



City of Colorado Springs

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

Meeting Minutes City Council

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Tuesday, August 22, 2017

1:00 PM

Council Chambers

1. Call to Order

Present: 9 - Councilmember Yolanda Avila, Councilmember Merv Bennett, President Pro Tem Jill Gaebler, Councilmember David Geislinger, Councilmember Don Knight, Councilmember Bill Murray, Councilmember Andy Pico, President Richard Skorman, and Councilmember Tom Strand

2. Invocation and Pledge of Allegiance

The Invocation was made by Pastor Dr. David Tomme from the First Southern Baptist Church.

President Skorman led the Pledge of Allegiance.

3. Changes to Agenda/Postponements

Eileen Lynch Gonzalez, City Council Administrator, stated Items 7.A. and 10.A. relating to stormwater have been moved to before the Consent Calendar and that she received notification from staff that Items 12.B., 12.C., and 12.D. relating to the Robbin Place appeal has been requested by the appellant to be postponed until the September 12, 2017 City Council regular meeting. Ms. Gonzalez also stated that she received a request that Item 4B.B. be withdrawn from the Consent Calendar due to changes to the appointments to Boards and Commissions.

Consensus of Council agreed to these changes on the agenda.

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. [17-1148](#) Ordinance No. 17-70 of the City of Colorado Springs, Colorado

providing for the refunding of certain outstanding Utilities System Revenue Bonds of the City and escrow therefor; providing for the refunding of certain outstanding Commercial Paper Notes of the City; providing for the issuance and sale of the City of Colorado Springs, Colorado, Utilities System Refunding Revenue Bonds, Series 2017A-1 in an aggregate principal amount not to exceed \$140,000,000, Series 2017A-2 in an aggregate principal amount not to exceed \$110,000,000 and Series 2017A-3 in an aggregate principal amount not to exceed \$95,000,000

Presenter:

Bob Leshner, Manager, Treasury and Finance
Jerry Forte, P.E., CEO, Colorado Springs Utilities

Attachments: [Bond Ordinance - 2017A - SURETY VERSION \(v.2\) - sent to City Council \(46....docx\)](#)
[Colorado Springs Utilities Bond Purchase Agreement 2017.docx](#)
[DOCSOC-#1798383-v4-Series_2017_POS.DOCX](#)
[DOCSOC-#1798646-v6-The Utilities POS section.DOCX](#)
[Escrow Agreement - 2017A-1 \(45660604v2\).DOC](#)
[Paying Agent Agreement - 2017A \(45660363v2\).DOC](#)
[Ordinance Summary \(Second Publication\) \(46400730v1\).DOC](#)
[Signed Ordinance 17-70](#)

This Ordinance was finally passed on the Consent Calendar.

- 4A.B.** [CPC V 17-00019](#) Ordinance No. 17-71 Vacating Portions of Public Right-Of-Way Consisting of 0.57 Acre Located Along Dublin Boulevard East of Vista Del Tierra Drive

(Legislative)

Presenter:

Hannah Van Nimwegen, Planner II, Planning & Community Development
Peter Wysocki, Director of Planning & Community Development

Attachments: [ORD - BLR Fil 20 ROW Vacation](#)
[Exhibit A - Legal Description](#)
[Exhibit B - Legal Description Depicted](#)
[Signed Ordinance 17-71](#)

This Ordinance was finally passed on the Consent Calendar.

4B. First Presentation:

- 4B.A.** [17-1215](#) City Council Regular Meeting Minutes August 8, 2017

Presenter:

Sarah B. Johnson, City Clerk

Attachments: [8-8-2017 City Council Regular Meeting Minutes Final](#)

The Minutes were approved on the Consent Calendar.

4B.C. [17-1207](#)

The City Clerk reports that on June 2, 2017 there was filed with her a petition for the annexation of Airport Spectrum Addition No. 1. The City Clerk herewith communicates such to City Council and recommends that the petition and map be referred to the City Administration for review and recommendation regarding whether the petition is in substantial compliance with Section 31-12-107(1) .

Presenter:

Sarah B. Johnson, City Clerk

Attachments: [Petition - Airport Spectrum Addition No. 1.pdf](#)

[Vicinity Map - Airport Spectrum Addition No. 1.pdf](#)

This Item was approved on the Consent Calendar.

4B.D. [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](#)

This Resolution was adopted on the Consent Calendar.

4B.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](#)

[Signed Resolution 91-17](#)

This Resolution was adopted on the Consent Calendar.

**4B.F. [CPC ZC](#)
[17-00054](#)**

An ordinance amending the zoning map of the City of Colorado Springs pertaining to 1.46 acres from PBC (Planned Business Center) and C-6 (General Business) to PBC (Planned Business Center) located at the

southeast corner of North Academy Boulevard and North Carefree Circle

(Quasi-Judicial)

Presenter:

Peter Wysocki, Director Planning and Community Development
Michael Schultz, Principal Planner, Planning and Community
Development

Attachments: [ORD ZC CVS Store 11001](#)
[Exhibit A - Legal Description](#)
[Vicinity Map](#)
[CPC Staff Report CVS](#)
[Figure 1 - CVS Development Plan](#)
[Figure 2 - Project Statement](#)
[Figure 3 - Property Diagram](#)
[7.5.603 Findings - ZC req CA](#)
[CPC July 20 2017 - CVS Pharmacy Store # 11001- Consent Minutes](#)

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

- 4B.G.** [CPC DP 17-00055](#) A development plan for CVS Pharmacy Store Number 11001 consisting of 1.46 acres for the purpose of a 13,111 square foot pharmacy and retail store

(Quasi-Judicial)

Presenter:

Peter Wysocki, Director Planning and Community Development
Michael Schultz, Principal Planner, Planning and Community
Development

Attachments: [Figure 1 - CVS Development Plan](#)
[7.5.502.E Development Plan Review](#)

This Item was approved on the Consent Calendar.

Approval of the Consent Agenda

Motion by Councilmember Bennett, seconded by Councilmember Murray, 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, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

5. Recognitions

Mayor John Suthers read a Proclamation recognizing September 1, 2017 as Air Force Space Command Day. Lieutenant Colonel David Westover accepted the recognition and expressed appreciation on behalf of General Jay Raymond, Commander Air Force Space Command.

Councilmember Bennett read a proclamation of appreciation for Robert Shonkwiler who served six years on the City of Colorado Springs Planning Commission. Mr. Shonkwiler expressed gratitude for his experience.

Councilmember Bennett read a proclamation of appreciation for Eric Phillips who served six years on the City of Colorado Springs Planning Commission. Mr. Phillips stated that it has been a pleasure serving the City of Colorado Springs for the past six years.

Councilmember Bennett read a proclamation of appreciation for Sherrie Gibson who served three years on the Colorado Springs Planning Commission.

Eileen Lynch Gonzalez, City Council Administrator, recognized John Trylch, Community Engagement Manager for the City of Fountain, who participated in the Veterans Local Government Management Fellowship Program. Mr. Trylch expressed gratitude to Councilmember Murray and Council staff.

- 5.A. [17-1201](#) A Resolution to support September 2017 as National Preparedness Month in the City of Colorado Springs.

Presenter:
Bret Waters, Deputy Chief of Staff

Attachments: [2017 PreparednessMonth RES Final.doc](#)
[Signed Resolution 92-17](#)

Bret Waters, Deputy Chief of Staff, encouraged citizens to be prepared for hazardous events, emergencies, and disasters. Mr. Waters identified the numerous preparedness events throughout the community and introduced several public safety personnel members. Councilmember Strand read the Resolution to support September 2017 as National Preparedness Month.

Motion by Councilmember Strand, seconded by Councilmember Pico, that the Resolution be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

6. Citizen Discussion

Citizen George Woodhead spoke about solutions to homelessness and the successful program in Salt Lake City.

Citizen Rita Ague spoke about the issues of homelessness.

Citizen Kittie Sherich spoke about her daughter and the need for medical cannabis.

Citizens Kristina Lynn Setarros, Jenna Enriquez Robinson, and Misty Berry, with The Empowerment Solidarity Network, as well as Naomi Wood, Jacqui Miller, and Carrie Peterson spoke against white supremacy and hate groups.

Citizens Amy Gray and Karyna Lemus spoke in favor of changing Columbus Day to Indigenous Peoples Day.

Citizen Gerald Miller spoke in favor of walking bicycles through intersections and the miracle of the solar eclipse.

Citizens Luther Bonow, Clifton Black, Ingrid Henderson, Dale Hecht, Mike Elliott, and Jaymen Johnson spoke in favor of recreational marijuana.

Citizen Reverend Danny Davis, Legacy Wesleyan Church, spoke about utilizing parking lots for semi-homeless people.

7. Mayor's Business

- 7.A. [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](#)
[Signed Resolution 89-17](#)

Mayor John Suthers presented the Resolution for a ballot measure for the November 7, 2017 coordinated election asking voters to vote for an ordinance which would reinstate a stormwater fee to fund the Stormwater Enterprise. Mayor Suthers stated two large legal issues have occurred since the Stormwater Enterprise was defunded in 2009. The first one has been resolved with an Intergovernment Agreement (IGA) with Pueblo, CO which commits the City and Colorado Springs Utilities to pay \$460 million for the next twenty years and the other is an Environmental Protection Agency (EPA) lawsuit regarding the municipal separate storm sewer system (MS4) permit. Mayor Suthers stated that the City's position in the case would be more favorable if the City implemented a stormwater fee. He stated that two citizen polling results reflected that citizens want the stormwater fee billing to be simple, used only for stormwater projects, and have a termination date. Mayor Suthers said the stormwater fee would be effective July 1, 2018 through July 1, 2038. He said it would be \$5 per dwelling unit per month for residential property and \$30 per acre per month for non-residential properties. Mayor Suthers stated that the stormwater fee can only be increased by City Council within the twenty year term due to compliance with a valid court order, federal or state permits, federal or state laws, and the IGA with Pueblo.

Councilmember Strand asked if this fee would be required if it was not for the EPA litigation and the IGA. Mayor Suthers stated that if the City continues to fund \$20 million for stormwater needs out of the general fund, it will impair the ability to respond to the citizen needs in regards to police and fire.

Citizens Dirk Draper, Dave Munger, Roy View, Rachel Campbell, and Scott Anderson spoke in favor of the Resolution.

Citizen Luther Bonow commented that construction costs will increase in twenty years and asked the City to identify a creative way of generating revenue instead of asking the citizens to pay.

Ryan Macoubrie asked what the specific consequences of losing the EPA suit would be. Councilmember Bennett said there is the potential of every homeowner having to pay for the fine. Tom Florzak, City Attorney, said the EPA is seeking civil penalties along with injunctive relief. Councilmember Murray said this is an enforcement action and the EPA will hold the City accountable.

Citizen Jaymen Johnson stated that he supports the Resolution, but has reservations with the language of the ballot question and how the general fund money that is freed up from the stormwater obligations will be allocated.

Councilmember Murray agreed the City needs a stormwater solution and stated that three criteria should be used when reviewing the plan: transparency, completion, and an understanding of what the money will be going to. He stated there are too many unanswered questions and does not feel it should be billed through Colorado Springs Utilities.

Councilmember Geislinger stated the City is in this situation because of the decisions that were collectively made over the last several years. He said that this Resolution would provide a more effective process of governance and that he has trust in the future of the restored budget process.

President Skorman stated that no other city in Colorado takes stormwater expenses out of the general fund.

Motion by Councilmember Bennett, seconded by President Pro Tem Gaebler, that the 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 as amended be adopted. The motion passed by a vote of 6-3-0

Aye: 6 - Avila, Bennett, Gaebler, Geislinger, Skorman, and Strand

No: 3 - Knight, Murray, and Pico

8. Items Called Off Consent Calendar

4B.B. [17-1214](#) Appointments to Boards and Commissions

Presenter:

Jacquelyn Puett, Assistant to Council

Attachments: [082217 Boards and Commissions](#)

Eileen Lynch Gonzalez, City Council Administrator, stated that Angie Vehlewald is ineligible to be appointed because she is not a City resident and recommended appointing Rita Fitzpatrick to that position and appoint

Sarah Poe of the Council of Neighbors and Organizations (CONO) to the alternate position.

Motion by Councilmember Strand, seconded by President Pro Tem Gaebler, that the Item as amended to appoint Rita Fitzpatrick as a member in place of Angie Vehlewald and appoint Sarah Poe to the alternate position be approved. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

9. Utilities Business

- 9.A.** [17-958](#) Consideration of a Resolution Regarding Certain Changes to Utilities Rules and Regulations

Presenter:

Chris Bidlack, City Attorney's Office-Utilities Division
Jerry A. Forte, P.E., CEO, Colorado Springs Utilities

Attachments: [URR - Restated Vol. 5 - Final.pdf](#)
[8-8-2017 URR 2017 Hearing.pptx](#)
[2017_CAO_Instructions_URR_Hearing.docx](#)
[2017_URR_Rate_Hearing_Agenda.docx](#)
[2017 URR Supplemental Filing.pdf](#)
[2017_DO_URR-8-10-17.docx](#)
[Signed Resolution 93-17](#)

There were no comments on this item.

Motion by President Pro Tem Gaebler, seconded by Councilmember Bennett, that the Resolution regarding proposed changes to Utilities Rules and Regulations be adopted. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

10. Unfinished Business

- 10.A.** [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 AmendingDStormwater Enterprise from G-rev-8-11-17.docx](#)

Please see comments in Agenda Item 7.A.

Motion by Councilmember Bennett, seconded by Councilmember Geislinger, that the Ordinance 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 be finally passed . The motion passed by a vote of 6-3-0.

11. New Business

11.A. [17-1208](#)

An Emergency Ordinance Amending Ordinance No. 16-116 (2017 Appropriation Ordinance) for a Supplemental Appropriation to the Public Space and Development Fund in the Amount of \$450,000 to Fund the Completion of the John Venezia Community Park

Presenter:

Karen Palus, Director - Parks, Recreation and Cultural Services
Britt Haley, Design, Development and TOPS Manager - Parks,
Recreation and Cultural Services

Attachments: [08-21-17 Venezia Emergency Suppl Appropriation ORD.docx](#)

[8-21-17 - Venezia Community Park Supplemental Appropriation Presentation - Powerpoint - Final as of 8-11](#)

Karen Palus, Director, Parks, Recreation and Cultural Services, presented an emergency Ordinance for a supplemental appropriation in the amount of \$450,000 to fund the completion of the John Venezia Community Park which includes the installation of security cameras. Ms. Palus said that the vandalism is prevalent at all of the parks, but the Parkland Dedication Ordinance (PDLO) funding is only for new parks and new developments.

Councilmember Strand asked for clarification that the other six community parks have not experienced the same extent of the damage as John Venezia Community Park has had. Ms. Palus confirmed.

Councilmember Avila asked if any other parks were waiting for cameras to be installed. Ms. Palus confirmed there were. Councilmember Avila asked what the cost would be for cameras to be installed at Deerfield Hills. Ms. Palus said she will look into it, but that funding has not been allocated to it at this time. Ms. Palus also identified the higher priority projects.

Councilmember Geislinger said he is concerned about equity and asked if the funding from PDLO could only be used for new parks and older park repairs would have to be funded from the general fund. Ms. Palus confirmed. Councilmember Geislinger asked how to get citizens engaged with protection of the parks. Ms. Palus said community friends groups and the Police Department have been advocates in addressing some of the

issues.

President Skorman said he will be supporting it reluctantly.

Councilmember Bennett commented that the limitations on the PDLO use of funds were Council imposed.

Citizen Jaymen Johnson asked if penalties for vandalism offenders will be increased if his taxes are increased to pay for the damage.

Councilmember Pico said that the penalties are determined by the judge and that the PDLO is funded from developers not taxpayers.

Motion by Councilmember Pico, seconded by Councilmember Bennett, that the Ordinance for the supplemental appropriation for the John Venezia Community Park in the amount of \$450,000 with PLDO funds be finally passed. The motion passed by a vote of 8-1-0

Aye: 8 - Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

No: 1 - Avila

11.B. [17-1195](#)

A Resolution approving an Intergovernmental Agreement between the City of Colorado Springs and El Paso County Clerk and Recorder regarding the conduct and administration of the November 7, 2017 Coordinated Election

Presenter:

Sarah B. Johnson, City Clerk

Attachments: [Clerk-IGACoordinatedElectionRES-2017-08-07.docx](#)

[City of Colorado Springs IGA \(2\).pdf](#)

[Signed Resolution 94-17](#)

Sarah B. Johnson, City Clerk, stated that after the ballot question was voted on and approved, she filed the question with the El Paso County Clerk and Recorder and that it will be question 2A on the ballot.

There were no comments on this item.

Motion by Councilmember Bennett, seconded by Councilmember Murray, that the Resolution approving an Intergovernmental Agreement between the City of Colorado Springs and El Paso County Clerk and Recorder regarding the conduct and administration of the November 7, 2017 Coordinated Election be approved on first reading. The motion passed by a vote of 7-2-0

Aye: 7 - Avila, Bennett, Gaebler, Geislinger, Murray, Skorman, and Strand

No: 2 - Knight, and Pico

- 11.C. [17-1210](#) An Ordinance amending Ordinance No. 16-116 (2017 Appropriation Ordinance) for a supplemental appropriation to the General Fund in the amount of \$137,265 for November 2017 election expense

Presenter:

Charae McDaniel, Acting Budget Director

Attachments: [Ordinance - Supp Approp for Nov Election Expenses.docx](#)

There were no comments on this item.

Motion by Councilmember Bennett, seconded by Councilmember Strand, that the Ordinance approving a supplemental appropriation to the General Fund in the amount of \$137,265 for November 2017 election expense be approved on first reading. The motion passed by a vote of 7-2-0

Aye: 7 - Avila, Bennett, Gaebler, Geislinger, Murray, Skorman, and Strand

No: 2 - Knight, and Pico

- 11.D. [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](#)

Sarah B. Johnson, City Clerk, stated that this is enabling legislation to allow an Entertainment District concept, but does not approve an actual Entertainment District. Ms. Johnson stated that the Liquor Board unanimously approved the two Ordinances and the Resolution. She said the Liquor Board suggested amending the Resolution to include public notice of having the Promotional Associations (PA) put a notice of participation on the doors of the liquor licensees and having signage on their businesses when they have an event.

Jeff Greene, Chief of Staff, reiterated that this is enabling legislation.

Citizen Jaymen Johnson spoke in support of the Entertainment District and about the correlation between alcohol and cannabis.

Motion by President Pro Tem Gaebler, seconded by Councilmember Murray, that

the 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 be approved on first reading. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

- 11.E. [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](#)

Sarah B. Johnson, City Clerk, stated this Ordinance includes the Entertainment District concept as well as other clean-up language. Michael Gendill, City Attorney, read Section 2.5.701.A.1 of the City Code which reads "It shall be unlawful for any person to sell, serve or distribute any alcohol beverage by the drink for consumption on the licensed premises or to permit the consumption of any alcohol beverage any day of the week between the hours of two o'clock (2:00) A.M. and seven o'clock (7:00) A.M." Mr. Gendill also read the recommended change proposed by Councilmember Knight to include "unless more limited hours are specifically authorized in a Resolution authorizing and establishing an Entertainment District".

Councilmember Knight stated that this change was more than satisfactory.

Motion by Councilmember Strand, seconded by Councilmember Geislinger, that the 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 be approved on first reading. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

- 11.F. [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](#)

Sarah B. Johnson, City Clerk, stated this Item was provided for informational purpose and would be on the next Agenda for a vote along with the second reading on Item 11.D. and 11.E.

There were no comments on this item.

Motion by Councilmember Bennett, seconded by President Pro Tem Gaebler, that the Resolution accepting and adopting the Liquor and Beer Rules and Regulations for The City of Colorado Springs be postponed to the City Council meeting of September 12, 2017. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

12. Public Hearing

- 12.A. [17-987](#)** An appeal of an administrative approval of a Revocable Permit for a freestanding wireless broadband facility for Peak Internet located at Research Parkway and Chapel Hills Drive.

(Quasi-Judicial)

Presenter:

Meggan Herington, Planning & Community Development, Assistant Director

Peter Wysocki, Planning & Community Development Director

Attachments: [Peak Internet PowerPt_CC1](#)
[Exhibit 1 PermitPeak Internet](#)
[Exhibit 2 Appeal Letters](#)
[Exhibit 3 Correspondence](#)
[Exhibit 4 Letter to City of COS](#)

Meggan Herington, Planning & Community Development, Assistant Director defined a revocable permit and CMRS facility. Ms. Herington presented a vicinity map and photos of the facility and gave the history of the revocable permit. She stated that staff is recommending denial of the appeal due to federal regulations and allowances related to the rights of utility providers. She said the objections could be considered by the Mayor when the future renewal of the permit is required for Peak Internet.

Brandon Helm, Briargate Business Campus Owner's Association, representing the appellant, identified the boundaries, purpose, and problem. He stated that they attempted to contact Peak Internet with no response. Mr. Helm also reviewed the solutions that they had provided.

Councilmember Knight asked if the appellant offered to co-locate with the

existing light post. Mr. Helm said that was their preference. Ms. Herington stated that the light pole is a Colorado Springs Utilities infrastructure, but may have been a solution.

Councilmember Murray asked who gave Peak Internet permission to put the pole in the right-of-way. Ms. Herington said there were several City departments involved and that there was a lack of communication issue and the excavation permit was approved prior to the revocable permit.

Trip Nadzac, Peak Internet representative, said when the property owner changed where the equipment was previously located and the lease rent for their communication equipment became unfeasible, they had to find another location. Mr. Nadzac said that it would cost approximately \$23,000 to co-locate the equipment and that they prefer to own their own infrastructure for maintenance issues.

President Skorman asked what improvements will be made within the year. Mr. Nadzac stated they will make every effort to comply with City Code.

Councilmember Murray asked if Peak Internet could put a brushed silver sleeve on it or other options to comprise. Mr. Nadzac agreed to look into it. Ms. Herington said staff attempted to contact Peak Internet for a solution, but they did not respond.

President Pro Tem Gaebler was excused.

Councilmember Murray asked why they did not respond to City staff. Mr. Nadzac said that it was determined that if they needed to replace or co-locate, they would probably just take the pole down. He also stated that they pulled the City permit correctly.

Councilmember Knight asked if Council upholds the appeal, when Peak Internet would be required to take the pole down. Ms. Herington said they would look to Council for direction and commented that Peak Internet does have a right to be located in the public right-of-way so there would be a period of time where they stealth the facility. Marc Smith, City Attorney, said there could be a condition placed on the permit as part of the appeal and recommended that the amount of time given to remedy the situation should be within the term of the permit and that it is presented back to

Council for a hearing at that time.

Councilmember Strand asked when the first notice from the appellant was received. Ms. Herington stated a complaint was filed in November 2016 and the appeal was filed May 4, 2017. Councilmember Strand said that he is comfortable with giving Peak Internet ninety days to comply.

Councilmember Pico said there are other options for the facility and does not see a good faith effort from Peak Internet to resolve the issue.

Ms. Herington asked for clarification from Council as to their expectations. Councilmember Knight stated that if Peak Internet needs to purchase a new pole, 180 days might be needed to order it. He said that the requirement is to make it co-located, stealth with a brushed aluminum finish whether it is wrapped or replaced, or removal of the pole. Councilmember Pico agreed.

Councilmember Murray said that they should meet the City Code requirements within ninety days.

Councilmember Geislinger asked what was acceptable to the appellant. Mr. Helm said that Peak Internet should co-locate with the Colorado Springs Utilities light post. Ms. Herington said that the co-locate process may take more than ninety days.

There was no public comment.

Motion by Councilmember Knight, seconded by Councilmember Pico, to deny the appeal and uphold the granting of a revocable permit approval on the condition that Peak Internet has ninety days to comply with or show good faith progress toward compliance with City Code Section 7.4.607 or the City Council will set a hearing to determine whether or not to revoke the permit. The motion passed by a vote of 8-0-1

Aye: 8 - Avila, Bennett, Geislinger, Knight, Murray, Pico, Skorman, and Strand

Absent: 1 - Gaebler

12.B. [CPC SWP
16-00155](#)

A request to postpone an appeal of the City Planning Commission's approval of a subdivision waiver to allow primary legal access via a public alley and associated preliminary and final plat applications re-platting the subject property from three lots into six lots

(Quasi-Judicial)

Related File: CPC PFP 16-00155, AR NV 17-00141

Attachments: [EXHIBIT 1 appeal request](#)
[EXHIBIT 2 postponement request FW August 22nd City Council Meeting appeal item](#)
[Staff Report - CPC SWP 16-00155; CPC PFP 16-00156; CPC NV 17-00141 \(Robbin PI\)](#)
[FIGURE 1A.rev - Preliminary Plat](#)
[FIGURE 1B - Final Plat](#)
[FIGURE 2 - Project Statement](#)
[FIGURE 3 - emails](#)
[FIGURE 4 - Letters](#)
[FIGURE 5 - Appeal Letter](#)
[FIGURE 6 - OWN letter](#)
[FIGURE 7 - CGS Recommendations](#)
[FIGURE 8.rev - Geological Hazard Investigation](#)
[FIGURE 9 - Survey Ltr for Admin Relief](#)
[7.7.1302 Waiver of Subdivision Dev](#)
[CPC July 20 2017 543 Robbins Place Minutes](#)

This Item was postponed to the September 12, 2017 City Council Meeting.

Motion by Councilmember Bennett, seconded by Councilmember Strand, that appeal hearing of the City Planning Commission's approval of a subdivision waiver to allow primary legal access via a public alley and associated preliminary and final plat applications re-platting the subject property from three lots into six lots be postponed to the City Council meeting of September 12, 2017. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

12.C. [AR NV 17-00141](#)

A request to postpone an appeal of the City Planning Commission's approval of a nonuse variance for lot width and associated subdivision waiver to allow primary legal access via a public alley and preliminary and final plat applications re-platting the subject property from three lots into six lots

(Quasi-Judicial)

Related File: CPC SWP 16-00155, CPC PFP 16-00156

Attachments: [FIGURE 1A - Preliminary Plat](#)
[7.5.802 Nonuse Variance](#)

This Item was postponed to the September 12, 2017 City Council Meeting.

Motion by Councilmember Strand, seconded by Councilmember Bennett, that appeal hearing of the City Planning Commission's approval of a nonuse variance for lot width and associated subdivision waiver to allow primary legal access via

a public alley and preliminary and final plat applications re-platting the subject property from three lots into six lots be postponed to the City Council meeting of September 12, 2017. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

12.D. [CPC PFP
16-00156](#)

A request to postpone an appeal of the City Planning Commission's approval of a preliminary and final plat and associated subdivision waiver to allow primary legal access via a public alley applications re-platting the subject property from three lots into six lots

(Quasi-Judicial)

Related File: CPC SWP 16-00155, AR NV 17-00141

Attachments: [FIGURE 1A - Preliminary Plat](#)

[FIGURE 1B - Final Plat](#)

[7.7.102 Subdivision Plats Review Criteria](#)

[7.7.204 Preliminary Plat Req - Subdivision Plats Review Criteria](#)

[7.7.303 Final Plat Req - Subdivision Plats Review Criteria](#)

This Item was postponed to the September 12, 2017 City Council Meeting.

Motion by Councilmember Bennett, seconded by Councilmember Strand, that the appeal hearing of the City Planning Commission's approval of a preliminary and final plat and associated subdivision waiver to allow primary legal access via a public alley applications re-platting the subject property from three lots into six lots be postponed to the City Council meeting of September 12, 2017. The motion passed by a vote of 9-0-0

Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand

12.E. [AR NV
17-00123](#)

An appeal of the Planning Commission decision to approve a nonuse variance to allow two 19,230 square foot lots where 20,000 square feet is required in the R zone district located at 28 Polo Drive.

(Quasi-Judicial)

Related Files: AR NV 17-00024, AR PFP 17-00122

Presenter:

Lonna Thelen, Principal Planner, Planning & Community Development
Peter Wysocki, Planning and Community Development Director

Attachments: [FIGURE 1 - Preliminary Plat](#)

[7.5.802 Nonuse Variance](#)

[7.5.906 \(A\)\(4\)](#)

Marc Smith, City Attorney, discussed ex parte communications with City Council prior to proceeding with this Quasi-Judicial matter. All

Councilmembers indicated they have the ability to hear this matter and make a fair and impartial decision based on the review criteria presented.

Lonna Thelen, Principal Planner, Planning & Community Development, provided an overview of the 28 Polo Drive vicinity map, the existing property zoning, the plat configuration, and the neighborhood meetings that were held. She stated the neighborhood identified three areas of concern which included neighborhood character, drainage and geologic hazards. Ms. Thelen said the City Planning Commission voted 6-3 to approve the applications.

Councilmember Pico asked why the other lots in the area did not meet the 20,000 square feet requirement. Ms. Thelen said they were developed prior to the R zone district being placed on those properties.

Gary McLaughlin, the appellant, stated the neighborhood is opposed to subdividing the lot into two lots. Mr. McLaughlin compared the lot information to City Code 7.5.802 nonuse variance criteria for granting a variance. He identified the street conditions and the steepness of the property. He presented the lot sizes in the neighborhood and stated that there is not a need to divide the property.

Bruce Fallhowe, Manager for 28 Polo, LLC representing the applicant, stated the approval was granted by the Planning and Community Development Department to subdivide 28 Polo Drive into 30 Polo Drive and 12 Polo Circle on June 5, 2017 and that first appeal was denied on July 20, 2017. Mr. Fallhowe reviewed the subdivision process and the appeal application details. He explained how the property would be divided and how the houses would be set on the properties.

Councilmember Geislinger asked why 28 Polo Drive was not compared to the lots on top of it. Mr. Fallhowe stated those were located at the bottom of the hill on Bearpaw with a height difference of one hundred feet. Councilmember Geislinger also asked how big the size of the house was. Mr. Fallhowe replied approximately 4,000 square feet. He stated that by subdividing the lot and building two smaller houses, the drainage would improve on the lots.

Councilmember Knight asked what would be the undue property loss if Council upheld the appeal. Mr. Fallhowe said it would result in building a small home on 40,000 square feet of property as opposed to 20,000 square feet. Mr. Fallhowe said he provided public notice to forty-nine neighbors in regards to his intent.

Citizen Marjory Frost, Pat Severn, Susan Marquez, Audrey Matthew, Lisa

Sacco, Tom Perkins, Paul O'Brien, Aaron Johnson, Didi Dieterich, and Linda McLaughlin spoke in favor of the appellant.

Ms. Thelen stated that any landslide conditions were reviewed and approved by the geologic hazard report and that the preservation areas purpose is to retain land or water in the natural scenic or open condition and it cannot be changed unless it is for fire mitigation.

Councilmember Bennett said that due the multiple variances being requested, he would approve of the appeal.

Councilmember Geislinger said that the requested variances are very small and supports the denial of the appeal.

Councilmember Knight said that he supports to uphold the appeal because he feels the variances are sizeable and because the other surrounding lots that do not meet the criteria are legally non-conforming lots, not variance lots.

Councilmember Pico said at least half of the lots are below the lot size criteria, but they were grandfathered in and not due to variance.

President Skorman said he is going to vote to uphold the appeal because subdividing the lot sets a bad precedent and changes the nature of this neighborhood.

Motion by Councilmember Bennett, seconded by Councilmember Murray, to approve the appeal and overturn the City Planning Commission's decision to approve the nonuse variance allowing two 19,230 square-foot lots where 20,000 square feet is required, based upon the finding that the appellant met the review criteria contained in City Code Section 7.5.906.A.4. and that the nonuse variance request does not comply with the review criteria in City Code Section 7.5.803.B. The motion passed by a vote of 7-1-1

Aye: 7 - Avila, Bennett, Knight, Murray, Pico, Skorman, and Strand

No: 1 - Geislinger

Absent: 1 - Gaebler

12.F. [AR NV
17-00124](#)

An appeal of the Planning Commission decision to approve a nonuse variance to allow a 67-foot lot width at the rear setback line for Lot 1 and a 59-foot lot width at the rear setback line for Lot 2 where 100 feet of lot width is required at the front and rear setback line located at 28 Polo Drive.

(Quasi-Judicial)

Related Files: AR PFP 17-00122, AR NV 17-00123

Presenter:

Lonna Thelen, Principal Planner, Planning & Community Development
Peter Wysocki, Planning and Community Development Director

Attachments: [FIGURE 1 - Preliminary Plat](#)
[7.5.803.B Use Variance Review Criteria](#)
[7.5.906 \(A\)\(4\)](#)

Please see comments in Agenda Item 12.E.

Motion by Councilmember Bennett, seconded by Councilmember Murray, to approve the appeal denying the City Planning Commission's decision to approve the nonuse variance allowing a 67-foot rear yard lot width for Lot 1 and a 59-foot rear yard lot width for Lot 2 where 100 feet is required, based upon the finding that the appellant did not meet the review criteria contained in City Code Section 7.5.906.A.4 and that the nonuse variance request does not comply with the review criteria in City Code Section 7.5.803.B. The motion passed by a vote of 6-1-2

Aye: 6 - Bennett, Knight, Murray, Pico, Skorman, and Strand

No: 1 - Geislinger

Absent: 2 - Avila, and Gaebler

- 12.G.** [AR PFP](#)
[17-00122](#) An appeal of the Planning Commission decision to approve the Preliminary and Final Plats to subdivide one 38,460 square-foot lot into two single-family lots located at 28 Polo Drive.

(Quasi-Judicial)

Related Files: AR NV 17-00123, AR NV 17-00124

Presenter:

Lonna Thelen, Principal Planner, Planning & Community Development
Peter Wysocki, Planning and Community Development Director

Attachments: [EXHIBIT A - Appeal Memo](#)
[Vicinity Map](#)
[CPC Staff Report_28 Polo](#)
[FIGURE 1 - Preliminary Plat](#)
[FIGURE 2 - Final Plat](#)
[FIGURE 3 - 28 Polo Appeal](#)
[FIGURE 4 - Project Statement](#)
[FIGURE 5 - 1st Review - neighborhood comments](#)
[FIGURE 6 - 2nd Review - neighborhood comments](#)
[FIGURE 7 - Record of Decision](#)
[FIGURE 8 - CGS Geologic Hazard Review](#)
[7.7.102 Subdivision Plats Review Criteria](#)
[7.7.204 Preliminary Plat Req - Subdivision Plats Review Criteria](#)
[7.7.303 Final Plat Req - Subdivision Plats Review Criteria](#)
[7.5.906 \(A\)\(4\)](#)
[CPC July 20 2017 - 28 Polo Minutes](#)

Please see comments in Agenda Item 12.E.

Motion by Councilmember Bennett, seconded by Councilmember Murray, to approve the appeal and deny the City Planning Commission's decision to approve the preliminary and final plats for 28 Polo Drive, based upon the finding that the appellant did not meet the review criteria contained in City Code Section 7.5.906.A.4 and that the preliminary and final plat request does not comply with the review criteria in City Code Section 7.7.102, 7.7.204, and 7.7.303. The motion passed by a vote of 7-1-1

Aye: 7 - Avila, Bennett, Knight, Murray, Pico, Skorman, and Strand

No: 1 - Geislinger

Absent: 1 - Gaebler

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

