COLORADO SPRINGS, COLORADO
CITY COUNCIL CHAMBERS
CITY HALL – 107 N. NEVADA AVENUE
AUGUST 13, 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, Mayor Steve Bach and Legislative Counsel Massey.

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1. **Call to Order.**

Deputy City Clerk Powell called the roll. All Councilmembers were present.

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

The meeting was opened with an invocation by Pastor Walt Johnson of the Deliverance House of Prayer.

The Pledge of Allegiance was led by Miles and Nolan Malohn, and McKenna Gomes.

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

Councilmember Miller asked that Consent Item B-4A be pulled for additional discussion.

President King stated that Item 12, "*A Resolution of the City Council of the City of Colorado Springs, Colorado approving the termination of the Memorial Hospital Excess Benefit Plan*" is to be withdrawn from the Agenda.

Motion by Knight, second by Gaebler, to withdraw Item 12.

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

The motion passed unanimously on a 9-0 vote.

4. **Councilmember Comments.**

There were no Councilmember comments.

CONSENT CALENDAR

5. The following items were acted upon by unanimous consent of the members present, with the exception of Item No. B-4A, which was called up for separate consideration:

SECOND PRESENTATION:

A-1. Ordinance No. 13-40 entitled: "An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for a supplemental appropriation to the Conservation Trust Fund (CTF) in the amount of $280,968 for the annual note payments on the Skyview Sports Complex and the Red Rock Canyon Open Space" was presented for final passage.

A-2. Ordinance No. 13-41 entitled: "An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for a supplemental appropriation to the Airport Capital Fund in the amount of $658,077 for principal and interest payments on loans from the Colorado Department of Transportation (CDOT) to be paid in calendar year 2013" was presented for final passage.

A-3. CPC PUZ 13-00032: (Quasi-Judicial Matter) Ordinance No. 13-42 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to 23.16 acres located south of North Gate Boulevard, east of Old North Gate Road and north of future Powers Boulevard, [from A (Agricultural) to PUD (Planned Unit Development: Height maximum is 45 feet for all lots west of Silver Rose Lane and 35 feet for all lots east of Silver Rose Lane)]" was presented for final passage.

A-4. CPC ZC 13-00034: (Quasi-Judicial Matter) Ordinance No. 13-43 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to 17.27 acres located at the southwest corner of Highway 83 and North Gate Boulevard, east of Roller Coaster Road [from A (Agricultural) to PBC (Planned Business Center)]" was presented for final passage.

A-5. CPC PUZ 13-00036: (Quasi-Judicial Matter) Ordinance No. 13-44 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to 11.76 acres located at the northeast corner of Prominent Point and Union Boulevard with access off of Cordera Crest Avenue [from A (Agricultural) to PUD (Planned Unit Development: Detached Single-Family Residential, 36 feet maximum building height, and 6.04 dwelling units per acre)]" was presented for final passage.

FIRST PRESENTATION:

B-1. Approval of the Minutes of the regular Council Meeting of July 23, 2013.

B-2. Appointments to various Boards and Commissions.

B-3. Ordinance No. 13-48 entitled: "An ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for a supplemental appropriation to the Black Forest Fire Grant Fund in the amount of $263,116 and to the General Fund in the amount of $165,895 for the purpose of funding expenses associated with the Black Forest Fire" was introduced and read.

B-4 **The Reserve at Indigo Ranch**

B-4A. See action taken earlier in the meeting.

B-4B. CPC ZC 13-00045: (Quasi-Judicial Matter) Ordinance No. 13-49 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to 2.8 acres located Southwest of Marksheffel Road and Dublin Boulevard [from A/AO-CAD (Agricultural with Airport Overlay – Commercial Airport District) to PBC/AO-CAD (Planned Business Center with Airport Overlay – Commercial Airport District)]" was introduced and read.

B-4C. CPC PUZ 13-00046: (Quasi-Judicial Matter) Ordinance No. 13-50 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to 16.11 acres located Southwest of Marksheffel Road and Dublin Boulevard [from A/AO-CAD (Agricultural with Airport Overlay – Commercial Airport District) to PUD/AO-CAD (Planned Unit Development with Airport Overlay – Commercial Airport District)]" was introduced and read.

B-4D. CPC CP 13-00047: (Quasi-Judicial Matter) Request by NES Inc. on behalf of Novak Investments LLC for consideration of a concept plan to allow 16.11 acres of single-family residential and 2.8 acres of commercial located southwest of Marksheffel Road and Dublin Boulevard.

B-4E. CPC PUD 13-00048: (Quasi-Judicial Matter) Request by NES Inc. on behalf of Novak Investments LLC for consideration of a PUD Development Plan to allow 16.11 acres of single-family residential residential located southwest of Marksheffel Road and Dublin Boulevard.

B-4F. CPC FP 13-00049: (Quasi-Judicial Matter) Request by NES Inc. on behalf of Novak Investments LLC for consideration of a subdivision plat for 64 lots containing 16.11 acres of single-family residential and 2.8 acres of commercial uses located southwest of Marksheffel Road and Dublin Boulevard.

Motion by Bennett, second by Pico, that all matters on the Consent Calendar with the exception of Item No. B-4A, be passed, adopted, and approved by unanimous consent of the members present.

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

The motion passed unanimously on a 9-0 vote.

6. **Recognitions.**

There were no recognitions.

7. **Citizen Discussion.**

Charles Barber spoke to infrastructure needs at North Circle and Palmer Park and emergency management priorities.

Joyce Cheney spoke regarding the proposed *Kum n' Go* convenience station in Old Colorado City and its incompatibility with the historic neighborhood and planning requirements.

Douglas Bruce spoke to commercial taxation for utilities.

Tony Carpenter commented regarding City Council failing to follow the City Charter and ignoring the will of the voters. He mentioned he had everything in place for a recall due to Council's vote to opt-out of retail sales of marijuana and asked that a Councilmember contact him to further discuss.

Meral Sarper spoke to encourage reconsideration of Council's decisions to opt-out on retail sales of marijuana.

8. **Mayor's Business.**

8A. All-America City Contest – Donna Nelson, Economic Vitality Specialist

Ms. Nelson reported on the City being one of 19 finalists in the *All-America City* contest. She described ways the city can market and celebrate the recognition and stated we will enter the contest again next year. She introduced Terrance McWilliams, Director of Military and Veteran Affairs of El Pomar Foundation, who led the effort to apply for the award. He described this as a distinction of which the City and its citizens can be very proud. He presented the Mayor with the award from the National Civic League identifying Colorado Springs as an *All-America City* finalist.

8B. Confirmation of the City Fire Chief

Mayor Bach requested Council's confirmation of Pueblo's current Fire Chief, Christopher P. Riley, as Colorado Springs' new Fire Chief. He described the nationwide search, the selection panel, the process followed, as well as highlighting qualities that drove the decision to select Chief Riley. Mayor Bach acknowledged that Chief Riley's extensive experience with wild land fire-fighting especially valuable for our community. As with other past appointees, Mayor Bach stated Chief Riley was not present for confirmation today due to a prior commitment serving as a senior officer officiating at a national conference in Chicago.

Mayor Bach acknowledged Interim Fire Chief Tommy Smith's years of service and his imminent departure to fulfill a new assignment in Redmond, Washington.

Interim Fire Chief Tommy Smith and Jeremy Kroto, President, IAFF Local 5, Colorado Springs Professional Firefighters, expressed their confidence in Chief Riley's abilities and their support of his confirmation.

Councilmember Bennett, Miller, and Pico also acknowledged Chief Riley's leadership qualities and expressed enthusiasm for his confirmation. President King expressed his appreciation for Chief Riley's contributions through mentoring and his willingness to volunteer in educational areas.

Motion by Bennett, second by Pico, that Chris Riley be confirmed as the City's new Fire Chief.

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

The motion passed unanimously on a 9-0 vote.

ITEMS CALLED OFF CONSENT CALENDAR

B-4A. CPC MP 84-361-A3MN13: (Quasi-Judicial Matter) Request by NES, Inc. on behalf of Novak Investments LLC for consideration of a minor amendment to a master plan that proposes to change 16 acres previously designated as commercial to single-family residential with a density range of 3.5-7.99 dwelling units per acre located southwest of Marksheffel Road and Dublin Boulevard.

Councilmember Miller stated that his math shows 128 homes would be added based on the zone change request and asked if there were a standard formula for ascertaining the effect on city services as a result of the change. Peter Wysocki, Planning and Development Director, responded that they typically look at the area of the city and the vicinity of the site and its compatibility to the master plan. Councilmember Miller also asked who the designated City engineer was that currently signs-off for the effect on drainage. Mr. Wysocki stated that the designee from the Engineering Division of the Public Works Department is currently Tim Mitros. Mr. Mitros is the Storm Water Supervisor and the engineer in charge of the Engineering Division.

Motion by Miller, second by Bennett, to approve the request.

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

The motion passed unanimously on a 9-0 vote.

UTILITIES BUSINESS

9. Ordinance No. 13-51 entitled: "An ordinance amending Ordinance Nos. 00-154, 02-196, 04-164, 05-111, 06-136, 06-137, 07-125, 07-126, 08-121, 09-108, 10-78 and 12-6 relating to Utilities System Revenue Bonds of the City; ratifying action heretofore taken relating to such Utilities Bonds; and providing other matters relating thereto" was introduced and read.

Dede Jones, General Manager for Financial Services with CS Utilities, described the substitute liquidity facility and standby purchase agreements. She stated the proposed amendment clarifies for all parties, including the bond agencies, that the tender agent will not terminate the original liquidity facility until the substitute liquidity facility is delivered. She confirmed all of the banks that currently hold standby purchase agreements with CSU were consulted and have consented to the modifications and there will be no change in fees or terms of the agreement

as a result of this amendment. She stated CSU staff recommends approval of this Ordinance authorizing this amendment to all of the existing standby agreements.

Motion by Snider, second by Pico, to approve the Ordinance as introduced.

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

The motion passed unanimously on a 9-0 vote.

10. Ordinance No. 13-52 entitled: "An ordinance of the City of Colorado Springs, Colorado approving and authorizing the execution and delivery of the revolving loan agreement between the City of Colorado Springs, Colorado and U.S. Bank National Association, the revolving loan agreement between the City and Keybank National Association and the revolving promissory notes of the City relating thereto; and providing other matters relating thereto" was introduced and read.

Dede Jones, General Manager for Financial Services with CS Utilities, described the two lines of credit (LOCs) that would be put in effect for $75 million if the Ordinance is approved. She described the uses for which the LOCs would be used only if needed and the RFP process utilized. She explained the decision was to split between two banks chosen on the basis of price, performance, and terms; Utilities negotiated a reduction in annual fees of approximately $149,000 with three year terms for both the agreements. There will be no additional debt that would result from the execution of the agreement unless there were need to draw on the lines of credit. She emphasized that, to-date, Utilities has not drawn on existing LOCs.

Douglas Bruce spoke against the Ordinance.

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

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

The motion passed on an 8-1 vote.

11. A public hearing for the consideration of a Resolution regarding certain changes to the Colorado Springs Utilities Electric Rate Schedules to implement the Community Solar Garden Program.

Utilities City Attorney, Chris Bidlack, described the formal rate hearing procedure. He asked if any Councilmember had received any *ex parte* communications, and, if so, to please disclose those at this time. Councilmembers Martin, Bennett, Gaebler, Knight, and Pico all acknowledged they had a few conversations with David Amster of SunShare, but they were very careful to not discuss the tariff.

John Romero, General Manager of Acquisition, Engineering and Planning for CS Utilities, provided the rate case presentation for the Solar Garden tariff. He described the background and how we got where we are today. He stated they were asking for guidance should Council recommend modification in any way. He indicated their objective in redrafting was to minimize cost, but support community solar projects. They looked at performance based incentive, the RFP process, and stated their objective was to drive the cost as low as possible while still looking for best overall values. He explained hurdles a developer would have to meet (minimum qualifications), developer experience criteria (for evaluation scoring purposes), financial criteria, and risks to be considered.

City Auditor, Denny Nester, stated his office has reviewed the tariff filing. They confirmed the calculations with one point noted. The one number they did comment on is the estimated cost of $4.8 million, which is based on an assumption that the customer bill for electricity for the next 20 years will increase at the rate of 3% per year. He explained this is an estimate based on assumptions and based on the increase over the last five years. He stated that number could be as much as $6 million if the actual annual rate of electricity were to increase as much as 9%. He indicated that he was comfortable projecting the total cost of the program could be in the range of $4.8 and $6 million. He also noted that this year they performed an audit of the pilot program. They identified some areas for potential improvement and noted that all those areas have been addressed in this filing.

PUBLIC COMMENT:

Those who spoke in favor:

Kevin Reel, Rita Ague, Pete Lee, Bob Kinsey, Jim Hartman, Judy Finley, Tim Dolan, Fred Crawley, as well as, David Amster.

Those who spoke in opposition:

Paul Kleinschmidt, Douglas Bruce, Paul Fussick and Jim Raso.

President King, Councilmembers Miller, Gaebler, and Knight all spoke regarding concerns relative to an RFP process, whether there would be potential to have two entities, so not just one would be awarded the opportunity, and wanted to ensure this is a fully open process.

Councilmember Miller asked to confirm the required procedure of Council on this matter. Mr. Bidlack responded that, per Rules and Procedures of City Council, Council first provides direction based on their deliberations and decision. He will put together the decision and orders, the resolution and the tariff, which then comes back to Council in a Work Session meeting for review. The final step will then be taken at the next Regular Council meeting for adoption of the resolution.

Councilmember Knight asked that the proposed tariff not result in any rate increase and requested a follow-up meeting with Utilities to address additional concerns.

Councilmember Collins stated she was not in favor of the tariff, quoted some newspaper articles and what other countries have learned, and indicated we need to look further down the line. President King also stated he was not in favor of the tariff.

Bruce McCormick described the position of utilities is that this program has significant benefit for the community, and as modified and proposed today, is quite reasonable.

Councilmembers Gaebler, Martin, and Snider all commented on the value of the solar garden program and its ability to stimulate young professional, entrepreneurial involvement.

Mr. Bidlack asked for direction from Council. He restated Council wants one or more candidates be chosen if two are qualified.

Councilmember Pico stated he would like to see flexibility built into the program.

Mr. Bidlack asked: Should the Community Solar Garden Program proceed as proposed? Council directed the Community Solar Garden Program proceed as proposed.

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

Council approved the action to proceed on a 6-3 vote.

UNFINISHED BUSINESS

13. Ordinance No. 13-45 entitled: "An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for a supplemental appropriation to the Trails, Open Space and Parks (TOPS) fund (Open Space Category) in the amount of $2,622,500; for the phase 1 acquisition of approximately 93 acres of real property for the expansion of Ute Valley Park" was brought up on second presentation.

Douglas Bruce spoke against the Ordinance.

Motion by Gaebler, second by Martin, that the Ordinance be finally passed.

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

The motion passed on an 8-1 vote.

14. Ordinance No. 13-46 entitled: "An Ordinance amending Article 6 (Public Health and Sanitation-No Smoking in Public Places or Workplaces Except in Those Areas Designated for Smoking) of Chapter 6 (Neighborhood Vitality/Community Health) of the Code of the City of Colorado Springs 2001, as amended, pertaining to smoking on park property" was brought up on second presentation.

Karen Palus, Director, Parks, Recreation and Cultural Services spoke to her research of other areas that have significant outdoor bans. She stated there are 2,600 current bans that exist. She has had conversations with El Paso County and commented they have come up with some creative signage ideas, including having children participate in creating the signage.

Councilmember Knight expressed his continued concern relative to individual rights vs. health rights. He indicated he would rather see designated non-smoking areas instead of a universal non-smoking ban. He requested they table the decision until September 24th while in the meantime a two-person task force could be formed to discuss how to enforce, what are good cautious ground rules, and include an attorney in the conversation.

Councilmembers Gaebler and Pico agreed that it is okay to refine the focus, but they remain concerned about the potential fire hazard of unrestricted smoking. Councilmember Miller agreed there should be equal opportunity to enjoy outdoor recreation.

Susan Davies, and Cindy Kulp spoke in support of the Ordinance.

Douglas Bruce and Mark Slaugh spoke against the Ordinance.

Motion by Knight, second by Collins, to table the Ordinance until September 24th

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

The motion passed on a 5-4 vote.

15. Ordinance No. 13-47 entitled: "An Ordinance amending Part 1 (Medical Marijuana License Code) of Article 3 (Sales of Goods and Services) of Chapter 2 (Business Licensing, Liquor Regulation and Taxation) of the Code of the City of Colorado Springs 2001, as amended, pertaining to the growing and selling of retail marijuana" was brought up for second presentation.

Those who spoke in favor of retail sales of marijuana:

Curt Noble, Nicole Tracy, Bob Wiley, Lindsey Dean, Mark Slaugh, Sarah Griffin, Cindy Kulp

Those who spoke against retail sales of marijuana:

Paul Kleinschmidt

Motion by Bennett, second by Miller, that the Ordinance be finally passed.

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

The motion passed on a 5-4 vote.

NEW BUSINESS

16. **Underwater Connection**

16A. CPC ZC 13-00055: (Quasi-Judicial Matter) Ordinance No. 13-53 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to 1.38 acres located at 4940 Rusina Road, Southweast of Elkton Drive and West of Rusina [from OC/cr/HS (Office Complex with conditions of record and Hillside Overlay) to PBC (Planned Business Center)]" was introduced and read.

Peter Wysocki, Director, Planning and Development, introduced Lonna Thelen, City Planner, who provided an overview for the requested zone change and the public input process. She described the three outstanding issues and staff perspective on the issues.

Councilmember Miller stated the packet contained information justifying the zone change instead of a variance. He would be more comfortable with a variance to the existing zone instead of a zone change. He would like to have consistency for land use and planning.

Mr. Chuck Crumb represented the applicant to answer questions from Council. He introduced Mr. Troy Juth, Underwater Connection owner, who described his passion to grow his diving business and requested Council move to approve the zoning change.

Those who spoke in support of the zone change:

Jack Pohlson, Chuck Murphy, Martin Johnson, Paul Kleinschmidt

Those who spoke in opposition to the zone change:

Bruce Hutchinson, Patty Carbone, George Swentz, Pete Kerner, Matt Coffman, Ms. Carlson, Betty Swin, Tom Lawrence, Dave Maxwell

Rebuttal on behalf of the applicant was given by Mr. Crumb. He stated this project will not be a "pink elephant"; they are meeting the landscape qualifications; and, they have agreed to up-grade the tree size. They are willing to provide a "condition of record" that the opposed types of businesses will not be allowed.

Mr. Wysocki addressed the notification question and relative to the reasoning why they did not use a variance.

President King asked about the limitations regarding the size of the building. Mr. Wysocki responded there is not a master plan for the area; therefore, it is difficult to apply standards.

Councilmember Knight inquired about trees for landscaping.

Councilmember Collins asked to see copies of the postcards that had been mailed to the neighboring property owners.

Councilmember Miller continued to express his preference for a variance vs. a zone change. Councilmember Bennett agreed with these concerns and stated he believed Council was in a position where they cannot make a compromise, believing that solutions can be found between the two parties.

Councilmember Snider questioned Ms. Massey relative to the need to have a change in zone. She responded that the proposed use is not permitted in the current zone. Councilmember Pico also asked whether conditions of record can be added to the zone. Ms. Massey confirmed yes.

Motion by Knight, second by Gaebler, to approve the zone change with the following conditions of record:

1. One freestanding sign will be allowed for the property. The freestanding sign will be a maximum of 100 square feet and 20 feet tall.
2. No wall signage will be allowed on the west and south elevations of the building.
3. One decorative flag will be allowed for the property. The decorative flag will be a maximum of 24 feet tall and 3x5 feet in dimension.
4. No EMC's will be allowed in conjunction with the Personal Improvement Services use for Underwater Connection. An EMC for future uses of the property will be determined at the time of development plan.
5. Any change of use on the property requires an amendment to the development plan. The amendment requires public notification and postcards mailed to property owners within 1,000 feet of the property and the adjacent homeowners association.
6. The following uses are prohibited on the property:
    a. Domestic Violence Safe House
    b. Pawn Shop
    c. Sexually Orientated Business
    d. Convenience Food Sales with Fuel
    e. Liquor Sales
    f. Fast Food Restaurant
    g. Bar
    h. Medical Marijuana Facility
    i. Auto Service
    j. Car Wash

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

The motion passed on an 8-1 vote.

16B. CPC DP 13-00056: (Quasi-Judicial Matter) Request by MVE Inc. on behalf of Underwater Connection, LLC for consideration of a development plan containing 1.38 acres to allow a personal improvement services use for diving training with a retail component located at 4940 Rusina Road, southeast of Elkton Drive and west of Rusina Road.

Ms. Massey explained that Council is now voting on the development plan and for the development plan to be consistent with the zone change, Council will have a motion to approve the development plan with the added condition.

Motion by Bennett, second by Martin, to approve the Development Plan with the condition that the trees located on the West property line adjacent to Elkton will be installed at eight feet in height.

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

The motion passed on a 9-0 vote.

At 7:04 p.m. there being no further business to come before City Council,

COUNCIL ADJOURNED

William Powell
Deputy City Clerk