

CITY OF COLORADO SPRINGS
INFORMAL CITY COUNCIL MEETING MINUTES
MARCH 11, 2013

Present: President Hente, President Pro Tem Martin, Councilmembers Bennett, Dougan, Herpin, Leigh, Snider and Williams. Absent, Councilmember Czelatdko. Also present, Chief of Staff Neumann, City Attorney/Chief Legal Officer Melcher, and Legislative Counsel Massey.

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1. **INFORMAL AGENDA CHANGES**

There were no changes.

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2. **FORMAL AGENDA CHANGES/COMMENTS (03/12/2013)**

A request was entered to postpone Item 8, the Dublin Terrace Forfeiture Ordinance for consideration on March 26th to coincide with the hearing of the appeal of the denial of the amended development plan.

President Hente polled interest of the Council to postpone the vote on the Oil & Gas Ordinance decision in order to allow the next Council, elected in April, to make the decision. The majority present was against postponement.

Council Administrator Cox called attention to a minor language change to the Resolution supporting the TOPS Ballot, Ballot Issue #1.

Councilmember Williams requested items 3-B-6 and 3-B-7 be pulled-off. Hente asked that Chief of Staff Laura Neumann make sure there are people present to address these issues.

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3. **REVIEW OF 02/25/2013 INFORMAL COUNCIL MEETING MINUTES**

Councilmember Williams requested a few corrections to the Informal Minutes of 2/25/2013:

- Mislabeled reference to President Pro Tem Martin on Page 3 will be corrected;
- In the Formal Agenda Changes/Comments section, page 1, it was her perspective relative to the City-County Stormwater Resolution, the Council had agreed there would be a "decision" vs. a "discussion." Ms. Massey stated that after reviewing the tape several times, the majority had not specifically requested a decision on the matter. However, as a result of this ambiguity, she and Council Administrator

Cox have agreed they would be more diligent in confirming the specific direction from Council.

- During the extensive Oil & Gas discussion, Councilmember Williams recalled that she had addressed mineral rights and conservation easements and does not see those comments reflected. City Clerk Johnson stated we will review the tape and include the comments.

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4. **STAFF REPORTS**

A. **Agenda Planner**

Councilmember Snider brought up that for Formal on March 26th, the first reading of the amendments to the Panhandling Ordinance was scheduled. He noted the need to review the changes prior to March 26th. Councilmember Williams asked if those changes were in a form for review at this time. Ms. Massey responded that in Closed Legal today there's a litigation update and that they will be seeking Council direction on how to handle this matter. Nothing is prepared to present today due to the need for Council's direction.

Council Administrator Cox described a few additional changes:

- On March 26th, the Consent Agenda includes a tentative approval of the Water Shortage Tariff. This is not a Consent item; therefore, it will be moved under "Utilities Business."
- Item 20-13-A is meant to read "refunding" the Bond Issue rather than "refuting."

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5. **PRESENTATIONS**

A. **General Information**

None.

B. **Items for Future Action**

(1) **Compensation Study Presentation**

Prior to the meeting, Council Members received a packet with approximately 46 pages of in-depth information. This information had been thoroughly reviewed during a work session last Thursday, March 7th. Chief of Staff Laura Neumann

summarized the report highlighting essential changes resulting from the study. A 13 slide PowerPoint presentation streamlined background information.

Chief of Staff Neumann highlighted three actions they would be asking from Council:

- A motion to approve the pay policy changes with the first reading scheduled for March 26th;
- An appropriation to fulfill pay changes which would be brought forward on March 26th with a second reading on April 9th; and,
- A philosophical agreement and understanding of the modifications to the Health Benefit Program that would be explained today. However, this item will not come forward until Fall of 2013, with direct impact hitting Calendar Year 2014.

Questions from Council included:

- President Pro Tem Martin asked about the overtime calculation and if the medical care changes could be delayed until after the results of the RFP are received? Laura responded that we are steering towards a consumer driven healthcare plan and reminded Council that, at this time, they are not asking for a formal action, only a philosophical agreement.
- Councilmember Dougan asked for clarification on the health insurance coverage change, and expressed confusion on the proposed calculation elements for overtime hours and the impact of those anticipated changes. Human Resource Manager Lori Smith provided clarification.
- President Hente expressed concern over the new sick leave use-it or lose-it policy and the change of payment amount for injury leave for those city employees who do have dangerous jobs although they are not police officers or firefighters. He stressed that City government should be cognizant of the message this sends.
- Councilmember Williams questioned the reference to the Workers' Compensation amount of 66 2/3rds as being a "state mandated" amount. Clarification provided that 66 2/3rds is a state mandated **minimum** for Workers' Compensation.
- Councilmember Williams asked for further clarification relative to the sick time use-it or lose-it policy change. Explanation was provided.
- Councilmember Snider asked how the \$2.2 million figure was derived for the increased costs as allocated in the 2013 Budget? Chief of Staff

Neumann responded it was an estimate based on 30% of employees getting a 5% raise.

- Councilman Snider asked about pension costs. Chief of Staff Neumann answered that approximately \$26 million is what the city pays for PERA annually. Councilman Snider wanted to confirm what portion of that the City controls? Laura responded that the State controls PERA. However, the City somewhat controls the "Sworn" component, while requiring approval of the FPPA Board to take action, as well as a vote of the majority of officers. She noted that, in reality, we don't really control any of it, presently.
- Councilman Snider requested Councilors have a list of the comments from employees in their packet when they receive the PPM changes in two weeks.
- Councilmember Dougan wanted to clarify the effective date for the sick leave accrued hours conversion. Chief of Staff Neumann responded that it ends at the end of this year.
- Councilmember Williams wanted to further clarify what Councilmember Dougan was asking. She asked if her intention was to know when the sick time changes go into effect or when the revised overtime calculation policy would become effective?

Human Resource Manager, Lori Smith, explained the changes in definition of hours worked (removing other paid leaves from the calculation) will go into effect in June when the new FLSA cycle begins. She added that the City is allowed the discretion and, thus, has chosen to pay the overtime consistent with the City's two week pay cycle, rather than a 28-day FLSA cycle.

(2) Review of Ordinance Pertaining to the Procedures for the Creation and Establishment of Election Districts for the City.

Council Administrator Cox overviewed the background for the development of a more robust redistricting process. She referred to the memorandum, as well as the current and revised ordinances, included in the packet. Citizen ad hoc committee member Dave Munger was present to provide additional information on their work.

- Councilmember Dougan expressed concern about the timing elements of the changes and stated we may need a full charter review suggesting the issue of four years versus ten years should be considered when a full charter review convenes. She also asked that the committee relook at the requirements for diverse representation as this may be fairly limiting.

- Councilmember Williams suggested changing the deadline for the Preliminary District Report to October 1st rather than November 1st believing that would allow ample time to prepare the report. Councilmember Dougan requested City Clerk Johnson's input on the matter. City Clerk Johnson stated she believed there should be no problem with moving the deadline up. She stressed that the most important factor is having the updated population data for redistricting.
- Councilors acknowledged the extensive amount of good work that had been done by all parties involved on this matter.
- City Clerk Johnson provided an overview of her orientation and preparation for redistricting. She emphasized that her responsibility was to follow the letter of the law when she drew the districts.

Ms. Massey asked for clear direction from Council on what the ordinance should look like. One-by-one she asked for their direction on these items:

- a. Do you want to insert the word advisory before committee throughout the ordinance?

Council expressed no objection.

- b. Do you want one representative from each district for the committee with one "at-large" person?

Council confirmed, yes.

- c. Do you want to specifically call out gender, racial, ethnic, age, etc.?

- Councilmember Williams asked what happens if you can't find someone from each of the six districts? Ms. Massey answered that if you call out specifically one representative from each of the six districts, and one at-large, yet you cannot find one for a district, that district would remain unfilled, and you would have a six member committee, if that's a requirement.

Council confirmed that would be okay.

- d. Do you specifically want to call out gender, racial, ethnic, and those other specifications?

President Hente acknowledged that he saw two noes and the rest saying yes.

- Council Administrator Cox explained that was the language that was in the previous version that says, "*City Council shall strive for gender, racial, age and geographic diversity,*" as opposed to the change which was "*...and reflect the gender, age, race, and geographic diversity.*"
- Ms. Massey stated she wanted clear direction and asked whether they preferred the word strive or reflect?

The majority chose strive.

- e. Then on page 3, 5.1.404 Public Process, § C, there was additional language that indicated that the committee "*...would prepare a preliminary report summarizing the public input and it shall submit the report to the City Clerk.*" She stated her question of whether that's Council's direction because this is an Advisory Committee to the Council, they are not an Advisory to the Clerk. They are conducting the Public Process that was in the Purpose section, that they are the keepers of the processes, as Council Administrator Cox has said, while the Clerk is the keeper of the procedure. The Clerk will be there at all of their meetings, so her question to Council - do you want this preliminary report submitted to the City Clerk or do you want the Preliminary Report submitted to Council?

Council consensus was the Committee will report to Council and to the City Clerk at the conclusion of the District meetings.

- Councilmember Williams asked to correct a reference for 403E to 404E.

Council Administrator Cox clarified that it was changed to 404E.

- f. Ms. Massey stated after the six district meetings are held by the Committee, which are prior to the release of the City Clerk's preliminary report, the ordinance draft requires the City Clerk to hold another public meeting. Is this what Council intends?

The consensus of Council was that there is no need for the additional meeting.

- g. Council Administrator Cox asked to confirm if Council intends, under 5.1.405, to state "*...no later than October 1st.*"

President Hente confirmed, yes.

- h. Council Administrator Cox asked about stating a time period for protests. On 5.1.405, it states that *"The City Clerk shall cause to be published at least 14 days before the preliminary report."* And then Protest follows, but we don't have a time period for protests.

Ms. Massey responded that protests can be submitted at the Protest Hearing.

- i. Council Administrator Cox asked for confirmation as to the form of the protests also being accepted via e-mail and written.

Ms. Massey confirmed anytime up to that protest hearing. So there is no deadline for submitting it as long as it is submitted before or at the Protest Hearing.

Council Administrator Cox responded that with Council's agreement we can go forward and identify the protest period begins when the Clerk issues her preliminary report and concludes at the Public Hearing.

Council Administrator and Council agreed.

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6. OPEN LEGAL ITEMS

A. **Criminalizing Public Drunkenness: The City Attorney will discuss this topic and take questions from the City Council.**

Council had no comments or questions regarding the legal opinion.

B. **Marijuana Ordinance Amendments**

Colorado Springs Police Deputy Chief Vince Niski described the background regarding proposed changes to the Municipal Ordinance governing possession of recreational marijuana and the proposed new ordinances limiting the consumption of marijuana in public places and in vehicles in public places. Their recommendation is that Council amend the City's current possession Statute to harmonize with Amendment 64.

Councilmember Snider asked why we are making these laws now and not waiting for the Governor's Task Force? It was his understanding that the Task Force would make recommendations, then the Legislature would vote and then the localities could make laws.

City Attorney, Chief Legal Officer Melcher explained that these are separate items. The Task Force and the State Assembly are working right now on regulation of retail

marijuana, non-medical marijuana, and they have received approximately 100 recommendations that the State Assembly is going to put, he believed, into an Omnibus Bill. Proposed changes to the City's criminal ordinance are not being addressed by the State Assembly.

Councilmember Dougan asked about an anticipated timeline for opting-out on retail marijuana.

City Attorney/Chief Legal Officer Melcher responded that they are ready to bring forward a timeline and a report to Council when they must begin the process should they choose to opt-out. He stated it's best to wait until the State Assembly writes, drafts, and passes the Omnibus Bill, if they do. He projected that by the middle of May we should know what the State Assembly is going to do and at that time they will bring a timeline to Council and be ready to assist Council in whatever option they wish to pursue.

Councilmember Williams asked for confirmation that the requested change to the ordinance relative to the amount one could openly possess is intended to conform to parameters of Amendment 64. Deputy Chief Niski agreed.

C. Update on Current Outstanding Litigation from the City Attorney

City Attorney/Chief Legal Officer Melcher provided a summary of the information included in the Quarterly Litigation Report (for a period between December 2012 through February 13, 2013).

Councilmember Leigh asked whether we are currently incurring expenses relative to the outstanding ULTRA Bankruptcy case? City Attorney/Chief Legal Officer Melcher replied that the only expense he was aware of was outside counsel expense, but nothing over the past six months. He clarified this case is in abeyance in a joint agreement not to proceed until the oil and gas ordinances were completed.

Councilmember Snider asked the City Attorney whether the number of new lawsuits is a higher number than usual? City Attorney/Chief Legal Officer Melcher responded that, in fact, for a city with a population over 400,000 he would venture to say that we may be somewhat on the low side of the number of lawsuits compared to other comparable cities of our size.

Councilmember Williams appreciated the legal case summary and suggested that a quick 5-10 minute update would be an informative practice going forward.

D. Pikes Peak Justice and Peace Coalition vs. the City: Regarding no Solicitation.

President Hente asked to postpone/hold this item in abeyance until after the Closed Executive Session addressing the topic at that time should Council agree it was needed.

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7. COUNCILMEMBER REPORTS AND OPEN DISCUSSION

Councilmember Dougan brought forth the issue Councilmembers were experiencing with their e-mails. Council requested that the system be restored to its prior functionality and no further changes be implemented until after the transition. Council staff replied they would work with City's IT staff to fix the issue immediately.

Councilmember Dougan then asked about the conceal-to-carry policy now in place at the staff level. She commented it looks like the conceal-to-carry is not allowed at Utilities. She would like to start this conversation. Council Administrator Cox stated she would speak to CSU CEO Forte about adding this topic to their agenda.

Councilmember Williams reported that the first Stormwater Phase II Task Force meeting was very successful. The second Phase II Stormwater meeting will be held on March 18th, at 10:00 a.m. upstairs in the Herring Room at the Regional Development Center.

President Hente provided Council Administrator Cox with a copy of the letter from the Executive Director of the PPACG. The City has two upcoming vacancies on the Community Advisory Committee which need to be filled by May 31st.

Councilmember Leigh was excused.

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8. CLOSED EXECUTIVE SESSION

Council moved to go into Closed Executive Session at 3:35 p.m. 8 Councilmembers present approved.

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COUNCIL RECONVENED AT 5:28 p.m.

President Pro Tem Martin and Councilmember Herpin were excused.

6. D. Pikes Peak Justice and Peace Coalition vs. the City: Regarding no Solicitation.

City Council directed the City Attorney to draft an ordinance amending Ord. 12-100 to remove the prohibition on solicitation in the downtown No Solicitation Zone.

COUNCIL WAS ADJOURNED AT 5:29 p.m.

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