



City of Colorado Springs

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

Meeting Minutes City Council

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Tuesday, April 11, 2023

10:00 AM

Council Chambers

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Estimated agenda item times are provided for planning purposes and do not constitute notice of a specific time for any item. Items may take more or less time than estimated. City Council may amend the order of items.

1. Call to Order and Roll Call

Present: 9 - Councilmember Yolanda Avila, Councilmember Dave Donelson, Councilmember Stephannie Fortune, President Randy Helms, Councilmember Nancy Henjum, Councilmember Bill Murray, Councilmember Mike O'Malley, President Tom Strand, and Councilmember Wayne Williams

Councilmember Fortune attended the meeting virtually.

2. Invocation and Pledge of Allegiance

The Invocation was made by Chaplain Colonel Retired Phil Wright.

President Strand led the Pledge of Allegiance.

3. Changes to Agenda/Postponements

Ryan Trujillo, Deputy Chief of Staff, requested item 11.B. be moved to after item 6.

Consensus of Council agreed to this change.

4. 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.)

4A. Second Presentation:

- 4A.A. [23-156](#) Ordinance No. 23-17 incorporating various amendments to the Code of the City of Colorado Springs 2001, as amended, as it relates to Chapter 7 (Unified Development Code) to coincide with the adoption of Unified Development Code.

Presenter:
Ben Bolinger, Legislative Counsel

Attachments: [UDC-CodeScrubALLChapters-2023-03-1](#)
[Signed Ordinance No. 23-17.pdf](#)

This Ordinance was finally passed on the Consent Calendar.

- 4A.B. [ZONE-23-00](#)
[06](#) Ordinance No. 23-18 amending the zoning map of the City of Colorado Springs to implement the Unified Development Code as it defines zone districts

Presenter:
Morgan Hester, Planning Supervisor
Ben Bolinger, City Attorney

Attachments: [CPC Staff Report](#)
[ZC-UDC_PCRzoning-2023-03-07](#)
[Exhibit A - Zone District Conversions](#)
[Signed Ordinance No. 23-18.pdf](#)

This Ordinance was finally passed on the Consent Calendar.

4B. First Presentation:

- 4B.A. [23-183](#) City Council Regular Meeting Minutes March 14, 2023

Presenter:
Sarah B. Johnson, City Clerk

Attachments: [3-14-2023 City Council Meeting Minutes Final](#)

The Minutes were approved on the Consent Calendar.

- 4B.B.** [23-094](#) A Resolution approving the Intergovernmental Agreement between the City of Colorado Springs and the State Of Colorado providing the Colorado State Patrol access to the Colorado Springs Police Department Airport Hanger Facility.

Presenter:

Mary Rosenoff, Deputy Chief, Colorado Springs Police Department
Frederick Stein, Public Safety Attorney

Attachments: [Resolution-CSPD-CSP IGA-Hanger-3-7-23](#)
[IGA - CSPD and CSP \(Hangar\)](#)
[Colorado Springs Airport Consent to Sublease](#)

This Resolution was adopted on the Consent Calendar.

- 4B.C.** [23-137](#) Ordinance No. 23-20 Platting a Columbarium in Evergreen Cemetery in Block 210

Presenter:

Kim King, Recreation and Administration Manager
Parks, Recreation and Cultural Services

Britt Haley, Director
Parks, Recreation and Cultural Services

Attachments: [3-27-23 - Cemetery New Columbarium Platting](#)
[Cemetery-EvergreenColumbariumORD-2023-02-24 - Final](#)
[Exhibit A - Map of Evergreen Cemetery](#)
[Exhibit B - Schematic of New Columbarium](#)

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

- 4B.D.** [23-122](#) A Resolution adopting the City Council's Annual Report to the Citizens for April 1, 2022 to March 31, 2023

Presenter:

Emily Evans, City Council Administrator
Alex Ryden, City Council Communications Specialist

Attachments: [Council Annual ReportDRAFT1_2022-23](#)
[Council Annual ReportFINAL_2022-23](#)
[Signed Resolution No. 52-23.pdf](#)

This Resolution was adopted on the Consent Calendar.

- 4B.E.** [23-172](#) A resolution approving an Economic Development Agreement between the City of Colorado Springs and Project Jade
Presenter:
Bob Cope, Economic Development Officer
Shawna Lippert, Senior Economic Development Specialist

Attachments: [EconDev-JadeRES-2023-03-14](#)
[Project Jade Economic Development Agreement 03-14-2023](#)
[EDA Presentation for City Council -Jade - WORK](#)
[Signed Resolution No. 53-23.pdf](#)

This Resolution was adopted on the Consent Calendar.

Approval of the Consent Agenda

Motion by Councilmember Donelson, seconded by President Helms, 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 9-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

5. Mayor's Business

- 5.A.** [23-207](#) A Resolution Confirming the Mayor's Appointment of Joel Pratt as Municipal Court Judge

Presenter:
John Suthers, Mayor

Attachments: [2023 Pratt Muni Judge Resolution \(002\)](#)
[Associate Muni Court Judge \(2023-15071\) Announcement](#)
[Joel Pratt - Application - Final](#)
[Signed Resolution No. 54-23.pdf](#)

Mayor Suthers presented the Resolution confirming the Mayor's appointment of Joel Pratt for a per diem position as a Colorado Springs Municipal Court Judge. Mayor Suthers gave a description of the per diem judge position, introduced Mr. Pratt, and provided an overview of Mr. Pratt's credentials for this position.

Mr. Pratt expressed appreciation for the opportunity and stated he is excited to serve the Municipal Court.

Mayor Suthers administered the Oath of Office.

Motion by Councilmember Murray, seconded by Councilmember Henjum, that the Resolution Confirming the Mayor's Appointment of Joel Pratt as Municipal Court Judge be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

6. Recognitions

- 6.A.** [23-119](#) A Resolution of Appreciation Designating April 16th Through 22nd, 2023 as National Volunteer Week

Presenter:

Wayne Williams, Councilmember At Large

Britt Haley, Director

Parks, Recreation and Cultural Services

April Allen, Analyst II - Community Engagement

Parks, Recreation and Cultural Services

Attachments: [4-11-23 - Volunteer Appreciation - Resolution](#)

[Signed Resolution No. 55-23.pdf](#)

Britt Haley, Director, Parks, Recreation and Cultural Services, spoke about the importance of volunteers, expressed appreciation for the over 3,000 volunteers who contributed hours of service to the community and for City Council recognizing the volunteers, and identified several of the many ways people are able to volunteer in the parks system and for storm water.

Adrian Vasquez, Chief, Colorado Springs Police Department, Randy Royal, Chief, Colorado Springs Fire Department, Stephanie Evitts, Citizens Advancing Public Safety (CAPS) Coordinator, and Yvette Runtez, Volunteer Coordinator, Colorado Springs Airport, expressed appreciation for all the volunteers in the community.

Motion by Councilmember Murray, seconded by Councilmember O'Malley, that the Resolution of Appreciation Designating April 16th through April 22nd, 2023 as National Volunteer Week be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

- 6.B.** [23-173](#) A Resolution Recognizing April 10-14, 2023 as Community Development Week

Presenter:

Randy Helms, President Pro Tem and Councilmember District 2

Barb Van Hoy, Policy Analyst, Community Development Division

Steve Posey, Community Development Manager

Attachments: [2023 CD Week Council Resolution Signed Resolution No. 56-23.pdf](#)

President Pro Tem Helms read a Resolution recognizing April 10-14, 2023 as Community Development Week.

Peter Wysocki, Director, Planning and Community Development, stated programs like these are vital in helping cities to create great communities, he expressed appreciation for all their partner organizations who help them meet the challenges of building and operating housing for low to moderate income families and those experiencing homelessness and the Community Development Division staff.

Steve Posey, Community Development Manager, stated the City has a very robust and important volunteer and nonprofit community.

Barb Van Hoy, Policy Analyst, Community Development Division, identified the impact of the Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), and Emergency Solutions (ESG) funds on residents in the community.

Motion by Councilmember Henjum, seconded by Councilmember Murray, that the Resolution recognizing April 10-14, 2023 as Community Development Week be adopted. The motion passed by a vote of 9-0-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

6.C. [23-192](#) A Resolution Recognizing April as Fair Housing Month

Presenter:

Nancy Henjum, Councilmember District 5

Attachments: [2023 Fair Housing Month Resolution Signed Resolution No. 57-23.pdf](#)

Steve Posey, Community Development Manager, stated Colorado was one of the first states to pass a Fair Housing law which was adopted prior to the Federal government adopting the Fair Housing Act.

Councilmember Henjum read a Resolution recognizing April as Fair Housing Month.

Motion by President Helms, seconded by Councilmember Murray, that the Resolution recognizing April as Fair Housing Month be adopted. The motion passed by a vote of 9-0-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

- 6.D. [23-202](#) A Resolution in recognition of Tom Strand's service to the City of Colorado Springs

Presenter:

Randy Helms, President Pro Tem and Councilmember District 2

Attachments: [Tom Strand Resolution](#)
[Signed Resolution No. 58-23.pdf](#)

President Pro Tem Helms presented the Resolution in recognition of Tom Strand's service to the City of Colorado Springs.

Councilmembers expressed gratitude for President Strand's service and accomplishments during his time on City Council.

President Strand expressed appreciation for his wife, Shannon, identified the number of City Council and Colorado Springs Utilities he attended, and the challenges that were faced during his time on City Council.

Motion by Councilmember Henjum, seconded by Councilmember Donelson, that the Resolution in recognition of Tom Strand's service to the City of Colorado Springs be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

- 6.E. [23-203](#) A Resolution in recognition of Bill Murray's service to the City of Colorado Springs

Presenter:

Dave Donelson, Councilmember District 1

Attachments: [Bill Murray Resolution](#)
[Signed Resolution No. 59-23.pdf](#)

Councilmember Donelson presented the Resolution in recognition of Bill Murray's service to the City of Colorado Springs.

Councilmembers expressed gratitude for Councilmember Murray's service and accomplishments during his time on City Council.

Councilmember Murray stated it has been an honor to serve on City Council, he expressed appreciation for the people who have supported him, stated true power of City Council lies in the discretion of making decisions which balance development and community, and thanked his wife, Susan.

Motion by Councilmember Murray, seconded by Councilmember Donelson, that the Resolution in recognition of Bill Murray's service to the City of Colorado

Springs be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

- 6.F.** [23-204](#) A Resolution in recognition of Wayne Williams' service to the City of Colorado Springs

Presenter:

Mike O'Malley, Councilmember District 6

Attachments: [Wayne Williams Resolution](#)
[Signed Resolution No. 60-23.pdf](#)

Councilmember O'Malley presented the Resolution in recognition of Wayne Williams' service to the City of Colorado Springs.

Councilmembers expressed gratitude for Councilmember Williams' service and accomplishments during his time on City Council.

Councilmember Williams spoke about serving the citizens during the pandemic, participating in the choosing of a new Chief Executive Officer for Colorado Springs Utilities, expressed appreciation for those who mentored him, his wife, Holly, his family, and those who have supported him. He spoke about his love of this community, family, of what they can do, and the Constitution.

Motion by Councilmember Henjum, seconded by Councilmember Murray, that the Resolution in recognition of Wayne Williams' service to the City of Colorado Springs be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

- 6.G.** [23-205](#) A Resolution in recognition of Stephannie Fortune's service to the City of Colorado Springs

Presenter:

Nancy Henjum, Councilmember District 5

Attachments: [Stephannie Fortune Resolution](#)
[Signed Resolution No. 61-23.pdf](#)

Councilmember Henjum presented the Resolution in recognition of Stephannie Fortune's service to the City of Colorado Springs.

Councilmembers expressed gratitude for Councilmember Fortune's service and accomplishments during her time on City Council.

Councilmember Fortune express appreciation for her husband, Kent, colleagues, serving the citizens of District 3, the Administration, and the

opportunity and privilege to serve and give a voice to people who did not think they have one.

Motion by Councilmember Murray, seconded by Councilmember O'Malley, that the Resolution in recognition of Stephannie Fortune's service to the City of Colorado Springs be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

6.H. [23-211](#) City Council Appointments to Boards, Commissions, and Committees

Presenter:

Tom Strand, Council President and Councilmember At Large

Attachments: [041023 Boards Commissions and Committee Appointments](#)

President Strand presented the City Council Appointments to Boards, Commissions, and Committees.

Sherryl Dillon, nominee appointee to the Law Enforcement Transparency and Advisory Commission (LETAC), expressed gratitude for the opportunity to serve.

Motion by Councilmember Murray, seconded by Councilmember Donelson, that the City Council Appointments to Boards, Commissions, and Committees be approved. The motion passed by a vote of 9-0-1-0

Aye: 8 - Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

Excused: 1 - Avila

7. Citizen Discussion For Items Not On Today's Agenda

Citizen Jenny Rush spoke about campaign signs being sabotaged, the vulnerability of election counting machines, and requested the City Council meeting be scheduled at a different time than the El Paso County Commission meeting.

Citizen Jim Miller requested City Council to take a stronger stand against the rapists, pedophiles, sex traffickers, and sex offenders in the community.

Citizen Lawrence Martinez expressed appreciation for the service of the Councilmembers who are leaving the dais, the voters who supported him in the election, and stated he will continue moving forward and helping the City heal the fractions between the Colorado Springs Police Department and the community.

Citizen Andrew Dalby expressed appreciation for Sarah B. Johnson, City Clerk, and her work conducting the municipal election and for the Resolution opposing Senate Bill 213. He stated he supports in person

voting as opposed to mail ballot voting and would like to see ballots segmented by precinct in order to conduct audits on a precinct level and advocates for development rights being held in trust by each neighborhood.

Citizen Jaymen Johnson expressed appreciation for the service of Councilmembers who will be leaving.

8. Items Called Off Consent Calendar

There were no items called off the Consent Calendar.

9. Utilities Business

- 9.A. [23-045](#) A Resolution Authorizing The Use Of Eminent Domain To Acquire Real Property Located At 2910 Austin Bluffs Parkway, Colorado Springs, Colorado Needed For The Central Bluffs Substation Project

Presenter:

Jessica Davis, Land Resource Manager, Colorado Springs Utilities
Travas Deal, Chief Executive Officer, Colorado Springs Utilities

Attachments: [Resolution Eminent Domain 2910 ABP Clean](#)
[CC Presentation 2910 ABP Condemnation Clean 3-13-2023](#)
[Signed Resolution No. 62-23.pdf](#)

Jessica K. Davis, Land Resource Manager, Colorado Springs Utilities (CSU), presented the Resolution authorizing the use of eminent domain to acquire real property located at 2910 Austin Bluffs Parkway needed for the Central Bluffs Substation Project. She provided an overview of the project, vicinity map, Central Bluffs Substation site, background of the property, and action requested.

Councilmember Donelson asked when the property owner contacted CSU. Ms. Davis stated last Thursday, April 6, 2023 and they have asked for a possession and use agreement and this Resolution would authorize the use of that agreement.

Renee Congdon, City Attorney's Office, provided an overview of possession and use agreements and stated City Council could approve that part of the Resolution today and come back at a later date if condemnation is required.

Councilmember Henjum requested additional information as to why this project is so important. Travas Deal, Chief Executive Officer, CSU, explained that there are three older, smaller substations which will be combined into one and they have gone through a two-year process which

has identified this location to be the best for both the rate payers, CSU, and has the least impact to the community.

Councilmember Murray stated there has been a consistent attempt to acquire this property and this Resolution should not be withheld due to the property owner delaying the transfer because either way, the property owner will be made whole.

Councilmember Williams stated the other parcels have been obtained through voluntary purchases, this parcel is needed to complete the project, this is an authorization Resolution so if a voluntary possession and use agreement is reached, there would not be a need to file an eminent domain action, and believes approval of this Resolution is appropriate.

Ann Turner, City Attorney's Office, went over the details of the landowner's rights when a condemnation action is filed.

President Pro Tem Helms asked if this parcel is commercial or residential. Ms. Davis stated it is commercial and one business occupies the entire facility.

President Pro Tem Helms and Councilmember O'Malley stated they support the Resolution as written.

Councilmember Donelson stated he will reluctantly support this Resolution and he would never want to use eminent domain or force property owners to acquiesce to the City's or CSU's needs or demands except in extreme situations and he is trusting that this would be a hardship to CSU to postpone this item.

There was no citizen comment.

Councilmember Donelson asked if the landowner was notified of this meeting. Ms. Davis confirmed they were.

Motion by Councilmember Murray, seconded by President Helms, that the Resolution authorizing the use of eminent domain to acquire real property located at 2910 Austin Bluffs Parkway, Colorado Springs, Colorado needed for the Central Bluffs Substation Project be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

10. Unfinished Business

10.A. [23-187](#)

Ordinance No. 23-19 amending Section 1001 (Office Of The City

Council Administrator) and Section 1002 (Powers And Duties Of City Council Administrator) 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 Powers And Duties Of The City Council Administrator

Presenter:

Tom Strand, Council President and Councilmember At Large
Randy Helms, Council President Pro Tem
Emily Evans, City Council Administrator
Michael Montgomery, Deputy City Council Administrator

Attachments: [OfficeCityCouncilAdministratorORD-2023-03-22](#)
[Signed Ordinance No. 23-19.pdf](#)

There were no comments on this item.

Motion by Councilmember Murray, seconded by Councilmember Williams, that the Ordinance pertaining to the powers and duties of the City Council Administrator be finally passed. The motion passed by a vote of 8-1-0-0

11. New Business

11.A. [23-163](#)

A resolution of the City Council of the City of Colorado Springs, Colorado approving the issuance of Lowell Metropolitan District Limited General Obligation Refunding Term Loan and Limited Tax General Obligation Refunding Bonds in an aggregate amount not to exceed \$7,120,000 and related bond documents for a district located in the southeastern area of downtown Colorado Springs.

Presenter:

Carl Schueler, Comprehensive Planning Manager
Peter Wysocki, Planning and Community Development Director

Attachments: [Resolution](#)
[Lowell MD Refinancing-Staff PP](#)
[Transmittal Letter, 2023-03-15](#)
[Transaction Summary to City - Lowell MD as of 2.13.23](#)
[NBH Bank Lowell MD Term Sheet 12.14.22](#)
[Senior Indenture - Lowell MD \(2022\) \(Jan 31 2023 v3\)](#)
[Subordinate Indenture - Lowell MD \(Jan 31 \)](#)
[PLOM \(01.3.23\) v2](#)
[Signed Resolution No. 63-23.pdf](#)

Carl Schueler, Comprehensive Planning Manager, Planning and Community Development Department, presented the Resolution approving the issuance of Lowell Metropolitan District Limited General Obligation

Refunding Term Loan and Limited Tax General Obligation Refunding Bonds in an aggregate amount not to exceed \$7,120,000 and related bond documents for a district located in the southeastern area of downtown Colorado Springs. He stated this is endorsed by the resident board and is the refinancing of existing debt and not the issuance of additional debt.

President Strand asked why this item is being presented at back-to-back City Council meetings. Mr. Schueler stated at the Budget Committee considered this item going back-to-back so the same Councilmembers could act at the Budget Committee, Work Session, and City Council meetings.

Citizen Chineta Davis stated she does not understand the \$7.1 million bond issuance. Mr. Schueler provided an overview of the district, location, district boundaries, district background/history, recent development status, 2004 bonds, refinancing summary, questions/comments from the Budget Committee, and next steps.

Ms. Davis asked who the bond holder is. Michael Lund, Senior Vice President, Piper, Sandler, representing the district, stated the current bond holder is Allstate Insurance Company and they want to get rid of it because they no longer invest in municipals of this credit quality and the new owner will be NBH Bank of Colorado (Community Banks of Colorado) and they do not know who the sub holder will be yet, but it will be an institutional investor.

Ms. Davis asked if the City will be paying this off. Mr. Lund stated there is no City obligation, only the current residents and property owners of the Lowell Metropolitan District have this obligation which is not new, it just sets them on a path to eventually paying it off. President Strand stated City Council only authorizes this refinance, but does not obligate the City to pay it.

Councilmember Donelson asked how much of a loss Allstate Insurance Company is taking in order to get rid of this investment. Mr. Lund stated they will be writing off approximately \$5.3 million.

Councilmember Donelson asked if this refinancing would provide an end date for the property owner's mill levy. Mr. Lund confirmed it does and currently, there is no end date, but with the new financing, there will be a forty-year discharge and are sizing the bond to be paid off in thirty years.

Ms. Davis asked how this will impact future residents of this district. Mr.

Schueler stated the present mill levy of 49.4 mills will remain the same, but will be limited to forty years.

Motion by Councilmember Murray, seconded by Councilmember Henjum, that the Resolution approving the issuance of Lowell Metropolitan District Limited General Obligation Refunding Term Loan and Limited Tax General Obligation Refunding Bonds in an aggregate amount not to exceed \$7,120,000 and related bond documents for a district located in the southeastern area of downtown Colorado Springs be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

11.B. [23-210](#) A resolution opposing Senate Bill 213 regarding state land use control

Presenter:

Wayne Williams, Councilmember At Large

Attachments: [Resolution Opposing SB23-213 State Land Use Signed Resolution No. 64-23.pdf](#)

Councilmember Williams provided an overview of the Resolution opposing Senate Bill 213 regarding state land use control. He stated this proposal would change the government structure in Colorado and shift land use decisions from local governments to the state which would take away the public being able to testify and provide input. Councilmember Williams stated there are significant things this Council has done to address affordable housing such as RetoolCOS, Sales Tax Fee Rebate Program, Development Fee Rebate Program, and other initiatives and also believes the proposed Bill violates the State Constitution's guarantee of local control in certain areas as a Home Rule City.

Councilmember Donelson stated he strongly supports this Resolution and municipalities should maintain their ability to address the needs of their citizens without a one-size-fits-all solution from the State.

Motion by Councilmember Donelson, seconded by Councilmember Murray, that the Resolution approving the issuance of Lowell Metropolitan District Limited General Obligation Refunding Term Loan and Limited Tax General Obligation Refunding Bonds in an aggregate amount not to exceed \$7,120,000 and related bond documents for a district located in the southeastern area of downtown Colorado Springs be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Donelson, Fortune, Helms, Henjum, Murray, O'Malley, Strand, and Williams

12. Public Hearing

12.A. [CUDP-22-00](#) An appeal of City Planning Commission's decision to approve a conditional use development plan for a licensed large daycare home with a maximum of twelve (12) children at 50 Mikado Drive East.
[15](#)

(Quasi-Judicial)

Presenter:

Peter Lange, Planner II, Planning & Community Development
Department

Peter Wysocki, Director, Planning and Community Development
Department

Attachments: [CPC Staff Report 50 Mikado Drive](#)
[Staff Presentation 4.11.23 50 Mikado Dr Daycare Appeal](#)
[CPC 3.8.23 Minutes draft](#)
[City Council Appeal packet](#)
[Project Statement](#)
[Conditional Use DP](#)
[Vision Map COS](#)
[Context Map](#)
[Community Comments](#)
[Applicant Response to comment letter](#)
[PublicComments_Support](#)
[PublicComments_Opposition](#)
[7.5.704 Conditional Use Permit Review Criteria](#)
[7.5.502\(E\) Development Plan Review Criteria](#)

Ben Bolinger, Legislative Counsel, City Attorney's Office, polled Council concerning if any members had received any ex parte communications. There were no ex parte communications disclosed.

Peter Lange, Planner II, Planning and Community Development, presented the appeal of City Planning Commission's decision to approve a Conditional Use Development Plan (CUDP) for a licensed large daycare home with a maximum of twelve children at 50 Mikado Drive East. He provided an overview of the application, a brief background, context map, project description, stakeholder notice/comment, Planning Commission's action, appeal of Planning Commission's approval, appellant's statement, conformance with PlanCOS/Unified Development Code (UDC), and staff recommendation.

Councilmember Donelson asked if the CUDP is denied by the City and the applicant reapplies to the State after June 5, 2023, would it be still be eligible to be appealed to City Council. Mike Tassi, Assistant Director, Planning and Community Development, stated they cannot because the UDC permits large daycares as small daycares so as adopted, it is a

permitted use and they are tracking the locations so they can apply any sort of separation requirements as necessary.

Councilmember Donelson requested any other previous condition uses which are now right by use in the UDC. Mr. Tassi stated he will provide that information.

President Pro Tem Helms asked what the size limitations are for small and large daycare centers. Mr. Tassi stated small daycares are authorized up to six children and there are some allowances for part-time care and the maximum for large daycares is twelve children.

President Pro Tem Helms asked if there have been any citizen complaints about this daycare having six children. Mr. Lange stated there have not been any formal complaints with regards to this facility.

Councilmember O'Malley asked how long the covenants, conditions, and restrictions (CCR) have been in place with the Raven Hills Homeowners Association (HOA) and if this business is prohibited under it. Mr. Tassi staff does not evaluate CCR.

Councilmember Murray asked if when the City authorized this to be a daycare center for six children, plus two children in part-time care in 2022, if the HOA raised any objections. Mr. Tassi stated there was not, but there is no notice issued for the permitting of a small daycare.

Councilmember Murray asked if the applicant rents this house or owns the property. Mr. Tassi stated she owns the property.

Councilmember Murray asked if this daycare center is inspected by the State. Mr. Tassi stated small daycares are not required to be inspected by the State.

Councilmember Murray asked how many home daycares are within a mile of this area or zip code and how many are needed within the City. Mr. Tassi stated he will provide that information.

Councilmember Donelson stated one of the biggest concerns from citizens regarding the RetoolCOS process would be that the lost the right to appeal to City Council and thought they had eliminated areas where that would happen which is why he is surprised by this information.

Christina Anderson, representing the appellant and Raven Hills HOA,

stated over eighty percent of the 220 residents are in opposition to the proposed conditional use permit, fifty individual letters of opposition were sent to Mr. Lange even though he said he only received three letters in opposition and four in support, the daycare currently has six full time and two part time children as well as a skills and craft class she provides for as many as eight children after school, and the applicant also advertised offering a summer camp out of her home on her website. She spoke regarding her concerns regarding the school traffic access for Rockrimmon Elementary School, fire evacuation on Mikado Drive, safety of the students, current investigation for too many children, neighbor complaints of noise, no license on file which is required for more than four children , health and safety inspections, and American with Disabilities Act (ADA) compliance, and conditional use attaches to the address not user/business .

President Pro Tem Helms asked if any neighbor has filed a complaint. Ms. Anderson confirmed one of the neighbors filed a noise complaint.

President Pro Tem Helms asked if the Rockrimmon Elementary School traffic creates a noise issue. Ms. Anderson stated it does not but adding four additional children to the backyard would.

Councilmember O'Malley stated CCR are legally binding documents and if the City issued a permit in violation of CCR, should the City take action to revoke it. Mr. Bolinger stated covenants are not law, HOA's are not governments, the City does not have jurisdiction to enforce covenants, is not part of the criteria on this application, and recommends that City Council does not discuss or consider them.

Councilmember Murray asked what actions have the HOA taken regarding the covenant violations. Ms. Anderson stated they have not made any motion that direction yet because they have been focused on City Planning and City Council hearings and they were not aware there was a small daycare there until November 2022. Councilmember Murray stated since they were not aware there was even a daycare there, it must not have been problematic to the community.

Councilmember Donelson asked why Ms. Anderson requested a values study. Ms. Anderson stated because they are a one hundred percent residential community and believes that a large daycare would negatively affect their property values.

Councilmember Donelson asked if the homes in that neighborhood have air conditioning. Ms. Anderson stated her home does not so she leaves her

windows opens on warm days.

Stacie Warren, representing the applicant, owner of Waldorf Sunflower House, provided an overview of the Colorado Department of Early Childhood regulations, exemption from State licensing requirements, licensing/permitting timeline, zoning process for Condition Use permit, childcare crisis, previously City approved daycares, government agencies regulating licensees, insurance coverage, neighbor comments, site location, testimonials, response from Raven Hills Homeowners Association (HOA), licensing requirements, report of inspection, Senate Bill 20-126, and nonprofit designation.

Councilmember Avila asked if any of the children are siblings. Ms. Warren stated she has two sets of siblings and provided an overview of the other children she cares for.

Councilmember Williams stated state statute 38-33.3.106.5 states prohibitions contrary to public policy include covenants prohibiting child care Mr. Bolinger stated he advises that City Council not discuss or consider covenants as criteria and covenants which prohibit the operation of large child care homes are void under state law.

Councilmember Williams asked if Ms. Warren was aware of the noise complaint. Ms. Warren stated she was not aware until it was presented at the public hearing.

Councilmember Williams asked what the HOA's response was when Ms. Anderson sent them information. Ms. Anderson stated there was no response from them.

Councilmember Williams asked how drop-off times are staggered. Ms. Anderson stated she assigns ten-minute allotments to the parents so there are rarely more than two or three cars in her driveway or in the adjacent parking lot.

Councilmember Williams asked if any of the parents who have children in the daycare also have children who attend Rockrimmon Elementary School. Ms. Anderson stated only her neighbor to the west of her has their daughter in daycare and a sibling attending the school.

Councilmember Murray asked if Ms. Anderson owns the house. Ms. Anderson confirmed she and her husband bought the house in March 2022.

Councilmember Murray asked how many employees work at the daycare. Ms. Anderson stated three, but only one person works as an attendant at a time.

Citizen Robert Warren ceded his time to Haley Kline Murphy, and Chris Jenkins ceded his time to Mary Jenkins who spoke in support of the large daycare.

Citizen Jim Schaffner, Susie Cooper, and Jenny Rush spoke in opposition of the large daycare.

Councilmember Williams asked Mr. Schaffner if he was aware of the daycare business before the notice of public hearing was provided. Mr. Schaffner stated he was aware of the increased traffic in the cul-de-sac and of the applicant providing daycare, but did not know it was a business.

Councilmember Donelson asked if the rest of the neighbors in the cul-de-sac were in consensus regarding the daycare. Mr. Schaffner stated he spoke with three of the five neighbors who said they are concerned about the property value of the homes decreasing.

Councilmember Murray asked Mr. Schaffner has any other concerns regarding the cul-de-sac outside of the daycare. Mr. Schaffner stated he does not.

Councilmember Henjum stated having a daycare center nearby may be very appealing to a family with young children. Mr. Schaffner stated the demographic of this subdivision consists of mostly retired or close to retirement age people.

Ms. Warren stated as part of her licensing requirements, she has taken four classes and has established an emergency evacuation/safety plan, a young family moved into the cul-de-sac three months after she moved there so she does not believe her childcare center is a deterrent, and the area has high childcare needs.

Councilmember O'Malley asked if Ms. Warren was signed up on ReadyCOS and knew her zone. Ms. Warren stated she was not, but she was enrolled in RedAlert so she would be notified of any emergency activity in the area, but she will look up ReadyCOS also.

Ms. Anderson stated the HOA Board was not notified directly from the

management company about the daycare because the email was sent in under the subject of "Budget", they never rejected communication from the two Architectural Control Committee (ACC) members who were appointed to the ACC by the HOA Board, they cannot site people for parking on the street, and one piano student receiving lessons once or twice a week is not the same as having twelve children multiple times of day.

Mr. Tassi stated he did a comparison on R1-6 zoning between the old City Code and RetoolCOS and the daycare use was the only use which changed from conditional use to permitted use.

Mr. Lange clarified that as part of the departmental review process, these applications are routed through the City's Traffic Engineering Division to see if there is any traffic impact and for this application, they found the amount of traffic generated by this use did not necessitate a traffic study. He stated the Colorado Springs Fire Department (CSFD) also reviewed this application and did not have any comments and with regards to the inquiries about state and City licensing permits, he did provide contact information for both of those representatives.

Councilmember Donelson stated the road was originally built for two lanes of traffic and now there are vehicles parked on each side and vehicles lined up for school. Katelyn Wintz, Planning Supervisor, Planning and Community Development, stated those items are evaluated by the Traffic Engineering Division, and they have made a determination that there are no significant impacts by the potential or future operation of this site to the existing road network and circulation.

Councilmember Murray asked if City Council approves the appeal if the applicant would be eligible to reapply after June 5, 2023 when the UDC goes into effect. Ms. Wintz confirmed they would. Mr. Tassi clarified that after June 5, 2023 there would not be a permit required. Ryan Trujillo, Deputy Chief of Staff, stated the UDC reflects state statute as a permitted use.

President Strand requested Planning staff be more supportive of the communities and neighborhoods both in support and opposition in future cases.

Councilmember Avila stated it is very difficult for people to find daycare anywhere in the City and this daycare provides an essential service to the community so she will not be supporting the appeal.

Councilmember Murray stated he will be voting against the appeal because the City needs this service, in two months this business will be permitted anyway, the HOA needs to sort out its internal issues to adapt and be considerate, and his biggest concern is making sure the children are safe.

Councilmember Donelson stated he feels it is a mistake that the UDC will hand off large daycares to the state and make them a use by right so he will be working with the City Attorney's Office to keep it as a conditional use. He stated he respects Ms. Warren's business as a small daycare, but believes a large daycare will negatively impact home prices in the neighborhood, a daycare desert is not a criteria for evaluating the appeal, and the impact of the noise would affect the quality of life for the surrounding neighbors to enjoy their private property which is why he will be voting in support of the appeal.

Councilmember Williams stated the criteria for conditional use states "substantially injured" and he does not believe this daycare adjustment to twelve children would create that level of impact and a home daycare would actually increase the value of the neighborhood so he will not be voting for the appeal.

Motion by Councilmember O'Malley, seconded by Councilmember Donelson, to approve the appeal, thereby over turning the Planning Commission's action to approve the large daycare Conditional Use Development Plan for the property located at 50 Mikado Drive East,. The motion failed by a vote of 2-7-0-0

Aye: 2 - Donelson, and O'Malley

No: 7 - Avila, Fortune, Helms, Henjum, Murray, Strand, and Williams

President Strand stated he understands the community's concern about

noise and change, but quality of life is in the eye of the beholder and looking through the report, City Traffic Engineering Division stated there was no traffic concerns related to the operation of the proposed large daycare project, CSFD stated they did not have any comments or exceptions to the Development Plan as submitted, City Engineering had no concerns or comments, and Stormwater Enterprise (SWENT) also had no comments.

**Motion by Councilmember Murray, seconded by Councilmember Avila, to deny the appeal, thereby upholding Planning Commission's action to approve the large daycare Conditional Use Development Plan for the property located at 50 Mikado Drive East, based on
the findings that the applicant complies with the review criteria set forth in City Code Sections 7.5.704 (Conditional Use) and 7.5.502.E (Development Plan), and that the appeal criteria found in City Code Section 7.5.906.B are not met. The motion passed by a vote of 7-2-0-0**

Aye: 7 - Avila, Fortune, Helms, Henjum, Murray, Strand, and Williams

No: 2 - Donelson, and O'Malley

13. Added Item Agenda

There were no items added to the Agenda.

14. Executive Session

There was no Executive Session.

15. Adjourn

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

Sarah B. Johnson, City Clerk