



Meeting Minutes - Final City Council

Monday, November 5, 2012

5:30 PM

Council Chambers

GID Meeting to Follow

1. Call to Order/Roll Call

A regular meeting of the City Council of the City of Commerce City was called to order by Mayor Ford on November 5, 2012, at 5:30 PM.

Present: 7 - Mayor Sean Ford , Council Member Jim Benson, Council Member Jadie Carson, Council Member Rick A. Teter, Mayor Pro Tem René Bullock, Council Member Crystal Elliott and Council Member Steven J. Douglas

Excused: 1 - Council Member Jason McEldowney

2. Executive Session

[12-0063](#)

Executive session to (1) receive legal advice pursuant to C.R.S. 24-6-402(4)(b) regarding Denver International Airport issues; and (2) regarding positions relative to issues pursuant to C.R.S. 24-6-402(4)(e) concerning incentives for economic development.

A motion was made by Council Member Bullock, seconded by Council Member Teter, that Council hold an executive session to (1) receive legal advice pursuant to CRS 24-6-402(4)(b) regarding Denver International Airport issues; and (2) regarding positions relative to issues pursuant to CRS 24-6-402(4)(e) concerning incentives for economic development. VOTE:

Aye: 7 - Mayor Ford, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

3. Pledge of Allegiance

A motion was made by Councilman Bullock, seconded by Mayor Pro Tem Moreno to excuse Councilman McEldowney's absence.

VOICE VOTE: Unanimous; all present affirmed

The Pledge of Allegiance was recited.

Present: 7 - Mayor Sean Ford , Council Member Jim Benson, Council Member Jadie Carson, Council Member Rick A. Teter, Mayor Pro Tem René Bullock, Council Member Crystal Elliott and Council Member Steven J. Douglas

Excused: 1 - Council Member Jason McEldowney

4. Audience Introduction

The audience introduced themselves.

5. Proclamations and Recognitions

[12-0065](#)

Commerce City Parks, Recreation & Golf Department Award Recognition

Parks & Recreation Director Carolyn Keith introduced Stephanie Stevens, Executive Director of the Colorado Parks & Recreation Association, to present the parks & recreation department and staff with the following awards:

*Columbine Award: Veteran's Memorial Park design renovation
Parks Professional of the Year: Tony Jaramillo*

6. Citizen Communication

Colorado Department of Transportation Representative Kirk Webb appeared before Council to inform them of upcoming public meetings regarding the I-70 east corridor project. Topics for the meetings will include: a new proposed alternative that puts the freeway below grade in the Swansea Neighborhood and the elimination of realignment alternatives. Realigning I-70 through Commerce City is no longer on the table.

7. Approval of Minutes

[Min 12-021](#)

Meeting Minutes of October 15, 2012

Mayor Pro-Tem Moreno asked that the minutes reflect a vote regarding adequate notification from staff regarding the conditional use permit.

A motion was made by Mayor Pro-Tem Moreno, seconded by Council Member Bullock, that the minutes of October 15, 2012, be amended to include a vote regarding public notice and approved as amended. VOTE:

Aye: 8 - Mayor Ford, Moreno, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

8. Resolutions

[Res 2012-75](#)

RESOLUTION APPROVING INTERGOVERNMENTAL AGREEMENT AMONG THE CITY OF COMMERCE CITY, THE CITY OF BRIGHTON AND BRIGHTON SCHOOL DISTRICT 27J REGARDING THE CONSTRUCTION, FUNDING AND MAINTENANCE FOR A SIDEWALK ON 120TH AVENUE NEAR PRAIRIE VIEW HIGH SCHOOL

A motion was made by Council Member Bullock, seconded by Mayor Pro-Tem

Moreno, that this resolution be adopted. VOTE:

Aye: 8 - Mayor Ford, Moreno, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

[Res 2012-85](#)

RESOLUTION SETTING FORTH PROCEDURES FOR APPEAL OF ADMINISTRATIVE DENIAL OF APPLICATION FOR MARIJUANA LICENSE

A motion was made by Mayor Pro-Tem Moreno, seconded by Council Member Bullock, that this resolution be adopted. VOTE:

Aye: 8 - Mayor Ford, Moreno, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

[Res 2012-88](#)

RESOLUTION APPOINTING MEMBERS TO THE YOUTH COMMISSION OF COMMERCE CITY

Council members Carson and Moreno moved and seconded to appoint Council members Carson and Bullock to serve on the youth commission until the next organizational meeting.

VOICE VOTE: Unanimous; all present affirmed

A motion was made by Council Member Carson, seconded by Mayor Pro-Tem Moreno, that this resolution be adopted. VOTE:

Aye: 8 - Mayor Ford, Moreno, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

[Res 2012-92](#)

First Amendment to the April 16, 2010 IGA Between the Northern Infrastructure General Improvement District and the City of Commerce City

A motion was made by Mayor Pro-Tem Moreno, seconded by Council Member Elliott, that this resolution be adopted. VOTE:

Aye: 8 - Mayor Ford, Moreno, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

9. Public Hearings

[Res 2012-80](#)

Public Hearing on 2013 Budget

Mayor Ford reopened the public hearing continued from October 15, 2012.

No one from the audience came forward to address Council on the 2013 budget and the Mayor closed the public hearing portion of the meeting.

Councilman Benson stated that he will not be voting to approve the budget because there is no funding included for parks in the northern range nor lights along Tower Road. Councilman Douglas felt the city could have tightened their belt further and therefore, will not be voting to approve the budget.

A motion was made by Mayor Pro-Tem Moreno, seconded by Council Member Bullock, that this resolution be adopted. VOTE:

Aye: 6 - Mayor Ford, Moreno, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock and Council Member Elliott

Nay: 2 - Council Member Benson and Council Member Douglas

Excused: 1 - Council Member McEldowney

Z-898-13

AN ORDINANCE REZONING FROM R-1 TO I-2 ZONE DISTRICT THE PROPERTY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF, AND AMENDING THE ZONING MAP OF THE CITY OF COMMERCE CITY, COLORADO TO REFLECT SAID REZONING.

A motion was made by Council Member Bullock, seconded by Council Member Teter, that Ordinance Z-898-12 be continued to January 7, 2013. VOTE:

Aye: 8 - Mayor Ford, Moreno, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

[CU-100-12](#)

Rocky Mountain Recycling requests a Conditional Use Permit to add a second rail spur on the property located at 6510 Brighton Boulevard, zoned I-3

Mayor Ford opened the public hearing.

Planner Jenny Axmacher presented the case to Council. Ms. Axmacher stated that the applicant, Rocky Mountain Recycling is seeking a conditional use permit to bring an existing rail spur into compliance, and to add a second spur. Approval of this permit will enable the applicant to expand storage of rail cars and increase their operational flexibility. The planning commission held a public hearing on October 2, 2012, and voted to forward the application to Council with a favorable recommendation.

William Aronstein appeared before Council on behalf of the applicant and asked Council to approve the permit.

No one from the public came forward to address Council and the public hearing portion of the meeting was closed.

Council members Moreno and Bullock moved and seconded to accept the findings and recommendations of the Planning Commission.

VOICE VOTE: Unanimous; all present affirmed

A motion was made by Council Member Bullock, seconded by Mayor Pro-Tem Moreno, that this conditional use permit be approved. VOTE:

Aye: 8 - Mayor Ford, Moreno, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

[AP-15-12](#)

iVita Wellness, LLC appeals the City's decision to deny its application for a Conditional Use Permit to operate a medical marijuana facility at 5500 Colorado Boulevard, zoned I-2.

Mayor Ford opened the appeals hearing.

City Attorney Bob Gehler stated that in accordance with Council's rules of procedure adopted earlier in the meeting, the record should reflect the following:

*the date of the hearing is November 5, 2012
proper legal notice was given for the hearing
David Foster of Foster, Graham, Milstein and Calisher is appearing on behalf of the applicant
Deputy City Attorney Karen Stevens, Interim Director of Community Development
Chris Cramer, Interim Planning Manager Steve Timms, Planner Paul Workman and
Parks Planning and Operations Manager Mike Brown appearing on behalf of the city.*

The question before Council is whether or not staff erred in administratively denying a conditional use permit application to operate a medical marijuana dispensary at 5500 Colorado Blvd. The application was denied because it failed to meet the distance requirement set forth in the Land Development Code. The planning commission held a public hearing on October 2, 2012, and voted 5-0 to affirm the staff's decision of the denial. At the conclusion of this hearing, Council must make a finding as to whether the administrative denial was made in error. If Council finds the denial was not made in error, then Council must affirm the planning commission's recommendation and deny the appeal. If Council finds the denial was made in error, then Council must send the case back for consideration of the conditional use permit application.

City Attorney Gehler entered the following exhibits into the record:

*Exhibit A: Planning Commission Minutes
Exhibit B: A Set of Definitions
Exhibit C: A Set of Definitions
Exhibit D: Development Review Application
Exhibit E: Medical Marijuana 1,000 Foot Property Buffer Map
Exhibit F: Conditional Use Permit Application
Exhibit G: Statement of Operations For The Facility
Exhibit H: List of Addresses Within the Buffer Area
Exhibit I: Excerpt from the Land Development Code
Exhibit J: Excerpt from the Land Development Code
Exhibit K: Excerpt from the Land Development Code
Exhibit L: Statement from City Staff Regarding Council Hearing
Exhibit M: Appeal From Applicant Through Their Attorney David Foster*

David Foster appeared on behalf of the applicant and distributed exhibits to Council and the city attorney. He stated that this is a de novo hearing, and that Council sits as though they are making the initial determination as to whether or not this location is appropriate based on the 1,000 foot distance being met or not. At issue, is that

staff determined a trail head, located within 1,000 feet from the property line of the proposed site, is a park, as defined in the Land Development Code. Mr. Foster argued that a trail head is not a park, and that generally speaking, spacing is determined from property line to property line; and that where this business is located within the property is more determinative than the property line itself.

Mr. Foster asked to bring forth a witness as an expert witness.

Assistant City Attorney Karen Stevens objected to this witness being brought forward.

Mayor Ford overruled the objection.

Councilman Benson did not support the Mayor's decision for the following reason: the witness was not made known prior to this meeting.

Justin Hay, 8480 E. Orchard Rd., Director of CLC Associates appeared before Council and was sworn in by City Attorney Gehler.

Mr. Hay testified that a trail head is for access and does not meet the land development code's definition of a park.

Deputy City Attorney Karen Stevens stated that based on the plain language of the land development code, adopted by Council, they must uphold staff's decision. In the land development code, a medical marijuana facility cannot be located within 1,000 feet of a park. A park is defined as a public-owned parcel of land, with or without improvements, that is set apart for the recreation of the public. In this instance, the greenway is publicly owned and has been improved.

Parks Planning and Operations Manager Mike Brown was called forward and sworn in by City Attorney Gehler. He stated that the Dahlia trail head happens to be located approximately midway along Sand Creek Regional Greenway. This particular trail head was built with an overlook in its design and was intended as a wildlife viewing point. His experience is that the site is not used exclusively to access the trail, but that many people within the industrial area, use the trail head as a place to enjoy their lunch.

Interim Director of Community Development Chris Cramer was called forward and sworn in by City Attorney Gehler. He stated that he reviewed the application, and concluded that the greenway trail head was a park, based on the definition in Article XI of the land development code.

Mayor Ford closed the public hearing portion of the meeting.

After brief Council discussion, Council members Carson and Douglas moved and seconded that, after considering the evidence in Case #AP-15-12, on the appeal of iVita Wellness, this Council finds that proper legal notice was given for the hearing, and that the recommendation of the planning commission is approved and adopted. Accordingly the appeal of iVita Wellness is denied.

ROLL CALL VOTE: 5 aye, 3 nay (Benson, Bullock, Teter)

Council members Moreno and Bullock moved and seconded to direct staff to research, and prepare, an amendment to the land development code under the 1,000 foot buffer for medical marijuana establishments that exempts trail heads.

VOICE VOTE: Unanimous; all present affirmed

10. Ordinances on 1st Reading

[Ord 1939](#)

An Ordinance Amending Section 10-3002 of the Commerce City Revised Municipal Code Relating to Illegal Discharges

In response to Council questions, City Manager Brian McBroom stated that the fire department supports this ordinance as reflected in the memo included in the packet. Interim Public Works Director Daren Sterling stated that the water department is covered under their industrial permit.

Audience Input:

Fire Marshal Ron Lapenna

A motion was made by Council Member Bullock, seconded by Council Member Douglas, that this ordinance be introduced by council as seated and approved on first reading. VOTE:

Aye: 8 - Mayor Ford, Moreno, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

[Ord 1940](#)

AN ORDINANCE AMENDING THE 2012 BUDGET OF THE CITY OF COMMERCE CITY, COLORADO BY APPROPRIATING A PORTION OF THE UNENCUMBERED FUND BALANCE IN THE CIPP FUND TO THE 96TH AVENUE ACCOUNT IN THE AMOUNT OF \$274,615, TRANSFERRING PRIOR APPROPRIATIONS IN THE CIPP FUND IN THE AMOUNT OF \$4,218,883 TO THE 96TH AVENUE ACCOUNT IN THE CIPP FUND, AND TRANSFERRING A PORTION OF THE UNENCUMBERED FUND BALANCE IN THE SOLID WASTE FUND TO THE 96TH AVENUE ACCOUNT IN THE CIPP FUND IN THE AMOUNT OF \$500,000, TOTALING \$4,993,498 FOR A LOAN TO THE BUFFALO HIGHLANDS METROPOLITAN DISTRICT, AND AUTHORIZING THE EXPENDITURE THEREOF.

In response to Council questions, Interim Public Works Director Daren Sterling stated that a preliminary subdivision plot has been reviewed by staff and there is a 300' foot buffer around the well heads. Finance Director Roger Tinklenberg stated that the actual terms of the loan have not been established. Mr. Gehler stated that tax liens will secure the loan.

A motion was made by Council Member Benson, seconded by Council Member Bullock, that this ordinance be introduced by council as seated and approved on first reading. VOTE:

Aye: 8 - Mayor Ford, Moreno, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

11. Ordinances on 2nd Reading - 9:30

[Ord 1934](#)

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF COMMERCE CITY BY ADDING SECTION 2-3005 ENTITLED YOUTH COMMISSION TO ARTICLE III OF CHAPTER 2.

A motion was made by Mayor Pro-Tem Moreno, seconded by Council Member Bullock, that this ordinance be approved on second & final reading. VOTE:

Aye: 8 - Mayor Ford, Moreno, Council Member Benson, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock, Council Member Elliott and Council Member Douglas

Excused: 1 - Council Member McEldowney

[Ord 1936](#)

AN ORDINANCE AMENDING THE 2012 BUDGET OF THE CITY OF COMMERCE CITY, COLORADO, BY APPROPRIATING A PORTION OF THE UNENCUMBERED FUND BALANCE OF THE PARK IMPACT FEE FUND IN THE AMOUNT OF \$947,745, FOR THE VAUGHN PROPERTY PURCHASE AND AUTHORIZATION THE EXPENDITURE THEREOF.

A motion was made by Council Member Bullock, seconded by Mayor Pro-Tem Moreno, that this ordinance be approved on second & final reading. VOTE:

Aye: 6 - Mayor Ford, Moreno, Council Member Carson, Council Member Teter, Mayor Pro Tem Bullock and Council Member Elliott

Nay: 2 - Council Member Benson and Council Member Douglas

Excused: 1 - Council Member McEldowney

12. Administrative Council Business

Councilman Douglas reported cracks in the road at 10161 Chambers Drive.

Councilman Bullock gave kudos to the police department for responding to an incident involving a truck losing a load of ceiling tiles on the road.

[12-0064](#)

Winter Retreat

City Manager Brian McBroom stated that traditionally, City Council has a planning retreat early in the calendar year. Staff is recommending that Council set a date for a planning retreat in February 2013 after receiving recommendations from the Quality Community Initiative Stakeholder Group. It would also be beneficial to have a facilitator help guide Council in the retreat.

Council tentatively agreed on February 8th & 9th

13. Reports

City Manager Brian McBroom highlighted his weekly report.

Council reported on attending various meetings and events throughout the week.

14. Adjourn

The meeting adjourned at 10:26 pm