



City of Colorado Springs

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

Meeting Minutes Council Work Session

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Monday, August 7, 2017

1:00 PM

Council Chambers

1. Call to Order

- Present** 8 - Councilmember Yolanda Avila, Councilmember Merv Bennett, President Pro Tem Jill Gaebler, Councilmember David Geislinger, Councilmember Don Knight, Councilmember Bill Murray, Councilmember Andy Pico, and President Richard Skorman
- Excused** 1 - Councilmember Tom Strand

2. Changes to Agenda

Eileen Lynch Gonzalez, City Council Administrator, stated Items 8.F. and 8.G. have been moved to the beginning of the Agenda and Items 8.B., 8.C., and 8.D. have been moved to before Item 6.A. Financial Report.

3. Regular Meeting Comments

Councilmember Knight requested Item 12.A. from the minutes of the July 25, 2017 regular meeting be corrected to reflect that the applicant withdrew the application. Sarah B. Johnson, City Clerk, stated the correction will be made.

4. Review of Previous Meeting Minutes

- 4.A. [17-1189](#) City Council Work Session Meeting Minutes July 24, 2017

Presenter:
Sarah B. Johnson, City Clerk

Attachments: [7-24-2017 City Council Work Session Meeting Minutes Final](#)

The minutes of the July 24, 2017 Work Session meeting were approved by Consensus of Council.

5. Executive Session

5A. Open

5A.A. [17-1194](#) Open Executive Session

Presenter:
Wynetta Massey, City Attorney

Attachments: [2017-07-31-Council Memorandum with facts Final](#)

Consensus of Council agreed with the recommendation of The Civil Action Investigation Committee for the City to represent the Officer in the case as required by the Colorado Governmental Immunity Act and the Liability of Peace Officers Act.

5B. Closed

5B.A. [17-1166](#) In accord with City Charter art. III, § 3-60(d) and its incorporated Colorado Open Meetings Act, C.R.S. § 24-6-402(4)(b) and (e), the City Council, in Open Session, is to determine whether it will hold a Closed Executive Session. The issue to be discussed involves legal advice and negotiation consultation with the City Attorney regarding litigation pertaining to a regulatory enforcement action.

Presenter:
Wynetta Massey, City Attorney

Council President Skorman polled Council regarding the desire to proceed with a Closed Session. At least two-thirds of Council agreed to proceed in closed executive session.

6. Staff and Appointee Reports

6.A. [17-939](#) Financial Report - City of Colorado Springs

Presenter:
Charae McDaniel, Acting Budget Director

Attachments: [080717 August 2017 Financial Update Presentation w Grant slides.pptx](#)

Charae McDaniel, Acting Budget Director, presented the August 2017 Financial Update. Ms. McDaniel reviewed the activity through June 2017 for the general fund revenue information including sales and use tax, charges for services, fines, intergovernmental, and other taxes and miscellaneous which is primarily the surplus revenue transfer from Colorado Springs Utilities. She stated the general fund revenue is trending almost 3% above budget. She also said that Sales and Use Tax, Lodgers and Automobile Rental Tax (LART), and Road Tax are up.

6.B. [16-695](#) Agenda Planner Review

Presenter:

Eileen Lynch Gonzalez, City Council Administrator

Attachments: [080717 Agenda Planner Review MEMO](#)

Eileen Lynch Gonzalez, City Council Administrator, said due to the August 21, 2017 City Council Work Session meeting having numerous items scheduled to be presented, staff is willing to postpone the Bancroft Park update until September 11, 2017. Ms. Gonzalez stated the Colorado Springs Utilities Resolution relating to four properties for the upper Williams Creek Reservoir will be presented at the August 21, 2017 City Council Work Session meeting and again at the September 12, 2017 City Council Regular meeting. Ms. Gonzalez said a Resolution of recognition supporting September 2017 as National Preparedness Month will be presented at the August 22, 2017 City Council Regular meeting.

Councilmember Murray stated that he received a request for a group to present an economic report on recreational Marijuana in Colorado Springs at the August 21, 2017 City Council Work Session meeting. Councilmember Geislinger requested to review the full data results from the University of Denver study prior to the presentation. Consensus of Council agreed that they should postpone it until a later date.

7. Presentations for General Information

There were no presentations for general information.

8. Items for Introduction

- 8.A. [17-1041](#) A Resolution Approving the Assignment of 2017 Private Activity Bond Volume Cap Allocation to El Paso County

Presenter:

Bob Cope, Economic Development Manager

Attachments: [2017 Colorado Springs Assignment Exhibit A](#)
[2017 Private Activity Bond Allocation Cap Resolution.doc](#)
[Attachment I](#)

Bob Cope, Economic Development Manager, presented the assignment of the 2017 Private Activity Bond (PAB) unused allocation in the amount of \$22.5 million to El Paso County for qualified housing purposes. Mr. Cope explained the eligible activities included in the PAB and that if no action was taken, it would be returned to the State of Colorado.

Councilmember Bennett said he would like to continue to retain the City's access to bonding capacity with the unused allocation going to El Paso County. Councilmember Pico and Councilmember Geislinger requested information by December 2017 regarding if the bonding capacity could be used elsewhere such as stormwater projects. Bret Waters, Deputy Chief of Staff, said they will look into it.

- 8.B.** [17-973](#) An Ordinance amending Article 5 (Alcohol Beverages) of Chapter 2 (Business Licensing, Liquor Regulation and Taxation) of the Code of the City of Colorado Springs 2001, as amended, pertaining to Entertainment Districts, Common Consumption Areas, and Promotional Associations.

Presenter:

Sarah B. Johnson, City Clerk

Lee McRae, License Enforcement Officer

Attachments: [Sample Entertainment District Resolution \(2017-07-26 DRAFT\)](#)
[Entertainment Districts and Promotional Associations 2017-08-07](#)
[EntDistrictORD-2017-07-27](#)

President Pro Tem Gaebler stated the Ordinances and Resolution being presented today do not create an Entertainment District, they only enable an environment where an Entertainment District can occur if a business does decide to come forward with the request for an Entertainment District. Sarah B. Johnson, City Clerk, reiterated that this is enabling legislation to put the concept into City Code and Resolutions and expressed gratitude for all the individuals that had participated in the project.

Lee McRae, License Enforcement Officer, provided an explanation of the proposed Agenda Items 8.B., 8.C. and 8.D.

Councilmember Murray stated he strongly supports the proposed endeavor and expressed gratitude to the City Clerk's office for their diligence in providing details.

Councilmember Knight and Councilmember Geislinger asked for clarification on Council involvement in the establishment of a future Entertainment District and the public process that would be involved. Mr. McRae stated that setting the Entertainment District parameters would go before Council as a Resolution and the request to operate a Common Consumption Area (CCA) within an Entertainment District would entail a more extensive public process with the Promotional

Association (PA) (liquor licensee) and CCA application process, which includes the applicant proving the “needs and desires” of the area around the entire CCA.

Ms. Johnson clarified that when the Entertainment District is established, it is only setting the broad boundary where a PA and CCA may or may not occur and that all other regulations and questions could be discussed at that time. She said that citizens would be able to speak during that regular Council meeting to voice their concerns or questions. Ms. Johnson referenced rule 19.03.B of the Liquor and Beer Rules and Regulations for the City of Colorado Springs which outlined the requirements of public notice for a PA and the appeal process. She stated that the proof for neighborhood needs and desires, which is required by state law, is accomplished during the formation of the PA and CCA.

Councilmember Knight said the burden would be on the citizen to know about the establishment of the Entertainment District and it should be on the applicant to inform the neighborhood. Ms. Johnson stated that they will research the topic.

Susan Edmondson, President and CEO of Downtown Partnership, stated the Downtown Partnership Board were open to the Entertainment District concept, supportive of it, and really felt like they had been listened to during the process and discussions. She stated that if there is a concern of security and cleanliness, she feels there is a procedure in place to address it. She said that it is a very pro-business design.

- 8.C.** [17-1178](#) A Resolution accepting and adopting the Liquor and Beer Rules and Regulations for The City of Colorado Springs

Presenter:

Sarah B. Johnson, City Clerk

Lee McRae, License Enforcement Officer

Attachments: [Clerk-LiquorBoardRulesRES-2017-07-27](#)
[Clerk-LiquorBoardRulesRES-EXHIBITA-2017-08-22](#)
[Clerk-EntDistrictLIQUOR RULES-2017-08-22-redline](#)

Please see comments in agenda Item 8.B.

- 8.D.** [17-1179](#) An Ordinance amending Article 5 (Alcohol Beverages) of Chapter 2 (Business Licensing, Liquor Regulation and Taxation) of the Code of the City of Colorado Springs 2001, as amended

Presenter:
Sarah B. Johnson, City Clerk
Lee McRae, License Enforcement Officer

Attachments: [Clerk-CS_Ch2ORD-2017-08-22](#)

Please see comments in agenda Item 8.B.

- 8.E. [17-1167](#) A resolution adopting City Council's annual Report to the Citizens for 2016-2017, pursuant to City Charter Section 3-10(d).

Presenter:
Eileen Lynch Gonzalez, City Council Administrator

Attachments: [080717 Annual Report Resolution](#)
[2017 Council Report to Citizens DRAFT](#)

There were no comments on this item.

- 8.F. [17-1163](#) A resolution submitting to the registered qualified electors of the city of Colorado Springs, Colorado, at the coordinated election conducted by mail ballot to be held on Tuesday, November 7, 2017, the question of approval of ordinance no. 17- 69 authorizing the collection of stormwater service fees for the sole purpose of funding the construction, improvement, operation and maintenance of public stormwater facilities and a public stormwater system in the city; providing for the form of the ballot title and text; providing for certain matters with respect to the election; and providing the effective date of this resolution.

Presenter:
Mayor John Suthers
Tom Florczak, Deputy City Attorney

Attachments: [StormwaterFee-BallotRES-2017-08-2](#)

Mayor John Suthers stated there is clear indication that the stormwater infrastructure has not kept up with the rapid growth of the city. He stated that when the Stormwater Enterprise fee was originally implemented in 2005, citizens disliked that it was a separate quarterly bill and was based on impervious surface. Mayor Suthers explained that the fee was eliminated by City Council in 2009, one year after Colorado Springs Utilities negotiated a 1041 permit for \$825 million with Pueblo, CO. He stated the United States Environmental Protection Agency (EPA) conducted an audit in 2013 and again in 2015 and discovered there were serious violations of the Municipal Separate Storm Sewer System Permit (MS4 Permit) leading to litigation against the City. Mayor Suthers stated the City does not have a sustainable source of funding for

stormwater issues and a fixed rate monthly fee of \$5 per household on the Colorado Springs Utilities bill would be the simplest way to implement the stormwater fee. He explained that the City would be responsible for billing \$30 per acre per month for non-residential properties in which pervious surface areas would be considered. He stated the goal is to generate \$17-\$18 million in yearly revenue. He also stated the fee would not increase in the twenty years unless there is a court order, a change in the Intergovernmental Agreement (IGA) obligations, or requirements from federal or state permits.

Councilmember Murray stated that the EPA suit states a failure to adhere to standards and does not reference the absence of a dependable revenue source. Alan Gilbert, outside counsel representing the City in the MS4 case, stated the plaintiffs made it very clear in the settlement negotiations that they are interested in funding streams for the MS4 program.

Tom Florczak, Deputy City Attorney, stated that based on the discussion at the June 9, 2017 Mayor-Council retreat, the majority of Council indicated that reinstating the stormwater fee effective July 1, 2018 would be worth pursuing and getting it on the ballot for November, 2017. He stated that the Ordinance would require two approvals and that there are only two regular Council meetings prior to the September 8, 2017 deadline for the ballot language. Mr. Florczak went over the proposed changes to the City Code, in the Ordinance, and the details of the Resolution. He stated that the stormwater fee would not be Taxpayers' Bill of Rights (TABOR) related and spoke regarding the ballot language.

Councilmember Murray stated that the June 9, 2017 Mayor-Council meeting was consensus to proceed, not to approve. He said that it was not fair that Council is being asked to vote with only two weeks' notice.

Travis Easton, Public Works Director, provided the financial breakdown of annual estimated revenue from the proposed fee which totaled \$7.5 million for residential and \$10.5 million for commercial. He also stated the size of the lot is the most important part of the equation regarding runoff and not whether it is an impervious or pervious surface.

Councilmember Avila asked if a renter refused to pay the stormwater fee would their credit would be affected. Mr. Florczak responded that through Colorado Springs Utilities collection procedures, the property

owner would be ultimately responsible for payment.

Councilmember Knight stated that he does not support this initiative based on not having answers to his concerns and the absence of citizen input. He said there are several issues such as the one-size-fits-all stormwater fee for residential properties regardless of lot size, the July 1, 2018 implementation date, the chance of ballot failure being too high, and what the previously budgeted general fund money for stormwater per year that would become available if this fee is approved will be used for.

President Skorman asked what the cost would be if a special election was held. Sarah Johnson, City Clerk, stated the cost for the April 4, 2017 stand-alone election was approximately \$440,000 and the estimated cost for the November 2017 coordinated election would be \$137,264.50. Councilmember Knight said the amount of the stormwater fee over twenty years and the cost if the ballot measure fails would be far greater than the \$300,000 cost difference.

Councilmember Geislinger asked if the Stormwater Enterprise fee would be a separate spending authority from the City budget spending authority. Mr. Florczak confirmed that it would be and that the fees are exempt from TABOR regulation. Councilmember Geislinger also asked how stormwater projects were currently funded. Charae McDaniel, Acting Budget Director, replied that it is out of the general fund.

Councilmember Geislinger asked how much the City spends on Stormwater and MS4 projects. Travis Easton, Public Works Director, said \$14.3 million per year for capital projects and MS4 responsibilities and 2018 would be approximately \$10-14 million for capital projects and \$7.5 million for MS4 responsibilities. Councilmember Geislinger asked how impervious property such as streets, sidewalks and gutters contribute to the stormwater issue. Rich Mulledy, Water Resources Engineering Manager, explained what the MS4 compliance program mandates and stated that capital projects are designed for the hundred year storm event. Councilmember Knight stated that the \$17 million in revenue would only be spent on stormwater and would be in lieu of, not in addition to, the money that is already being spent.

Councilmember Murray asked if there were any legal ramifications with billing the stormwater fee through Colorado Springs Utilities. Mr.

Florczak said it was not an issue and explained how billing and payment for services would occur.

Jeff Greene, Chief of Staff, stated that the Stormwater Enterprise Ordinance addresses the already existing Stormwater Enterprise and does not set the ballot for the November 2017 election, but gives Council the opportunity to ask questions of staff regarding the issue. Mr. Greene said if the polling results from citizens are positive, there will be further conversation on August 22, 2017 regarding whether or not to proceed.

Councilmember Bennett said that the polling results will be returned before the Resolution is to be voted on and a special meeting may need to be held to discuss. President Skorman said they will have more information regarding the preference of the voters after the polling results are received. Councilmember Murray asked when will public hearings be held. President Skorman said that would be determined from the polling results.

Councilmember Knight asked to move the effective date to January 1, 2019 since the citizens have already granted \$6 million in stormwater funding for 2018 per a 2015 ballot item. Mr. Greene stated it is not in concrete and the effective date can be delayed until the systems have been fully evaluated. Councilmember Bennett said he can support the implementation date of January 1, 2019, but the July 1, 2018 date would free up six months of additional general fund money. Councilmember Knight requested a list of the projects in the Pueblo IGA and the projects in the TABOR ballot question that overlap and the ones that are independent of each other. Mr. Easton agreed to provide that information.

Councilmember Geislinger commented that a dedicated revenue stream addresses the responsibility to fund the stormwater obligation which would be an advantage in a litigation situation and that he supports a January 1, 2019 effective date.

Councilmember Murray said that it is the responsibility of Council to provide a solution, but if the information is incomplete, they should not vote for it. President Skorman said the City has a stormwater obligation for \$750 million in projects and it should be funded by an enterprise fee. Councilmember Knight suggested waiting and putting it on a February

2018 ballot after the details are worked out.

Councilmember Pico said he does not support the stormwater fee because the voters were against it in 2014 which resulted in funding stormwater projects out of the general fund. He also said he realizes there are many projects that need to be completed, but does not support asking the voters to pay for them. He stated the flat residential fee, regardless of house size, is not equitable and billing through Colorado Springs Utilities is the wrong way to bill it.

Councilmember Avila stated that she supports it and that Council needs to take responsibility to make it happen.

Councilmember Geislinger said that the City could be court ordered to pay even more in obligations and that judges prefer to see defendants taking responsibility for their obligations.

Mr. Greene stated that if Council approves the Ordinance, it is not setting the ballot question. The ballot would not be set until the Resolution being presented on August 22, 2017 is adopted. Mr. Greene said there was earlier favorable polling from various community and business leaders that supported a stormwater initiative and if the additional polling results do not come back favorable, there will be additional conversation regarding the next steps to be taken.

- 8.G.** [17-1164](#) Ordinance No. 17-69 amending sections of article 8 (Stormwater Enterprise) of Chapter 14 (municipal enterprises) of the Code of the City of Colorado Springs 2001, as amended, pertaining to the stormwater enterprise and stormwater service fees.

Presenter:
Tom Florczak, Deputy City Attorney

Attachments: [Ordinance Amending DStormwater Enterprise from G-rev-8-11-17.docx](#)

9. Items Under Study

There were no items under study.

10. Councilmember Reports and Open Discussion

Councilmember Bennett stated PlanCOS was hosting an event related to the Complete Creeks program on August 24, 2017 at Sand Creek.

Councilmember Murray and Councilmember Avila requested permission to attend the Smart Cities conference from October 2-5, 2017 in Washington D.C. Consensus of Council agreed.

Councilmember Knight stated that he attended a Fort Carson event on August 4, 2017 for the arrival of the new Deputy Commander for the 4th Infantry Division, Colonel William L. Thigpen. Councilmember Knight said there will be a Change of Command ceremony for Major General Ryan Gonsalves on August 24, 2017 and that he, Councilmember Pico, and Councilmember Strand will be attending the Change of Command ceremony at the United States Air Force Academy on August 11, 2017. Councilmember Pico stated that he will attend the Change of Command ceremony on August 24, 2017.

Councilmember Avila said she and Councilmember Murray attended the Wildflower Park barbecue and cleanup.

11. Adjourn

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

Sarah B. Johnson, City Clerk