



# City of Colorado Springs

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

## Meeting Minutes City Council

*City Council meetings are broadcast live on Channel 18. In accordance with the ADA, anyone requiring an auxiliary aid to participate in this meeting should make the request as soon as possible but no later than 48 hours before the scheduled event.*

---

Tuesday, March 9, 2021

10:00 AM

Council Chambers

---

### How to Watch the Meeting

Coloradosprings.gov/springstv | Facebook Live: Colorado Springs City Council  
Facebook Page @coscity Council | SPRINGS TV - Comcast Channel 18 / 880 (HD)  
- CenturyLink Channel 18

### How to Comment on Agenda Items

Before the meeting, you may email general comments for items not on the agenda or comments regarding agenda items to: [allcouncil@coloradosprings.gov](mailto:allcouncil@coloradosprings.gov)

During the meeting, those who wish to comment should submit their name, telephone number, and the topic or agenda item for comment via [allcouncil@coloradosprings.gov](mailto:allcouncil@coloradosprings.gov) in addition to calling +1 720-617-3426 United States, Denver (Toll) and entering this Conference ID: 773 914 721#

### 1. Call to Order

**Present:** 9 - Councilmember Yolanda Avila, Councilmember Jill Gaebler, Councilmember David Geislinger, Councilmember Don Knight, Councilmember Bill Murray, Councilmember Mike O'Malley, President Richard Skorman, President Pro Tem Tom Strand, and Councilmember Wayne Williams

### 2. Invocation and Pledge of Allegiance

The Invocation was made by Dr. Courtney J. Wright.

President Skorman led the Pledge of Allegiance.

### 3. Changes to Agenda/Postponements

Sarah B. Johnson, City Clerk, stated items 9.A. will be taken at 1:00 PM and item 12.A. will be taken after 1:00 PM. President Skorman stated Mayor's Business will be taken prior to Citizens Discussion.

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. [CPC ZC 20-00155](#) Ordinance No. 21-27 amending the zoning map of the City of Colorado Springs relating to 36.14 acres located on multiple parcels throughout The Farm development from PUD (Planned Unit Development) and A (Agricultural) to PK (Park).

(Quasi-Judicial)

Presenter:

Katie Carleo, Senior Planner, Planning & Community Development  
Peter Wysocki, Planning & Community Development Director

**Attachments:** [ORD\\_ZoneChange\\_TheFarm](#)  
[EXHIBIT A\\_Legal Description\\_The Farm Parks](#)  
[EXHIBIT B\\_The Farm Park Rezone](#)  
[Signed Ordinance 21-27](#)

**This Ordinance was finally passed on the Consent Calendar**

- 4A.B. [CPC V 19-00173](#) Ordinance No. 21-28 vacating portions of a public right-of-way described as the western portion of Metzler Avenue as platted in Metzler's Subdivision consisting of 0.157 of an acre.  
(LEGISLATIVE)

Presenter:

Ryan Tefertiller, Planning Manager, Planning and Community  
Development Department  
Peter Wysocki, Planning Director, Planning and Community  
Development Department

**Attachments:** [ORD\\_VacationROW\\_Metzler](#)  
[Exhibit A - Metzler ROW Vacation Legal](#)  
[Exhibit B - Metzler ROW Vacation Plat](#)

**This Ordinance was finally passed on first reading on the Consent Calendar**

- 4A.C. [21-010](#) Ordinance No. 21-29 authorizing the issuance and delivery of the City's Series 2021 multi-family housing revenue bonds for the Academy Heights Apartments project in one or more series, in the aggregate principal amount of \$22,000,000

Presenter:

Steve Posey, HUD Program Manager, Planning & Community Development

John Bales, Fred Marienthal, Kutak Rock LLP

Peter Wysocki, Director of Planning and Community Development

**Attachments:** [2021 Ordinance - Colorado Springs Academy Heights](#)

[2021 Tax Regulatory Agreement - Colorado Springs Academy Heights](#)

[2021 Project Loan Agreement - Colorado Springs Academy Heights](#)

[2021 Funding Loan Agreement - Colorado Springs Academy Heights](#)

**This Ordinance was finally passed on first reading on the Consent Calendar**

#### **4B. First Presentation:**

**4B.A.** [21-132](#) City Council Regular Meeting Minutes February 23, 2021

Presenter:

Sarah B. Johnson, City Clerk

**Attachments:** [2-23-2021 City Council Meeting Minutes Final](#)

**The Minutes were approved on the Consent Calendar.**

**4B.B.** [21-159](#) Appointments to Boards, Commissions, and Committees

Presenter:

Michael Montgomery, Deputy City Council Administrator

**Attachments:** [030921 Boards Commissions and Committee Appointments](#)

**This Item was approved on the Consent Calendar.**

**4B.C.** [21-099](#) A resolution approving the issuance of debt in the form of Limited Tax General Obligation Bonds not to exceed \$6,475,000 for the Upper Cottonwood Creek Metropolitan District No. 3

Presenter:

Carl Schueler, Comprehensive Planning Manager, Planning and Community Development Department

**Attachments:** [Resolution\\_UpperCottonwoodCreekNo.3](#)

- [1- 2021 Cover Letter to Colorado Springs re Bond Submittal - UCC Nos. 3 & 4\)](#)
- [2- Public Improvements Spreadsheet](#)
- [3-2020-12-18 Upper Cottonwood Creek MD No. 3 2021 - Bond Details](#)
- [4- UCC 3 Cash Flow Summary](#)
- [5- Draft - UCCMD #3 Sale Certificate\(4395979.1\)](#)
- [6- Draft 2021 Bond Resolution - UCC MD No. 3](#)
- [7- Draft 2021 Bond Counsel Opinion UCC MD No. 3](#)
- [8- 2021-01-20 Upper Cottonwood Creek MD No. 3 - 2021 LT GO Fairness Letter by RBC Powerpoint](#)
- [Signed Resolution 30-21](#)

**This Resolution was adopted on the Consent Calendar.**

**4B.D. [21-100](#)**

A resolution approving the issuance of debt in the form of Limited Tax General Obligation Bonds not to exceed \$5,095,000 for the Upper Cottonwood Creek Metropolitan District No. 4

Presenter

Carl Schueler, Comprehensive Planning Manager, Planning and Community Development

**Attachments:** [Resolution\\_UpperCottonwoodCreekNo.4](#)

- [1- 2020-12-18 Upper Cottonwood Creek MD No. 4 2021 - Bond Details](#)
- [2- UCC 4 Cash Flow Summary](#)
- [3- Draft UCCMD # 4 - Sale Certificate\(4397130.1\)](#)
- [4- Draft 2021 Bond Counsel Opinion UCC MD No. 4](#)
- [5- Draft 2021 Bond Resolution - UCC MD No. 4](#)
- [6- 2021-01-20 Upper Cottonwood Creek MD No. 4 - 2021 LT GO Fairness Letter by RBC](#)
- [Signed Resolution 31-21](#)

**This Resolution was adopted on the Consent Calendar.**

**4B.E. [21-086](#)**

A resolution to approve CARES Act Substantial Amendment 2 to the 2020-2024 Consolidated Plan/2020 Annual Action Plan

Presenter:

Catherine Duarte, AICP, Senior Analyst, Community Development Division

**Attachments:** [CC resolution for 2020 CARES Act Amendment 2 Feb2021](#)  
[Colorado Springs ConPlan Amendment 2 draft for website](#)  
[Community Development Guide to CARES Act Funding Feb9](#)  
[Amendment 2 2020-2024 ConPlan and 2020 Action Plan Feb22 CC presentation](#)  
[Signed Resolution 32-21](#)

**This Resolution was adopted on the Consent Calendar.**

- 4B.F. [21-119](#)** Ordinance No. 21-31 amending Ordinance No. 20-92 (2021 Appropriation Ordinance) to decrease the appropriation in the Grants Fund (103) in the amount of \$2,586,451 and the HOME Grants Fund (102) in the amount of \$315,715, and to increase the appropriation of the Pikes Peak America's Mountain enterprise fund (460) in the amount of \$750,000 for anticipated grants in 2021, and the CDBG Grants Fund (101) in the amount of \$2,152,166, to correct the dollar amount of appropriation in each of these Grants Funds
- Presenter:  
Charae McDaniel, Chief Financial Officer  
Chris Wheeler, Budget Manager

**Attachments:** [Ordinance-Grants Funds corx to 2021 Appropriation](#)

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

- 4B.G. [21-123](#)** A Resolution Amending Resolution No. 131-20 Modifying the 2021 Sand Creek Basin Fees.
- Presenter:  
Richard Mulledy, P.E., Stormwater Enterprise Manager, Stormwater Enterprise  
Erin Powers, P.E., Senior Engineer, Stormwater Enterprise

**Attachments:** [Resolution for 2021 Sand Creek Fees](#)  
[Exhibit A - 2021 Proposed Fee Schedule](#)  
[Exhibit B - 2021 Fee Schedule](#)  
[Exhibit C - Staff Report to Drainage Board](#)  
[Exhibit D - Resolution 131-20](#)  
[Sand Creek Fee Adjustment 2021](#)  
[Signed Resolution 33-21](#)

**This Resolution was adopted on the Consent Calendar.**

- 4B.H. [21-134](#)** A resolution adopting and approving the Intergovernmental Agreement between the City of Colorado Springs and El Paso County, Colorado for the Homeland Security Grant Program Urban Area Security Initiative

Presenter:  
Jim Reid, Director, Pikes Peak Regional Office of Emergency  
Management

**Attachments:** [EIPaso-City-HomelandSecurity-UASI-CouncilResolution](#)  
[2020-02-10-City-EIPasoCounty-IGA-UASI -FINAL](#)

**This Resolution was adopted on the Consent Calendar.**

- 4B.I.** [21-135](#) A resolution adopting and approving the Intergovernmental Agreement between the City of Colorado Springs and Teller County, Colorado for the Homeland Security Grant Program Urban Area Security Initiative

Presenter:  
Jim Reid, Director, Pikes Peak Regional Office of Emergency  
Management

**Attachments:** [2020-02-10-City-TellerCounty-IGA-UASI-DRAFT1](#)  
[Teller-City-HomelandSecurity-UASI-CouncilResolution](#)

**This Resolution was adopted on the Consent Calendar.**

- 4B.J.** [21-120](#) Ordinance No. 21-32 of the City of Colorado Springs, Colorado authorizing the termination by the City of existing Interest Rate Exchange Agreements delegating to the Utilities Chief Executive Officer or the Utilities Chief Planning and Financial Officer (or the Acting Chief Planning and Financial Officer, as applicable) the authority to determine the financial terms of transactions terminating such agreements; ratifying action heretofore taken and relating to such agreements; and providing other matters relating thereto

Presenter:  
Scott Shewey, Chief Planning and Finance Officer, Colorado Springs  
Utilities  
Aram Benyamin, Chief Executive Officer, Colorado Springs Utilities

**Attachments:** [Swap Termination Ordinance 2021](#)

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

- 4B.K.** [21-078](#) A Resolution Repealing Resolution 42-13 And Any Previous Resolutions Adopting Other Amendments To Prior Editions Of The "City Of Colorado Springs Rules And Procedures Of City Council" And Adopting The "City Of Colorado Springs Rules And Procedures Of City Council" Effective March 9, 2021

Presenter:  
Emily Evans, City Council Administrator  
Michel Montgomery, Deputy City Council Administrator

Carly Hoff, Legislative Analyst II

**Attachments:** [DRAFT 2021 Rules and Procedures of City Council Resolution](#)  
[Rules and Procedures of City Council FINAL](#)  
[Rules and Procedures of City Council FINAL REDLINE](#)  
[Signed Resolution 36-21](#)

This Resolution was adopted on the Consent Calendar.

## Approval of the Consent Agenda

Motion by Councilmember Williams, seconded by President Pro Tem Strand, 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 9-0-0-0

**Aye:** 9 - Avila, Gaebler, Geislinger, Knight, Murray, O'Malley, Skorman, Strand, and Williams

## 5. Recognitions

5.A. [21-15](#) A Proclamation recognizing March 21 as Colorado Single Parents Day

Presenter:  
Tom Strand, Council Pro Tem  
Janice Moglen

**Attachments:** [Colorado Single Parents Day](#)

President Pro Tem Strand read a letter from Senator Edward Kennedy addressed to Janice Moglen, Founder of Colorado Single Parents Day, in 2009 and the Proclamation recognizing March 21, 2021 as Colorado Single Parents Day.

Ms. Moglen provided a brief history of Single Parents Day.

Councilmember Geislinger and Councilmember Avila recognized the challenges which single parents face especially during the COVID-19 pandemic.

5.B. [21-169](#) A Proclamation celebrating March as Women's History Month

Presenter:  
Jill Gaebler, Councilmember District 5

**Attachments:** [Women's History Month](#)

Councilmember Gaebler gave a brief history of Women's History Month,

the women of the Rocky Mountain West and read a Proclamation celebrating March as Women's History Month.

Councilmember Avila spoke about some of the obstacles women face in the workforce and encouraged women to be their authentic selves.

Councilmember Geislinger recognized the contributions and challenges of women in society.

Councilmember Williams expressed appreciation for several women leaders in the community.

## **6. Citizen Discussion For Items Not On Today's Agenda**

Citizen Dr. Cahuilla Red Elk requested the removal of the Sand Creek Massacre plaque located on Cascade Avenue.

Citizens Lou Szody, Ash Stephens, Flannery Burdick Mitchell, and Meghan Burchfield spoke about the need for transgender equality in the community.

## **7. Mayor's Business**

- 7.A. [21-166](#) Nomination to appoint John Vasilakis to serve a four term on the Colorado Springs Housing Authority Board, expiring on April 1, 2025.

Presenter:  
Mayor John Suthers

**Attachments:** [John Vasilakis - Memo to CC.pdf](#)  
[John Vasilakis - Application Redacted.pdf](#)

Mayor John Suthers presented the nomination to appoint John Vasilakis to serve a four-year term on the Colorado Springs Housing Authority Board. He stated Mr. Vasilakis is an architect and the term is set to expire on April 1, 2025.

**Motion by President Pro Tem Strand, seconded by Councilmember Geislinger, to appoint John Vasilakis to serve a four-year term on the Colorado Springs Housing Authority Board, expiring on April 1, 2025 be approved. The motion passed by a vote of 9-0-0-0**

**Aye:** 9 - Avila, Gaebler, Geislinger, Knight, Murray, O'Malley, Skorman, Strand, and Williams

## **8. Items Called Off Consent Calendar**

There were no items called off the Consent Calendar.



## **9. Utilities Business**

### **9.A. [21-145](#) A Resolution Setting the Gas Cost Adjustment effective March 11, 2021**

Presenter:

Scott Shewey, Chief Planning and Finance Officer, Colorado Springs Utilities

Aram Benyamin, Chief Executive Officer, Colorado Springs Utilities

**Attachments:** [03-09-2021 CC Mtg-GCA Resolution](#)

[GCA Sheet 2.4 Rate Tbl - Redline](#)

[GCA Sheet 2.4 Rate Tbl - Final](#)

[GCA Schedule 1](#)

[GCA Alternatives Summary](#)

[Signed Resolution 37-21](#)

Scott Shewey, Chief Planning and Finance Officer, Colorado Springs Utilities (CSU), presented the Resolutions increasing Gas Cost Adjustment (GCA) rate to 54.77 per hundred cubic feet of natural gas effective March 11, 2021. He gave an overview of the extreme weather event which occurred February 13 through 16, 2021, the impact it had on the fuel prices, the natural gas price adjustment to recover those fuel costs over fourteen months, and how CSU will help customers with these unexpected utility costs. Mr. Shewey stated this will result in a monthly increase of \$21.99 for an average residential bill and gave an overview of the supply/demand issues, February prices, natural gas forward curve, 2021 forecasted fuel related expense, GCA alternatives, and sample total monthly bills. He identified the seasonal increase to monthly gas bills, customer information, cost adjustment information channels, and how CSU will help their customers.

Councilmember Geislinger asked if any customers lost power or were sick or died as a result of a loss of CSU service. Mr. Shewey stated to his knowledge, none.

Councilmember Knight stated the Electric Cost Adjustment (ECA) of approximately a \$7 increase will also be added to the customer's monthly bills in the near future and he believes with the current price of housing, Option three which stretches the repayment out for a longer period of time is the best option.

Councilmember Gaebler and Councilmember Williams stated they support the CSU recommended Option 2.

Councilmember Geislinger stated he sees the value in both Option 2 and Option 3, but that Option 2 is the best option due to unanticipated expenses which may arise.

President Pro Tem Strand asked what the fiscal impact would be to CSU if Option 3 was approved and customers were given an additional nine months to pay. Mr. Shewey stated the biggest impact would be on 2021 cash and debt service coverage and with Option 3 it would be 1.4 coverage ratio and Option 2 would be 1.5 coverage ratio. He stated the cash impact would be a \$20M difference.

President Pro Tem Strand stated many citizens do not have an additional twenty dollars a month to put towards their utility bill and he will be supporting Option 3.

Councilmember O'Malley stated in consideration of rate payers and their fixed incomes, he will be supporting Option 2.

Councilmember Murray stated he will be supporting Option 3 and if the economy takes an upturn, they can adjust the rate at that time.

Councilmember Williams stated if there is another weather incident next winter, the City needs to be prepared for it. President Pro Tem Strand stated he does not believe this situation will occur again in the near future. Councilmember Williams stated he is also concerned with the future production of natural gas.

President Skorman stated there is a movement to reduce greenhouse gas emissions and it will be more difficult to extract natural gas and he supports Option 2 which is a good balance.

Councilmember Geislinger stated in one way or the other the cost to the citizens will need to increase for either fourteen months or twenty-three months and that needs to be balanced with what CSU needs to continue to provide.

Councilmember Knight stated many people live check to check and Option 3 would be less painful to their cash flow.

Councilmember Avila stated it is important to remember who City Council is representing and ten dollars makes a big difference to them. She stated she will be supporting Option 3.

Citizen Cynthia Shivaya spoke in opposition of the proposed rate increase.

**Motion by Councilmember Knight, seconded by President Pro Tem Strand, that the Resolution for Option 3 be adopted. The motion failed by a vote of 5-4-0-0**

**Aye:** 4 - Avila, Knight, Murray, and Strand

**No:** 5 - Gaebler, Geislinger, O'Malley, Skorman, and Williams

Councilmember Knight encouraged City Council to have the same sense of urgency to repay rate payers in the event of an over-collection situation.

**Motion by Councilmember Gaebler, seconded by Councilmember Williams, that the Resolution for Option 2 be adopted. The motion passed by a vote of 9-0-0-0**

**Aye:** 9 - Avila, Gaebler, Geislinger, Knight, Murray, O'Malley, Skorman, Strand, and Williams

## **10. Unfinished Business**

- 10.A.** [CPC PUZ 20-00071](#) Ordinance No. 21-30 amending the zoning map of the City of Colorado Springs relating to 5.07 acres located at Silverstone Terrace and Villa Lorenzo Drive from PIP1/PUD/HS (Planned Industrial Park, Planned Unit Development with Hillside Overlay) to PUD/HS (Planned Unit Development: Residential (Single-Family Attached and Townhouse), 3.5-7.99 dwelling units per acre and Maximum Building Height 35-feet with Hillside Overlay).

(Quasi-Judicial)

Related Files: CPC MP 06-00065-A2MJ20, CPC PUD 06-00067-A5MN20

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development  
Peter Wysocki, Director, Planning & Community Development

**Attachments:** [ORD\\_ZoneChange\\_TuscanFoothillsVillagePhase4](#)

[Exhibit A - Legal Description](#)

[Exhibit B - Zone Change Depiction](#)

[Context Map](#)

[7.3.603 Establishment & Development of a PUD Zone](#)

[7.5.603.B Findings - ZC](#)

[Signed Ordinance 21-30](#)

Councilmember Knight stated the City needs to address the safety of the

citizens which live in this area to allow for quick egress in the event of a wildfire.

Councilmember Geislinger requested the City establish evacuation criteria for developments, but based on the current policy, he supports this proposal.

**Motion by Councilmember Williams, seconded by Councilmember O'Malley, that the Ordinance amending the zoning map of the City of Colorado Springs relating to 5.07 acres from Planned Industrial Park and Planned Unit Development with Hillside Overlay (PIP1/PUD/HS) to Planned Unit Development: Residential (Single-Family Attached and Townhouse), 3.5-7.99 dwelling units per acre and a Maximum Building Height of 35 feet, with Hillside Overlay (PUD/HS), based upon the findings that the request meets the review criteria for establishing a PUD zone, as set forth in City Code Section 7.3.603, and the review criteria for a zone change, as set forth in City Code Section 7.5.603 be finally passed. The motion passed by a vote of 7-2-0-0**

**Aye:** 7 - Avila, Gaebler, Geislinger, O'Malley, Skorman, Strand, and Williams

**No:** 2 - Knight, and Murray

## **11. New Business**

- 11.A.** [21-133](#) Ordinance No. 21-33 adding Article 29 (Vehicular Public Nuisances) to Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs.

Presenter:

Vince Niski, Chief of Police

David Edmondson, Commander Sand Creek Division

**Attachments:** [VehicularPublicNuisanceORD-2021-03\\_09\\_Clean](#)

[VPNO Procedure Chart](#)

[Vehicular Public Nuisance \(Version 2\)](#)

David Edmondson, Commander Sand Creek Division, CSPD, presented the Ordinance adding Article 29 (Vehicular Public Nuisances) to Chapter 10 (Motor Vehicles and Traffic) of the City Code and identified the amendment which changes the words "real property" to "motor vehicles". Amy Loft, Attorney, Prosecution Division, City Attorney's Office, identified where the references were located in the Ordinance.

President Pro Tem Strand requested additional information regarding why this Ordinance is necessary. Commander Edmondson gave examples of locations and types of behaviors the proposed Ordinance is addressing.

Councilmember Knight requested this item be continued at 1:00 PM so City Council has time to review the proposed changes.

**Motion by Councilmember Geislinger, seconded by Councilmember Williams, that that the Ordinance creating Article 29 (Vehicular Public Nuisances) to Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs creating the process for civil abatement of vehicular public nuisances as amended to replace the words “real property” to “motor vehicles” be approved on first reading. The motion passed by a vote of 9-0-0**

**Aye:** 9 - Avila, Gaebler, Geislinger, Knight, Murray, O'Malley, Skorman, Strand, and Williams

## **12. Public Hearing**

**12.A.** [AR NV  
20-00678](#)

An appeal of the City Planning Commission's decision to uphold the appeal of the administrative approval of a nonuse variance allowing a fence/retaining wall combination at a height of 7 feet 6 inches within the side-yard setback addressed as 21 Marland Road.

(Quasi-Judicial)

Related Files:

Presenter:

Meggan Herington, Assistant Director, Planning and Community Development

Peter Wysocki, Director, Planning and Community Development

**Attachments:** [CPC Staff Report - 21 Marland](#)  
[Approved Site Plan 21 Marland Road](#)  
[Record of Decision 21 Marland Road](#)  
[SWENT Email](#)  
[21 Marland Staff PP](#)  
[CPC Minutes 21MarlandRoad draft](#)  
[CC Appeal Letter Surofchek](#)  
[CC Surofchek Presentation without videos](#)  
[CC Surofchek 1 VideoEnteringGarage](#)  
[CC Surofchek 2 VideoExitingGarage](#)  
[CC Surofchek 3 VideoImprovement](#)  
[Exhibits A thru N Surofchek](#)  
[HOA Board Email Surofchek](#)  
[HOA letter of support Surofchek](#)  
[03.01.21 ltr tracy&surofchek HOA Response](#)  
[CPC Appeal Letter Tracey](#)  
[Tracy Response](#)  
[Code Enforcement Letter](#)  
[ILC](#)  
[RussAcufflettertoCity](#)  
[Photos for CPC Memo](#)  
[Neighbor Opposition](#)  
[7.5.906 \(B\) Appeal](#)  
[7.5.802.B Nonuse Variance Criteria](#)  
[7.5.802.E GuidelinesforReview NonuseVariance](#)  
[7.4.102 Fences or Walls](#)  
[7.5.906 \(A\)\(4\) Administrative Appeal.docx](#)  
[Williams Support 21 Marland](#)  
[Busch Support 21 Marland](#)  
[Tenney Exchange 21 Marland](#)  
[League 21 Marland](#)  
[Kohl Exchange 21 Marland](#)  
[Johnson Exchange 21 Marland](#)  
[Burkett.Melissa Grievance re 21 Marland Road variance](#)

Meggan Herington, Assistant Director, Planning and Community Development, presented the appeal of the City Planning Commission's decision to uphold the appeal of the administrative approval of a nonuse variance allowing a fence/retaining wall combination at a height of 7 feet 6

inches within the side-yard setback addressed as 21 Marland Road. She provided a vicinity map, photos of the fence and retaining wall, and gave an overview of City Code Section 7.4.102.A, staff findings in 7.5.802.B, and Planning Commission's decision on January 21, 2021.

Councilmember Knight asked if the retaining wall is directly on the property line. Ms. Herington stated it is just to the inside of the property line. Councilmember Knight asked if there is a way for the applicant to reduce the fence to six feet where it is currently at eight feet. Ms. Herington stated it could be cut down to four feet, but it may not serve its purpose of buffering vehicle lights from the neighboring driveway at that height.

Councilmember Williams asked when the fence was installed and when the complaint was filed. Ms. Herington stated it was installed in 2018 and the complaint was filed in September 2020. Councilmember Williams asked why staff approved the variance. Ms. Herington stated staff did not see the variance as a negative impact due to the screening and buffer the fence provided.

Councilmember Geislinger asked when the houses at 17 and 21 Marland Road were built. Ms. Herington stated there was an older home on the 17 Marland Road property which was demolished and reconstructed around 2006 and the home at 21 Marland Road is the original house which was built quite some time ago.

David Surofchek, owner of 21 Marland Road, representing the applicant of the non-use variance and the appellant, gave an overview of the purpose for the non-use variance, other instances of non-use variances in the area, 21 Marland City Planning Staff Report, letter from the Homeowners Association (HOA) on January 25, 2021, difficulties with entering and exiting the old driveway, need for privacy provided by the 6 foot picket fence, and provided a contour map of 17 and 21 Marland road from 2011 illustrating the downhill water drainage.

George and Amy Tracey, owner of 17 Marland Road, representing the Planning Commission (CPC) appellant, gave a brief history of the driveway extension and construction of the fence, identified the reasons they believe the CPC's decision is reasonable, why the fence height should be lowered, how the variance does have an adverse impact on the neighboring property. They stated the owner can reasonably use the property with a

six-foot fence/wall, now wants relief from City Code for a self-imposed condition and removed the natural fence.

Councilmember Williams asked why the neighbors feel they have an obligation to maintain the side of the fence facing their property. Ms. Tracey explained it is because it is on their property. Councilmember Williams asked if a spotlight and cameras have been aimed at the neighboring property. Ms. Tracey stated she shined them on workers at night when her husband was out of town.

Councilmember Geislinger asked when the actions toward the pending litigation began. Mr. Tracey stated April 2018 when foliage was removed for construction of the driveway, retaining wall, and fence.

Councilmember Knight asked what the HOA ruling is. Mr. Tracey stated they believe there is a covenant violation for building a retaining wall without an approval, but the HOA is remaining neutral regarding it at this time.

Mr. Surofchek read a letter provided by the HOA and stated the six-foot fence guidelines are not part of the covenant, the HOA will support the final decision issued by the City, and the foliage which was removed was located on his property.

Councilmember Knight requested additional details regarding the City Code amendments made in 2016 regarding measuring three-foot retaining walls. Ms. Herington gave an overview of the Ordinance amendments which were passed in 2016.

Councilmember Knight asked if there were any other City Code violations in the neighborhood. Mr. Wysocki stated even if they measured all the fences and retaining walls, some of them may be grandfathered if they were built prior to the 2016 City Code amendments.

Councilmember Knight asked if there were City Code regulations regarding light pollution. Mr. Wysocki confirmed there were.

Councilmember Geislinger asked if regardless of the outcome of City Council's decision regarding the non-use variance, if the court may make determinations from the pending litigation which could change City Council's decision. Wynetta Massey, City Attorney, the court may use City



Council's decision as to whether or not the fence complies with the City Code in City Council's view.

Councilmember O'Malley asked if denying the appeal will enforce City Code as written. Marc Smith, Corporate Division Chief, Office of the City Attorney, stated what is under consideration is whether the non-use variance review criteria in City Code Section 7.5.802.B has been met and to deny the appeal would be saying the criteria was not met.

Councilmember Knight stated the guidelines for review of use for a non-use variance, City Code Section 7.5.802.E., should also be considered. Mr. Smith stated that section does provide additional clarity.

Councilmember Williams stated there is a declared need for an eight-foot fence on the retaining wall, near the driveway, but not for the rest of the property and asked if City Council could approve that section and disapprove it for the remainder of the property. Mr. Smith stated special conditions may be imposed to mitigate potential adverse impacts. Ms. Herrington stated the site plan indicates the property line is the area closest to the driveway.

Councilmember Williams asked how much of the sixty feet of retaining wall which is in violation of City Code must be on the property line. Mr. Surofchek stated the entire area is supporting the driveway. Ms. Herrington explained that the fence located on the retaining wall is not eight feet for the entirety of the sixty feet of retaining wall. She stated due to the grade of the property, the height of the fence starts at six feet, eight inches, goes up to eight feet, and then back down to six feet, eight inches.

Councilmember Murray stated there is compelling evidence that other neighbors have other issues which will not be enforced, it was constructed in 2018, and he is in support of upholding the appeal.

Councilmember Knight stated the guidelines for review of a non-use variance state extraordinary or exceptional physical conditions that do not allow the use of the property and the only one which was heard was the inability to play basketball, this was a self-imposed condition, and there is an adverse condition on the neighbors so he will not be supporting to uphold the appeal.

Councilmember Geislinger stated he believes this is the use of a City process in order to achieve litigation advantage in a pending lawsuit between the parties, but he will not make it the basis for his determination and he does not believe it meets the standards for a non-use variance.

Councilmember Gaebler stated she believes this is a typical variance request and supports upholding staff's decision.

**Motion by Councilmember Murray, seconded by Councilmember Gaebler, to uphold the appeal, thus upholding the administrative approval of the nonuse variance for a 6-foot fence within 3 feet of the face of a retaining wall, based upon the findings that the appeal meets the appeal criteria set forth in City Code Section 7.5.906.A.4 and the nonuse variance criteria in City Code Section 7.5.802.B.. The motion passed by a vote of 5-4-0-0**

**Aye:** 5 - Avila, Gaebler, Murray, Skorman, and Williams

**No:** 4 - Geislinger, Knight, O'Malley, and Strand

### **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