoke against the sign.

Applicants Rebuttal:

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Mr. Wisniewski responded to Mr. Barrett's opposition.

President King stated this will close the public hearing. Council will proceed.

Councilmember Martin acknowledges her respect to Mr. Barrett and Scenic Colorado. However, she stated there is reason for the sign to be approved.

Motion by Snider, second by Bennett, to approve the appeal.

Ayes: Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, Snider

Noes: None

Absent: None

The motion passed unanimously on a 9-0 vote.

18. **Executive Session.**

Ms. Massey read the request for a Closed Executive Session.

President King called for a voice vote to approve movement into Closed Executive Session. Consensus failed on a 3-6 vote.

City Attorney Melcher addressed Council in open session and described, without voiding Attorney/Client privilege, the status of negotiations with the Retirees and their Counsel at this time. The City proposed to continue with the benefit payments through the end of the year; however, no response was received from the Retirees, and their new Counsel advised they reject the offer. The Retirees' Counsel further indicated that he will be preparing a complaint and plans to file suit against the City. Considering there is no reason to expect any sort of agreement or settlement of this matter, Mr. Melcher advised the best course of action is to proactively terminate the plan. He emphasized the 1999 plan was never valid since it did not receive IRS approval.

Councilmember Martin expressed frustration and believes the City has not handled this matter well. She stated she feels we need to work together with PERA through the end of the year to resolve the issue amicably. Mr. Melcher responded with a review of discussions and actions taken over the past year to address and resolve the issue.

Councilmember Knight stated that he was not prepared to make a decision on the matter due to receiving the large volume of material just prior to the meeting. Therefore, he would like to make a motion to postpone to the July 9th meeting.

Councilmember Bennett asked about the qualifications of the 16 retirees to receive benefits. Mr. Melcher responded they did check on the qualifications and found that 7 of the individuals did not qualify under the 2009 plan itself, even if the plan were valid; and that 7 retired, or left employment after the date by which they needed to qualify for the plan.

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Motion by Knight, second by Pico, to postpone to July 9th.

Ayes: Collins, Gaebler, King, Knight, Martin, Miller, Pico, Snider

Noes: Bennett

Absent: None

The motion passed on an 8-1 vote.

19. Added Item Agenda.

Based on the outcome of the Executive Session an Added Agenda Item was anticipated. As a result of the vote to postpone the decision on the Memorial Retirees action, Ms. Massey recommended a motion be made to also postpone the related matter to the date certain.

Motion by Knight, second by Snider, to postpone the Added Agenda Item to July 9th.

Ayes: Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, Snider

Noes: None

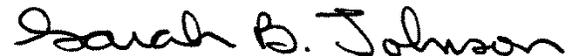
Absent: None

The motion passed unanimously on a 9-0 vote.

19. Adjourn.

At 5:03 p.m., there being no further business to come before City Council,

COUNCIL ADJOURNED



Sarah B. Johnson
City Clerk