COLORADO SPRINGS, COLORADO
CITY COUNCIL CHAMBERS
CITY HALL – 107 N. NEVADA AVENUE
November 12, 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 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 Pastor Tim Dane of Mesa Hills Bible Church. The Pledge of Allegiance was led by students participating in the *"Ticket for Success"* program.

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

No agenda changes were requested.

4. **Councilmember Comments.**

Councilmember Collins described her concern about a health clinic planned to be held at a fire house in her district.

CONSENT CALENDAR

5. The following items were acted upon by unanimous consent of the members present, with the exception of Items A-2, A-3, and B-4, which were called up for separate consideration:

SECOND PRESENTATION:

A-1. CPC PUZ 13-00058: (Quasi-Judicial Matter) Ordinance No. 13-64 entitled: "An Ordinance amending the zoning map of the City of Colorado Springs relating to 116 acres located south of Flying Horse Club Drive, east of Vine Cliff Heights and west of future Powers Boulevard [from A (Agricultural) to PUD (Planned Unit Development: Single-Family Residential with an overall density of two dwelling units per acre and a maximum building height of 35 feet)]" was presented for final passage.

FIRST PRESENTATION:

B-1. Approval of the Minutes of the regular Council Meeting of October 22, 2013.

B-2. Appointments to various Boards and Commissions.

B-3. Resolution No. 96-13 was presented: "A Resolution approving an agreement to annex and to provide water and wastewater service outside the city limits to 4940 Silver Drive in the enclave of Park Vista Estates."

Motion by Bennett, second by Miller, that all matters on the Consent Calendar with the exception of Items A-2, A-3, and B-4, 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.**

A. "*Ticket to Success*" Youth Program Introduction – Donna Nelson, Economic Vitality

Donna Nelson described the history of the program and introduced the attending student participants. Parker, one of the students in his second year with the program, described his enthusiasm for having the opportunity to learn about the functions of City Government.

7. **Citizen Discussion.**

Charles Barber spoke about changes in City Administration staffing.

Ronald Bier, Katherine Jolly, and Don Montano spoke about water pressure and regulator issues they each simultaneously experienced in their neighborhood. Councilmember Knight asked who denied the neighborhood's claim for the required repairs and requested a status report at the next Utilities Board meeting.

Douglas Bruce spoke about gifting of public funds.

Beverly Winger spoke in opposition to the proposed convenience station in the Flying Horse subdivision. Ms. Massey advised Council regarding the basis upon which Council is to make a determination on matters subject to a quasi-judicial proceeding.

Cindy Lyons requested discontinuance of financial contributions to the Regional Business Alliance.

8. **Mayor's Business.**

Chief of Staff Neumann announced the Mayor's next Town Hall meeting would be held on Wednesday, November 13th, at 6:00 p.m. at the Gold Hills Police Substation.

ITEMS CALLED OFF CONSENT CALENDAR

A-2. Ordinance No. 13-65 entitled: "An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for a supplemental appropriation to the Airport Capital fund in the amount of $650,000 for the design and bid phases for the Rehabilitation of Taxiways E, G and H (Phase V) project at the Colorado Springs Airport" was presented for final passage.

Councilmember Miller explained he pulled both Items A-2 and A-3 off Consent due to an expressed concern that a conflict may exist due to his employment as a pilot with FedEx. He stated that since he serves as a skilled labor employee of FedEx, he has no authority to enter into contractual agreements on behalf of FedEx; thus, he did not believe a conflict existed and would not request to be recused from voting on the two agenda items.

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

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

The motion passed unanimously on a 9-0 vote.

A.3 Ordinance No. 13-66 entitled: "An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for the supplemental appropriation to the Airport Capital Fund in the amount of $860,000 for the design and construction of office space in the East Terminal Unit at the Colorado Springs Airport" was presented for final passage.

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

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

The motion passed unanimously on a 9-0 vote

B-4 Resolution No. 97-13 was presented: "A Resolution setting the Gas Cost Adjustment effective December 1, 2013."

Bill Cherrier, Chief Planning and Finance Officer, overviewed the request for a 1.9% gas rate reduction.

Tom Gallagher spoke against the Resolution.

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

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

The motion passed on an 8-1 vote.

UTILITIES BUSINESS

9. Resolution No. 98-13 was presented: "A Resolution granting permission to close a consensual transaction for the acquisition of property for Southern Delivery System project improvements."

Lyman Ho, Land Acquisition Manager of Southern Delivery System, provided an explanation of the proposed reservoir site, the background supporting the acquisition, and additional acquisition details.

Cheryl Glasgow, Douglas Bruce, Tom Gallagher, and Paul Kleinschmidt spoke against the acquisition and the costs.

Mr. Ho and Keith Riley, Deputy Program Director for SDS, responded to the concerns expressed relative to acquisition costs and the issues expressed relative to Bradley Road.

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

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

The motion passed on an 8-1 vote.

10. Resolution No. 99-13 was presented: "A Resolution authorizing the use of eminent domain to condemn certain property rights for Southern Delivery System project improvements."

Lyman Ho overviewed the history of negotiations with the owner and the justification to request use of eminent domain if necessary to acquire the approximately ½ acre parcel for the SDS project. He stated they will continue to work with the owner to reach an agreement, if possible, in a timely manner and to avoid litigation costs.

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

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

The motion passed on an 8-1 vote.

11. Public hearing for the consideration of resolutions regarding certain changes to Utilities Rules & Regulations and setting electric and natural gas rates within the service areas of Colorado Springs Utilities.

Chris Bidlack, City Attorney Utilities Division, provided an introductory briefing and the series of instructions on how the Rate Case Hearing is to proceed.

Mr. Bidlack then requested that if Council has had any *ex parte* communications, to please communicate that for the record. Councilmembers Bennett, Collins, Gaebler, King, Martin, and Pico each stated they had received e-mails from citizens relative to the matter. Councilmembers Knight and Miller also received e-mails and further indicated that, as members of the Utilities Finance Committee, they had received information on the matter.

Bill Cherrier, Chief Planning and Finance Office for CSU overviewed the procedural background, the rate proposal by service, public outreach, and next steps. Henry Henderson, Interim Pricing Manager, described the Utilities Rules and Regulations.

Denny Nester, City Auditor, confirmed he had examined the rate case and stated the proposed increased rates are needed to align the tariffs with the proposed CSU Budget for 2014.

Public Testimony:

Jerry Murphy, Paul Kleinschmidt, Nani Aspinwall, Johanna Glover, Al Brody, Douglas Bruce, Tom Gallagher, Cheryl Glasgow, Sherry Brunsell, and Jax Bubis expressed concerns and asked questions for Council's consideration before approving rate increases.

Council recessed to consider the questions presented.

Bruce McCormick, Chief Energy Services Officer, responded to the EPA and emissions control questions; Melissa Killian, General Manager of CSU Human Resources, responded to the base pay and benefits questions; Bill Cherrier, Planning and Finance Officer, responded to the financial and cost of fuel questions; and, Carl Cruz, Chief Customer Services Officer answered the advertising and communications questions.

There were multiple questions and concerns expressed by Council that they needed more time to review the details prior to giving direction on the utilities rate changes. They requested additional information to support the list of questions to be addressed prior to providing direction on the rate case hearing.

Motion by Bennett, second by Knight, to postpone the Rate Case Hearing to resume on Wednesday, November 20, 2013, 11:30 a.m. at City Hall.

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

The motion passed on a 9-0 vote.

12. Ordinance No. 13-68 entitled: "An ordinance identifying and accepting the annual sources of funds for Colorado Springs Utilities for the year ending December 31, 2014" was introduced and read.

    Motion by Bennett, second by Gaebler, 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.

13. Ordinance No. 13-69 entitled "An Ordinance approving the Annual Budget for Colorado Springs Utilities and appropriating monies for the several purposes named in the Annual Budget for Colorado Springs Utilities for the year ending December 31, 2014" was introduced and read.

    Mr. Cherrier explained the detail underlying the sources of funds, the appropriation ordinances, and responded to Council's multiple questions.

    Public Testimony

    Douglas Bruce spoke in opposition to the two ordinances.

    Susan Davies, Trails and Open Space Coalition, encouraged a solution to address the watering needs to sustain the City's parks.

    President King asked to have a better explanation of the beginning and ending budget values to ensure there would be no deficit spending, and that a balanced budget was presented before the next vote on the passage of the Budget.

    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.

14. Ordinance No. 13-67 entitled: "An Ordinance assessing costs for work performed in building demolition at 1726 West Colorado Avenue, charging the work against the property upon which the work was done and certifying this assessment to the County Treasurer for collection as a Priority Lien" was presented for final passage.

Steve Bodette, City Engineering and Standards Administrator, overviewed the history and condition of the property prior to taking action to demolish, the multiple attempts to communicate with the property owner prior to demolition, and responded to various additional questions presented by Council.

Douglas Bruce testified against the property lien.

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

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

The motion passed on a 7-2 vote.

15. Ordinance No. 13-70 entitled: "An Ordinance amending Section 101 (Penalties) of Part 1 (General Provisions) of Article 1 (Administration and Enforcement) and Section 101 (Compulsory Vehicle Insurance) of Article 28 (Compulsory Insurance), both of Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs 2001, as amended, pertaining to Penalties" was introduced and read.

HayDen W. Kane II, Presiding Judge of the Colorado Springs Municipal Court, overviewed each of the three related ordinances (Agenda Items 15, 16, and 17), the changes being considered, and answered Council's questions.

Douglas Bruce spoke against the proposed Ordinance changes.

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

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

The motion passed on a 7-2 vote.

16. Ordinance No. 13-71 entitled: "An Ordinance amending Part 2 (General Penalty) of Article 1 (Administration) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs 2001, as amended, pertaining to Criminal Penalties and Minor Offenders" was introduced and read.

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

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

The motion passed on a 7-2 vote.

17. Ordinance No. 13-72 entitled: "An Ordinance amending Sections 102 (Right to Trial by Jury; Waiver; Fee) and 104 (Right to Trial by Jury; Jail; Exceptions) both 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 the Right to Trial by Jury" was introduced and read.

    Motion by Knight, second by Gaebler, to amend the proposed Ordinance amendment by removing the strike-out revisions under Section 4.3.109, 'Watercraft Permits", specifically on items: "G. Section 4.2.102, "Park Hours," of this Code;" "I. Section 9.6.105, "Urination or Defecation," of this Code;" and "V. Section 9.9.404, "Camping Restrictions," of this Code."

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

    The motion passed on a 5-4 vote.

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

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

    The motion passed on a 7-2 vote.

18. Ordinance No. 13-73 entitled: "An Ordinance amending Ordinance No. 12-108 (2013 Appropriation Ordinance) for Supplemental Appropriations to the General Fund in the amount of $2,000,000 and the Grants Fund in the amount of $10,000,000" was introduced and read.

    Kara Skinner, CFO, explained the details of the Supplemental Appropriation and the FEMA Public Assistance Grant.

    Douglas Bruce spoke against the Appropriation Ordinance.

    Motion by Gaebler, second by Bennett, 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.

19. Approval of the proposed 2014 Budget and Operating Plan for the Barnes & Powers North Business Improvement District.

Carl Schueler, Planning and Land Use Review Senior Planner, overviewed information specific to each Business Improvement District ("BID"). Nor'wood representatives Ralph Braden and Delroy Johnson, as well as Attorney Russ Dykstra, and Carrie Bartow, CPA, specializing in Business Improvement Districts, were also present and responded to additional BID questions from Council.

Motion by Bennett, second by Pico, to approve the proposed 2014 Budget and Operating Plan for the Barnes & Powers North Business Improvement District.

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

The motion passed unanimously on a 9-0 vote.

20. Approval of the proposed 2014 Budget and Operating Plan for the Barnes & Powers South Business Improvement District.

Motion by Bennett, second by Pico, to approve the proposed 2014 Budget and Operating Plan for the Barnes & Powers South Business Improvement District.

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

The motion passed unanimously on a 9-0 vote.

21. Approval of the proposed 2014 Budget and Operating Plan First and Main Business Improvement District.

Motion by Gaebler, second by Martin, to approve the proposed 2014 Budget and Operating Plan for the First and Main Business Improvement District.

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

The motion passed unanimously on a 9-0 vote.

22. Approval of the proposed 2014 Budget and Operating Plan for the First and Main Business Improvement District No. 2.

Motion by Gaebler, second by Martin, to approve the proposed 2014 Budget and Operating Plan for the First and Main Business Improvement District 2.

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

The motion passed on a 6-3 vote.

23. Approval of the proposed 2014 Budget and Operating Plan First and Main North Business Improvement District.

Motion by Bennett, second by Gaebler, to approve the proposed 2014 Budget and Operating Plan for the First and Main North Business Improvement District.

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

The motion passed unanimously on a 9-0 vote.

24. Approval of the proposed 2014 Budget and Operating Plan Interquest North Business Improvement District.

Motion by Gaebler, second by Martin, to approve the proposed 2014 Budget and Operating Plan for the Interquest North Business Improvement District.

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

The motion passed on a 7-2 vote.

25. Approval of the proposed 2014 Budget and Operating Plan for the Interquest South Business Improvement District.

Motion by Bennett, second by Martin, to approve the proposed 2014 Budget and Operating Plan for the Interquest South Business Improvement District.

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

The motion passed on a 6-3 vote.

26. Approval of the proposed 2014 Budget and Operating Plan Powers & Woodmen Commercial Business Improvement District.

Motion by Gaebler, second by Martin, to approve the proposed 2014 Budget and Operating Plan for the Powers & Woodmen Commercial Business Improvement District.

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

The motion passed unanimously on a 9-0 vote.

PUBLIC HEARINGS

27. CPC DP 03-00259-A7MN13: (Quasi-Judicial Matter) Public Hearing on an appeal by William Louis of Flynn, Wright and Fredman, LLC, on behalf of Hannah Polmer regarding the Planning Commission's action of September 19, 2013 approving a minor amendment to the Broadmoor Event Center Development Plan to allow a 4,192 square-foot addition to the Carriage Museum adjacent to the Events Center for the construction of the Pikes Peak Hill Climb Museum located at 11 Lake Circle.

Legislative Counsel Massey described the order by which the Public Hearing was to be conducted. She also requested disclosure of any *ex parte* communications between Council and the applicant, appellant or any member of the public related to this matter. Councilmembers stated they had received e-mails relative to the matter.

Peter Wysocki, Planning and Development Director, introduced Mike Schultz, Land Use Review Planner II, who provided an overview of the project and the appeal.

Attorney William Louis provided a presentation detailing the issues of concern on behalf of the Appellant, Hannah Polmer. He requested on behalf of his client that Council preserve the e-mails they disclosed they had received on the matter in compliance with the Colorado Open Records Act.

John Maynard of NES, representing the El Pomar Foundation, appeared on behalf of the Applicant and described the plan for the property.

Appellant Public Testimony:

Dennis Keegan spoke to support the Appellant.

Applicant Public Testimony:

Victoria Lynn Heim spoke to support the Applicant.

Mr. Maynard rebutted on behalf of the Applicant.

Mr. Louis rebutted on behalf of the Appellant.

Kathleen Krager, Transportation Planning Manager, described reasons for traffic impact studies and stated they had no concern about issues with the Museum's traffic generation. At the request of Councilmember Martin, Ms. Krager also addressed estimated costs for performing a traffic impact study.

Mr. Wysocki described the review criteria for minor and major development plans.

Motion by Bennett, second by Gaebler, to deny the appeal.

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

The motion passed on a 6-3 vote.

28. AR DP 13-00182: (Quasi-Judicial Matter) Public hearing on an appeal by Northgate Highlands Neighborhood regarding the Planning Commission approval of the request by Mays and Company on behalf of American Bank of Commerce for consideration of a development plan for Lot 2, Northgate Point Filing No. 1 (First Choice Emergency Room). The plan proposes a 7,070 square-foot emergency care facility on 1.62 acres. The property is zoned PBC (Planned Business Center) and is located on the northwest corner of North Gate Boulevard and Meadowgrass Drive.

Peter Wysocki, Planning and Development Director, introduced Steve Tuck, Land Use Review Senior Planner, who provided background on the project and the appeal.

In full disclosure of any *ex parte* communications, Council stated that they all had received e-mail communications relative to this matter.

Jill Johnson, Denise Osborn, and Becky Butterfield spoke on behalf of the Appellant, Northgate Highlands Neighborhood.

Steve Meier and Mike Corey represented the Applicant.

Kathleen Krager, Transportation Planning Manager, responded to questions related to traffic flow.

Appellant Public Comment:

Denise Osborn reappeared to provide Public Comment.

Applicant Public Comment:

There was no Applicant Public Comment.

There was no Applicant rebuttal.

There was no Appellant rebuttal.

Mr. Wysocki provided final comment.

Motion by Bennett, second by Martin, to deny 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.

November 12, 2013 Work Session Agenda

Motion by Gaebler, second by Pico, to postpone the Work Session Agenda to Wednesday, November 20th, 2013, commencing at 10:00 a.m. in Council Chambers. Consensus of Council was unanimous.

At 11:02 p.m., there being no further business to come before City Council,

COUNCIL ADJOURNED

Sarah B. Johnson

Sarah B. Johnson
City Clerk