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Title: A Resolution Approving Modifications to a Declaration of Protective Covenants and Authorizing Execution of Such Modified Declaration of Protective Covenants

Presenter:
Bethany Burgess, Senior Attorney
Jerry Forte, Chief Executive Officer, Colorado Springs Utilities

Sponsors:

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Attachments: 1. PPIR_CityCouncil Presentation_05-26-2016, 2. PPIR_Modification to Declaration of Protective Covenants_FINAL, 3. PPIR Deed Restrictions Resolution_FINAL, 4. PPIR Warranty Deed and Deed Restrictions, 5. Signed Resolution 56-16

Date	Ver.	Action By	Action	Result
6/14/2016	1	City Council	adopted	Pass
6/13/2016	1	Council Work Session	referred	

A Resolution Approving Modifications to a Declaration of Protective Covenants and Authorizing Execution of Such Modified Declaration of Protective Covenants

Presenter:

Bethany Burgess, Senior Attorney
Jerry Forte, Chief Executive Officer, Colorado Springs Utilities

Summary:

Colorado Springs Utilities (“Utilities”) was approached by Colorado Springs Police Chief Pete Carey, El Paso County Sheriff Bill Elder, and Fountain Police Chief Chris Heberer, on behalf of their public safety non-profit organization, the Colorado Training Institute for Public Safety (“COTIPS”), to determine whether Utilities would be willing to approve modifications to deed restrictions placed on a 200-acre parcel of land adjacent to Utilities’ Clear Spring Ranch property to allow development of a public safety training facility. This item seeks City Council approval of a Resolution approving modifications to the Declaration of Protective Covenants under which the restrictions were imposed.

Previous Council Action:

In 1996, by Resolution No. 64-96, the City Council approved the sale of the 200-acre parcel subject to a Declaration of Protective Covenants.

Background:

In 1996, Utilities was approached by Raceway Associates, LLC, then owners of what is now commonly known as the Pikes Peak International Raceway (“PPIR”), to determine whether Utilities would be willing to sell 200 acres of what was originally part of Utilities’ Hanna Ranches property. After considering this request, Utilities determined that the only purpose the 200 acres served for Utilities was as a buffer for Utilities activities at what is now Clear Spring Ranch. It was decided that it would be in the best interests of Utilities’ ratepayers to sell the property, so long as deed restrictions were imposed to ensure that the property continued to serve as a buffer. These deed restrictions were included in the attached Declaration of Protective Covenants recorded against the property at the time of the sale to Raceway Associates.

Recently, Utilities was approached by Police Chief Carey, Sheriff Elder, and Police Chief Heberer, to find out whether Utilities would consider modifying the deed restrictions to allow the property, which would be donated by the current property owner, North Park 200 LLC, to COTIPS, to be used for purposes of a public safety training facility. Specifically, they requested the following modifications to the Declaration of Protective Covenants recorded against the property:

1. The allowable uses and structures be expanded to allow a facility of this nature, with an understanding that other types of uses would still be prohibited or require additional approval from the City.
2. The elimination of the reverter clause in the Declaration of Protective Covenants.
3. The elimination of the prohibition against encumbrances over \$500,000 in the Declaration of Protective Covenants.

After internal review, Utilities believes each of these requests may be accommodated, subject to City Council approval by Resolution.

Utilities has no objection to modifying the allowable uses, as the proposed training facility is not expected to have any impact on Utilities’ operations on the Clear Spring Ranch property, so long as modified deed restrictions remain in place to prohibit other types of uses and development on the property.

Utilities also has no objection to elimination of the reverter clause. Under the Declaration of Protective Covenants, Utilities may enforce the Protective Covenants through an injunction, through recovery of any actual damages, or through a right of reversion. If Utilities were to ever exercise the reverter clause, it would have to pay the lesser of the appraised market value of the property or \$1,000,000. Because of the requirement to pay consideration in order to exercise the reverter clause, it is unlikely that Utilities would do so, given that it has already determined that there is no operational need for the property. Additionally, with the elimination of the reverter clause, Utilities would still be able to enforce any remaining deed restrictions by seeking injunctive relief or actual damages.

Lastly, Utilities has no objection to elimination of the prohibition on encumbrances, as this restriction was intended to ensure that if Utilities ever exercised the reverter clause described above, that it would not be in the position of buying the property back subject to encumbrances that could not be paid entirely out of the purchase price. In short, if the reverter clause is eliminated, there is no need for the prohibition on encumbrances over \$500,000.

Financial Implications:

No cost implications for Colorado Springs Utilities. The Colorado Springs Police Department will likely be responsible for some part of the cost of the development of the proposed public safety training facility.

Board/Commission Recommendation:

N/A

Stakeholder Process:

City and Utilities staff have worked with the Pikes Peak International Raceway, COTIPS, the El Paso County Sheriff's Office, and the Fountain Police Department in the development of the attached modification to the Declaration of Protective Covenants.

Alternatives:

City Council could approve the Resolution Approving Modifications to a Declaration of Protective Covenants. Alternatively, City Council could not approve the Resolution. The consequences of not approving the Resolution could result in reduced training opportunities for the Colorado Springs Police Department and other regional public safety agencies.

Proposed Motion:

Move adoption of the proposed Resolution.

N/A