



City of Colorado Springs

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

Meeting Minutes City Council

City Council meetings are broadcast live on Channel 18.

Tuesday, March 10, 2015

1:00 PM

Council Chambers

1. Call to Order

Present: 8 - Councilmember Larry Bagley, President Pro Tem Merv Bennett, Councilmember Helen Collins, Councilmember Jill Gaebler, President Keith King, Councilmember Jan Martin, Councilmember Andy Pico, and Councilmember Val Snider

Excused: 1 - Councilmember Don Knight

2. Invocation and Pledge of Allegiance

The Invocation was led by Joey Jiminez, New Life Church Downtown.

The Pledge of Allegiance was led by Adabelle Wright, West Middle School.

3. Changes to Agenda/Postponements

Eileen Gonzalez, City Council Administrator, stated there were no changes to the agenda and took the opportunity to inform everyone City Hall has been equipped with Hearing Loop System technology to improve the ability of hearing aid users to hear City Council meetings.

4. Councilmember Comments

There were no Councilmember comments.

5. Consent Calendar

These items will be acted upon as a whole, unless a specific item is called for discussion by a Councilmember or a citizen wishing to address the City Council. (Any items called up for separate consideration shall be acted upon following the Mayor's Business.)

5A. Second Presentation:

- 5A.A.** [15-00138](#) Ordinance No. 15-15 authorizing execution of a Settlement Agreement and extension of water services outside the City Limits
Res/Ord Number: 15-15

This Ordinance was finally passed on the Consent Calendar.

- 5A.B.** [15-00141](#) Ordinance No. 15-16 amending the Zoning Map of the City of Colorado Springs relating 41.7 acres located west of Chapel Hills Drive and north of Research Parkway, east and adjacent to the Focus on the Family Campus, from PIP-1 (Planned Industrial Park) to PBC (Planned Business Center).
(Quasi-Judicial Matter)
Res/Ord Number: 15-16

This Ordinance was finally passed on the Consent Calendar.

- 5A.C.** [14-0398](#) Ordinance No. 15-17 amending Section 203 (Duties) and Section 204 (Emergency Operations Plan) of Part 2 (Office of Emergency Management) of Article 7 (Emergency Management) of Chapter 8 (Public Safety) of the Code of the City of Colorado Springs 2001, as amended pertaining to approval of the City's Emergency Operations Plan
Res/Ord Number: 15-17

This Ordinance was finally passed on the Consent Calendar.

- 5A.D.** [15-0040](#) Ordinance No. 15-18 providing for the platting of Blocks 203, 212 and 213 in Evergreen Cemetery
Res/Ord Number: 15-18

This Ordinance was finally passed on the Consent Calendar.

- 5A.E.** [15-0030](#) Ordinance No. 15-19 for a supplemental appropriation to the general fund in the amount of \$60,000 for the purpose of fulfilling an order to demolish a dangerous building
Res/Ord Number: 15-19

This Ordinance was finally passed on the Consent Calendar.

5B. First Presentation:

- 5B.A.** [15-00177](#) City Council Meeting Minutes February 24, 2015

The meeting minutes were approved as amended on the Consent Calendar.

- 5B.B.** [14-0699](#) A Resolution Authorizing an Intergovernmental Agreement between the City of Colorado Springs and the City of Manitou Springs for Operations of Manitou's Summer Shuttle Bus Service
Res/Ord Number: 19-15

This resolution was adopted on the Consent Calendar.

- 5B.C.** [15-00121](#) A Resolution Approving the Renewal of the \$1,000,000 Loan Agreement and Promissory Note Between the Great Outdoors Colorado Trust Fund (GOCO) and the City of Colorado Springs
Res/Ord Number: 20-15

This resolution was adopted on the Consent Calendar.

- 5B.D.** [15-00124](#) Ordinance No. 15-21 setting the salary of Mayor pursuant to City Charter § 13-20(a).
Res/Ord Number: 15-21

This Ordinance was approved on first reading on the Consent Calendar.

- 5B.E.** [15-00136](#) A Resolution of the City of Colorado Springs City Council to approve the Jimmy Camp Creek Drainage Basin Planning Study
Res/Ord Number: 21-15

This resolution was adopted on the Consent Calendar.

- 5B.F.** [15-0049](#) A Resolution amending Resolution No. 73-05 authorizing the Colorado Springs Airport to lease or grant the right of use airport property in excess of twenty-five (25) years but not to exceed ninety-nine (99) years for the purpose of economic development.
Res/Ord Number: 22-15

This resolution was adopted on the Consent Calendar.

- 5B.G.** [15-0050](#) A resolution authorizing the submission of Passenger Facility Charge (PFC) Application #21 to the Federal Aviation Administration increasing the total PFC funds to be collected for capital improvements at the Colorado Springs Airport.
Res/Ord Number: 23-15

This resolution was adopted on the Consent Calendar.

Approval of the Consent Agenda

Motion by President Pro Tem Bennett, seconded by Councilmember Pico, that all matters on the Consent Calendar be passed, adopted, and approved by unanimous consent of the members present. The motion passed by a vote of 8-0-1.

Aye: 8 - Bagley, Bennett, Collins, Gaebler, King, Martin, Pico, and Snider

Excused: 1 - Knight

6. Recognitions

6.A. [15-00110](#) Recognition of MATHCOUNTS regional competition winners

Ms. Gonzalez introduced the Regional MATHCOUNTS Winners. Mike Bartusek, MATHCOUNTS leader, provided an overview of the program and thanked the teachers and coaches who work with the children and City Council for their support. Team and individual winners were recognized. The winners will represent our City in the State competition March 21, 2015.

7. Citizen Discussion

Citizen Charles Barber spoke about an unfinished water project.

Citizen Janice Moglen provided a proclamation, read by Councilmember Bennett, in support of National Single Parents day.

Citizen Carl Strow spoke about corruption in the local government, the Helen Collins recall and the coming election.

Citizen Keesha Jackson thanked Council for supporting community transit and encouraged Council to recognize National Bus Driver's Day.

Courtney Stone, representing the Community Transit Coalition, stated the transit system is not meeting its maintenance of effort requirements.

8. Mayor's Business

Bret Waters, Chief of Staff, announced the Venezia Park ground breaking is scheduled for April 16, 2015 at 10:00am.

9. Items Called Off Consent Calendar

There were no Items Called Off the Consent Calendar.

10. Utilities Business

There was no Utilities Business.

11. Unfinished Business**11.A.** [15-0052](#) Ordinance No. 15-20 amending Ordinance No. 07-15 to redescribe the Colorado Springs Downtown Development Authority so as to include certain additional property.
(Legislative Matter)

Res/Ord Number: 15-20

Councilmember Collins stated she does not support this because she believes Business Improvement Districts hurt taxpayers.

Motion by President Pro Tem Bennett, seconded by Councilmember Gaebler, that the Ordinance amending Ordinance 07-15 to re-describe the boundaries of the Colorado Springs Downtown Development Authority to include the additional properties be finally passed. The motion passed by a vote of 7-1-1.

Aye: 7 - Bagley, Bennett, Gaebler, King, Martin, Pico, and Snider

No: 1 - Collins

Excused: 1 - Knight

12. New Business

12.A. [14-0649](#)

A Resolution Recognizing the History of Locomotive "Old 168" and Finding a Public Purpose is served by a Lease Agreement between the City of Colorado Springs on behalf of its Parks, Recreation and Cultural Services Department and the Cumbres and Toltec Scenic Railroad Commission, Providing for the Rehabilitation and Return to Service of Locomotive "Old 168"

Res/Ord Number: 24-15

Councilmember Bagley made motion to postpone this item to the March 24, 2015 meeting to allow changes to be made to the lease agreement and to allow Councilmember Knight to be present for the vote.

Councilmember Gaebler asked if there is a limited time-frame for this resolution to be adopted without causing delays. Matt Mayberry, Cultural Services Manager, Parks, Recreation and Cultural Services, stated March 12th is the deadline for this to be presented to the State Historic Preservation Office for National Register Review for approval. A two week delay would cause a six month delay in the process, adding he has been in communication with Councilmember Knight and is making every effort to address his concerns.

Motion by Councilmember Bagley, seconded by Councilmember Collins, that the Resolution be postponed to a date certain, the March 24, 2015 City Council Meeting. The motion failed by a vote of 1-7-1.

Aye: 1 - Collins

No: 7 - Bagley, Bennett, Gaebler, King, Martin, Pico, and Snider

Excused: 1 - Knight

Res/Ord Number: 24-15

Mr. Mayberry stated he met with Councilmembers Knight and Bagley to address the concerns presented by Council. Mr. Mayberry explained the

changes that have been made to the lease agreement and included in the Master plan to alleviate these concerns.

Councilmember Collins stated she has concerns about the \$600,000 required for the restoration not being currently available and requested follow-up reports on the restoration progress.

Councilmember Pico asked about the terms of the lease agreement, specifically regarding the condition of the locomotive on return. Mr. Mayberry stated the locomotive will be returned in display condition - looking as new as an old locomotive can look. John Bush, President, Cumbres and Toltec Operating, LLC, added the locomotive will be returned in as good of condition as when it was last restored in 1984, but will not be operational.

Motion by President Pro Tem Bennett, seconded by Councilmember Gaebler, that the Resolution and Lease Agreement between the City of Colorado Springs and the Cumbres and Toltec Scenic Railroad Commission for the use of locomotive 168 for the purposes outlined in the agreement be adopted. The motion passed by a vote of 7-1-1.

Aye: 7 - Bagley, Bennett, Gaebler, King, Martin, Pico, and Snider

No: 1 - Collins

Excused: 1 - Knight

12.B. [15-00114](#) Ordinance No. 15-22 establishing a Food Policy Advisory Board

Res/Ord Number: 15-22

Citizens Craig McHugh, Larry Stebbins, Melissa Martz, Alise Brockman and Dave Anderson, spoke in support of this ordinance.

Councilmember Gaebler stated the requested changes to the language in the ordinance from the previous work session have been made.

Councilmember Pico acknowledged his request to have this noted as being an advisory board had been included in the body of the ordinance, and questioned environmental stability being achievable in our climate and the meaning of transforming our system into an equitable and sustainable system. Councilmember Gaebler explained food security allows food availability, because it is produced locally and is accessible during crisis situations. Councilmember Gaebler also stated alternate growth systems such as green houses or hydroponics allow for year round food growth. Councilmember Gaebler added that some HOA's

limit or prohibit the growth of edible food products on citizen property.

Jeff Greene, El Paso County Administrator, stated the County supports this initiative and provided information about how the County plans to provide administrative and other support to this Board.

Council President King asked why this cannot be an advisory committee and not a formal board. Mr. Greene stated there is an emphasis on resiliency and importance when a stand-alone board is created.

Councilmember Collins stated it is sad that citizens are prohibit from growing what they want on their property, but she does not support this board as she feels there are too many boards already.

Councilmember Martin reminded Councilmember Collins that reducing the number of boards in our community has been an on-going Council goal adding Council needs to be flexible and support initiatives that are important to our community. Councilmember Martin stated she supports this board as an opportunity for the City to work with the County to set some regional policies to ensure sustainability.

Mr. Greene shared the research he has done into this idea and reminded citizens and Council about the Victory Gardens that sustained this country through WWII.

Councilmember Snider thanked Mr. Greene for his work on this and being here today.

Council President King stated this reminds him of the co-ops he remembers from earlier days and added he supports the idea but would like to see it go forward as a private initiative.

Motion by Councilmember Bagley, seconded by Councilmember Martin, that the Ordinance be approved on first reading. The motion passed by a vote of 5-3-1.

Aye: 5 - Bagley, Bennett, Gaebler, Martin, and Snider

No: 3 - Collins, King, and Pico

Excused: 1 - Knight

13. Public Hearing

13.A. [14-0785](#) CPC PUD 05-00301-2MJ12. Public hearing on a reconsideration of

City Council's previous action denying an appeal of City Planning Commission's denial of an appeal of an Administrative denial of an amendment to a previously approved development for the Dublin Terrace Townhome project. The amendment to the development and this hearing specifically pertains to the existing townhomes located at 6552, 6553, 6560, 6568, 6572, 6576, 6580, 6588, 6592, and 6596 Emerald Isle Heights.
(Quasi-Judicial Matter)

David Andrews, Legislative Counsel, polled Council regarding ex parte contacts and communications. Councilmember Pico stated he has seen the townhomes but has not spoken to anyone about them. Consensus of Council agreed they are able to fairly and impartially hear this matter.

Michael Gendill, Senior Attorney, City Attorney's Office, provided an overview of the City Attorney's Office request to override the Planning Decision regarding this development plan and a brief history of the case including the court rulings and orders. Mr. Gendill stated the focus of City Council's decision today is to assess the impact on anybody's rights, consider the review criteria presented, discuss what the planning commission considered and set up development review criteria.

Peter Wysocki, Director, Planning and Development, provided additional information about the development, the background of the construction and the efforts to reach an agreement on the case.

Councilmember Pico asked what the approved height of the buildings was and clarified that they were always approved as two-story buildings. Mr. Wysocki stated the buildings are approximately two to four feet taller than approved.

Greg O'Boyle, Attorney representing the Receiver, explained the Receiver represents those affected by the building company, Today's Homes, which went out of business. Mr. O'Boyle presented a summary of the case and the court order and entreated Council to make the best decision for the residents of the development and the City.

Mr. Wysocki provided an updated copy of the agreement to Council.

Andrew Checkley, Receiver for Heritage Homes dba Todays Homes and Alpen, Myers, Stuart, LLC, spoke in support of the settlement agreement presented today. Mr. Checkley expressed appreciation for the work done by City Planning and the City Attorney's Office to reach an

agreement that allows the development to move forward and stakeholders to be compensated and provided documents about the investment property rights of the investors and showed pictures of the completed units.

Gregg Baker, Commercial Appraiser, provided an estimated economic impact of the proposed agreement at the request of Mr. Checkley.

Jean Arnold, Attorney for the claimants, Pro Build and MC West Corp., explained the claimants are willing to make the sacrifice realized in the settlement for the good of the community and allow the situation to pass and move forward.

Steven Dexter, Representing PNC Bank, lender, stated the bank believes the settlement presented is fair and equitable to all parties represented.

Citizens Nicole Fagundo, Karrine Gibbons, and Wendy Fuller spoke in support of the agreement.

Citizens Jeanne English and John Gregg spoke in opposition of the agreement.

Councilmember Pico asked what the general zoning height limit for the area is. Mr. Wysocki stated the assumed maximum height for areas zoned PUD is 45 feet, the townhomes average 32 feet from ground to peak on average.

Councilmember Bagley asked what recourse the opposition has, suggesting maybe a taller fence, or larger trees. Mr. Wysocki stated options include additional conditions (trees and taller fences) being added to the agreement, but this may have an undesired impact on the agreement.

Mr. Wysocki also stated that the Planning Department cannot go back and disapprove the development plan that was approved several years ago and the City does not have view protection laws.

Councilmember Bennett stated this has not been a pleasant experience for anybody involved, the original problem causers cannot be brought back, and the court has ruled the previous decision cannot stand,

therefore; he made a motion to approve the plan as amended.

Councilmember Martin requested Mr. Wysocki provide information to Council to prevent situations like this from happening again in the future.

Motion by President Pro Tem Bennett, seconded by Councilmember Martin to approve the Dublin Terrace Townhome development plan amendment CPC PUD 05-00301-2MJ12, based upon the finding that as amended, the development plan meets the development plan review criteria set forth in City Code Section 7.5.502.E, and the fairness and equitable standard established by the District Court, subject to the following conditions:

1. Conditions pertaining to properties located at 6588 (Lot 71), 6592 (Lot 72) and 6596 (Lot 73) Emerald Isle Heights:

- a. The building consisting of the three townhomes ("Properties") shall be demolished by no later than December 31, 2015. All debris, including the foundation, shall be removed from the site and utility connections shall be appropriately capped.
- b. Within 30 days of the demolition and removal of the debris, the site shall be rough graded and seeded to stabilize the soils. The deadline for seeding, however, may be extended based on weather conditions and the time of year that the building is demolished.
- c. The Properties may be developed pursuant to the Dublin Townhome Development Plan approved by the City of Colorado Springs on November 13, 2006. To the extent possible, the grade of the Properties shall be lowered to be compliant with the approved 2006 Development Plan.

2. Conditions pertaining to properties located at 6520 (Lot 57), 6524 (Lot 58), 6528 (Lot 59), 6552 (Lot 64), 6556 (Lot 66), 6560 (Lot 66), 6568 (Lot 67), 6572 (Lot 68), 6576 (Lot 69), and 6580 (Lot 70) Emerald Isle Heights (collectively, the "Receiver's Townhomes"):

- a. A 6-foot high white vinyl fence shall be constructed along the south side (the side with the front doors) of each of the three townhome buildings comprising the Receiver's Townhomes. The width of the fence shall be the same width as the adjacent building. There will be a gap in the fence between the townhome buildings. The fence shall be located between the sidewalk and the top of the retaining wall. The fence materials shall be consistent with the existing white vinyl perimeter fence around the Dublin Terrace Townhome neighborhood.

3. Landscaping and irrigation along the south property line shall be installed in compliance with the landscape plan approved by City of Colorado Springs on November 12, 2006 adjacent to the Receiver's Townhomes. Two low level shrubs shall be installed on top of the slope along the fence, facing each individual townhome unit between the fence the sidewalk. Two evergreen trees shall be planted between the fences constructed adjacent to the townhome buildings (between Lots 63 and 64; 66 and 67; and 70 and 71; 59 and 60). The evergreen trees shall be approximately 8 feet in height and not subject to any particular stem caliper. The final landscape plan shall be approved by the City prior to installation.

4. Certificates of Occupancy for the residences located 6552 (Lot 64), 6556 (Lot 65), 6560 (Lot 66), 6568 (lot 67), 6572 (Lot 68), 6576 (Lot 69), and 6580 (Lot 70)

Emerald Isle Heights will not be issued until conditions I, II, and III above are met, including the fencing described in condition II. The fence described in condition II for residences located at 6536 (Lot 60), 6540 (Lot 61), 6544 (Lot 62), 6548 (Lot 63), 6588 (Lot 71), 6592 (Lot 72), and 6596 (Lot 73) shall be constructed when the lots are developed. The Parties understand that re-Inspection of the residences located at 6552 (Lot 64), 6556 (Lot 65), 6560 (Lot 66), 6568 (Lot 67), 6572 (Lot 68), 6576 (Lot 69), and 6580 (Lot 70) Emerald Isle Heights may be necessary. The City shall work with Pikes Peak Regional Building Department to facilitate inspections of the Receiver's Townhomes and issuance of Certificates of Occupancy. Only issuance of Certificates of Occupancy for the residences located at 6552, 6556, 6560, 6568, 6572, 6576, and 6580 Emerald Isle Heights shall be contingent upon the fulfillment of the conditions I, II, and III above. Conditions in Sections I and II that relate to a specific building or unit shall not be a condition precedent to the issuance of a Certificate of Occupancy on other units or buildings. Certificates of Occupancy will be issued for the remaining residences if they comply with the 2006 Development Plan and all amendments thereto.

Aye: 8 - Bagley, Bennett, Collins, Gaebler, King, Martin, Pico, and Snider

Excused: 1 - Knight

14. Added Item Agenda

There were no Added Agenda Items.

15. Executive Session

There was not an Executive Session.

16. Adjourn

There being no further business to come before City Council, Council adjourned.

Sarah Johnson, City Clerk