COLORADO SPRINGS, COLORADO
CITY COUNCIL CHAMBERS
CITY HALL – 107 N. NEVADA AVENUE
FEBRUARY 11, 2014 – 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 and Interim City Attorney Massey.

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1. **Call to Order.**

City Clerk Johnson called the roll. Eight members present; President Pro Tem Bennett arrived later in the meeting.

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

Reverend Douglas Brauner, Holy Cross Lutheran Church, led the invocation. Council President King led in the Pledge of Allegiance.

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

There were no Agenda changes requested.

4. **Councilmember Comments.**

Councilmember Knight provided an update on the Budget Subcommittee meeting. They are preparing a list of questions they will want answered prior to the budget approval cycle beginning in October 2014 and anticipates bringing those questions to Council for their consideration at a Work Session in March.

Councilmember Miller updated Council on the work he has been doing with the City Attorney's Office and with the Institute of Justice with the goal to restrict use of eminent domain.

CONSENT CALENDAR

5. The following items were acted upon by unanimous consent of the members present, with the exception of Item 5-A1, which was called up for separate consideration:

SECOND PRESENTATION:

There were no second presentations scheduled.

FIRST PRESENTATION:

A-1. See action taken later in the meeting.

A-2. Appointments to various Boards and Commissions.

A-3. The City Clerk reports that on January 15, 2014 there was filed with the Office of the City Clerk a petition for the annexation of Capital Annexation No. 1. She states 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 communicates such to City Council and recommends that the petition be referred to the City Administration for review and recommendation.

A-4. Request for hearing for consideration of a Resolution modifying the Water Shortage Tariff.

A-5. Resolution No. 7-14 was presented: "A Resolution approving an agreement to annex and to provide water and wastewater service outside the City limits at 4835 Platinum Drive in Park Vista Estates Addition."

A-6. **6385 North Academy Boulevard**

A-6A. CPC ZC 13-00132: (Quasi-Judicial Matter) Ordinance No. 14-12 entitled: "An Ordinance amending the Zoning Map of the City of Colorado Springs relating to 1.1 acres located on the southeast corner of Academy Boulevard and Dominion Way addressed as 6385 North Academy Boulevard from OC (Office Complex) to PBC (Planned Business Center)" was introduced and read.

A-6B. CPC DP 13-00133: (Quasi-Judicial Matter) Request by Top Land Investment LLC on behalf of Legacy Bank for consideration of a Development Plan to change the use from restaurant to retail consisting of 1.1 acres located at the southeast corner of Academy Boulevard and Dominion Way addressed as 6385 North Academy Boulevard.

Motion by Gaebler, second by Snider, that all items on the Consent Calendar, with the exception of Item 5-A1 be passed, adopted, and approved by unanimous consent of the members present.

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

The motion passed on an 8-0-1 vote with Councilmember Bennett absent.

6. **Recognitions.**

There were no recognitions.

7. **Citizen Discussion.**

Charles Barber, Raven Martinez, Mark Slaugh, and John Hawk spoke against *City for Champions*.

Marcia Fields spoke in recognition of Charles Barber's commitment to the well-being of the community and read from the plaque she prepared on his behalf.

President Pro Tem Bennett Arrived

Paul Kleinschmidt spoke regarding the anticipated installation of the Neumann Scrubber System at the Martin Drake power plant and provided a series of questions that he requested CSU answer.

Bill Murray spoke regarding CSURA going into default and into future default if no action taken.

Mark Slaugh spoke in support of the industrial hemp industry for Colorado Springs.

First Presbyterian representative, Chesley Miller, spoke about "*The Year of the City*" and read a blessing for the members of City Council.

8. **Mayor's Business.**

Chief of Staff Neumann read a letter from Mayor Bach to Council regarding Sister Cities International and the desire to form a relationship with Ancient Olympia Greece as a Sister City to Colorado Springs. In response to the invitation for a Councilmember to work with Mayor Bach, Councilmember Gaebler volunteered to partner in the project.

ITEMS CALLED OFF CONSENT CALENDAR

A-1. Approval of the Minutes of the Regular Council Meeting of January 28, 2014, and the Special Called Session of January 22, 2014.

City Clerk Johnson described the corrections made to the January 28th Minutes soon after the print deadline. The corrected version was posted and available on the City's website as of Friday prior to the Tuesday meeting. There were no corrections made to the Special Called Session of January 22, 2014.

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

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. 14-10 entitled: "An Ordinance approving a supplemental appropriation for Colorado Springs Utilities for the sole purpose of purchasing corporate memberships by Colorado Springs Utilities for the year ending December 31, 2014" was presented for final passage.

Discussion ensued among Councilmembers relative to not funding organizations that endorse political candidates.

Motion by Knight, second by Collins, to amend the Ordinance to exclude funding for the Colorado Springs Housing and Building Association, the Pikes Peak Association of Realtors and the Downtown Partnership Association.

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

The motion failed on a 3-6-0 vote.

Motion by Gaebler, second by Snider, to amend the Ordinance to exclude funding for the Home Builders Association and Pikes Peak Association of Realtors, and to include funding for the Downtown Partnership.

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

The motion passed on a 6-3-0 vote.

UNFINISHED BUSINESS

10. CPC CA 13-00119: Ordinance No. 14-8 entitled: "An Ordinance amending Sections 103 (Permitted, Conditional and Accessory Uses) and 105 (Additional Standards for Specific Uses Allowed in Residential Zones) of Part 1 (Residential Districts) and Section 705 (Mixed Use Permitted, Conditional and Accessory Uses) of Part 7 (Mixed Use Zone Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to human service establishments" was presented for final passage.

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

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

The motion passed on an 8-1-0 vote.

11. CPC ZC 13-00085: (Quasi-Judicial Matter) Ordinance No. 14-9 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to .48 acre located southeast of South 8th Street and Yucca Drive, from R-1 6000 (Single-family Residential) and C-5 (Intermediate Business) to C-5/cr" was presented for final passage.

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

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

The motion passed on an 8-1-0 vote.

12. CPC PUZ 13-00092: (Quasi-Judicial Matter) Ordinance No. 14-11 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to 2.45 acres located west of the intersection of South 8th Street and Yvette Heights from PUD (Planned Unit Development) to PUD (Planned Unit Development to establish the use of single-family residential at 8.16 dwelling units per acre and a maximum building height of 40 feet)" was presented for final passage.

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

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

The motion passed on a 6-3-0 vote.

13. Resolution No. 8-14 was presented: "A Resolution adopting an amendment to the "City of Colorado Springs Rules and Procedures of City Council" relating to General Procedures for confirmation of Mayoral Appointees."

Michael Sullivan, Human Resource Director, appealed to Council on behalf of the Administration to not pass the Resolution and listed reasons the action impeded the Administration's ability to recruit and hire the best talent.

Councilmember Pico responded that the action codifies the practice and was produced in a collaborative manner while attempting to lay out a consistent process to follow.

Council Administrator Gonzalez stated she had e-mailed to Councilmembers a minor revision made to 7-3 (B) in the Exhibit to the Resolution.

Citizens Raven Martinez and Mark Slaugh spoke in support of the Resolution.

Motion by Knight, second by Pico, that the Resolution to include the amended language be approved.

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

The motion passed on a 5-4 vote.

14. Council consideration of the Mayor's disapproval by veto of Ordinance No. 14-6 entitled: "An Ordinance amending Section 303 (Appoint to Acting Capacity) of Part 3 (Powers and Duties of the Mayor) of Article 2 (Officers of the City) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs 2001, as amended, pertaining to the confirmation process for Mayoral appointees."

Motion by Bennett, second by Martin, to postpone indefinitely. After further discussion, Councilmember Bennett, in agreement with Councilmember Martin, withdrew his motion.

Extensive discussion ensued between Council and Interim City Attorney Massey on issues relative to the Ordinance and the consideration of the Mayor's disapproval by veto of the Ordinance.

Motion by Miller, second by Pico, that the Mayor's veto of Ordinance No. 14-6 be over-ridden.

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

The motion failed on a 5-4 vote.

NEW BUSINESS

15. **Marijuana Ordinances**

15A. Ordinance No. 14-13 entitled: "An Ordinance amending Sections 301 (Definitions) and 302 (Facility Security Plans) of Part 3 (Facility Security) of Article 2 (City Properties) of Chapter 3 (Public Property and Public Works) and Section 108 (City Facility Security; Violation) of Part 1 (General Offenses) of Article 6 (Offenses Affecting Property) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, pertaining to possession of marijuana at indoor city facilities, and providing penalties for the violation thereof" was introduced and read.

City Attorney – Corporate Division Chief Haley described the requests from Council relative to penalties that were incorporated in the revised versions presented. She stated there was additional minor format clean-up needed in the enforcement section to align with the Code as amended by Council last year.

Citizens Bob Wiley, Sara Griffin, Mark Slaugh, and Raven Martinez spoke against the Ordinance.

Motion by Bennett, second by Martin, that the Ordinance be passed as introduced.

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

The motion passed on a 6-3 vote.

15B. Ordinance No. 14-14 entitled: "An Ordinance amending Sections 301 (Definitions) and 302 (Facility Security Plans) of Part 3 (Facility Security) of Article 2 (City Properties) of Chapter 3 (Public Property and Public Works) and Section 108 (City Facility Security; Violation) of Part 1 (General Offenses) of Article 6 (Offenses Affecting Property) of Chapter 9 (Public Offenses) and Section 104 (Right to Trial by Jury; Exceptions) of Part 1 (Trial by Jury) of Article 4 (Jury Provisions) of Chapter 11 (Municipal Court) of the Code of the City of Colorado Springs 2001, as amended, pertaining to possession of marijuana at the Colorado Springs Municipal Airport, and providing penalties for the violation thereof" was introduced and read.

Ms. Haley stated the Ordinance has been provided in response to the concern about interstate transport of what is still a federally controlled substance.

Councilmember Miller asked when the airport rule will be repealed. Ms. Neumann responded that she will work with Interim Airport Director Gallagher to address the issue.

Motion by Bennett, second by Martin, that the Ordinance be passed as introduced.

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

The motion passed on an 8-1 vote.

PUBLIC HEARING

16. **Flying Horse Parcel Number 21 Convenience Store**

16A. CPC CP 12-00085-A1MN13: (Quasi-Judicial Matter) Public hearing on an appeal by Flying Horse residents regarding the Planning Commission action of December 19, 2013 approving the Flying Horse Parcel No. 21 concept plan amendment that will add a right-in, right-out access to the site from North Gate Boulevard. The property is located at the northeast corner of Roller Coaster Road and North Gate Boulevard.

16B. CPC DP 13-00118: (Quasi-Judicial Matter) Public hearing on an appeal by Flying Horse residents regarding the Planning Commission action of December 19, 2013 approving the Flying Horse Convenience development plan that illustrates a 3,119 square-foot convenience store with a gas canopy, six gas islands and associated store parking. The property is located at the northeast corner of Roller Coaster Road and North Gate Boulevard.

Ms. Massey requested disclosure of any *ex parte* communications between Council and the applicant, appellant or any member of the public related to this matter. She reminded Council that regardless of prior statements they had heard, their job during this hearing is to listen to the evidence presented in a fair and impartial manner and

apply the Review Criteria in order to make a decision on the two applications and the appeal.

All Councilmembers acknowledged they had heard citizens' comments, received e-mails, and letters relative to the matter.

Developer, Doug Stimple, objected to the *ex parte* communication by Bev Wenger and requested preservation of his objection for the record.

Staff Presentation:

Meggan Herington, Senior Planner for Land Use Review, described background and underlying details of the appeal for the two items brought before Council today.

Kathleen Krager, Transportation Planning Manager, responded to traffic engineering questions from Council.

Appellant Presentation:

Flying Horse Residents, Mark Henkle and Bev Wenger

Applicant Presentation:

Greg Moran, Senior Development Director for MVG Development and Alicia Rhymer, Senior Real Estate Representative for 7-Eleven, Inc.

Appellants:

Sarah Mersnick, Leslie Dukes, Judy Warren, Charles Warren, Linda LaFrenierre, and Mike Dukes spoke in support of the appeal.

Applicant:

Doug Stimple spoke against the appeal.

Applicant's Rebuttal:

Doug Stimple and Alicia Rhymer spoke to deny the appeal.

Motion by Snider, second by Martin, to deny the appeal and uphold the Planning Commission's decision to approve the Flying Horse Parcel Number 21 Minor Concept Plan Amendment as listed in the Planning Commission Record of Decision.

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

The motion passed on a 6-2-1 vote.

Motion by Snider, second by Martin, to deny the appeal and uphold the Planning Commission's decision to approve the Flying Horse Number 21 Convenience Development Plan subject to compliance with the following conditions of approval and technical modifications as listed in the Planning Commission Record of Decision, plus one additional request that a stoplight is installed at Roller Coaster and North Gate prior to issuance of a Certificate of Occupancy.

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

The motion passed on a 7-1-1 vote.

17. **Added Item Agenda.**

There was no added item agenda scheduled.

18. **Executive Session.**

There was no Executive Session scheduled.

19. **Adjourn.**

At 5:43 p.m., there being no further business to come before City Council,

COUNCIL ADJOURNED

Sarah B. Johnson

Sarah B. Johnson
City Clerk