

**COLORADO SPRINGS, COLORADO  
CITY COUNCIL CHAMBERS  
CITY HALL – 107 N. NEVADA AVENUE  
SEPTEMBER 24, 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, and Snider. Absent: Councilmember Pico. Also present, Chief of Staff Neumann, City Attorney/Chief Legal Officer Melcher, and Legislative Counsel Massey.

1. **Call to Order.**

City Clerk Sarah Johnson called the roll. Eight members were present with Councilmember Pico's absence excused.

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

The meeting was opened with an invocation by Councilmember Bennett. President King led the Pledge of Allegiance.

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

Council Administrator Gonzalez stated there will be an added item for No. 17. Added Item Agenda.

4. **Councilmember Comments.**

Councilmember Collins reported on the District 4 Town Hall meeting she held on September 17<sup>th</sup>. She also reminded staff she was awaiting a draft ordinance for the elimination of certain license fees.

President King announced he would be holding a Town Hall meeting at the Westside Community Center on Wednesday, September 25, 2013, at 6:30 p.m.

**CONSENT CALENDAR**

5. The following items were acted upon by unanimous consent of the members present, with the exception of Items B-2 and B-3 which were called up for separate consideration:

**SECOND PRESENTATION:**

- A-1. CPC ZC 13-00063: (Quasi-Judicial Matter) Ordinance No. 13-56 entitled "An Ordinance amending the zoning map of the City of Colorado Springs relating to 4.5 acres located south of Briargate Parkway, east of Powers Boulevard and west of Grand Cordera Parkway [from A (Agricultural) to PBC (Planned Business Center)]" was presented for final passage.

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**FIRST PRESENTATION:**

- B-1. Approval of the Minutes of the regular Council Meeting of September 10, 2013.
- B-2. See action taken later in the meeting.
- B-3. See action taken later in the meeting.

Motion by Bennett, second by Gaebler, that all matters on the Consent Calendar with the exception of Items B-2 and B-3, be passed, adopted, and approved by unanimous consent of the members present.

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

Noes: None

Absent: Pico

The motion passed unanimously on an 8-0-1 vote, with Councilmember Pico excused.

6. **Recognitions.**

There were no recognitions.

7. **Citizen Discussion.**

Charles Barber spoke about the anticipated report from CH2MHill on stormwater and infrastructure needs and mitigation needs for sewer spills into Fountain Creek.

Douglas Bruce stated he has not received the report he requested for PERA contributions for Councilmembers and described his utilities billing issues.

Michael Ring spoke regarding encouragement of innovation and solutions for renewable energy, and requested Council's help in cutting through any "red tape" involved with obtaining state funded grants.

8. **Mayor's Business.**

Chief of Staff Neumann described three upcoming Mayoral events: The Mayor's Town Hall at Cordera Community Center on September 26<sup>th</sup>, the Spirit of the Springs Garden of the Gods Spruce-Up on September 28<sup>th</sup>, and the Stormwater briefing on October 9<sup>th</sup>.

**ITEMS CALLED OFF CONSENT CALENDAR**

B-2. Appointments to Boards and Commissions

Councilmember Knight stated he had called this item off the agenda. A revised list was provided to Councilmembers that included an appointment to Planning Commission.

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Motion by Knight, second by Bennett, to approve the appointments.

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

Noes: None

Absent: Pico

The motion passed on an 8-0-1, with Councilmember Pico excused.

- B-3. Resolution No. 83-13 was presented: “A Resolution authorizing the exchange of a 1.59-acre parcel owned by the City of Colorado Springs for a 3.96-acre parcel owned by Verdoorn 1999 Charitable Unitrust, located within the Oak Valley Ranch Master Plan located southwest of Allegheny Drive and Front Royal Drive.”

Councilmember Knight requested this item be pulled off since he had questions and concerns during the initial presentation relative to drainage and stormwater issues. Karen Palus, Parks, Recreation and Cultural Services Director, and Tim Mitros, Subdivision Engineering Review Manager, responded to each of Councilmember Knight’s concerns relative to the land exchange.

Douglas Bruce spoke against the exchange

Motion by Bennett, second by Gaebler, that the Resolution be adopted.

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

Noes: Knight and Miller

Absent: Pico

The motion passed on a 6-2-1 vote with Councilmember Pico excused.

**UTILITIES BUSINESS**

There was no Utilities Business for presentation.

**UNFINISHED BUSINESS**

9. 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 presented for final passage.

Councilmember Knight described follow-up conversations he had with various City Officials relative to his concerns on this matter. He asked that Council direct Parks and Recreation to come back in February to report on each park and describe how they figure which are entitled to smoking areas and how it will be managed.

Councilmember Collins expressed concern that this may violate an individual’s rights and did not understand how it can be enforced and that she would not support the Ordinance. Karen

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Palus, Parks, Recreation and Cultural Services Director, responded that education is the way to manage enforcement, designating smoking areas allows avenues for signage and education, while promoting the health and enjoyment of the community for all.

Councilmember Miller asked about events in parks and how they determine which can and which cannot allow smoking. Ms. Palus responded that the flexibility resides in the size of the event with the ability to look at the footprint to designate areas accordingly.

Douglas Bruce spoke against the Ordinance.

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

Ayes: Bennett, Gaebler, Knight, Martin, Snider

Noes: Collins, King, Miller

Absent: Pico

The motion passed on a 5-3-1 vote with Councilmember Pico excused.

10. Ordinance No. 13-54 entitled: “An amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for a supplemental appropriation to the Capital Project Fund in the amount of \$200,000 for the purpose of a traffic signal at Marksheffel Road and Dublin Boulevard” was presented for final passage.

Kathleen Krager, Transportation Planning Manager, described the need for the traffic light at this location. She provided an historical review of costs involved when the City installs traffic lights, currently in the range of \$250,000. She explained these funds are collected from the developers as a deposit before the work is done. If there is an excess, or shortfall, this is later resolved after installation when actual costs are determined. Ms. Krager confirmed that they do follow a bid process.

Douglas Bruce spoke against the ordinance.

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

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

Noes: None

Absent: Pico

The motion passed on an 8-0-1 vote with Councilmember Pico excused.

11. CPC ZC 13-00067: (Quasi-Judicial Matter) Ordinance No. 13-57 entitled “An Ordinance amending the zoning map of the City of Colorado Springs relating to 2.79 acres located at the southeast corner of Chapel Hills Drive and Research Parkway [from PIP-1/cr (Planned Industrial Park with conditions of record) to PBC (Planned Business Center)]” was presented for final passage.

Councilmembers Knight, Miller, and Collins described their lack of support for the ordinance. They believed it would be precedent setting to change a zone without knowing specifically

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what is intended for the location. Peter Wysocki, Planning and Development Director, clarified that the approval of this zone change would not set a precedent and described other recently approved, similar situations.

Carey Crain of Prime West, representing the owner, explained that marketing a property with zoning in place is a more effective approach and that the Concept plan had been submitted with a convenience retail center and possibility of a convenience station included. He assured Council the property is governed by not only City guidelines, but also by stringent Briargate guidelines.

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

Ayes: Bennett, Gaebler, King, Martin, Snider

Noes: Collins, Knight, Miller

Absent: Pico

The motion passed on a 5-3-1 vote with Councilmember Pico excused.

12. Ordinance No. 13-58 entitled: “An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for a supplemental appropriation to the Airport Capital Fund in the amount of \$233,956 for the design and construction of a Premier Lounge at the Colorado Springs Airport” was presented for final passage.

Councilmember Gaebler stated the airport is self-sustaining and that the item is being supported by the various airlines.

Councilmember Miller acknowledged the need to improve airline traffic counts, but believed this was not the right time for this interior enhancement. He and Councilmember Collins stated they would not be supporting the Ordinance.

Councilmember Knight stated he shared Councilmember Miller’s concerns, and questions the annual income it can generate. He would be reluctantly voting for the Ordinance but suggested that Council keep a close eye on its results and if it doesn’t prove lucrative, return the space to the gate.

Douglas Bruce spoke against the Ordinance.

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

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

Noes: Collins, Miller

Absent: Pico

The motion passed on a 6-2-1 vote with Councilmember Pico excused.

13. Ordinance No. 13-59 entitled: “An ordinance approving the 2013 Total Compensation Study results and the Salary Ranges for Civilian and Sworn Personnel” was introduced and read.

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Mike Sullivan, Human Resources Director, recommended approval of the Ordinance as originally presented by the Administrative Branch to include all the elements of the salary package, the salary structure, and the salary based adjustment.

The City Council Budget Committee prepared a modified version of the Ordinance and Salary Schedule which was also included in Council's agenda packet.

Councilmember Knight proposed multiple options based on the two versions of the Ordinance and related Salary Schedule.

Ms. Massey provided clarification of the two versions of the Ordinance, the one proposed by the Executive Branch and the second as prepared by the Budget Committee. She described the process to appropriately amend the language in either version if Council deemed it necessary.

Motion by Miller to approve the City Council's Budget Committee version of the Ordinance. There was no second; the motion failed.

Ms. Massey provided a brief explanation of what Council now had in front of them. Councilmember Knight further described the differences between the options being considered. He emphasized that regardless of which option is chosen, Council will be working with a single salary plan as originally presented by the Administration, but wherever "control point" is used, it will be changed to read "market average."

Douglas Bruce spoke against the ordinance.

Tracy Lessig, HR Division Chief for City Attorney's Office, spoke regarding a change not mentioned earlier which was included in the Budget Committee's version of the Ordinance but not included in the Administration's version which she felt was prudent to note. She explained the reference to another Code Section 1.4.201(a) is relevant because it defines what salary is and the issue of what the Charter grants for the authority for Salary of the City Attorney and the City Auditor. Additionally, she clarified, the Code provision defines Salary "...as including base annual salary, overtime pay, standby pay, and shift differential."

Ms. Neumann noted that on the Administration Draft, Administration was meant to be the Executive Branch and additionally reiterated the Mayor's comments that he will not be in support of reversing back the City Attorney's salary to the entry level.

Motion by Bennett, second by Martin, to approve Option 2 as presented by the Budget Committee, to include a modification of the wording from "control point" wherever it appears to "market average."

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

The motion failed on a 3-5-1 vote with Councilmember Pico excused.

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Motion by Knight, second by Miller, to approve the Ordinance presented by the Budget Committee, Option 1, with the stipulation that they are replacing the Salary Range Schedule as handed out and changing all references to “control point” to “market average” be included.

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

The motion failed on a 4-4-1 vote with Councilmember Pico excused.

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Motion by Snider, second by Collins, to postpone this matter to the next Council meeting on October 8<sup>th</sup>.

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

The motion failed on a 3-5-1 vote with Councilmember Pico excused.

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After considerable effort by Councilmembers to clarify the Options proposed, Councilmember Miller asked about bifurcation of Section 6, in Option 2. Ms. Massey provided legal clarification that reconsideration by a voting member previously voting among the majority on Option 2 could motion to reconsider. She further stated that technically the change they want for Section 6 would not be a bifurcation, that Council would move to approve Option 2 with that section excluded.

Councilmember Collins asked to note that from her research, the top 100 City employees are well overpaid compared to the top 100 County employees.

Motion by Knight, second by Martin, for reconsideration of Option 2 as previously presented.

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

The motion passed on a 6-2-1 vote with Councilmember Pico excused.

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Motion by Bennett, second by Knight, to approve Option 2 as presented by the Budget Committee, to include a modification of the wording from “control point” wherever it appears to “market average; and, in Section 6 modifying the list to include only the salaries for the City Auditor and City Attorney.

Ayes: Bennett, Gaebler, King, Knight, Martin

Noes: Collins, Miller, Snider

Absent: Pico

The motion passed on a 5-3-1 vote with Councilmember Pico excused.

14. Ordinance No. 13-60 entitled: “An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for Supplemental Appropriations to multiple funds as stated to implement the results of the Compensation Study” was introduced and read.

Kara Skinner, Chief Financial Officer, stated the recommendation from the Finance Department was for approval of the Ordinance submitted by the Executive Branch that includes the experience based adjustment as originally presented to Council.

Councilmember Knight explained the difference between the Executive Branch Ordinance and the Budget Committee Ordinance is the inclusion of language as to how the money is to be spent. He described that based on the meeting earlier in the day between Council and the Executive Branch, the only clause that had concern was in Section 2-B, the first sentence. He stated the request is to remove the last half of the first sentence that reads “... who have not received salary adjustments in their current job classification.”

Motion by Knight, second by King, to approve the Budget Committee Ordinance with the amendment to remove the last half of the first sentence in Section 2 (B) “... who have not received salary adjustments in their current job classification.”

Councilmember Martin asked for clarification on which Ordinance they were approving. Councilmember Knight described the Ordinance prepared by the Budget Committee and the elements varying from the original version presented by the Executive Branch.

Ms. Skinner reconfirmed their recommendation was to approve the Ordinance presented by the Executive Branch; however, if they do vote on the Budget Committee’s version instead, she stated her advice was that in Section 2-B, it needs to read “... to make time and service adjustments for eligible employees.” And in the second sentence, after the date, April 1, 2013 delete the comma and add “without a salary adjustment.”

Councilmember Miller and Knight asked if there had been contact with either the TOPS, PSST, and Airport Advisory Oversight committees regarding the funds. Ms. Skinner stated the Finance Department did not contact any of those committees. Ms. Neumann commented that, based on prior review and discussion, she did not believe they needed to seek the committees’ permission, but would be happy to do so between now and the second reading of the Ordinance.

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Motion by Knight, second by Martin, to modify the motion to include the language recommended by Ms. Skinner as follows: In Section 2-B, add "... to make time and service adjustments for eligible employees." And in the second sentence, after the date, April 1, 2013 delete the comma and add "without a salary adjustment."

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

Noes: Collins, Snider

Absent: Pico

The motion passed on a 6-2-1 vote with Councilmember Pico excused.

### **NEW BUSINESS**

15. Resolution No. 84-13 was presented: "A Joint Resolution of the City Council of the City of Colorado Springs and the El Paso County Board of County Commissioners in support of Regional Stormwater Control."

Councilmember Snider briefly reviewed the changes to the Resolution that Council requested.

Councilmember Miller stated he liked the amendment, but suggested, based on prior legal opinions, they add "...and as such is considered by Council as a major legislative budget determination." Councilmember Gaebler stated this was discussed yesterday, yet wanted to be consistent with the County and not sidetrack progress.

Councilmember Collins stated she does not support the regional approach but would rather see the funds address public safety and public infrastructure.

Councilmember Martin described the intent of the Resolution is a way of showing, from a regional perspective, that working together is the best way to solve the problem. Councilmember Miller commented that he felt this was a positive step, opening up the conversation on how to go forward regionally and supports the Joint Resolution.

Paul Kleinschmidt and Douglas Bruce spoke against the Resolution.

Larry Small spoke in support of the Resolution.

Ms. Neumann stated the Mayor opposes the Joint Resolution considering it premature until the unveiling of the CH2MHill report on October 9<sup>th</sup> and believes the Capital Improvement Projects (CIP) need adequate funding in addition to stormwater. She stated the Mayor is prepared to share a funding mechanism during the October 9<sup>th</sup> meeting.

President King described what he believes are key elements included in the Resolution, specifically in Section 3, Item 4. He stated it is important that we show, as a body, that we are willing to dedicate a portion of our general fund dollars and to make a meaningful commitment.

Motion by Snider, second by Martin, to adopt the Joint Resolution to include the amendment recommended by the County Commissioners.

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

The motion passed on a 7-1-1 vote with Councilmember Pico excused.

16. Ordinance No. 13-61 entitled: “An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for a supplemental appropriation to the General Fund in the amount of \$35,000 for the purpose of funding economic study, legal and survey work related to the recommendations of the Regional Stormwater Task Force” was introduced and read.

Ms. Gonzalez described amended language being passed-out that is based on Councilmembers’ requests to include language in Section 1 of the Ordinance linking it to the Council’s Strategic Plan.

Councilmember Snider briefly described the purpose of the Ordinance.

Tom Florczak, Deputy City Attorney, addressed Council and described that the Ordinance uses the word “legal” and appears to sanction an appropriation of funds to an unincorporated association, not to an existing legal entity, to furnish or use some of the funds for legal advice or legal services. He stated the City Attorney’s Office provides that function for the City of Colorado Springs including the Stormwater Enterprise, the Department of Public Works that administers the Stormwater program, and to Colorado Springs Utilities. The City Attorney’s Office asks that the word legal be deleted from the title and from Section 1.

Douglas Bruce spoke against the Ordinance.

Ms. Neumann stated the Mayor’s office opposes the appropriation and believes it is premature to request the funds before the October 9<sup>th</sup> meeting.

Councilmember Miller asked if there is a stipulation as to how a commissioned study would be chosen for who performs the study and if it would fall under normal procurement procedures.

Councilmember Bennett stated he doesn’t have a problem with the nature of the resolution but would prefer to hear the presentation on October 9<sup>th</sup> first.

Councilmember Knight stated he would be approving the Ordinance today but may reconsider on second reading. He requested that Council have the right to approve the money before it is obligated.

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

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

The motion passed on a 6-2-1 vote with Councilmember Pico excused.

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**17. Added Item Agenda**

Resolution No. 85-13 was presented: “A Resolution of the City Council of the City of Colorado Springs concerning the retention of outside legal counsel.”

President King described Council’s rationale for the presentation of the Resolution. He stated this gives City Council an opportunity to clear up an area unclear in the Charter as to whether or not they have authority to employ other Counsel and how they may participate in these decisions. He described the Resolution statement by statement to be clear on the purpose of the Resolution.

Douglas Bruce spoke against the Resolution.

Chief Legal Officer/City Attorney Chris Melcher addressed Council on the legal aspects of the Resolution, legal resources available through the City Attorney’s Office, including the expertise available to address Stormwater issues. He stated he believed it would be a waste of taxpayers’ money to hire an outside Counsel for this issue and further stated that the Resolution is in violation of the Charter. He advised Council to delay this for further research and guidance on the draft Resolution.

Mr. Melcher described the Colorado Rules of Professional Conduct and his binding responsibility to represent the interests of the City, the Mayor, and Council, fairly and equally, as one voice, aligning with an attorney’s responsibility to exercise independent professional judgment in all cases.

Councilmembers expressed their frustration in not receiving responses to their requests for legal advice from the City Attorney’s office in a timely manner. Mr. Melcher stated he and his office would do better to address their requests more timely.

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

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

Noes: None

Absent: Pico

The motion passed on an 8-0-1 vote with Councilmember Pico excused.

**18. Executive Session**

**19. Adjourn.**

At 5:44 p.m., there being no further business to come before City Council,

COUNCIL ADJOURNED



Sarah B. Johnson, City Clerk