



CITY COUNCIL AGENDA
June 20, 2023 6:00 P.M.
116 Main St., Fountain
Register to attend virtually @
www.fountaincolorado.org

1) Call to Order

2) Pledge of Allegiance

3) Roll Call

4.1) Presentations

- Department Update: Transportation (Bob McDonald) 10 mins
- Homeless Update (T. Cornella) 10 min

4.2) Board/Commission/Committee

- Appoint One Regular Member To The Heritage Maintenance District Board

5) City Council Agenda Requests

City Council shall use this time to request any items for future consideration.

6) Public to be Heard

Citizens may address the Council on items that are not on the agenda. Council may not be able to provide an immediate answer but will direct staff to follow up. Out of respect for the Council and others in attendance, please limit your comments to three (3) minutes or less.

7) Consent Agenda

*All items listed under the Consent Agenda are considered to be routine and will be approved with one motion. There will be no separate discussion of these items unless a Council Member or citizen so requests, in which case the item may be removed from the Consent Agenda and considered separately, at the discretion of Council. **(Est. time-3 min)***

- A.** Approval Of The June 6, 2023, City Council Meeting Minutes (S. Huffman)
- B.** Request To Ratify Resolution 22-055. (S. Huffman)
- C.** Request Of Report Of Changes For A Fermented Malt Beverage (FMB) Liquor License For Kum & Go LC. (S. Huffman)
- D.** Consider A Request For An Additional Sales Room Application For Fountain Creek Winery & Eatery. (S. Huffman)
- E.** Resolution 23-024, A Resolution Authorizing And Approving The Non-Exclusive Permanent Easement And Temporary Construction Easement Agreements Between The City Of Fountain, Fountain Colony 1933 LLC And Fountain Colony 1933 No. II LLC For Waterline Easements To Support The 36" SW/Link Transmission Main Project. (T. Murphy)

8) Old Business

9) New Business

- A.** Consideration Of Items Removed From The Consent Agenda
- B.** First Reading Of Ordinance No. 1789, An Ordinance Amending Definition Of “Electronic Smoking Device” In Section 5.36.030 (Defining Terms) Of Chapter 5.36 (Tobacco Product Retail Licensing) Of Title 5 (Business Tax, Licenses And Regulations) Of The Fountain Municipal Code To Expressly Include Vaping Devices. (K. Parker/ FFCHS Student Council 10 min)
- C.** First Reading Of Ordinance 1790, An Ordinance Amending Fountain Municipal Code, Creating A Hearing Officer And Authorizing The Hearing Officer To Act As The Local Liquor Licensing Authority And To Hear Various Appeals And Variance Requests (T. Johnson 15 min.)

10) Correspondence, Comments and Ex-Officio Reports

11) Announcement of Executive Sessions

In accordance with the City Charter and the Colorado Open Meetings Act, the City Council open session is to determine whether it will hold a Closed Executive Session. A Closed Executive Session may be held upon an affirmative vote of two-thirds of the quorum present. If consent to the closed Executive Session is not given, the items may be discussed in open session or withdrawn from consideration.

PURPOSE OF THE EXECUTIVE SESSION:

- Pursuant to C.R.S. Section 24-6-402(4) for the Purpose of Review, Approval, and Amendment of Executive Session Minutes
- Pursuant to C.R.S. Section 24-6-402(4)(b) for the purpose of receiving legal advice on specific legal questions.

12) Adjourn

A (Administrative Action) QJ (Quasi-Judicial Action) L (Legislative Action)

**NEXT REGULAR COUNCIL MEETING
July 11, 2023**



Regular City Council Meeting

Appointments-4.2A
Appointment of Heritage Maintenance District
Member

June 20, 2023

Summary Information

Title:

APPOINT ONE REGULAR MEMBER TO THE HERITAGE MAINTENANCE DISTRICT BOARD

Initiator: Silvia Huffman, City Clerk

Council Action

Presenter: Silvia Huffman, City Clerk

Council Information

Legal Review: Yes No

Report to Council

Summary Overview and List of Attachments:

The purpose of this action is to appoint one member to the Heritage Maintenance District Board.

Previous Action by City Council: N/A

Attachment: Application for Joe Grigg

Background Information

Mr. Grigg has submitted her application to the Heritage Maintenance District Board.

There is currently one regular vacancy and two alternate positions.

Please see attached application for Joe Grigg.

Strategic Plan Priority (if applicable):

Facilitate responsible development, building reasonable capacity to meet future community needs.

Diversify city financial resources and invest.

Provide reliable access to public safety services.

Improve the quality and availability of parks and recreation opportunities

Recommendation

Staff does not have a recommendation on appointments

Proposed Motion

I move to appoint Mr. Joe Grigg to the Heritage Maintenance District Board as a regular Member



Regular City Council Meeting

Consent –7A
Council Meeting Minutes

June 20, 2023

Summary Information

Title:

APPROVAL OF THE JUNE 6, 2023, CITY COUNCIL MEETING MINUTES

Initiator : City Clerk Huffman

Presenter: City Clerk Huffman

Legal Review: Yes No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The attached minutes were compiled as the result of the June 6, 2023, City Council Meeting Minutes

Attachments: Above Referenced Meeting Minutes

Background Information

Strategic Plan Priority (if applicable):

- Facilitate responsible development, building reasonable capacity to meet future community needs.**
- Diversify city financial resources and invest.**
- Provide reliable access to public safety services.**
- Improve the quality and availability of parks and recreation opportunities**

Recommendation

Staff recommends approval.

Proposed Motion

Motion to approve shall be included under the consent agenda.

CITY COUNCIL MEETING

June 6, 2023

1) Call to Order

Mayor Thompson called the meeting to order at 6:00P.M.

2) Pledge of Allegiance

The pledge of Allegiance was recited.

3) Roll Call

Roll call found the following members present:

Mayor Thompson

Mayor Pro Tem Estes

Council Member Cory

Council Member Rick

Council Member Applegate

Council Member Hinton

Council Member Duncan notified staff of her absence.

4 (1) Presentations

- **Fountain Valley Kiwanis**

Mr. Tom Taylor, Fountain Valley Kiwanis, introduced to Council its newest chapter members and notable events that were held in the last year sponsored by the Kiwanis.

- **Girls of the West**

Chris Whitney, past President of the Pikes Peak or Bust Rodeo reported on the history of the rodeo, its mission and the Range Riders. He introduced Makena Norton, Girl of the West. Ms. Norton gave details of the upcoming events at the rodeo and encouraged all to attend.

4 (2) Board/Commission/Committee Appointments

There were no appointments.

5) City Council Agenda Requests

Council Member Rick stated that resident Penny Cimino had requested that Council consider forming a Public Safety oversight committee similar to Colorado Springs.

Mayor Thompson suggested allowing staff to research and return to Council in a worksession for further discussion. It was the consensus of Council on this direction.

6) Public to be Heard

Commander Langley, American Legion Post 38, reported on upcoming events at the American Legion.

7) Consent Agenda

A. Approval Of The May 23, 2023, City Council Meeting Minutes (S. Huffman)

Mayor Pro Tem Estes made a motion to approve the consent agenda, seconded by Council Member Applegate. All members voted yes (6-0); the motion carried.

8) Old Business

A. Second Reading Of Ordinance 1788, An Ordinance Establishing A New Chapter (Chapter 9.72) Of Title 9 (Public Peace, Morals And Welfare), Of The Fountain Municipal Code, Relating To The Possession And Use Of Fireworks

Commander Racine reported there have been no changes to this ordinance since first reading.

Council Member Hinton confirmed the fine amounts and reoccurring offences.

City Manager Trainor stated that the information campaign for the PPIR events and upcoming firework changes will begin.

Council Member Applegate made a motion to approve Ordinance 1788 on second reading, seconded by Council Member Rick. All members voted yes (6-0); the motion carried.

9) New Business

A. Consideration Of Items Removed From The Consent Agenda

No items were removed.

10) Correspondence, Comments and Ex-Officio Reports

City Manager Trainor reminded Council of the upcoming budget worksession next Tuesday, he also thanked Recreation Coordinator Gordy McCormick for his efforts in gathering volunteers last week for city clean up projects.

Deputy City Manager Evans reported on CDOT upcoming projects on Indiana Ave. and Carson and Highway 85.

Fire Chief Graham thanked the street department and a neighboring fire department for their aid on the structure fire.

Police Chief Cristiani announced the promotion of Commander Racine and noted that the traffic division is fully staffed. He also stated that the therapist for the BECHON unit is finishing up training and another will be starting training soon.

Mayor Pro Tem congratulated Commander Racine on his promotion.

Council Member Hinton thanked all those involved in the volunteer day of service.

Council Member Rick thanked the Mayor and staff for a successful Memorial Day event, he thanked the Fountain Up committee for the Bark in the Park event, the thanked the Fire Department for their response to the recent fire, and lastly he reported on his attendance at Mayor -elect Yemi Mobolade's ceremony.

Mayor Thompson reported that the farmer's market has begun and will be held each Saturday in Metcalfe park.

11) Announcement of Executive Sessions

No sessions were requested.

12) Adjourn

There being no further business, Mayor Thompson declared the meeting adjourned at 6:50 P.M.

City Clerk

Mayor



Regular City Council Meeting

Consent – 7B
Ratification of Resolution 22-055

June 20, 2023

Summary Information

Title:
REQUEST TO RATIFY RESOLUTION 22-055.

Initiator : City Clerk Huffman

Presenter: City Clerk Huffman

Legal Review: Yes No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

Resolution 22-055 was approved at the October 25, 2022 City Council Meeting.

A RESOLUTION AUTHORIZING THE TRANSITION OF ALL CURRENT PART TIME AND PER DIEM FIRE FIGHTER POSITIONS INTO FULL TIME POSITIONS AND THE CREATION OF A NEW FIRE FIGHTER /PARAMEDIC POSITION UTILIZING MEDICAID REIMBURSEMENT WITHOUT INCREASING COSTS TO THE GENERAL FUND.

Attachments: Corrected Resolution 22-065

Background Information

The request is to correct a clerical error in which the Resolution number was duplicated with a budget amendment resolution approved on December 13, 2022.

There are no changes to the approved content of the original resolution. The record will be ratified to Resolution 22-065.

Strategic Plan Priority (if applicable):

- Facilitate responsible development, building reasonable capacity to meet future community needs.
- Diversify city financial resources and invest.
- Provide reliable access to public safety services.
- Improve the quality and availability of parks and recreation opportunities

Recommendation

Staff recommends approval.

Proposed Motion

Motion to approve shall be included under the consent agenda.



RESOLUTON 22-065

A RESOLUTION AUTHORIZING THE TRANSITION OF ALL CURRENT PART TIME AND PER DIEM FIRE FIGHTER POSITIONS INTO FULL TIME POSITIONS AND THE CREATION OF A NEW FIRE FIGHTER /PARAMEDIC POSITION UTILIZING MEDICAID REIMBURSEMENT WITHOUT INCREASING COSTS TO THE GENERAL FUND.

WHEREAS, The City of Fountain continues to grow and strives to meet minimum fire station staffing every day; and

WHEREAS, There are currently 10 authorized Fire Fighter per diem positions and 4 P/T Fire Fighter positions backfilling our current minimum manning of 10 per battalion which is increasingly putting undue strain on our employees / leaders to adequately provide emergency services evenly across our community;

WHEREAS, The reclassification of those positions to 6 F/T Fire Fighter/EMT positions will increase our available staffing levels to 12 per battalion to meet our minimum staffing of 10 personnel per shift. The additional F/T Fire Fighter/Paramedic position will help reduce over time and employee burnout all without impacting the general fund;

WHEREAS, the City Council of the City of Fountain desires to change the available staffing levels of each battalion to 12 in order to improve our delivery of emergency services throughout our community, reduce over time expenditures, decrease stress on our workforce and improve the employee experience;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fountain, Colorado, as follows:

- 1. All existing 10 Per Diem and 4 PT positions within the Fire Department shall be replaced with 6 Full-time Firefighter/EMT positions, expending no additional General Fund budget dollars.**
- 2. One additional Firefighter/Paramedic position shall be authorized, using the additional Medicaid reimbursements funds received by the City.**

Done this 25th day of October, 2022.

Sharon Thompson, Mayor

ATTEST:

Silvia Huffman, City Clerk



Regular City Council Meeting

Consent –7C

Report of Changes

June 20, 2023

Summary Information

Title:

REQUEST OF REPORT OF CHANGES FOR A FERMENTED MALT BEVERAGE (FMB) LIQUOR LICENSE FOR KUM & GO LC.

Initiator: Deputy City Clerk Carneal

Presenter: City Clerk Huffman

Legal Review: Yes No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

Kum & Go LC has submitted a report of changes for a permanent modification of premises for Store #670 located on Fountain Mesa Rd. All required information has been submitted.

Attachment: Report of Changes

Background Information

Recommendation

Staff recommendations

Proposed Motion

Motion to approve shall be included under the consent agenda.



Regular City Council Meeting

Consent – 7D
Approval of Additional Liquor Sales
Room

June 20, 2023

Summary Information

Title:

CONSIDER A REQUEST FOR AN ADDITIONAL SALES ROOM APPLICATION FOR FOUNTAIN CREEK WINERY & EATERY

Initiator : Deputy City Clerk Carneal

Council Action

Presenter: Silvia Huffman, City Clerk

Council Information

Legal Review: Yes No

Report to Council

Summary Overview and List of Attachments:

Colorado Liquor Rule 44-3-109(49), "Sales room" means an area in which a licensed winery, pursuant to section 44-3-402 (2); limited winery, pursuant to section 44-3-403 (2)(e); distillery, pursuant to section 44-3-402 (7); or beer wholesaler, pursuant to section 44-3-407 (1)(b), sells and serves alcohol beverages for consumption on the licensed premises, sells alcohol beverages in sealed containers for consumption off the licensed premises, or both.

Vino Colorado Winery is requesting an Additional Liquor Sales Room to participate in the Community Market every Saturday from June 10, 2023 - October 1, 2023, from 8:00 A.M. to 2:00 P.M., on City property located at 618 E. Ohio Ave. Fountain Creek Winery & Eatery will be selling sealed bottles of wine for off site consumption.

Attachments: State of Colorado Additional Sales Room Application

Background Information

Colorado Liquor Code 47-428(A) Any manufacturer of vinous or spirituous liquor, licensed pursuant to 44-3-402, C.R.S., a limited winery license issued pursuant to section 44-3-403, C.R.S., or beer (malt liquor) wholesaler licensed pursuant to section 44-3-407(1)(b), C.R.S., applying to operate a sales room as defined by section 44-3-103(49), shall submit an application for sales room to the **state** licensing authority.

(D)The local licensing authority may submit a response to the application to the state licensing authority including its determination whether or not the approval of the proposed sales room will impact traffic, noise, or other neighborhood concerns in a manner that is inconsistent with local regulations or ordinances, which may be determined by the local licensing authority without requiring a public hearing, or that the applicant cannot sufficiently mitigate any potential impacts identified by the local licensing authority.

(H) For additional sales rooms for vinous or spirituous liquor, the applicant must affirm to the state licensing authority that the applicant has complied with local zoning restrictions.

Recommendation

Staff recommends approval.

Proposed Motion

"Motion to be considered with the consent agenda"



Regular City Council Meeting

Consent – 7E
Fountain Colony Waterline
Easements

June 20, 2023

Summary Information

Title:

RESOLUTION 23-024, A RESOLUTION AUTHORIZING AND APPROVING THE NON-EXCLUSIVE PERMANENT EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENTS BETWEEN THE CITY OF FOUNTAIN, FOUNTAIN COLONY 1933 LLC AND FOUNTAIN COLONY 1933 NO. II LLC FOR WATERLINE EASEMENTS TO SUPPORT THE 36” SW/LINK TRANSMISSION MAIN PROJECT.

Initiator: Taylor Murphy, Water Resource Manager

Council Action

Presenter: Taylor Murphy

Council Information

Legal Review: Yes No

Report to Council

Summary Overview and List of Attachments:

The SW/Link Transmission Main Project has been in design since 2021 with construction targeted for late 2023. The City requires 5 separate easements for the selected alignment, and Utilities Department staff has been negotiating with the property owners for 18+ months. Staff has arrived at agreeable terms for 3 of the 5 Easements on lands owned by Fountain Colony 1933 LLC and Fountain Colony 1933 No. II LLC at no cost to the City.

Attachments:

Lot 5607301001 Easement Agreement (7 pages)

Lot 5607400001 Easement Agreement (8 pages)

Lot 5600000154 and 5600000155 Easement Agreement (9 pages)

Waterline Easement Map (1 page)

Background Information

The SW/Link Transmission Main Project will connect Fountain’s Southwest Water Tank to the existing 36” Pipeline that crosses Fountain Creek and connects to Link Road near Old Pueblo Road. Once finished, this pipeline will boost the flows and provide redundancy to the southern half of the city’s water system. The Project is being designed by RESPEC (formerly JDS Hydro) and is targeted for construction in late 2023.

The selected pipe alignment requires 5 separate easements from 4 different property owners to connect the storage tank west of I-25 to the existing 36” pipe east of the BNSF Railroad. The City has been negotiating with the various property owners for 18+ months to acquire these easements.

Utilities staff has reached agreeable terms with two of these owners, Fountain Colony 1933 LLC and Fountain Colony 1933 No. II LLC, to acquire three of the five easements. The parcels containing these easements currently have no water infrastructure nearby and would bear costly off-site infrastructure expenses to extend the water system to them. The SW/Link project will greatly enhance the ability to develop these properties by bringing a high-capacity water supply through the parcels. The owner has agreed to grant these easements to the City of Fountain at no cost if the city installs points of connection on the pipeline for their future use, and agrees to waive any future cost-recovery charges for this pipeline when the parcels are developed.

Strategic Plan Priority (if applicable):

Facilitate responsible development, building reasonable capacity to meet future community needs.

Diversify city financial resources and invest.

Provide reliable access to public safety services.

Improve the quality and availability of parks and recreation opportunities

Recommendation

Staff recommends that the Council approve Resolution 23-024, authorizing and approving the Non-Exclusive Permanent Easement and Temporary Construction Easement Agreements with Fountain Colony 1933 LLC and Fountain Colony 1933 No. II LLC.

Proposed Motion

"I move to approve Resolution 23-024 authorizing and approving the Easement Agreements with Fountain Colony 1933 LLC and Fountain Colony 1933 No. II LLC."



RESOLUTION 23-024

A RESOLUTION AUTHORIZING AND APPROVING THE NON-EXCLUSIVE PERMANENT EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENTS BETWEEN THE CITY OF FOUNTAIN, FOUNTAIN COLONY 1933 LLC AND FOUNTAIN COLONY 1933 NO. II LLC FOR WATERLINE EASEMENTS TO SUPPORT THE 36” SW/LINK TRANSMISSION MAIN PROJECT.

WHEREAS, The City of Fountain is designing the SW/Link Transmission Main project to install a 36” water pipeline that will greatly benefit the southern half of the City’s water system; and

WHEREAS, the SW/Link project requires numerous easements across private properties to connect the Southwest storage tank to the rest of the water system; and

WHEREAS, Utilities Department staff has negotiated acceptable terms with Fountain Colony 1933 LLC and Fountain Colony 1933 NO. II LLC to acquire needed easements at no cost in exchange for providing pipeline connection points and waiving future cost-recovery charges stemming from the SW/Link project; and

WHEREAS, the City Council of the City of Fountain desires to approve the Easement Agreements and accept the easements from Fountain Colony 1933 LLC and Fountain Colony 1933 NO. II LLC for the SW/Link Transmission Main Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fountain, Colorado, as follows:

- 1. The Mayor, City Manager or other representative of the City delegated by the Mayor or City Manager are hereby authorized to execute the Non-Exclusive Permanent Easement and Temporary Construction Easement Agreements with Fountain Colony 1933 LLC and Fountain Colony 1933 NO. II LLC to complete and close upon the purchase of the Easements.**
- 2. The above authorization extends to the related documents necessary to achieve the identified and approved actions for acquisition of the easements.**

Done this 20th day of June 2023.

Sharon Thompson, Mayor

ATTEST:

Silvia Huffman, City Clerk

**NON-EXCLUSIVE PERMANENT EASEMENT AND
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

FOUNTAIN COLONY 1933 NO. II LLC, a Colorado limited liability company (the “Grantor”), and the CITY OF FOUNTAIN, Colorado, a Colorado home rule city and municipal corporation (the “Grantee”), hereby agree as follows:

Grantor and Grantee are referred to herein individually as a “Party” and collectively as the “Parties.” Pursuant to the terms set forth in this Non-Exclusive Permanent Easement and Temporary Construction Easement Agreement (“Easement Agreement”), Grantor, being the owner of the real properties identified by El Paso County Assessors Schedule Numbers 5600000154 and 5600000155 (the "Properties") located in the County of El Paso and the State of Colorado, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, does hereby grant to the Grantee the following easements:

- A. A nonexclusive permanent easement for the installation of a 36” potable water transmission pipeline and all other related attachments and appurtenant facilities (collectively the “Water Facilities”) over, under and across the real properties as described and depicted in **Exhibit A** (the "Waterline Easements"), together with rights of ingress and egress across the Properties of the Grantor for the installation, maintenance, repair, and replacement of the Water Facilities within the Waterline Easements; and
- B. During the period of construction of the Water Facilities, the Waterline Easements shall include twenty-five (25) feet on either side of the edge of the permanent easements, thus constituting a temporary construction easement totaling fifty (50) feet in width (the “Construction Easement”).
- C. The Waterline Easements and the Construction Easement are collectively referred to herein as the "Easements.” The Construction Easement shall expire upon completion of construction of the Water Facilities as reasonably determined by mutual agreement between the Parties' representatives.
- D. Except as provided herein, Grantor shall retain the right to make full use of the Properties, except for such use as might endanger or interfere with the rights of Grantee in its construction, operation or maintenance of the Water Facilities and use of the Easements. Grantor reserves use of the Easements, whether longitudinal or otherwise, for installing public improvements including but not limited to pavement, curbs, gutters, sidewalks, paved parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again such as stone, brick, or other masonry type fences or walls), that do not interfere with Grantee's use of the Easements, low-height landscaping, and sprinkler systems which are capable of being reasonably located by Grantee and Grantor (the "Grantor's Improvements"); provided, however, that the exercise of such rights, in the mutual agreement of the Parties, does not injure or interfere with, now or in the future, any of

the rights provided to Grantee under this Easement Agreement, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- E. Grantor shall notify Grantee in writing of any of Grantor's Improvements that Grantor desires to construct or place on any part of the Easements. Such notice shall include all engineering and construction plans and any other information necessary for Grantee to evaluate the impact of such Grantor Improvements on the Water Facilities and the Easements. Grantor shall work with Grantee to ensure that any such Grantor Improvements do not negatively impact the Water Facilities and or Grantor's use of and rights associated with the Easements. No Grantor Improvements may be erected on any part of the Easements without the mutual written agreement of the Parties. Any Grantor Improvements constructed or placed on, in, above, or under the Easements without the mutual written consent of the Parties as detailed above, may be removed by Grantee without liability for any damages or claims arising therefrom, and Grantor shall reimburse Grantee for all expenses associated with removing such violating Grantor Improvements.
- F. The Grantor shall not undertake to construct or place Grantor Improvements on, in, above, under, or otherwise within the Easements that necessitate the relocation, reconstruction, removal, or abandonment of any of the Water Facilities that are located within the Easements.
- G. The foregoing notwithstanding, in no event shall Grantor:
 - a) construct or place, longitudinally along or otherwise within the Easements, any tree, underground pipeline, cable, wire, conduit, valve, stub, or other utility or appurtenance without the prior written consent of Grantee; or
 - b) change, by excavation or filling, the present grade or ground level of the Easements, by more than one foot without the prior written consent of Grantee; or
 - c) drill or operate any well within the permanent Easements; or
 - d) erect or construct any building or other permanent structure on, in, above, under, or otherwise within the Easements without the prior written consent of the Grantee.

Grantor shall control and, to the extent reasonably necessary, prevent the construction or alteration of landfills, land excavations, water impoundments, and other land uses within the Easements or within the Properties, which might, in Grantee's discretion, endanger or interfere with the Water Facilities and or Grantee's use of and rights associated with the Easements, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- H. Grantor shall replace, repair, or reimburse Grantee for the reasonable cost of replacement or repair of physical damage to Grantee's Water Facilities if such damage is caused by the construction or placement of Grantor Improvements.
- I. Grantee shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's Improvements on the Properties, whether or not within the Easements, but only if such damage is caused by Grantee's construction,

reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Water Facilities.

- J. The Grantee shall have the right to trim or remove any vegetation that may interfere with the rights granted to the Grantee in association with these Easements, without being required to replace or reimburse Grantor for said vegetation.
- K. At the time of future development on the Properties, Grantor shall not be required to pay to Grantee any cost-recovery or surcharge associated with the construction of the Water Facilities beyond the standard Tap Fee amount set at such future time for the tap size being requested.
- L. Grantee will provide, at no cost to Grantor, three (3) 16” water distribution connections with the Water Facilities at locations mutually agreeable to the Parties. One Tee will be situated to serve parcel 5607400001, one Tee to serve parcel 5600000154, and a Cross fitting to serve parcel 5600000155.
- M. The provisions herein shall inure to the benefit of and bind the heirs, successors and assigns of the respective Parties hereto.
- N. The provisions herein shall be a covenant running with the land.
- O. The Grantor covenants that it has the authority to grant the Easements as set forth herein. Grantee agrees and understands that it commences its use of the Properties –“AS IS” and without any warranties of any kind or nature.
- P. In no event shall Grantee allow any mechanics' or materialmen's liens to attach against the Properties for materials supplied or work performed at the request of, or for the benefit of, Grantee, and Grantee, to the extent expressly permitted by law, shall indemnify and hold Grantor harmless from any cost or expense, incurred by Grantor to release any such mechanic's or materialmen's liens against the Properties.
- Q. The Grantor shall hold Grantee and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, and liabilities of any kind or nature as a result of or in connection with Grantor's, its contractors', agents', or employees' use of the Easements, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantor's, its contractors', agents', or employees' negligence or willful misconduct. In addition, to the extent expressly permitted by law, the Grantee shall hold Grantor and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, liabilities of any kind or nature as a result of, or in connection with Grantee's, its contractors', agents', or employees' use of the Easement, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantee's negligence or willful misconduct, but not as to the use by the general public. Nothing in this section shall be deemed to waive or otherwise limit any defenses, rights, or immunities available to the Grantee pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.

- R. The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.
- S. This Agreement, together with Exhibit A, supersedes all prior negotiations, representations, and agreements, whether oral or in writing, between the Parties with respect to the subject matter herein. Each Party to this Agreement acknowledges that no representation by any party which is not embodied herein, nor any other agreement, statement, or promise not contained in this Agreement, shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing and signed by all Parties.
- T. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.
- U. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.
- V. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of El Paso. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the District of Colorado.

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EXHIBIT A

Legal Description

Waterline Easement

Fountain Colony 1933 No.II LLC

Legal description of a strip of land located in the North ½ of the North ½ of Section 18, Township 16 South, Range 65 West of the 6th P.M., El Paso County, Colorado. described as follows:

(Bearings are based on the West line of Lot 4 of Fountain Colony Industrial Park Filing No. 1 as bearing S09°09'10" W)

Commencing (POC) at the SE Corner of Fountain Colony Road as shown on the subdivision plat of Fountain Colony Industrial Park Filing No. 1, recorded under Reception Number 208712761 of the Records of El Paso County, Colorado, thence N09°09'10"E, 30.00 feet along the East line of said Fountain Colony Road, thence S80°50'50"E, 164.71 feet, thence S58°22'33"E, 378.77 feet, thence S35°34'49"E, 392.03 feet, thence S50°29'09"E, 187.03 feet,; thence S40°13'40"E, 8.10 feet to a point on the North line of said Section 18 and the **TRUE POINT OF BEGINNING**;

Thence continue S40°13'40"E, 214.26 feet;

Thence S42°47'06"E, 226.96 feet;

Thence S45°47'24"E, 205.73 feet;

Thence S67°56'31"E, 88.96 feet;

Thence N72°30'00"E, 750.10 feet;

Thence N62°31'23"E, 34.33 feet to a point on the West Right-of-Way line of Interstate Highway 25 ;

Thence S25°34'48"E, 30.02 feet along said West Right-of-Way line;

Thence S62°31'23"W, 35.96 feet;

Thence S72°30'00"W, 763.51 feet;

Thence N67°56'31"W, 105.62 feet;

Thence N45°47'24"W, 212.39 feet;

Thence N42°47'06"W, 228.42 feet;

Thence N40°13'40"W, 220.34 feet;

Thence N50 29'09"W, 23.22 feet to a point on the North line of said Section 18;

Thence N89°23'30"E, 44.31 feet along said North line to the **TRUE POINT OF BEGINNING**.

Area = 46,635.9 square feet, 1.07 acres, more or less.

Randall D. Hency, PLS Colorado 27605
for and on behalf of
Polaris Surveying, Inc.
1903 Lalaray Street, Suite 102
Colorado Springs, Co. 80909
Job No. 220909

Date 03/20/23





EXHIBIT MAP
Waterline Easement
Fountain Colony 1933 No. II LLC

SCALE 1" = 300'

FOUNTAIN COLONY
INDUSTRIAL PARK
FIL. NO.1
LOT 4

(S 09°09'10" W)
Basis of Bearing

FOUNTAIN COLONY ROAD

LOT SCHEDULE NO. 5607400001
OWNER: FOUNTAIN COLONY 1933 LLC
UNPLATTED

POINT OF
BEGINNING

SECTION 7
SECTION 18

SECTION 7
SECTION 18

1-25

LOT SCHEDULE NO. 5600000154
OWNER: FOUNTAIN COLONY 1933
NO II LLC
UNPLATTED

LOT SCHEDULE NO. 5600000155
OWNER: FOUNTAIN COLONY 1933
NO II LLC
UNPLATTED

LOT SCHEDULE NO. 5600000146
OWNER: COPART INC
UNPLATTED



REV: 3/20/23
March 9, 2023
JOB: 21-09-09
JDS Hydro

Waterline Easement
Fountain Colony 1933 No. II

POLARIS SURVEYING, INC.
1903 Lelaray Street, Suite 102
COLORADO SPRINGS, CO 80909
(719)448-0844 FAX (719)448-9225

Line Table
Waterline Easement

Line Table		
Line #	Direction	Length
L1	N09°09'10"E	30.00'
L2	S80°50'50"E	164.71'
L3	S58°22'33"E	378.77'
L4	S35°34'49"E	392.03'
L5	S50°29'09"E	187.03'
L6	S40°13'40"E	214.26'
L7	S42°47'06"E	226.96'
L8	S45°47'24"E	205.73'
L9	S67°56'31"E	88.96'
L10	N72°30'00"E	750.10'
L11	N62°31'23"E	34.33'
L12	S25°34'48"E	30.02'
L13	S62°31'23"W	35.96'
L14	S72°30'00"W	763.51'
L15	N67°56'31"W	105.62'
L16	N45°47'24"W	212.39'
L17	N42°47'06"W	228.42'
L18	N40°13'40"W	220.34'
L30	S40°13'40"E	8.10'
L31	N89°23'30"E	44.31'
L32	N50°29'09"W	23.22'

REV: 3/20/23
March 1, 2023
JOB: 21-09-09
JDS Hydro

*Waterline Easement Line Table
Fountain Colony 1933 No. II*

POLARIS SURVEYING, INC.

1903 Lelaray Street, Suite 102
COLORADO SPRINGS, CO 80909
(719)448-0844 FAX (719)448-9225

**NON-EXCLUSIVE PERMANENT EASEMENT AND
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

FOUNTAIN COLONY 1933 LLC, a Colorado limited liability company (the “Grantor”), and the CITY OF FOUNTAIN, Colorado, a Colorado home rule city and municipal corporation (the “Grantee”), hereby agree as follows:

Grantor and Grantee are referred to herein individually as a “Party” and collectively as the “Parties.” Pursuant to the terms set forth in this Non-Exclusive Permanent Easement and Temporary Construction Easement Agreement (“Easement Agreement”), Grantor, being the owner of the real property identified by El Paso County Assessors Schedule Number 5607400001 (the "Property") located in the County of El Paso and the State of Colorado, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, does hereby grant to the Grantee the following easements:

- A. A nonexclusive permanent easement for the installation of a 36” potable water transmission pipeline and all other related attachments and appurtenant facilities (collectively the “Water Facilities”) over, under and across the real property as described and depicted in **Exhibit A** (the "Waterline Easements"), together with rights of ingress and egress across the Property of the Grantor for the installation, maintenance, repair, and replacement of the Water Facilities within the Waterline Easements; and
- B. During the period of construction of the Water Facilities, the Waterline Easements shall include twenty-five (25) feet on either side of the edge of the permanent easements, thus constituting a temporary construction easement totaling fifty (50) feet in width (the “Construction Easement”).
- C. The Waterline Easements and the Construction Easement are collectively referred to herein as the "Easements.” The Construction Easement shall expire upon completion of construction of the Water Facilities as reasonably determined by mutual agreement between the Parties' representatives.
- D. Except as provided herein, Grantor shall retain the right to make full use of the Property, except for such use as might endanger or interfere with the rights of Grantee in its construction, operation or maintenance of the Water Facilities and use of the Easements. Grantor reserves use of the Easements, whether longitudinal or otherwise, for installing public improvements including but not limited to pavement, curbs, gutters, sidewalks, paved parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again such as stone, brick, or other masonry type fences or walls), that do not interfere with Grantee's use of the Easements, low-height landscaping, and sprinkler systems which are capable of being reasonably located by Grantee and Grantor (the "Grantor's Improvements"); provided, however, that the exercise of such rights, in the mutual agreement of the Parties, does not injure or interfere with, now or in the future, any of the rights provided to Grantee under this Easement Agreement, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- E. Grantor shall notify Grantee in writing of any of Grantor's Improvements that Grantor desires to construct or place on any part of the Easements. Such notice shall include all engineering and construction plans and any other information necessary for Grantee to evaluate the impact of such Grantor Improvements on the Water Facilities and the Easements. Grantor shall work with Grantee to ensure that any such Grantor Improvements do not negatively impact the Water Facilities and or Grantor's use of and rights associated with the Easements. No Grantor Improvements may be erected on any part of the Easements without the mutual written agreement of the Parties. Any Grantor Improvements constructed or placed on, in, above, or under the Easements without the mutual written consent of the Parties as detailed above, may be removed by Grantee without liability for any damages or claims arising therefrom, and Grantor shall reimburse Grantee for all expenses associated with removing such violating Grantor Improvements.
- F. The Grantor shall not undertake to construct or place Grantor Improvements on, in, above, under, or otherwise within the Easements that necessitate the relocation, reconstruction, removal, or abandonment of any of the Water Facilities that are located within the Easements.
- G. The foregoing notwithstanding, in no event shall Grantor:
 - a) construct or place, longitudinally along or otherwise within the Easements, any tree, underground pipeline, cable, wire, conduit, valve, stub, or other utility or appurtenance without the prior written consent of Grantee; or
 - b) change, by excavation or filling, the present grade or ground level of the Easements, by more than one foot without the prior written consent of Grantee; or
 - c) drill or operate any well within the permanent Easements; or
 - d) erect or construct any building or other permanent structure on, in, above, under, or otherwise within the Easements without the prior written consent of the Grantee.

Grantor shall control and, to the extent reasonably necessary, prevent the construction or alteration of landfills, land excavations, water impoundments, and other land uses within the Easements or within the Property, which might, in Grantee's discretion, endanger or interfere with the Water Facilities and or Grantee's use of and rights associated with the Easements, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- H. Grantor shall replace, repair, or reimburse Grantee for the reasonable cost of replacement or repair of physical damage to Grantee's Water Facilities if such damage is caused by the construction or placement of Grantor Improvements.
- I. Grantee shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's Improvements on the Property, whether or not within the Easements, but only if such damage is caused by Grantee's construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Water Facilities.

- J. The Grantee shall have the right to trim or remove any vegetation that may interfere with the rights granted to the Grantee in association with these Easements, without being required to replace or reimburse Grantor for said vegetation.
- K. At the time of future development on the Property, Grantor shall not be required to pay to Grantee any cost-recovery or surcharge associated with the construction of the Water Facilities beyond the standard Tap Fee amount set at such future time for the tap size being requested.
- L. Grantee will provide, at no cost to Grantor, three (3) 16" water distribution connections with the Water Facilities at locations mutually agreeable to the Parties. One Tee will be situated to serve parcel 5607400001, one Tee to serve parcel 5600000154, and a Cross fitting to serve parcel 5600000155.
- M. The provisions herein shall inure to the benefit of and bind the heirs, successors and assigns of the respective Parties hereto.
- N. The provisions herein shall be a covenant running with the land.
- O. The Grantor covenants that it has the authority to grant the Easements as set forth herein. Grantee agrees and understands that it commences its use of the Property –“AS IS” and without any warranties of any kind or nature.
- P. In no event shall Grantee allow any mechanics' or materialmen's liens to attach against the Property for materials supplied or work performed at the request of, or for the benefit of, Grantee, and Grantee, to the extent expressly permitted by law, shall indemnify and hold Grantor harmless from any cost or expense, incurred by Grantor to release any such mechanic's or materialmen's liens against the Property.
- Q. The Grantor shall hold Grantee and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, and liabilities of any kind or nature as a result of or in connection with Grantor's, its contractors', agents', or employees' use of the Easements, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantor's, its contractors', agents', or employees' negligence or willful misconduct. In addition, to the extent expressly permitted by law, the Grantee shall hold Grantor and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, liabilities of any kind or nature as a result of, or in connection with Grantee's, its contractors', agents', or employees' use of the Easement, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantee's negligence or willful misconduct, but not as to the use by the general public. Nothing in this section shall be deemed to waive or otherwise limit any defenses, rights, or immunities available to the Grantee pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.
- R. The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either

Party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

- S. This Agreement, together with Exhibit A, supersedes all prior negotiations, representations, and agreements, whether oral or in writing, between the Parties with respect to the subject matter herein. Each Party to this Agreement acknowledges that no representation by any party which is not embodied herein, nor any other agreement, statement, or promise not contained in this Agreement, shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing and signed by all Parties.
- T. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.
- U. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.
- V. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of El Paso. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the District of Colorado.

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EXHIBIT A

Legal Description

Waterline Easement

Fountain Colony 1933 LLC

Legal description of a strip of land located in the South ½, of the South ½ of Section 7 and in the North ½ of the North ½ of Section 18, Township 16 South, Range 65 West of the 6th P.M., El Paso County, Colorado. described as follows:

(Bearings are based on the East line of Lot 4 of Fountain Colony Industrial Park Filing No. 1 as bearing S09°09'10" W)

BEGINNING at the SE Corner of Fountain Colony Road as shown on the subdivision plat of Fountain Colony Industrial Park Filing No. 1, recorded under Reception Number 208712761 of the Records of El Paso County, Colorado, thence N09°09'10"E, 30.00 feet along the East line of said Fountain Colony Road;

Thence S80°50'50"E, 164.71 feet;

Thence S58°22'33"E, 378.77 feet;

Thence S35°34'49"E, 392.03 feet;

Thence S50°29'09"E, 187.03 feet;

Thence S40°13'40"E, 8.10 feet to a point on the South Line of said Section 7;

Thence S89°23'30"W, 44.31 feet along said South line;

Thence N50°29'09"W, 165.04 feet;

Thence N35°34'49"W, 389.90 feet;

Thence N58°22'33"W, 366.76 feet;

Thence N80°50'50"W, 158.75 feet; to the Southeast Corner of said Fountain Colony Road and the **POINT OF BEGINNING**.

Area = 33,177.5 square feet, 0.76 acres, more or less.

Randall D. Hency, PLS Colorado 27605
for and on behalf of
Polaris Surveying, Inc.
1903 Lalaray Street, Suite 102
Colorado Springs, Co. 80909
Job No. 220909

Date 03/20/23





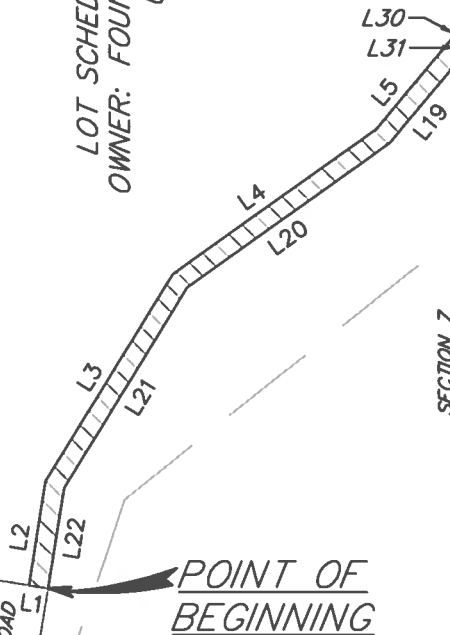
EXHIBIT MAP
Waterline Easement
Fountain Colony 1933 LLC

SCALE 1" = 300'

FOUNTAIN COLONY
INDUSTRIAL PARK
FIL. NO.1
LOT 4

(S 09°09'10" W)
Basis of Bearing

FOUNTAIN COLONY ROAD



LOT SCHEDULE NO. 5607400001
OWNER: FOUNTAIN COLONY 1933 LLC
UNPLATTED

SECTION 7
SECTION 18

SECTION 7
SECTION 18

1-25

LOT SCHEDULE NO. 5600000154
OWNER: FOUNTAIN COLONY 1933
NO II LLC

LOT SCHEDULE NO. 5600000155
OWNER: FOUNTAIN COLONY 1933
NO II LLC
UNPLATTED

LOT SCHEDULE NO. 5600000146
OWNER: COPART INC
UNPLATTED



REV: 3/20/23
March 9, 2023
JOB: 21-09-09
JDS Hydro

**Waterline Easement
Fountain Colony 1933**

POLARIS SURVEYING, INC.

1903 Lelaray Street, Suite 102
COLORADO SPRINGS, CO 80909
(719)448-0844 FAX (719)448-9225

Line Table
Waterline Easement

Line Table		
Line #	Direction	Length
L1	N09°09'10"E	30.00'
L2	S80°50'50"E	164.71'
L3	S58°22'33"E	378.77'
L4	S35°34'49"E	392.03'
L5	S50°29'09"E	187.03'
L19	N50°29'09"W	165.04'
L20	N35°34'49"W	389.90'
L21	N58°22'33"W	366.76'
L22	N80°50'50"W	158.75'
L30	S40°13'40"E	8.10'
L31	S89°23'30"W	44.31'

REV: 3/20/23
March 1, 2023
JOB: 21-09-09
JDS Hydro

***Waterline Easement Line Table
Fountain Colony 1933***

POLARIS SURVEYING, INC.

1903 Lelaray Street, Suite 102
COLORADO SPRINGS, CO 80909
(719)448-0844 FAX (719)448-9225

NON-EXCLUSIVE PERMANENT EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

FOUNTAIN COLONY 1933 LLC, a Colorado limited liability company (the “Grantor”), and the CITY OF FOUNTAIN, Colorado, a Colorado home rule city and municipal corporation (the “Grantee”), hereby agree as follows:

Grantor and Grantee are referred to herein individually as a “Party” and collectively as the “Parties.” Pursuant to the terms set forth in this Non-Exclusive Permanent Easement and Temporary Construction Easement Agreement (“Easement Agreement”), Grantor, being the owner of the real property legally described as Lot 1 Fountain Colony Industrial Park Filing No. 1 and identified by El Paso County Assessors Schedule Number 5607301001 (the "Property") located in the County of El Paso and the State of Colorado, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, does hereby grant to the Grantee the following easements:

- A. A nonexclusive permanent easement for the installation of a 36” potable water transmission pipeline and all other related attachments and appurtenant facilities (collectively the “Water Facilities”) over, under and across the real property as described and depicted in **Exhibit A** (the "Waterline Easements"), together with rights of ingress and egress across the Property of the Grantor for the installation, maintenance, repair, and replacement of the Water Facilities within the Waterline Easements; and
- B. During the period of construction of the Water Facilities, the Waterline Easements shall include twenty-five (25) feet on either side of the edge of the permanent easements, thus constituting a temporary construction easement totaling fifty (50) feet in width (the “Construction Easement”).
- C. The Waterline Easements and the Construction Easement are collectively referred to herein as the "Easements.” The Construction Easement shall expire upon completion of construction of the Water Facilities as reasonably determined by mutual agreement between the Parties' representatives.
- D. Except as provided herein, Grantor shall retain the right to make full use of the Property, except for such use as might endanger or interfere with the rights of Grantee in its construction, operation or maintenance of the Water Facilities and use of the Easements. Grantor reserves use of the Easements, whether longitudinal or otherwise, for installing public improvements including but not limited to pavement, curbs, gutters, sidewalks, paved parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again such as stone, brick, or other masonry type fences or walls), that do not interfere with Grantee's use of the Easements, low-height landscaping, and sprinkler systems which are capable of being reasonably located by Grantee and Grantor (the "Grantor's Improvements"); provided, however, that the exercise of such rights, in the mutual agreement of the Parties, does not injure or interfere with, now or in the future, any of the rights provided to Grantee under this Easement Agreement, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- E. Grantor shall notify Grantee in writing of any of Grantor's Improvements that Grantor desires to construct or place on any part of the Easements. Such notice shall include all engineering and construction plans and any other information necessary for Grantee to evaluate the impact of such Grantor Improvements on the Water Facilities and the Easements. Grantor shall work with Grantee to ensure that any such Grantor Improvements do not negatively impact the Water Facilities and or Grantor's use of and rights associated with the Easements. No Grantor Improvements may be erected on any part of the Easements without the mutual written agreement of the Parties. Any Grantor Improvements constructed or placed on, in, above, or under the Easements without the mutual written consent of the Parties as detailed above, may be removed by Grantee without liability for any damages or claims arising therefrom, and Grantor shall reimburse Grantee for all expenses associated with removing such violating Grantor Improvements.
- F. The Grantor shall not undertake to construct or place Grantor Improvements on, in, above, under, or otherwise within the Easements that necessitate the relocation, reconstruction, removal, or abandonment of any of the Water Facilities that are located within the Easements.
- G. The foregoing notwithstanding, in no event shall Grantor:
- a) construct or place, longitudinally along or otherwise within the Easements, any tree, underground pipeline, cable, wire, conduit, valve, stub, or other utility or appurtenance without the prior written consent of Grantee; or
 - b) change, by excavation or filling, the present grade or ground level of the Easements, by more than one foot without the prior written consent of Grantee; or
 - c) drill or operate any well within the permanent Easements; or
 - d) erect or construct any building or other permanent structure on, in, above, under, or otherwise within the Easements without the prior written consent of the Grantee.

Grantor shall control and, to the extent reasonably necessary, prevent the construction or alteration of landfills, land excavations, water impoundments, and other land uses within the Easements or within the Property, which might, in Grantee's discretion, endanger or interfere with the Water Facilities and or Grantee's use of and rights associated with the Easements, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- H. Grantor shall replace, repair, or reimburse Grantee for the reasonable cost of replacement or repair of physical damage to Grantee's Water Facilities if such damage is caused by the construction or placement of Grantor Improvements.
- I. Grantee shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's Improvements on the Property, whether or not within the Easements, but only if such damage is caused by Grantee's construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Water Facilities.

- J. The Grantee shall have the right to trim or remove any vegetation that may interfere with the rights granted to the Grantee in association with these Easements, without being required to replace or reimburse Grantor for said vegetation.
- K. At the time of future development on the Property, Grantor shall not be required to pay to Grantee any cost-recovery or surcharge associated with the construction of the Water Facilities beyond the standard Tap Fee amount set at such future time for the tap size being requested.
- L. Grantee will provide, at no cost to Grantor, three (3) 16” water distribution connections with the Water Facilities at locations mutually agreeable to the Parties. One Tee will be situated to serve Parcel 5607400001, one Tee to serve parcel 5600000154, and a Cross fitting to serve Parcel 5600000155.
- M. The provisions herein shall inure to the benefit of and bind the heirs, successors and assigns of the respective Parties hereto.
- N. The provisions herein shall be a covenant running with the land.
- O. The Grantor covenants that it has the authority to grant the Easements as set forth herein. Grantee agrees and understands that it commences its use of the Property –“AS IS” and without any warranties of any kind or nature.
- P. In no event shall Grantee allow any mechanics' or materialmen's liens to attach against the Property for materials supplied or work performed at the request of, or for the benefit of, Grantee, and Grantee, to the extent expressly permitted by law, shall indemnify and hold Grantor harmless from any cost or expense, incurred by Grantor to release any such mechanic's or materialmen's liens against the Property.
- Q. The Grantor shall hold Grantee and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, and liabilities of any kind or nature as a result of or in connection with Grantor's, its contractors', agents', or employees' use of the Easements, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantor's, its contractors', agents', or employees' negligence or willful misconduct. In addition, to the extent expressly permitted by law, the Grantee shall hold Grantor and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, liabilities of any kind or nature as a result of, or in connection with Grantee's, its contractors', agents', or employees' use of the Easement, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantee's negligence or willful misconduct, but not as to the use by the general public. Nothing in this section shall be deemed to waive or otherwise limit any defenses, rights, or immunities available to the Grantee pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.
- R. The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein

contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

- S. This Agreement, together with Exhibit A, supersedes all prior negotiations, representations, and agreements, whether oral or in writing, between the Parties with respect to the subject matter herein. Each Party to this Agreement acknowledges that no representation by any party which is not embodied herein, nor any other agreement, statement, or promise not contained in this Agreement, shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing and signed by all Parties.
- T. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.
- U. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.
- V. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of El Paso. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the District of Colorado.

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EXHIBIT A

Legal Description

Waterline Easement

Fountain Colony 1933 LLC

(THIS REVISES ONE DATED 03/02/23)

Legal description of a strip of land located in the Southwest $\frac{1}{4}$ of Section 7 and in the North $\frac{1}{2}$ of the North $\frac{1}{2}$ of Section 18, Township 16 South, Range 65 West of the 6th P.M., El Paso County, Colorado being in a portion of Lot 1, Fountain Colony Industrial Park Filing No. 1, recorded under Reception Number 208712761 of the Records of El Paso County, Colorado described as follows:

(Bearings are based on the West line of Lot 1 of Fountain Colony Industrial Park Filing No. 1 as bearing $N00^{\circ}48'45'' W$)

Commencing at the Southwest Corner of said Lot 1, thence $N00^{\circ}48'45''W$, 253.72 feet along the West line of said Lot 1 to the **TRUE POINT OF BEGINNING**;

Thence continue $N00^{\circ}48'45''W$, 31.14 feet

Thence $N88^{\circ}00'41''E$, 10.65 feet;

Thence $S46^{\circ}59'19''E$, 260.08 feet;

Thence $N88^{\circ}00'41''E$, 305.05 feet to a point on the East line of said Lot 1;

Thence Southeasterly, a distance of 46.89 feet along the arc of a curve concave to the Northeast, said arc having a radius of 501.08 feet, a central angle of $05^{\circ}21'41''$ and being subtended by a chord that bears $S52^{\circ}11'36''E$, 46.87 feet;;

thence along a line non-tangent to said curve, $S88^{\circ}00'41''W$, a distance of 353.49 feet

Thence $N46^{\circ}59'17''W$, 258.47 feet; to the West line of said Lot 1 and the **TRUE POINT OF BEGINNING**.

Area = 17,804.71 square feet, 0.41 acres, more or less.

Randall D. Hency, PLS Colorado 27605
for and on behalf of
Polaris Surveying, Inc.
1903 Lalaray Street, Suite 102
Colorado Springs, Co. 80909
Job No. 210909

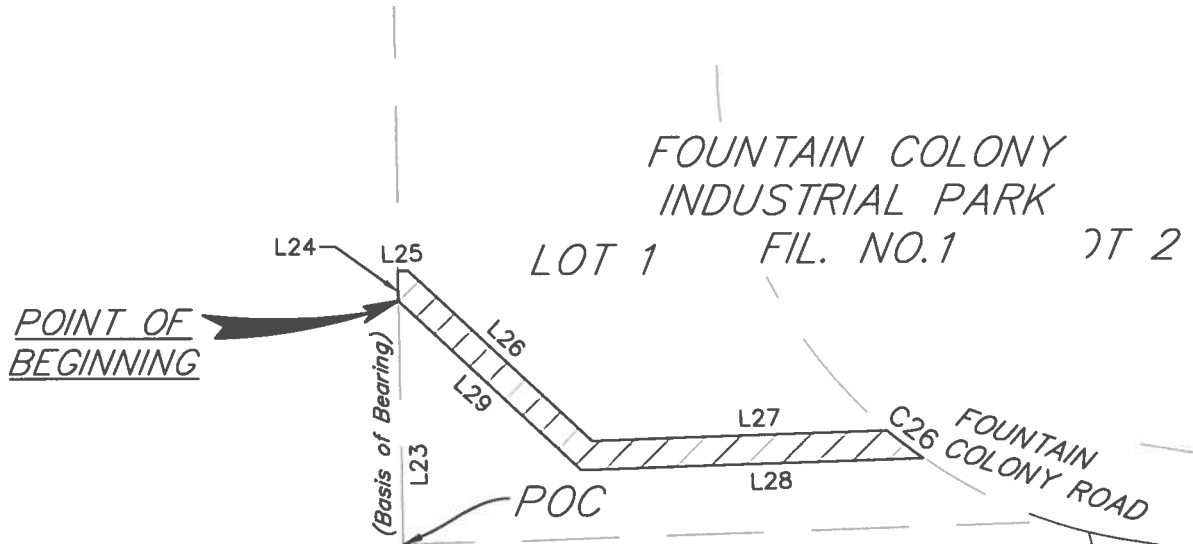
Date 03/21/23



EXHIBIT MAP
Waterline Easement
Fountain Colony 1933



SCALE 1" = 200'



Line Table		
Line #	Direction	Length
L23	S00°48'45"E	253.72'
L24	N00°48'45"W	31.14'
L25	N88°00'41"E	10.65'
L26	S46°59'19"E	260.08'
L27	N88°00'41"E	305.05'
L28	S88°00'41"W	353.49'
L29	N46°59'17"W	258.47'

UNPLATTED



Curve #	Length	Radius	Delta	Chord Bearing	Chord Dist
C26	46.89'	501.08'	005°21'41"	S52°11'36"E	46.87'

Rev: 03/21/23
March 1, 2023
JOB: 21-09-09
JDS Hydro

Waterline Easement Exhibit Map

POLARIS SURVEYING, INC.

1903 Lelaray Street, Suite 102
COLORADO SPRINGS, CO 80909
(719)448-0844 FAX (719)448-9225



Regular City Council Meeting

New Business –9A

Items removed from Consent Agenda

June 20, 2023

Summary Information

Title:

CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT AGENDA

Initiator: City Clerk

Presenter: City Clerk

Legal Review: Yes No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

Any Items removed from the Consent agenda for further discussion shall be heard under this item

Previous Action by City Council:

Attachment:

Background Information

Strategic Plan Priority (if applicable):

Facilitate responsible development, building reasonable capacity to meet future community needs.

Diversify city financial resources and invest.

Provide reliable access to public safety services.

Improve the quality and availability of parks and recreation opportunities

Recommendation

Staff recommendations

Proposed Motion

"I move to approve"



Regular City Council Meeting

New Business-9B

Definition of "Electronic Smoking Device"

June 20, 2023

Summary Information

Title:

FIRST READING OF ORDINANCE NO. 1789 AN ORDINANCE AMENDING DEFINITION OF "ELECTRONIC SMOKING DEVICE" IN SECTION 5.36.030 (DEFINING TERMS) OF CHAPTER 5.36 (TOBACCO PRODUCT RETAIL LICENSING) OF TITLE 5 (BUSINESS TAX, LICENSES AND REGULATIONS) OF THE FOUNTAIN MUNICIPAL CODE TO EXPRESSLY INCLUDE VAPING DEVICES.

Initiator: Kaitlin Parker, Assistant City Attorney & FFCHS Student Council

Council Action

Presenter: Kaitlin Parker, Assistant City Attorney & FFCHS Student Council

Council Information

Legal Review: Yes No

Report to Council

Summary Overview and List of Attachments:

This is a request to approve an amendment of the definition of "electronic smoking device" in Section 5.36.030 of the Fountain Municipal Code to expressly refer to vape pens and other vaping devices.

Previous Action by City Council:

Attachment(s):

Ordinance Amending Definition of "Electronic Smoking Device" in Section 5.36.030 (Defining Terms) of Chapter 5.36 (Tobacco Product Retail Licensing) of Title 5 (Business Tax, Licenses and Regulations) of the Fountain Municipal Code to Expressly Include Vaping Devices.

Background Information

Section 5.36.030 of the Fountain Municipal Code defines the term "electronic smoking device." The definition does not expressly refer to vape pens and other vaping devices. The use of vape pens and other vaping devices by persons under 21 years of age is of concern to the City of Fountain, and City staff recommends amending the aforementioned definition for the health, safety, and welfare of the City's citizens.

Strategic Plan Priority (if applicable):

- Facilitate responsible development, building reasonable capacity to meet future community needs.
- Diversify city financial resources and invest.
- Provide reliable access to public safety services.
- Improve the quality and availability of parks and recreation opportunities

Recommendation

Staff recommends approval of Ordinance No. 1789 authorizing amendment of the definition of "electronic smoking device" in Section 5.36.030 of the Fountain Municipal Code on first reading.

Proposed Motion

"I move to approve Ordinance No. 1789 approving amendment of the definition of 'electronic smoking device' in Section 5.36.030 of the Fountain Municipal Code on first reading.

ORDINANCE NO. 1789

AN ORDINANCE AMENDING DEFINITION OF “ELECTRONIC SMOKING DEVICE” IN SECTION 5.36.030 (DEFINING TERMS) OF CHAPTER 5.36 (TOBACCO PRODUCT RETAIL LICENSING) OF TITLE 5 (BUSINESS TAX, LICENSES AND REGULATIONS) OF THE FOUNTAIN MUNICIPAL CODE TO EXPRESSLY INCLUDE VAPING DEVICES.

WHEREAS, the Fountain Municipal Code regulates the sale and use of tobacco products by persons under 21 years of age; and

WHEREAS, the consumption or use of a “tobacco product,” as defined in Section 5.36.030 of the Fountain Municipal Code, by a person under 21 years of age is unlawful under Section 9.56.070 of the Fountain Municipal Code; and

WHEREAS, Section 5.36.030 of the Fountain Municipal Code defines the term “tobacco product” as including an “electronic smoking device,” which term is also defined under Section 5.36.030 of the Fountain Municipal Code; and

WHEREAS, the definition of “electronic smoking device” in Section 5.36.030 of the Fountain Municipal Code does not expressly refer to vape pens and other vaping devices; and

WHEREAS, the use of vape pens and other vaping devices by minors is of concern to the City of Fountain and the City Council wishes to expressly prohibit said sale to and use by persons under 21 years of age; and

WHEREAS, the City seeks to ensure that its municipal code definition of the term “electronic smoking device” remains current with and reflective of modern advances in electronic smoking devices by expressly including in said definition vape pens and other vaping devices containing or delivering or capable of containing or delivering nicotine, even if manufactured, distributed, marketed, or sold as nicotine free; and

WHEREAS, the State of Colorado prohibits the furnishing of cigarettes, tobacco products, or nicotine products to all persons under 21 years of age as codified in C.R.S. § 18-13-121; and

WHEREAS, Colorado law permits home rule municipalities to impose concurrent regulations regarding smoking and the sale of smoking materials that may be more, but not less, restrictive than state statute depending on local circumstances; and

WHEREAS, City staff recommends that certain changes be made to the definition of “electronic smoking device” in Section 5.36.030 of Title 5 of the City Code for the aforementioned reasons; and

WHEREAS, the City Council has determined that the proposed amendments are in the best interests of the City and are necessary for the health, safety and welfare of the City’s citizens.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fountain, Colorado:

Section 1. The recitals set forth in this ordinance are incorporated herein and made a part of this ordinance.

Section 2. The definition of “Electronic smoking device” contained in Section 5.36.030 (Defined terms) of Chapter 5.36 (Tobacco Product Retail Licensing) of Title 5 (Business Tax, Licenses and Regulations) of the Fountain Municipal Code is hereby amended to read as follows:

Sec. 5.36.030. – Defined terms.

Electronic smoking device means any product containing or delivering **or capable of containing or delivering** nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if **manufactured, distributed, marketed, or sold** as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. **Electronic smoking device includes but is not limited to any electronic cigarette, electronic cigar, electronic pipe, electronic nicotine delivery system, alternative nicotine delivery system, electronic hookah, vape pen, vape mod, vape pod, vape tank, and vape device, containing or delivering or capable of containing or delivering nicotine, even if manufactured, distributed, marketed, or sold as nicotine free.** Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medically approved or certified purposes.

Section 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read by title, and passed on first reading, this 20th day of June, 2023, by City Council and ordered to be published by title in Gazette with a summary written by the City Clerk, and with a statement that the ordinance is available for public inspection and acquisition in the office of the City Clerk, 116 South Main Street, Fountain, Colorado 80817.

CITY OF FOUNTAIN, COLORADO

By: _____
Sharon Thompson, Mayor

Attest:

By: _____
Silvia Huffman, City Clerk



Regular City Council Meeting

New Business –9C

Hearing Officer

June 20, 2023

Summary Information

Title:

FIRST READING OF ORDINANCE 1790, AN ORDINANCE AMENDING FOUNTAIN MUNICIPAL CODE, CREATING A HEARING OFFICER AND AUTHORIZING THE HEARING OFFICER TO ACT AS THE LOCAL LIQUOR LICENSING AUTHORITY AND TO HEAR VARIOUS APPEALS AND VARIANCE REQUESTS

Initiator: Troy Johnson, City Attorney

Council Action

Presenter: Troy Johnson, City Attorney

Council Information

Legal Review: Yes No

Report to Council

Summary Overview and List of Attachments:

This Ordinance amends Fountain City Code to eliminate the Board of Adjustment, replaced by a single Hearing Officer and authorizing that Hearing Officer to act as the local liquor licensing authority.

Background Information

With recent changes to the City of Fountain’s zoning code, there has been a reduction in the amount of requests for variances by citizens. This makes it increasingly difficult to maintain a quorum for the Board of Adjustment with present and properly educated and trained members of the community. This ordinance would instead replace that board with a qualified and knowledgeable person to evaluate variances. Additionally, this person would be qualified to act as well as the City’s Liquor Authority, instead of the City Council. This could add ease, speed, and efficiency in processing items related to the liquor code.

Strategic Plan Priority (if applicable):

- Transportation Infrastructure
- Telecommunications Technology and Capabilities.
- Distribution of Public Safety Resources
- Improve the Availability of Venues Which Support Community Activities

Recommendation

Staff makes no recommendation.

Proposed Motion

“I move to approve Ordinance NO. 1790 on First Reading”

ORDINANCE NO. 1790

AN ORDINANCE AMENDING FOUNTAIN MUNICIPAL CODE, CREATING A HEARING OFFICER AND AUTHORIZING THE HEARING OFFICER TO ACT AS THE LOCAL LIQUOR LICENSING AUTHORITY AND TO HEAR VARIOUS APPEALS AND VARIANCE REQUESTS

RECITALS

- A. The City of Fountain, Colorado is authorized as a local licensing authority to regulate alcohol beverages under Article 3 of Title 44, C.R.S. (The Colorado Liquor Code) and is authorized to regulate fermented malt beverages under Article 4 of Title 44, C.R.S. (The Colorado Beer Code)
- B. Section 44-4-103(4) C.R.S. and Section 44-3-103(27) C.R.S. define local licensing authority as: “the governing body of a municipality or city and county, the board of county commissioners of a county, or any authority designated by municipal or county charter, municipal ordinance, or county resolution.”
- C. As the local licensing authority, the City Council of the City desires to designate the City Clerk and a Hearing Officer as the local licensing authority of the City for purposes of routine renewal of licenses, manager registration, temporary permits, and change of corporate structure under the Colorado Liquor Code and the Colorado Beer Code as hereinafter set forth.
- D. The City of Fountain has historically had a Board of Adjustment to hear various matters, primarily variances from Fountain City Code, but now desires to implement a Hearing Officer to Act in such matters.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Fountain, Colorado:

Section 1. The recitals set forth in this Ordinance are incorporated as legislative findings in support of this Ordinance.

Section 2. Chapter 5.28 (Renewal of Liquor Licenses and Temporary Permits) of Title 5 (Business Tax, Licenses and Regulations) is hereby amended as attached Exhibit A.

Section 3. Chapter 2.28 of Title 2 (Administration and Personnel) is renamed “Hearing Officer” and hereby amended as attached Exhibit B.

Section 4. Section 140 (Notice and order for owner abatement) of Chapter 8.12 (Property Maintenance Code for Non-Owner Occupied Housing and Nonresidential Buildings) of Title 8 (Health and Safety) is hereby deleted in its entirety.

Section 5. Section 070 (Amendments to the International Fire Code) of Chapter 15.04 (Fire Code) of Title 15 (Public Safety) is hereby amended as attached Exhibit C.

Section 6. Section 030 (District boundaries) of Chapter 17.03 (Districts and Maps) of Title 17 (Zoning); Sections 050 (Hearing Officer), 070 (Pre-application meetings), and 080 (Public Notice), of Chapter 17.20 (Administration) of Title 17 (Zoning); Sections 010 (Who may apply), 020 (Time Limits and procedure for appeals, 040 (Appeals), 050 (Variances), 060 (Standard of review for variance requests), 070 (Not transferable), and 080 (Duration) of Chapter 25 (Variances and Appeals) of Title 17 (Zoning); and Part A, “Variance” of Section 010 (Meanings defined) of Chapter 31 (Definitions) of Title 17 (Zoning) are hereby amended as attached Exhibit D.

Section 7. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read by title, and passed this 20th day of June, 2023, by the City Council, City of Fountain, Colorado, signed by the Mayor, and ordered published by title with a summary written by the City Clerk together with a statement that the ordinance is available for public inspection and acquisition in the office of the City Clerk in the Colorado Springs Gazette, a newspaper of general circulation in the City of Fountain.

Mayor

ATTEST:

City Clerk

Introduced, read by title, and passed on second and final reading on the _____ day of _____ 2023 and ordered published by title in the Colorado Springs Gazette, a newspaper of general circulation in the City of Fountain, Colorado, in accordance with the City Charter.

Mayor

ATTEST:

City Clerk

TITLE 5 (BUSINESS TAX, LICENSES AND REGULATIONS)

CHAPTER 5.28 (RENEWAL OF LIQUOR LICENSES AND TEMPORARY PERMITS)

5.28.10. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“City Clerk” is the City Clerk of the City of Fountain including the Deputy City Clerks.

“License” includes both a grant to a license to manufacture, or sell malt, vinuous liquors as provided in Article 3 of Title 44, C.R.S. (the “Colorado Liquor Code”) and a grant of license to manufacture or sell fermented malt beverages as provided by Article 4 of Title 44, C.R.S. (the “Colorado Beer Code”).

“Temporary permit” means the temporary permit issued under the authority of section 44-3-303 C.R.S.

5.28.020. Designation of City Clerk and Hearing Officer as the Local Licensing Authority for Certain License Renewals and the Issuance of Temporary Permits.

- A. The City Council as the governing body of the City designates the City Clerk as the local licensing authority under Article 3 of Title 44, C.R.S. and Article 4 of Title 44, C.R.S. for certain license renewals.
- B. Any other local licensing authority not specifically granted herein to the City Clerk shall be designated to the Hearing Officer, have sufficient knowledge and expertise to apply and enforce the State of Colorado Beer Code Liquor Code, Special Events Code, and Code of Regulations. The Hearing Officer shall not hold any other City office, appointment or position, except that the City Council may appoint the Municipal Court Judge as the Hearing Officer. Additionally, the Hearing Officer shall not have any financial interest in the operation of any business located or operating in the City that holds a license pursuant to C.R.S. § 12-46-101. et seq. or C.R.S. § 12-47-101. et seq.

5.28.030. Renewal of Licenses issued under the Colorado Liquor Code and the Colorado Beer Code by the City Clerk.

- A. Whenever an application for renewal of a license issued under Article 4 of Title 44 C.R.S. or an application for renewal of a license issued under Article 3 of Title 44 C.R.S. is filed with the office of the City Clerk, the City Clerk shall consider the applicable legal requirements for license renewal. The City Clerk shall obtain such information as the City Clerk determines is appropriate to consider concerning the renewal of the license. The City Clerk is authorized to renew license if all legal requirements for renewal of the license are met.
- B. If all applicable legal requirements for renewal of the license are met, except that the license renewal application is not timely filed in accordance with Section 12-47-302 C.R.S.(1), the City Clerk may renew the license if the City Clerk concludes there is good cause to waive the time forty-five day requirement for filing with the local licensing authority an application for license renewal as permitted in Section 12-47-302 (1) C.R.S. If the City Clerk concludes that there is not good cause for waiving the forty-five day requirement, the City Clerk shall refer the application for license renewal to the Hearing Officer.

- C. If a late renewal application is filed with the office of the City Clerk meeting the requirements of Section 44-3-302(b) C.R.S., the City Clerk may, at her discretion, renew the license or refer the license renewal application to the Hearing Officer.

5.28.040. Referral to the Hearing Officer.

If the City Clerk determines there is good cause to not renew the license under section C.R.S. § 44-3-302 the City Clerk shall refer consideration of renewal of the license to the Hearing Officer. No license renewal hearing shall be held by the Hearing Officer until a notice of the hearing has been conspicuously posted on the licensed premises for a period of ten (10) days and a notice of the hearing has been provided to applicant for license renewal at least ten (10) days prior to the hearing, in accordance with Section 44-3-302(c) C.R.S.

5.28.050. Issuance of Temporary Permits under Section C.R.S. § 44-3-303.

Whenever an application is filed with the City Clerk under section C.R.S. § 44-3-303 for the issuance of a temporary permit, the City Clerk shall consider the applicable legal requirements for issuance of a temporary permit. The City Clerk shall obtain such information as the City Clerk determines is appropriate to consider concerning the issuance of a temporary permit. The City Clerk is authorized to issue a temporary permit if all legal requirements of C.R.S. § 44-3-303 are met.

5.28.060. Approval of Manager Registration and Change of Corporate Structure Application.

Whenever an application is filed with the City Clerk regarding a change under C.R.S. § 44-3-301, either for a change of manager, corporate structure, or trade name, the City Clerk shall obtain information as the City Clerk determines is appropriate. The City Clerk is authorized to approve the application if all legal requirements under C.R.S. § 44-3-301 have been met.

5.28.070. Approval of Change, Alteration, or Modification of Licensed Premises.

Whenever an application is filed with the City Clerk changing, altering, or modifying a licensed premises, the City Clerk shall obtain information as the City Clerk determines is appropriate under state regulations. The City Clerk is authorized to approve the application if all legal requirements have been met.

TITLE 2 (ADMINISTRATION AND PERSONNEL)

CHAPTER 2.28 (HEARING OFFICER)

2.28.010. Created.

There shall be and is hereby created a hearing officer. The hearing officer shall be appointed through resolution of the city council. The Hearing Officer shall have sufficient knowledge and expertise to apply and enforce the State of Colorado Beer Code, Liquor Code, Special Events Code, and Code of Regulations. The Hearing Officer shall not hold any other City office, appointment or position, except that the City Council may appoint the Municipal Court Judge as the Hearing Officer. The City Attorney shall be vested with the authority to select an alternate to serve from time to time as the Hearing Officer in the event that the Hearing Officer is unable to fulfill their duties. Such alternate must meet the same qualifications as required for the Hearing Officer.

2.28.020. Functions.

The hearing officer shall have the following functions:

- A. To hear and decide upon all appeals pursuant to section 17.25.040(A).
- B. To hear and decide upon all applications for variances under the zoning code, pursuant to section 17.25.050.
- C. To hear and decide upon all appeals pursuant to the International Fire Code, as adopted by Chapter 15.04.
- D. To act as the local licensing authority for purposes of liquor licensing, pursuant to Chapter 5.28.

2.28.040. Minutes.

The hearing officer shall be responsible for ensuring minutes are kept for all proceedings.

2.28.050. Form of appeals pursuant to section 17.25.040.

- A. Any person appealing any decision pursuant to section 17.25.040(A), and any person appealing for modifications of the requirements of the International Fire Code, as adopted by chapter 15.04, may appeal such decision by filing at the office of the clerk of the city within 30 days from the date of the service of such order or administrative decision a written appeal containing:
 - 1. A heading in the words: Before the Fountain Hearing Officer.
 - 2. A caption reading: Appeal of giving the names of all appellants participating in the appeal.
 - 3. A brief statement, in ordinary and concise language, setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order or administrative decision.
 - 4. A brief statement, in ordinary and concise language, of the specific order, action or decision protested, together with any material facts claimed to support the contentions of the appellant.

5. A brief statement, in ordinary and concise language, of the relief sought and the reasons why it is claimed the protested order, action or decision should be reversed, modified or otherwise set aside.
 6. The signature of all parties named as appellants, and that, in ordinary and concise language, of the specific order or action protested, together with any material facts claimed to support the contentions of the appellants.
 7. The signature of all parties named as appellants, and their official mailing addresses.
 8. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
 9. The appeal form shall be accompanied by a nonrefundable fee as set by city council.
- B. The party shall pay a nonrefundable application fee as set by city council. In the event that the party filing the appeal anticipates that the time required for the hearing, including the review of all evidence by the hearing officer, will require more than two hours, the party shall pay an additional \$25.00 per one-half hour exceeding two hours of public hearing time. The appealing party shall be responsible for payment of this amount, regardless of outcome. Should the appealing party fail to pay the assessed costs within five days of any final judgment, they shall also be liable for all costs of collecting said monies, including reasonable attorneys' fees.
- C. The payment of fees or lack thereof for extra time shall not be considered in the hearing officers' determination as to whether to allow more time for the hearing.

2.28.060. Effect of failure to appeal.

Failure of any person to file an appeal in accordance with the provisions of this chapter and section 17.25.040(A), or the International Fire Code, as adopted by chapter 15.04, shall constitute a waiver of any right to an appeal.

2.28.070. Staying of order under appeal.

Except for emergency orders or notices issued pursuant to the International Fire Code, as adopted pursuant to Chapter 15.04, enforcement of any decision appealed pursuant to section 17.25.040(A) shall be stayed during the pendency of an appeal therefrom that is properly and timely filed.

2.28.080. Processing appeal.

- A. Upon receipt of any appeal filed pursuant to this chapter, the appeal shall be presented at the next regular or special meeting of the hearing officer.
- B. As soon as practicable after receiving the written appeal, the clerk of the city shall fix a date, time and place for the hearing of the appeal by the hearing officer. Such date shall be not less than ten days nor more than 60 days from the date the appeal was filed with the clerk of the city. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the clerk of the city either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal or application.

2.28.090. Scope of hearing on appeal.

Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

2.28.100. Procedure for hearing appeals.

- A. *Hearings.* The city hearing officer shall conduct hearings and exercise all powers relating to the conduct of hearings.
- B. *Records and reports.* A record of the entire proceedings shall be made by tape recording determined to be appropriate by the hearing officer and as may be required by state law.
- C. *Continuances.* The hearing officer may grant a continuance for good cause shown.
- D. *Reasonable dispatch.* The hearing officer shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.
- E. *Form of notice of hearing.* The notice to appellant shall be substantially in the following form, but may include other information:

“You are hereby notified that a hearing will be held before the Fountain Hearing Officer at place on the date day of month, year, at the hour upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you.
- F. *Penalties.* Any person who refuses, without lawful excuse, to attend any hearing or to produce material evidence in his possession or under his control shall be guilty of a municipal violation, and, upon conviction, shall be punished in accordance with section 1.12.010.

2.28.110. Conduct of hearings for appeals.

For all appeals taken pursuant to section 17.25.040(A), and the International Fire Code, as adopted by Chapter 15.04, hearings shall be conducted as follows:

- A. *Chairperson to preside.* The hearing officer shall preside over the hearing and shall make all evidentiary and procedural rulings.
- B. *Rules.* Hearings need not be conducted according to the technical rules relating to evidence and witnesses.
- C. *Time of hearing.* Except for good cause, hearings shall be limited to two hours.
- D. *Oral evidence.* Oral evidence shall be taken only on oath or affirmation.
- E. *Hearsay evidence.* Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in the state.
- F. *Admissibility of evidence.* Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in the state.

- G. *Exclusion of evidence.* Irrelevant and unduly repetitious evidence shall be excluded.
- H. *Rights of parties.* Each party shall have these rights, among others:
1. To call and examine witnesses on any matter relevant to the issues of the hearing.
 2. To introduce documentary and physical evidence.
 3. To cross examine opposing witnesses on any matter relevant to the issues of the hearing.
 4. To impeach any witness, regardless of which party first called him to testify.
 5. To rebut the evidence against him.
 6. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.
- I. *Official notice.*
1. What may be noticed. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of the state, or of official records of the board or departments and ordinances of the city, or rules and regulations of the hearing officer.
 2. Parties to be notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.
 3. Opportunity to refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the hearing officer.
- J. *Inspection of the premises.* The hearing officer may inspect any building or premises involved in the appeal during the course of the hearing, provided that:
1. Notice of such inspection shall be given to the parties before the inspection is made.
 2. The parties are given an opportunity to be present during the inspection.
 3. The hearing officer shall state for the record, upon completion of the inspection, the material, facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the hearing officer.
- K. *Standard of review.*
1. Appeals pursuant to section 17.25.040.A. The hearing officer may affirm, modify or reverse the decision of the zoning administrator if it finds that the zoning administrator acted contrary to local, state or federal law or abused his discretion.
 2. Appeals pursuant to the International Fire Code, as adopted by chapter 15.04. The hearing officer may affirm, modify or reverse orders, decisions, or determination made by the fire code official relative to the application and interpretation of the International Fire Code, as adopted by chapter 15.04.

2.28.120. Variances.

- A. An application for approval of a variance may be initiated only by the fee owner of the property for which the variance is requested, or their duly authorized agent. The application shall be submitted to the zoning administrator on forms provided by the city. At a minimum, the application shall contain the following:
1. Name, address and telephone number of the applicant.

2. Legal description of the property and the street address, if applicable.
 3. A plot plan of the property as described in chapter 17.21 or site development plan as described in chapter 17.523, whichever is applicable to the property and use.
 4. The names and addresses of all adjoining property owners of record.
 5. The nature of the variance and under which section of this Code the variance is sought.
 6. A statement of facts, which the applicant believes justifies the variance.
- B. The application shall be accompanied by a nonrefundable fee as determined by the city council to cover costs related to the application. An application shall not be considered filed until all required information is submitted.
- C. The zoning administrator, or their designee, shall review the application and shall make a report of their findings to the hearing officer.
- D. Notice of the public hearing shall be mailed and posted in the manner set forth in section 17.20.080.
- E. The public hearing shall be held. An applicant may appear in person or by authorized representative or attorney.
- F. Records and reports. A record of the entire proceedings shall be made by tape recording determined to be appropriate by the hearing officer and as may be required by applicable state law.

2.28.130. Method and form of decision for appeals and variances.

- A. *Form of decision.* The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him at the address set forth in the appeal by first class mail.
- B. *Time of decision.* The hearing officer shall issue its findings within 30 days of the completion of the hearing.
- C. *Effective date of decision.* The effective date of the decision shall be as stated therein.

TITLE 15 (PUBLIC SAFETY)

CHAPTER 15.04 (FIRE CODE)

Sec. 15.04.070. Amendments to the International Fire Code.

Appendix A

- A. *Appendix A* - Board of appeals. Delete appendix A and replace with the following:
- B. *A101*. Board of appeals established. In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there shall be and hereby created a board for the purpose of hearing appeals.
- C. *A102*. Within the city, the board of appeals shall be the Hearing Officer as established pursuant chapter 2.15. Within the Fire Protection Districts of Security and Stratmoor Hills the board of appeals shall be the Fire Protection District Board. Where the term "board of appeals" is used in the International Fire Code, it shall mean the Hearing Officer of the city nor the Fire Protection District Boards of Security and Stratmoor Hills.
- D. *A103*. When hearing issues relative to this code, the Hearing Officer or fire district board shall operate in accordance with section 108 and appendix A of this Code.
- E. *A104*. Scope. The Hearing Officer or fire district board shall be authorized to hear evidence from the appellants and the fire code official pertaining to the application and intent of this code for the purpose of issuing orders pursuant to these provisions. The fire code official is authorized to have the fire code officials from the other jurisdictions covered by this code to testify on their behalf.
- F. *A105*. Process. The process of an appeal of a decision or determination made by the fire code official should be first made to the fire chief within 30 days of the decision or determination. Within 30 days of a decision or determination made by the fire code official or within 30 days of a written decision by the fire chief the appellant may make a written appeal to the Hearing Officer or fire district board.
- G. *A106*. Procedures. The city Hearing Officer shall operate in accordance with the establish rules, regulations and procedures of chapter 2.28 for its own procedure not inconsistent with the provisions of this code and applicable state law. The fire districts boards shall operate in accordance with their establish rules, regulations and procedure in accordance with the C.R.S. title 32 for its own procedure not consistent with the provisions of this code and applicable state law.

TITLE 17 (ZONING) ARTICLE II (DISTRICT REGULATIONS)

CHAPTER 17.03 (DISTRICTS AND MAPS)

17.03.030. District boundaries.

- A. *District boundaries.* Except where otherwise indicated, zoning district boundaries shall follow municipal corporation limits, section lines, lot lines, right-of-way lines, or extensions thereof. In property where a zoning district boundary divides a lot or parcel, the location of such boundary, unless indicated by legal description with distance and bearing or other dimensions, shall be determined by using the graphic scale of the official zoning map. In interpreting the official zoning map, unless otherwise specified on the official zoning map, zoning district boundary lines are intended to be property ownership lines or lot lines; centerline of streets, alleys, channel waterways or similar rights-of-way; the centerline of blocks; section or township lines; municipal corporate boundaries; the centerline of stream beds; or other lines drawn approximately to scale on the official zoning map.
- B. *Boundary clarification.*
 - 1. In the event that a zoning district boundary is unclear or is disputed, it shall be the responsibility of the zoning administrator to determine the intent and actual location of the zoning district boundary.
 - 2. Any appeal of the determination of the zoning district boundary made by the zoning administrator shall be heard by the Hearing Officer in accordance with the procedures outlined in article V.
- C. *Amendments to map.* Changes in the boundaries of any zoning district shall be made only upon amendment to this title as specified in chapter 17.24 and shall promptly be entered on the official zoning map with an entry on the map giving the number of the amending ordinance.

CHAPTER 17.20 (ADMINISTRATION)

17.20.050. Hearing Officer.

- A. The Hearing Officer shall have the power and duty to:
 - 1. To hear and decide upon all appeals pursuant to section 17.25.040(A)
 - 2. To hear and decide upon all applications for variances under the zoning code, pursuant to section 17.25.050.
- B. The Hearing Officer shall not have the power to change this title or to change the official zoning map.

17.20.070. Pre-application meetings.

- A. Subject to the exceptions provided by subsection E. below, if requested by the zoning administrator, the applicant shall attend a pre-application meeting with the city planning staff and such other personnel as the city deems necessary.
- B. The purpose of the pre-application meeting is to define the scope of the project, to alert the applicant and the city to any particular circumstance concerning the subject property and, in general, to settle on the suitability of the proposed project prior to extensive planning.
- C. An informal preliminary application shall be submitted at the pre-application meeting. The informal application should describe the nature and scope of the proposed application and, in the case of a PUD application, shall include a sketch plan reflecting total acreage, adjacent landowners, adjacent land uses, existing and proposed streets, highways and utilities that will service the project, major physical features, including drainages, the location of natural features in and around the development and existing and proposed uses, including the number of dwelling units. The city planner may waive any of these requirements in his or her discretion.
- D. Prior to or at the time of the pre-application meeting, the applicant shall submit a development review cash deposit in the amount set forth in the fee schedule adopted by the city council from time to time.
- E. The pre-application meeting required by this section shall not apply to applicants for sign permits, minor amendments to PUDs requiring administrative approval only, site development plans for new single family residences, new two-family residences and new accessory structures and variances and appeals to the Hearing Officer.

17.20.080. Public notice.

- A. *Purpose and intent.* All land use applications that require a public hearing before the planning commission, city council or hearing officer shall be subject to the requirements contained in this section. It is intended to provide for adequate notification ensuring the opportunity for public participation of land use proposals within the city.
- B. *Requirements.*
 - 1. All applications requiring public hearing shall meet these requirements prior to the established hearing date. The planning commission, city council, or hearing officer may continue the hearing to a date certain. No further notice of a continued hearing must be

provided unless a period of six weeks or more elapses between the hearing dates, before the same board. In situations where this time period has passed, additional publication of the notice of public hearing is required in accordance with section 17.20.080 below.

2. All required public notices shall be performed by the city at the applicant's sole cost and expense.
3. No public hearing shall commence unless and until all manner of public notice required of such hearing by this section have been provided.

C. *Procedures.*

1. At least 15 days prior to a public hearing, a notice shall be published at least one time in the legal notice section of a general circulation newspaper within the City of Fountain. A publisher's affidavit shall be obtained by the zoning administrator prior to the hearing date to verify the publication of the required notice.
2. At least 15 days prior to a public hearing, a notice shall be posted on the property for which the land use application is made.
3. Notice of the public hearing shall be sent by first-class mail to the record owners of property within 400 feet of the subject property at least 15 days in advance of the public hearing.
4. The content of all notices of public hearing shall be as specified by city administrative guidelines.

CHAPTER 17.25 (VARIANCES AND APPEALS)

17.25.010. Who may apply.

Any person aggrieved by the inability to obtain a building permit, (except where inability to obtain a building permit is due to denial of a conditional use or rezoning application by the city council), or by decision of any administrative officer in the city based upon or made in the course of the administration of or enforcement of the provisions of this title may appeal that decision pursuant to the terms of this chapter. Appeals may also be made by any officer, department or board of the city affected by the grant or refusal of the building permit, or by other decision of the administrative officer or agency, based on or made in the course of administration or enforcement of this regulation.

17.25.020. Time limit and procedure for appeals.

Appeals shall be made in writing and filed in accordance with chapter 2.28, Hearing Officer.

17.25.030. Stay of proceedings.

An appeal stays all proceedings and furtherance of the action appealed from unless the officer from whom the appeal is taken, certifies to the hearing officer or planning commission, after the notice of appeal shall have been filed with him or it, that by reason of facts stated in the certificate, a stay would, in his or its opinion, cause imminent peril of life and property, in which case proceedings shall not be stayed.

17.25.040. Appeals.

- A. *Appeals from administrative decisions to the hearing officer.* Any person aggrieved by an administrative decision made by the zoning administrator on a matter involving an interpretation or determination of this title or the official zoning map may appeal such decision to the hearing officer pursuant to chapter 2.28, Hearing Officer. The hearing officer may affirm, modify or reverse (wholly or partially) the administrative decision made by the zoning administrator.
- B. *Appeals from the planning commission's decisions.* Any person may appeal to the city council any action of the planning commission in relation to this title, where such action was adverse to such person by filing with the city clerk a written notice of appeal. Such notice of appeal shall be filed with the city clerk no later than 15 days after the action from which appeal is taken, and shall briefly state the grounds upon which the appeal is based. The city council may refer any matter so appealed back to the planning commission for further consideration, affirm the action of the planning commission, reverse the action of the planning commission or modify said action.

17.25.050. Variances.

Requests for relief from the regulations and development standards of this title may be taken to the hearing officer pursuant to section 2.28.120 when the strict application of this title will deprive a property of the privileges enjoyed by other property of the same zoning classification in the same zoning district because of special circumstances applicable to a property, including its size, shape, topography, location or surrounding. The hearing officer may only consider dimensional standard variances; use variances are not permitted.

17.25.060. Standard of review for variance requests.

- A. For any requests for variance pursuant to section 17.25.050, the hearing officer may, after public hearing, modify the application of the regulations or provisions of this title relating to the construction, or alteration of buildings or structures if it finds that all of the following exist:
1. Due to exceptional and extraordinary circumstances unique to the property or structure, such as topography or other natural features present on the property, for which the variance is sought, the strict enforcement of the provisions of this title would cause an unnecessary hardship to the applicant. The circumstances causing the unnecessary hardship were not created by an owner or user of the property or by the applicant for the variance. Additionally, the circumstances causing the unnecessary hardship are particular to the land or structure for which the variance is sought and do not apply generally to land and buildings in the zoning district in which the property is located. Financial hardships or gains cannot be not considered.
 2. The variance requested is the minimum deviation from the title necessary to allow the same and no greater use as that allowed of other land or structures in the same zoning district.
 3. The granting of the variance will not allow uses or densities not permitted in the zoning district in which it is granted nor shall the variance allow the expansion or establishment of a non-conforming use.
 4. The granting of the variance will not injure the appropriate use of adjacent conforming properties, will not impair an adequate supply of light and air, will not impair the view from the adjacent property, and will not substantially diminish or impair property values within the surrounding area.
 5. The granting of the variance will be consistent with the spirit, purpose, and intent of this title and will not create a situation, which alters the character of the area surrounding the property for which the variance is granted.
 6. The granting of the variance will secure and in no way diminish the public safety and welfare; not impair prevention of or increase risk of fire, flood, traffic congestion or other hazard.
- B. In granting a variance, the hearing officer may prescribe any safeguard that it deems necessary to secure substantially the objectives of the regulations or provisions to which the variance applies and may impose such conditions on the use of the property for which the variance is sought as are consistent with the purposes of this title. If such safeguards or conditions are imposed, the variance shall not become effective until the owner of the property and the applicant agree to abide by such conditions.

17.25.070. Not transferable.

Each variance shall apply specifically to the property or structure described in the approval and shall not be transferable to any other property or structure.

17.25.080. Duration.

- A. Unless limited by its terms, a variance shall remain in full force and effect as long as the use for which the variance is sought continues. However, failure to apply for a building permit to carry out the work involved in the variance, within one year from the date the variance was granted, shall constitute abandonment of the variance.
- B. Discontinuance of the use for which the variance was granted for a period of one year or more shall constitute abandonment of the variance. Upon abandonment, the variance shall automatically cease to exist with no further action by the hearing officer.

CHAPTER 17.31 (DEFINITIONS)

17.31.010. Meanings defined.

- A. As used within this title, except where otherwise specifically defined, or unless the context otherwise requires, the following terms, phrases, words and their derivations shall have the following meanings:

Variance. A modification of the regulations of these regulations as applied to a specific property when authorized by the hearing officer after finding that the literal application of the provisions of these regulations would cause undue and unnecessary hardship in view of the facts and conditions applying to a building or lot.

Significant Changes:

- Eliminating Board of Adjustment, replacing with a “Hearing Officer” appointed by City Council
 - Deleting Board procedures, membership, etc.
 - Deleting 8.12.140 (abatement appeals to the BOA) and subsequent references
- Replacing City Council with Hearing Officer as the local liquor authority

Minor Changes:

- Removing the ability to request the hearing be transcribed
- Removal of administering an oath
- Simplified language regarding costs of appeal, depending on length of the hearing
- Deletion of “Treble Damages”
- Removal of ability to grant a restraining order
- Alternate Hearing Officer selection by the City Attorney

FOUNTAIN URBAN RENEWAL AUTHORITY

February 21, 2023

(COVID-19 Social Distancing and Unvaccinated Masks in effect)

General Board Meeting Minutes

Chair Aragon called a regular monthly meeting of the Fountain Urban Renewal Authority to order at 6:03pm. Commissioners present included Vice Chair (VC) McMaster, Dixie Snyder, Tamera Estes, and Logan Broz; and FURA Executive Director (ED) Kimberly Bailey. Additional attendees include: Carrie Bartow and Mallorie Hansen of CliftonLarsonAllen (CLA)

CONSENT AGENDA

The following Consent Agenda items were presented for approval:

1. Approval of January 17, 2023 General Meeting Minutes
2. Approval of February 21, 2023 Accounts Payable
3. Approval of February 21, 2023 Monthly Financials Report

Estes motioned for Consent approval as denoted, second by Broz, and the motion passed unanimously by the Board.

UPDATES

2nd FL RENO PH II Completion

ED Bailey referenced a budget reconciliation report on the 2nd FL RENO PH II for Woodman Hall property. Through a series of Pikes Peak Regional Building add-on mandates, two TDG Architect design errors, and miscellaneous clawback credits, the project completed within 4% of the approved project budget. Bailey also acknowledged the nimble, creative, and thriftiness of the Nunn G.C. team which helped to contain project creep and overall budget completion ratio.

Business Tenant Claim

ED Bailey presented a Business Tenant Claim for damages and client retention expenditures due to 2nd FL RENO PH II construction impacts endured; as put forth for FURA review, discussion, and parties' obligation.

Per the Claim:

- There are items above the fold which are perceived to be directly due to sub-contractor and or G.C. Superintendent Negligence (100% payment)
- There are items below the fold which are client retention measures by the Small Business, due to the project disruptions (50% payment)

Through a general discussion, Chair Aragon motioned for reimbursement and conditional terms of approval for a check payable to the Tenant, second by Broz, and the motion passed unanimously by the board.

The Authority's conditional terms include notification to the tenant that the Business Tenant Claim reimbursement is/will be a one-time-allowance of a particle reimbursement. At no point, may our Tenant expect further allowances of such UNLESS there is an unprecedented case of occurrence that placed undue hardship. In addition, an early disclosure notice by Tenant of such to the Authority to communicate the situation will be a critical step for us to remedy such in a timely (20 day) manner.

ED Bailey to coordinate Business Tenant Claim reimbursement in portion by the first week of March on behalf of tenant retention.

In the same vein, the Authority wished to address the negligence factor which transpired on-site and caused undue hardship with our business tenant, whereby:

1. The G.C. Superintendent Negligence matter should be paid/reimbursed to FURA by the G.C. due to their parties' liability obligation under the service contract with FURA.
 - a. **UPDATE: This action item has been concluded by G.C.**
2. In our proceedings ahead with 1st FL design and hard construction realms the Authority wishes for the G.C. to be proactive now as to its review of protocols and policies to ensure to the best of its ability this expenditure impact will be limited/non exist in the next round(s) of on-site construction scope of work.
 - a. The Authority and our Tenant have been fully aware there will be continual disruptions transpiring within the property during the next scope of work variables; however it's imperative for our G.C. to be cognizant of such aspects and work with FURA as to minimalizing such impacts, to be best of its reasonable abilities and to do so on behalf of our Tenant Business operations.

The reimbursement allowance and forward thinking approach is deemed respectful and a basis of understand among all parties whereby the Authority is seeking to have improved protocols in place ahead of 1st FL hard construction; as the Authority proceeds ahead in the property construction phase(s) in the near term and future property improvements.

Intermittent PH II 2.0

ED Bailey referred to the quasi state of conditions as to the interior east stairwell located off of Ohio Avenue. To completely finish the 2nd FL RENO, there are two defined areas that need to be addressed and/or approval of the board to proceed:

- a. The interior stairwell and upper landing need some caretaking attention on behalf of recruiting future small business tenants of the property, such improvements include:
 - Wall texture and uniform paint finish
 - Restore/refresh the beadboard and uniform paint finish
 - Below flooring deck, Kitchenette plumbing encasement at the Ohio Avenue entry
 - 2 Window Transom replacements due to non-existence and/or damaged glass panes
 - Restore/replicate retro handrail and hardware
 - Window shades for climate buffer enhancement
- b. New Insulation layer for climate conditions of the tenant spaces, above and beyond the recent HVAC units installed per tenant spaces.
 - The G.C. has recommended installation of a new layer of insulation in the upper ceiling rafters to increase the R-energy factor and to maintain new HVAC equipment functionality for the 2nd FL.
 - This will avail FURA a test period of cold and warm climate seasons to determine if to-date climate improvements are performing adequately for the SF
 - If this test fails then the final step would necessitate upgrading window(s) encasements of the upper floor at the time of ground floor window pane improvements for climate and sound barriers of the property

Items outlined in Section A and B were not included in the current PH II scope of work nor foreseen for inclusion in the PH III Ground Floor scope of work. As the board completed a site visit of the property, VC McMaster motioned for approval of the ED to engage with G.C. to procure bid quotes for final review/approval by the board in advance of its March general board meeting, second by Broz, and the motion passed unanimously by the board.

W.H. Ground Floor PH III

ED Bailey referenced a series of floor plan layouts with regards to ADA accessibility, bathroom configurations, and the project timeline creep among the technical talent team. As project manager, we've reached a capacity limit among the technical team and supply chain procurement; which already has the project timeline bumped into fall 2023 for hard construction commencement. With that said, it's important for the board to discuss the following variables as it pertains to the W.H. Ground Floor PH III project deliverable with the intent for the board to gain a set of DD and Cost Budget by an APRIL timeframe.

The board discussed a series of if/this/that scenario aspects for the DD and decided upon these key elements to drive the PH III property improvements. The list in is no particular order all items are deemed necessary:

1. Civil Engineer contract to assess ALL access doors, site drainage/grading, and adjoining parking lot ADA access improvements and include such recommendation findings in the DD
 - a. VC McMaster motioned for approval of the TDG Civil Engineer Contract, with the outstanding credit balance to be applied to the Contract, second by Estes, and the motion passed unanimously by the board.
2. ADA access and new sidewalk ramp design at Ohio Avenue street-front for patrons and east side door service vendor deliveries
3. Interior and Exterior Lighting design (minimalistic) to brighten the property and to deter vandalism mischief at the property
4. All floor levels Fire Suppression System upgrade; with an awareness to design for reducing impacts to existing 2nd FL tenant.
5. New "replica" historic front door and new Ohio Ave 2nd FL access south door
6. (historic) Tin Ceiling will be covered with a drop, replica new Ceiling coverage in the HALL portion only.
 - a. This drop ceiling will also allow for the an Installation buffer to increase the R-efficiency factor for enhanced climate conditions, interior noise control among the building's floors, and MEP channel of installation service lines.
7. Replace all exterior wood-shaker areas with solid impervious surface (and re-exposure of the historic SE window headers) that prevent continual maintenance and climate abrasion concerns
8. 1st FL separate meter panel upgrade for the SF Common and Exterior Lighting design
 - a. Removal of all old meters/electric panels wall clunk on north exterior wall.

Estes motioned for approval of task items 2-8, second by VC McMaster, and the motion passed unanimously by the board.

The following bigger scope aspects have been sent back to the technical team to address and propose a final design scope for board recommendation/approval:

1. Bathrooms was a big conversation topic. The Chair and some others still struggle with the location, so much so, they suggested moving the service unit outside for an out-building bath design on the north patio. The board was advised it could be a significant investment and may necessitate other RBD code compliance issues.
 - a. Bath functionality is an important item for us to host Open House and business recruitment efforts for tenant fulfillment of the property.
 - b. Overall the board did like the flip design approach and new location of the rear door for (north) access to new patio for intimate seating and service for the future tenant.
2. New (south) Window Store-Front design was a big conversation topic. As the board still likes the better cohesion look of the store-front as approved (*vs. the former roll up garage bay doors*) they were alarmed by:
 - a. The numerous mechanical slide effects of the design
 - b. The future maintenance/repair costs warnings with usage over time
 - c. The specialty order of the glass and the 4MTH+ procurement lead time

Advice to the technical team for design included:

- * Each full movement swing door remains (4 total)
- * Each interior upper window-slider panel unit is to be replaced by flat glass panel (upper 2/3 only) (5 total) – the board likes the 2/3 - 1/3 window encasement split style of the design; as it mirrors the west store-front
- * The middle zone of slider doors are to be replaced by flat glass panels (full height) (2 of 1 Unit Set)

3. Existing (historic) Front Bay Windows Store-Front – the board unanimously acknowledged the lack of energy efficiency and thin panel glass of this feature. They do not wish to deconstruct/disturb the historic window exterior frame; so they support the interior double panel improvements of the store-front.

ED Bailey mentioned this directional guidance is much appreciated for the technical team to meet its DD and cost budget assessment by the April general board meeting.

FINANCE

SAH PH I Sales Tax Audit

CLA Bartow mentioned that staff is working to issue the Sales Tax Audit notice with South Academy Highlands (SAH) PH I retailers by the next general board meeting.

2022 Audit Proceedings

CLA Bartow advised the 2022 FURA Audit has a start date of on/about March 23rd by BiggsKofford.

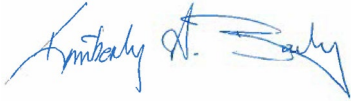
Check Signing

As approved on consent, A/P checks were signed totaling \$147,692.25.

ANNOUNCEMENTS

1. [Army Community Partnerships Award](#), City of Fountain/Fort Carson 2022
2. South Powers Blvd. Extension Transportation Master Plan
 - i. <https://www.southpowersstudy.com/>
3. [Article](#): Industrial Rail Park, Fort Carson Resiliency (*Charter Oak URA*)

Chair Aragon asked if there was any further business. No further topics were brought forth by board members; therefore, VC McMaster motioned to adjourn, second by Broz, passed unanimously by the board at 8:27pm.



Kimberly Bailey, Executive Director

06.20.23

Date

FOUNTAIN URBAN RENEWAL AUTHORITY

March 21, 2023

(COVID-19 Social Distancing and Unvaccinated Masks in effect)

General Board Meeting Minutes

Vice Chair (VC) McMaster called a regular monthly meeting of the Fountain Urban Renewal Authority to order at 6:05pm. Commissioners present included Tamera Estes, Leslie Louzon-Keller, and Nicole Reinhardt. Additional attendees include: FURA Executive Director (ED) Kimberly Bailey and Carrie Bartow of CliftonLarsonAllen (CLA)

CONSENT AGENDA

The following Consent Agenda items were presented for approval:

1. Approval of February 21, 2023 General Meeting Minutes
2. Approval of March 21, 2023 Accounts Payable
 - i. ED Bailey noted an A/P modification to include Check #1717 for CLA routine services
3. Approval of March 21, 2023 Monthly Financials Report
 - i. CLA Bartow noted normal Q1 activity with 38% of property tax collections

Louzon-Keller motioned for Consent approval with updates denoted, second by Reinhart, and the motion passed unanimously by the Board.

NEW ITEMS

The Blast Site and Passive Recreational Corridor Feasibility Study

EDD Bailey provided a base map poster and a master plan/land contribution matrix to introduce The Blast Site and Passive Recreational Corridor Feasibility Study. As FURA has been an active, informed participant during the course of the 3YR EPA Brownfields Coalition Partners grant program, The Blast Study and a Public Survey are the next steps as to the City's participation in the program. During the two-weeks of April 10-April 21st the base map poster will launch as an online Public Survey to steward community engagement on behalf of gaining a Conceptual Site Land Use Design and minor engineering scope from the grant funded consultant services. The board discussed general concepts, the THK study's traffic patterns, business vitality for the district, and a 50YR legacy on behalf of the historic Blast pedestrian corridor as a reuse public open place under the URA District's master plans. The Partners will collect data from the Survey for a findings report, as well as, add to additional feedback thru upcoming meetings with the City's Parks n Rec Board and the Working Committee of the project and grant consultant.

UPDATES

FURA Staff Recruitment

EDD Bailey shared an update on the recruitment efforts for the vacant URA/Economic Development Specialist (EDS) position. There were seven applicants with two demonstrating some potential, with a further review process and writing sample steps toward a final determination for the department.

Real Estate

Real Estate Broker Engagement

ED Bailey referred to two informational packets as prepared by Real Estate Broker Service firms expressing interests to work with the Authority asset holdings for business recruitment/fulfillment goals. The board discussed generalities of the broker services proposals. Reinhardt shared commentary as to CW national broker status and mostly a national brand oriented retailer recruitment. VC McMaster shared commentary as to WPS has built a custom portfolio of services with 8+ years of more extensive experience in the broker field. Louzon-Keller commented the WPS proposal demonstrates the extra leg work put forth in the deeper analysis

of each site and a more polish appearance in their materials presentation. EDD Bailey expressed it's a 1YR services engagement contract and at such time either party will have the option to exit or extend the services contract. Reinhardt motioned of approval for ED Bailey to work with/finalize the WPS Real Estate Broker Engagement Services Contract, second by Louzon-Keller, and the motion passed unanimously by the Board.

Woodman Hall

ED Bailey presented the Nunn G.C. bid quote as it pertains to the Intermittent 2.0 Interior Stairwell scope of work services; per the board's February request. The board noted the services and the favorable pricing for ED Bailey to proceed accordingly with Nunn G.C. scheduling and supplies procurement.

ED Bailey provided commentary from the recent State of CO Historic Preservation site visit, per their request to learn more about the property's heritage and rehab vision. Also in attendance during the site visit was Tamera Estes and CLA Bartow representatives. Unfortunately, due to the decades of haphazard gutting and interior transformation, which transpired under former owner(s) of the property, the property does not meet the criteria of historic designation with the State. An alternative approach option that was presented is the establishment of a local district designation by the City, whereby the property falls within the historic district and earns an eligible criteria status with the State historic designation review process. In addition, any such earned State Historic tax credits could then become eligible pass thru by the Authority to a future small business tenant operation of the ground floor of the property.

ED Bailey briefly commented the 2nd FL Yoga Studio tenant has been notified to switch over the Electric Utility Meter Service to their self-registered name on or by April 1, 2023 timeframe; under the conditions of the Tenant Lease.

ED Bailey informed the board of interested parties to tour the property during the spring season. Site visit tours may include: Economic Development Commission, FV Chamber of Commerce, Olde Town Steering Committee, the City Mayor, Council, and Administration, as well as, Yoga Studio Open House. These site visit tours will provide educational awareness of the property's transformation to 100% commercial tenant occupancy and small business referral recruitment on behalf of the Authority's vision. Reinhardt shared a comment about the lack of Tesla Charging Stations in the URA district and for the Authority to keep this need in mind as its assets revitalize for the community and the potential as an alternative traffic generator for the district.

FINANCE

UMB Banking Industry

CLA Bartow mentioned in light of the SVB banking collapse that several other banks were listed in concerning status by the FED. The UMB bank was one of those listed by the FED in a banking industry notice. As such, Bartow wished to inform the board that the Authority's UMB banking investments are 102% collateralized by the FED, to which if the bank may collapse the governmental entities are first in line to be made whole in its investment portfolio.

SAH PH II Escrow

CLA Bartow noted that due to shifting interest rates and earnings on the South Academy Highlands (SAH) PH II Escrow that the CLA Team has particular attention attune to monitor the earnings performance to hedge off any arbitrage triggers with the PH II escrow account.

SAH PH I Retailer Audit

CLA Bartow shared that staff is working to issue the Sales Tax Audit notice with South Academy Highlands (SAH) PH I retailers by the next general board meeting.

2022 Audit Proceedings

CLA Bartow advised the 2022 FURA Audit has a start date of on/about March 23rd by BiggsKofford.

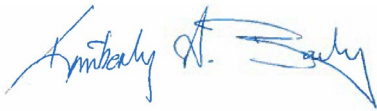
Check Signing

As approved on consent, A/P checks were signed totaling \$103,931.87.

ANNOUNCEMENTS

- Press Release: CoF New Retail 21-AC Development to Feature King Soopers Anchor
- Gazette Article: King-Sized King Soopers Store Planned in Fountain
 - https://gazette.com/premium/king-sized-king-soopers-store-planned-in-fountain/article_af1c5308-bd13-11ed-bc12-3334195c7a31.html
- CoF Transportation Public Survey to join the PPACG Regional Transportation Authority (*tentative Nov 2023 ballot measure*)

VC McMaster asked if there was any further business. No further topics were brought forth by board members; therefore, VC McMaster motioned to adjourn, second by Reinhardt, passed unanimously by the board at 7:26pm.



06.20.23

Kimberly Bailey, Executive Director

Date

**Economic Development Commission
March 13, 2023**

General Meeting Minutes

(COVID Social Distancing Protocols and Unvaccinated Masks in Effect)

Chair Small called a regular monthly meeting of the Economic Development Commission to order at 5:29 pm. Commissioners present included Vice Chair (VC) Dan Osinski, Mercedes Davis, Phyllis Baez, Wandaleen Thomas, and James Flowers. Staff in attendance included, Economic Development Director (EDD) Kimberly Bailey; Public Guest in attendance included Andrew VanDerWege.

APPROVAL OF MINUTES

Chair Small presented for approval the February 13, 2023 meeting minutes. VC Osinski motioned for approval, seconded by Baez, and passed unanimously by the board.

NEW ITEMS

2023 Chair and Vice Chair Appointments

ED Bailey acknowledged the by-laws and the fiscal new year of March. She thanked the Chair Harville Small and Vice Chair Dan Osinski in their service role with the Commission and to cast an open call for 2023 appointments. Bailey recognized no further members of expressed interests for the 2023 fiscal year roles. Flowers motions for re-appointment approval of the Chair Small and Vice Chair Osinski, seconded by Thomas, and passed unanimously by the board.

The Blast Site and Passive Recreational Corridor Feasibility Study

EDD Bailey provided a base map poster and a master plan/land contribution matrix to introduce The Blast Site and Passive Recreational Corridor Feasibility Study. As the board has been informed during the course of the 3YR EPA Brownfields Coalition Partners grant program, The Blast Study and a Public Survey are next steps the City's participation in the program. During the two-weeks of April 10-April 21st the base map poster will launch as an online Public Survey to steward community engagement on behalf of gaining a Conceptual Site Land Use Design and minor engineering scope from the grant funded consultant services. The board discussed general concepts, economic business vitality for the district, and a 50YR legacy on behalf of the historic Blast pedestrian corridor as a reuse public open place under the District's master plans. The Partners will collect data from the Survey for a findings report, as well as, add to additional feedback thru upcoming meetings with the City's Parks n Rec Board and the Working Committee of the project and grant consultant.

UPDATES

Economic Development Specialist

EDD Bailey shared an update on the recruitment efforts for the vacant Economic Development Specialist (EDS) position. There were seven applicants with two demonstrating some potential, with a further review process and writing sample steps toward a final determination for the department.

Economic Development Commissioner

EDD Bailey presented two candidates for the single vacancy seat of the Commission. One of the candidates, applied unsuccessfully to the EDS staff position too, in the end he was no longer interested in the volunteer Commissioner role to serve the community. Therefore, the board discussed the single applicant Mr. Diaz. Flowers knows of the individual as an engaged neighborhood citizens in the community. Thomas is a co-industry reference in the community. EDD Bailey reminded of the by-laws to serve a 1YR inaugural term as a review and knowledge period with succession terms-of-service available with the EDC. Chair Small motioned for guest attendance at April's board meeting, and if seeking to serve, support for an appointment by City Council; second by Flowers, and passed unanimously by the board.

COMMISSIONER COMMENTARY TIME

Olde Town

- Thomas mentioned a Pet Store is coming in at the former Ink Fountain space.
- Thomas mentioned that a RETRO Video Gaming business is coming in at the former Corner Pocket space.
 - Due to the move out and rehab of the spaces within the Dale Street Center, there is excess trash and furniture stacked next to the southside dumpster station.

Small Business Advocacy

- Flowers mentioned the Chambers upcoming events, to include: Membership Breakfast or Luncheon segments, inaugural Spring Expo, and the Fall Festival's theme "Blues-n-BBQ". He referenced Facebook/Website to learn more of the details and the Fall Festival's registration is now open.
- Flowers has noted uptick in citizen-troll.bots online and preventive measures for business.

Business Development/Policy

- VC Osinski briefly mentioned to keep an eye of the COS Mayoral Race as the potential outcome could have effects within the region and City of Fountain.

Real Estate Market

- VC Osinski mentioned inventory of homes available are significantly low supply with examples of power pricing within the housing market, and the recent change of ownership with Keller Williams homebuilder.

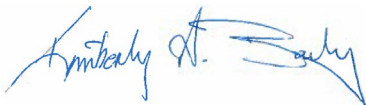
Military

- Flowers mentioned a possible need of Fountain CO awareness materials during the bi-annual PCS installation command process for new enlisted service men and families; a community stigma concern.

ANNOUNCEMENTS

- **Press Release:** CoF New Retail 21-AC Development to feature King Soopers Anchor
- **Gazette Article:** King-Sized King Soopers Store Planned in Fountain
 - https://gazette.com/premium/king-sized-king-soopers-store-planned-in-fountain/article_af1c5308-bd13-11ed-bc12-3334195c7a31.html
- Guest Andrew VanDerWege shared commentary as to the need of better equality in A to Z types of business when it comes to planning review scope and transportation improvement requirements.
- Flowers shared commentary about better price control options for consumers and new job creation.
- EDD Bailey shared commentary on a 2 for 1 package of development, the Anchor also avails entry of an UCHHealth Medical Facility; whereas shared-cost approach with offsite improvements.
- Chair Small reminded of a Woodman Hall Site Visit Tour is available to EDC Board of Commissioners following the close of the meeting; interested participants to gather in the 1st FL lobby of City Hall with a restroom break.

Chair Small asked if there was further business. No further topics were brought forth by subsequent board members; therefore, Baez motioned to adjourn, seconded by Flowers, passed unanimously at 6:19pm.



Kimberly Bailey

06.20.23

Date

Economic Development Commission
April 10, 2023

General Meeting Minutes

(COVID Social Distancing Protocols and Unvaccinated Masks in Effect)

Chair Small called a regular monthly meeting of the Economic Development Commission to order at 5:34 pm. Commissioners present included Vice Chair (VC) Dan Osinski, Mercedes Davis, Phyllis Baez, Wandaleen Thomas, and James Flowers. Guest in attendance included Mr. Terrance Diaz. Staff in attendance included, Economic Development Director (EDD) Kimberly Bailey.

WELCOME/INTRODUCTIONS

EDD Bailey provided a welcome to Mr. Terrance Diaz, an interested applicant as to the vacancy EDC board member position. Diaz owns a small business and is a four-year resident in the city; per the bylaws requirements. Mr. Diaz expressed his interest in building community relations with local businesses and to gain greater awareness of the City of Fountain's growth. His wife is already serving with the city's Parks-n-REC board commission. Chair Small welcomed Diaz and a general round of introductions where shared among the board.

APPROVAL OF MINUTES

Chair Small presented for approval the April 10, 2023 meeting minutes. Baez requested a name change to Flowers within the March minutes under line item Military updates. EDD Bailey noted the minor change for staff correction and introduced a subsequent request of approve to the minutes as noted for change. Flowers motioned for approval, seconded by Thomas, and passed unanimously by the board.

NEW ITEMS

Olde Town District Updates

EDD Bailey referenced the hyperlink source documents as listed in the Agenda, as to recently published materials on the Olde Town District (2022) reporting. Bailey noted the Olde Town Streeting Committee met less frequently in 2022, due to small business COVID recovery focus and/or individuals volunteered via specific project initiatives underway within the District (ie: EPA Brownfields - Lorraine Center, The Blast PED Corridor). In addition, EDD Bailey referenced the 2023 Olde Town Ambassadors. A co-role shared among Teresa Vieira of Peaks N Pines Brewing Co. and Jenifer Zenner of ZENner Yoga on behalf of district economic vitality measures.

Dual Service Rail Park

EDD Bailey provided the Q1 2023 Project Status report for the proposed Dual Service Industrial Rail Park; a public-private development on behalf of resiliency BRAC measures in relation to Fort Carson Army Installation and quality job creation for the region. The regional partnership is focusing project efforts towards prepping and finalizing a Federal Rail Administration: CRISTI Grant application for hard-construction funding of the 2025 primary rail spur implementation; the CRISTI application is due by December 2023.

UPDATES

Monthly Economic Dashboard Reports

EDD Bailey shared two versions of a monthly Economic Dashboard for February 2023; by the data providers UCCS College of Business and Data Driven Economic Strategies (DDES). Bailey noted each report is 90% identical from a perspective of data metrics of the region but each does have its unique economist perspectives and focus niches of

interest. She noted it's not incumbent upon the EcoDev department to further analysis, filter the data for the EDC; so, it was asked how the board wishes to receive the insightful complementary metrics data? The board chose to continue to receive both UCCS and DDES monthly Dashboards but under a separate email delivery; EDD Bailey agreed to proceed as recommended.

COMMISSIONER COMMENTARY TIME

Olde Town

- Thomas mentioned a Pet Store is to receive its COO this week to open in the former Ink Fountain space.
- Thomas mentioned there is excess trash and furniture stacked next to the southside dumpster station.

Small Business Advocacy

- Flowers mentioned the Chamber's upcoming events and the Chamber's EOM (March) membership renewal period for business.
- Flowers shared a comment that any vacancy space in the Fountain Valley doesn't remain idle and backfills quickly. In addition, he mentioned some recent business interests as to food/beverage and quasi entertainment sectors in Fountain.

Business Development/Policy

- VC Osinski shared Fountain developer interests out of Trinidad and a former Venetucci Farm associate seeking commercial and/or the city-owned Lorraine Center sites.

Real Estate Market

- VC Osinski mentioned inventory of homes are low with a moderate scaling seen in the residential market list pricing. He also stated "spring" is peak season for families and the military PCS assignment rotation.

Military

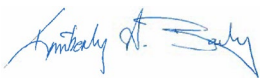
- Baez mentioned her research on a social media "The Guardian" post as to City of Fountain vs. Other Cities to live for enlisted service members. As previously shared, a SM post featured commentary as to a Fountain sigma of lifestyle; research has determined this post derived from a D.C. resident and not a local resident.

In closing, Chair Small noted with a new fiscal year and timing of an interested EDC applicant, that he wished the board to review the commentary categories and relevancy for this current board; and to give more thought possibly for our May meeting discussion. EDD Bailey echoed those same sentiments with the board.

ANNOUNCEMENTS

- Nominations Open: 2023 Small Business Week (June 2023)
<https://pikespeaksbdc.org/what-we-do/events/2023-small-business-week-in-the-pikes-peak-region/>
- The Blast Passive PED Urban Recreation Corridor – Public Survey
<https://www.fountaincolorado.org/cms/One.aspx?portalId=6004447&pageId=8300317>
- Community Autism Night Out – Metcalfe Park (April 18th @ 6pm)

Chair Small asked if there was further business. No further topics were brought forth by subsequent board members; therefore, VC Osinski motioned to adjourn, seconded by Thomas, passed unanimously at 6:31pm.



Kimberly Bailey

06/20/23

Date