



CITY COUNCIL AGENDA
July 11, 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**
- 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 20, 2023, City Council Meeting Minutes (S. Huffman)
 - B. Resolution No. 23-026, A Resolution Authorizing Participation By The City Of Fountain In The Coordinated Election On November 7, 2023 And Providing For Other Matters Relating Thereto
- 8) **Old Business**
 - A. Second 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 5 min)
 - B. Second 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 5 min.)

9) New Business

- A.** Consideration Of Items Removed From The Consent Agenda
- B.** Resolution No. 23-027 A Resolution Amending The Appropriation Of Fiscal Year (FY) 2023 Budgeted Funds. (J. Lewis est. 10 min)
- C.** Resolution No. 23-028, A Resolution Authorizing Schmidt Construction To Provide Professional Road Maintenance On Three Projects Throughout The City. (R. McDonald 5 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
- Two Items 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 25, 2023**



Regular City Council Meeting

Appointments-4.2A

July 11, 2023

Appointment of Heritage Maintenance District
Member

Summary Information

Title: APPOINT ONE REGULAR MEMBER TO THE HERITAGE MAINTENANCE DISTRICT BOARD

Initiator: Silvia Huffman, City Clerk

Presenter: Silvia Huffman, City Clerk

Legal Review: Yes No

Council Action

Council Information

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 Everett L. Frazier III

Background Information

Mr. Frazier III has submitted his application to the Heritage Maintenance District Board.

There is currently one regular vacancy and two alternate positions.

Please see attached application for Everett L. Frazier III

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. Everett L. Frazier III to the Heritage Maintenance District Board as a regular Member



Regular City Council Meeting

Consent –7A

Council Meeting Minutes

July 11, 2023

Summary Information

Title:

APPROVAL OF THE JUNE 20, 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 20, 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 20, 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

4 (1) Presentations

Police Chief Cristiani introduced Sammy McFadden as the newest clinician on the BCHON team.

- **Department Update: Transportation**

Street Superintendent McDonald gave a report on the street department's focus, issues, and upcoming projects. He also noted that he will be requesting funding, during the budget process, to aid with additional employees and a paving machine.

- **Homeless Update**

-

Neighborhood Services Supervisor Cornella updated Council on the current homeless concerns and costs.

Discussion was held regarding annual budget for abatement, personal protective equipment for volunteers, and connection with the Water Shed District.

4 (2) Board/Commission/Committee Appointments

Appoint One Regular Member To The Heritage Maintenance District Board

City Clerk Huffman reported that Mr. Joe Grigg has applied to become a member of the Heritage Maintenance District Board.

Council Member Cory made a motion to appoint Mr. Grigg to the Heritage Maintenance District Board, seconded by Council Member Duncan. All members voted yes (7-0); the motion carried.

5) City Council Agenda Requests

There were no requests.

6) Public to be Heard

Connie Wisenhunt, resident reported on her actions to help the homeless community and stated that this is a people problem and needs to be addressed by the local authority.

7) Consent Agenda

- 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)**

Council Member Rick made a motion to approve the consent agenda, seconded by Mayor Pro Tem Estes. All members voted yes (7-0); the motion carried.

8) Old Business

There was no old business to be heard.

9) New Business

A. Consideration Of Items Removed From The Consent Agenda

There were no items removed.

- 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.**

Assistant City Attorney Parker introduced recent High School graduates that have been working with the City on this Ordinance. The graduates gave a presentation regarding the harm and risks involved with vaping. They reported that this is a continued concern with youth in the community.

Assistant City Attorney Parker introduced the recommended changes to the definition of vape and praised the graduates for their work on this ordinance.

Discussion was held regarding the availability of these products and the penalty.

Jennifer Herzberg, resident, suggested that the SRO of the school give an orientation to new students on the dangers of this product.

Council Member Rick made a motion to approve Ordinance 1789 on first reading, seconded by Council Member Hinton. All members voted yes (7-0); the motion carried.

Mayor Thompson distributed city collector coins to the graduates.

Mayor Thompson declared the meeting in recess at 7:58 P.M.

Mayor Thompson declared the meeting back in session at 8:07 P.M.

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.)

City Attorney Johnson noted that it was requested that the section pertaining to liquor be removed for further discussion and suggested approval excluding the liquor section.

Discussion was held regarding the appeal process and an alternate officer.

City Attorney Johnson stated that the hearing officer would hear both Board of Adjustment applications and liquor hearing requests and appeals would go to district court.

City Clerk Huffman explained that the Clerk's office can currently approve routine renewals or temporary licenses but any application that requires a hearing or consideration by the local licensing authority would now go before the hearing officer should this be approved.

Council Member Duncan made a motion to approve Ordinance 1790 on first reading, seconded by Council Member Rick. Mayor Thompson stated that she requested that the liquor section be removed for further discussion and clarification as she was not comfortable with the ordinance.

Council Member Duncan stated that she was satisfied with the discussion, therefore, made the motion to approve the ordinance as written.

All members voted yes except for Mayor Thompson, (6-1); the motion carried.

10) Correspondence, Comments and Ex-Officio Reports

City Attorney Johnson reported that Council had asked to be updated on HB 23-1190 regarding first right of refusal and cities being allowed to opt out, and the Governor did not sign the bill so it has not become law.

Chief Cristiani reported the retirement party for Chris Heberer will be Thursday June 29th at Metcalfe Park.

Council Member Duncan reported that COVID-19 Health group is located in the South County building and offer several resources for the community. She noted there is a redistricting meeting

for our area on July 6th at Mesa Ridge High School. She stated the County had a meeting regarding the assessor's procedure to appeal on residential properties.

Mayor Pro Tem Estes reported on the upcoming Woodman Hall tour.

Council Member Hinton noted that some properties have a blue marking on their trees that represent protection of property that is a law in Texas but not in Colorado.

Council Member Rick stated with all the rain, the city is trying to attend to the weeds but asked for patience.

Mayor Thompson asked if we could ask vendors to spread the education on the laws pertaining to fireworks. She also requested additional information on the open area near the water filters in Aga park.

Utility Director Blankenship noted that the water department is working with the Park's department to bring that are back as a multi-purpose field.

Mayor Thompson also reported that PPRTA voted to accept the city's application and all the member governments will need to consider this application. The upcoming board meetings will be given to Council so they may attend.

11) Announcement of Executive Sessions

City Clerk Huffman requested the following executive sessions:

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

Council Member Duncan made a motion to hold the executive sessions as requested, seconded by Council Member Rick. All members voted yes (7-0); the motion carried.

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
Authorizing Participation in the
Coordinated Election

July 11, 2023

Summary Information

Title:

RESOLUTION NO. 23-026, A RESOLUTION AUTHORIZING PARTICIPATION BY THE CITY OF FOUNTAIN IN THE COORDINATED ELECTION ON NOVEMBER 7, 2023, AND PROVIDING FOR OTHER MATTERS RELATING THERETO

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:

This item is to request Council’s approval of a resolution authorizing participation by the City of Fountain in the coordinated election to be held on November 7, 2023 and other related matters.

Background Information

As required by the Uniform Election Code of 1992, the City will provide notice to the El Paso County Election Department of the County Clerk and Recorder’s office that the City will be participating in the coordinated election on November 7, 2023.

The resolution appoints the City Clerk, or in the City Clerk’s absence the Deputy City Clerk, as a designated election official as required by law. If the City is to participate in the coordinated election, it must utilize the provisions of the Uniform election Code of 1992 and must enter into an Intergovernmental Agreement with the El Paso County Clerk and Recorder and the Board of County Commissioners for El Paso County which specifies which entity is responsible for which actions. The resolution authorizes the City Clerk or in the City Clerk’s absence, the Deputy City Clerk to enter into the Intergovernmental Agreement on behalf of the City. The coordinated election will be a mail ballot election.

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.



RESOLUTION 23-026

A RESOLUTION AUTHORIZING PARTICIPATION BY THE CITY OF FOUNTAIN IN THE COORDINATED ELECTION ON NOVEMBER 7, 2023, AND PROVIDING FOR OTHER MATTERS RELATING THERETO

WHEREAS, the City of Fountain, El Paso County, Colorado (the “City”) is a home rule municipality and political subdivision of the State of Colorado (the “State”), duly organized and operating under the Charter of the City (the “City Charter”) and the Constitution and laws of the State, and;

WHEREAS, the City Charter authorizes regular municipal elections on the first Tuesday in November of each odd-numbered year; and

WHEREAS, the City Council of the City desires that the regular municipal election on November 7, 2023 be part of the coordinated election administered by the El Paso Clerk and Recorder through its election department under the Uniform Election Code of 1992; and

WHEREAS, §31-10-102.7 C.R.S. and §1-1-102(1) C.R.S. provides that a municipality may elect to utilize the requirements and procedures of the Uniform Election Code of 1992 (the “Uniform Election Code”); and

WHEREAS, pursuant to §1-7-116(2) C.R.S. the City and the County Clerk and Recorder are required to enter into an agreement for the administration of their respective duties concerning the conduct of the November 7, 2023, coordinated election.

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

1. The regular municipal election of the City of Fountain, Colorado shall be held on Tuesday November 7, 2023 and shall be conducted as a coordinated election by the El Paso County Clerk and Recorder in accordance with Articles 1 to 13 of Title 1, C.R.S. (the “Uniform Election Code”), and in accordance with the Intergovernmental Agreements (collectively, the “Intergovernmental Agreement”) between the City and the El Paso County Board of County Commissioners and the El Paso County Clerk and Recorder (the “County Clerk”) to be entered into on or before August 29, 2023.

2. The City Clerk, or in her absence, the Deputy City Clerk is hereby designated as the designated election official and is authorized to enter into the Intergovernmental Agreement on behalf of the City of Fountain.

3. No later than September 8, 2023, the City Clerk, as the designated election official for the City, shall certify the order of the ballot and ballot content to the County Clerk.

4. All acts required or permitted by the Uniform Election Code relevant to voting by early voters' ballots, absentee ballots, provisional ballots and emergency absentee ballots, which are to be performed by the designated election official, shall be performed by the County Clerk including acts that the County Clerk is to perform pursuant to the Intergovernmental Agreement.

5. The City Clerk and other City officials and employees are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.

6. All actions not inconsistent with the provisions of this Resolution heretofore taken by the members of the City Council and the officers and employees of the City and directed toward holding the election for the purposes stated herein are hereby ratified, approved and confirmed.

7. All prior acts, orders or resolutions, or parts thereof, by the City in conflict with this Resolution are hereby repealed, except that this repealer shall not be constructed to revive any act, order or resolution, or part thereof, heretofore repealed.

8. If any section, paragraph, clause, or provision of this Resolution shall be adjudged invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this Resolution, it being the intention that the various parts hereof are severable.

9. This Resolution shall take effect immediately upon its passage.

Done this 11th day of July 2023.

Sharon Thompson, Mayor

ATTEST:

Silvia Huffman, City Clerk



Regular City Council Meeting

Old Business-8A

Definition of "Electronic Smoking Device"

July 11, 2023

Summary Information

Title:

SECOND 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 second 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 second 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

Introduced, read by title, and passed on second and final reading on the 11th day of July 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.

CITY OF FOUNTAIN, COLORADO

By: _____
Sharon Thompson, Mayor

Attest:

By: _____
Silvia Huffman, City Clerk



Regular City Council Meeting

Old Business –8B

Hearing Officer

July 11, 2023

Summary Information

Title:

SECOND 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 Second 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 11th day of July 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.



Regular City Council Meeting

New Business –9A

Items removed from Consent Agenda

July 11, 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

Fiscal Year 2023 Appropriation

July 11, 2023

Summary Information

Title:

RESOLUTION NO. 23-027 A RESOLUTION AMENDING THE APPROPRIATION OF FISCAL YEAR (FY) 2023 BUDGETED FUNDS

Initiator: John Lewis, Finance Director

Council Action

Presenter: John Lewis, Finance Director

Council Information

Legal Review: Yes No

Report to Council

Summary Overview and List of Attachments:

The City Council adopted a budget for the FY 2023 on November 15, 2022. The budget was amended on January 24, 2023, for certain leases on 2 Mack trucks and a ladder truck and again on February 28, 2023, primarily for Indiana Street improvements and legal services for the Water Fund reservoir project. City personnel have been made aware of additional necessary expenditures that need to be made in 2023 and/or additional revenue has been received with corresponding required expenditures. These primarily include additional Public Safety staffing in accordance with commitments made in the 2B ballot measure and CDBG grant requirements for ADA improvements.

City Staff is therefore recommending formal approval by City Council to amend the budgets of the 2023 General, Water, Electric and Insurance Funds for those additional items. This supplementary budget request process is a standard process and “Best Practice” for ensuring that only items appropriated by council are spent. The recommended items within the above mentioned Funds are included in the attached spreadsheet labeled Exhibit A.

Previous Action by City Council:

The City Council adopted a budget for the FY 2023 on November 15, 2022, and approved supplemental requests on January 24 and February 28, 2023.

Attachment: Exhibit A

Background Information

This Resolution amends the FY 2023 budget per City Financial Policies. This amendment will be included with the original 2023 budget to comply with State of Colorado requirements.

Exhibit A includes the detail of the request.

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 City Council approve Resolution No. 23-027

Proposed Motion

“I move to approve Resolution No. 23-027”



RESOLUTION NO. 23-027

**A RESOLUTION AMENDING THE APPROPRIATION OF FISCAL YEAR 2023
BUDGETED FUNDS**

WHEREAS, the City Council adopted a budget for the fiscal year (FY) 2023 on November 15, 2022, and;

WHEREAS the City Council adopted a first budget supplemental for the fiscal year (FY) 2023 on January 24 for certain truck leases, and;

WHEREAS the City Council adopted a second budget supplemental for the fiscal year (FY) 2023 on February 28 primarily for Indiana street improvements and the reservoir project, and;

WHEREAS, staff is recommending approval by City Council to amend expenditures for the additional necessary expenditures not initially budgeted for and summarized by fund as follows:

General Fund - \$925,780
Water Fund - \$13,500
Electric Fund - \$3,500
Insurance Fund -\$40,000

And WHEREAS, the City Council wishes to make a supplemental appropriation pursuant to Section 9.11(a) of the City Charter, for the FY 2023 budget year and to direct the Finance Department to amend the FY 2023 budget accordingly;

NOW, THEREFORE, BE IT RESOLVED by the City Council:

Section 1. The FY 2023 budget appropriation is amended as shown in Exhibit A.

Section 2. That the fund balance reserve be appropriated as indicated in Exhibit A from monies available in each fund for the purpose set forth herein.

Section 3. That the Finance Department make the appropriate adjustments to the 2023 budget in the City's books and records.

Section 4. That a certified copy of this Resolution be filed with the Division of Local Government of the State of Colorado.

Section 5. This Resolution shall be in full force and effect after its approval by the City Council.

Done this 11th day of July, 2023.

Sharon Thompson, Mayor

ATTEST:

Silvia Huffman, City Clerk

EXHIBIT A

ACCOUNT #	AMOUNT	DESCRIPTION OF PROJECT	JUSTIFICATION
3rd SUPPLEMENTAL BUDGET REQUEST FOR 2023			
GENERAL FUND			
REVENUE			
Account #	Amount	Description	Justification
100-0000-43110	850,000	Property tax revenue	1/2 of estimated 2B property tax revenue for YE 2023
100-0000-43316	129,574	CDBG Grant	CDBG Bonita Drive ADA Improvement Grant
TOTAL REVENUE	979,574		
EXPENDITURES			
Account #	Amount	Description	Justification
100-0000-22227	4,500	Land	Indiana project easement purchase
100-1150-53535	3,200	Other Professional services	Appraisal on the Lorraine Building
100-1150-53535	7,000	Other Professional services	Cost Allocation Study
100-1160-53630	28,000	TS- Maint SVC Contracts	Addition of MFA contract and additional costs of current service contracts being higher than estimated
100-1160-53639	15,325	Fire Maint. SVC Contracts	Lexipol policies
100-1160-53638	38,000	PD- Maint SVC Contracts	Additional tasers for new PD officers
100-1160-52271	9,000	PD- Computer Equip/supplies	Additional MDT's for new PD officers
100-1160-52271	8,200	PD- Computer Equip/supplies	Additional MDT's for new SROs
100-1180-53535	20,000	Other Professional services	Recertification of Quiet Zones
100-2213-51110	177,260	Salaries and wages	Fully burdened costs for 3 new PD officers for last 6 months of 2023
100-2213-52120	34,800	Minor equipment	Radios, phones, etc. for new patrol officers
100-2213-52120	8,000	Minor equipment	Stop sticks for patrol vehicles
100-2213-52211	4,500	Uniforms	Uniforms for new officers
100-2213-52212	15,000	Firearms supplies	Guns and ammo for new officers
100-2213-53956	3,250	Miscellaneous Fund Expense	Citizen contact app required by senate Bill 217
100-2213-59410	70,000	Vehicles	Vehicles costs in 2023 for new officers
100-2222-53720	10,000	Overtime	Training of 3 new FF/Paramedics
100-2222-5110	181,250	Salaries and wages	Fully burdened cost for 3 new FF/Paramedics for remainder of the year
100-2222-52211	4,000	Uniforms	Uniforms for 3 new FF/Paramedics
100-2222-52217	18,000	Firefighting supplies	Firefighting supplies for 3 new FF/Paramedics
100-2222-59220	100,000	Improvements	Foundation repair to Station #3
100-3310-53653	141,982	CDBG Improvements	Bonita Drive ADA Improvements including City match for labor and materials
100-3310-59410	12,513	Equipment	Tree chipper for the Streets department

<u>ACCOUNT #</u>	<u>AMOUNT</u>	<u>DESCRIPTION OF PROJECT</u>	<u>JUSTIFICATION</u>
100-3350-59220	12,000	Buildings	Remodel of FVN building to make it useable
TOTAL EXPENDITURES	925,780		
	248,740	INCREASE IN RESTRICTED 2B/PUBLIC SAFETY RESERVES	
	(194,946)	(DECREASE) IN UNRESTRICTED (UNASSIGNED) RESERVES	
	53,794	NET INCREASE IN GENERAL FUND RESERVES	
WATER FUND			
<u>REVENUE</u>			
510-0000-43665	10,000	Insurance proceeds	Insurance proceeds for damaged trailer
TOTAL REVENUE	10,000		
<u>EXPENDITURES</u>			
510-7720-59420	10,000	Equipment	Replace damaged trailer
510-7740-53535	3,500	Other Professional Services	Cost Allocation Study
TOTAL EXPENDITURES	13,500		
	(3,500)	(DECREASE) IN NET POSITION	
ELECTRIC FUND			
<u>EXPENDITURES</u>			
520-7740-53535	3,500	Other Professional Services	Cost Allocation Study
TOTAL EXPENDITURES	3,500		
	3,500	(DECREASE) IN NET POSITION	
INSURANCE FUND			
<u>EXPENDITURES</u>			
610-1150-51491	40,000	Wellness	Physicals for FD personnel
TOTAL EXPENDITURES	(40,000)	(DECREASE) IN NET POSITION	



Regular City Council Meeting

New Business –9C

Pavement Resurfacing Project

June 11, 2023

Summary Information

Title:

RESOLUTION NO. 23-028, A RESOLUTION AUTHORIZING SCHMIDT CONSTRUCTION TO PROVIDE PROFESSIONAL ROAD MAINTENANCE ON THREE PROJECTS THROUGHOUT THE CITY.

Initiator : Robert McDonald, Transportation Director

Council Action

Presenter: Robert McDonald, Transportation Director

Council Information

Legal Review: Yes No

Report to Council

Summary Overview and List of Attachments: The purpose of this item is for City Council to approve the extension of contract with Schmidt Construction for the 2023 Pavement Resurfacing Project for the following streets:

1. East Ohio Avenue – West Railroad Tracks east to Vern Street
2. Fountain Mesa Road – Lake Ave north to Calle Entrada
3. South Main Street – East Ohio Avenue to West Indiana Avenue

Attachment: 2023 Pavement Resurfacing Project Extension of Contract

Background Information

The 2023 Asphalt project is meant to resurface the listed road as the road has deteriorated to a point where preservation would not be cost effective.

The roadways will be milled and a new course of asphalt will be applied to renew the roadway surface. As per the 2022 contract with Schmidt Construction under the RFB S22-001, the City was pleased with the work completed and wishes to extend the contract for the 2023 Pavement Resurfacing Project in the amount of \$568,522.00, which includes a 5% Contingency Fee.

These funds will be utilized from the approved 2023 MFF Streets Resurfacing budget line item.

The low bid is within the Transportation Department Directors estimate of probable costs. As such sufficient appropriated Transportation Sales Tax funds are already budgeted to award this project to the low bidder.

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 recommends moving forward with awarding the 2023 Pavement Resurfacing Project to Schmidt Construction in the amount of \$568,522.00 (5% Contingency Fee Included)

Proposed Motion

I recommend approval of Resolution 23-028, to approve the 2023 Pavement Resurfacing Project to Schmidt Construction.



RESOLUTION 23-028

A RESOLUTION AUTHORIZING SCHMIDT CONSTRUCTION TO PROVIDE PROFESSIONAL ROAD MAINTENANCE ON THREE PROJECTS THROUGHOUT THE CITY

WHEREAS, the voters of the City of Fountain, Colorado at the November 3, 2009 coordinated election approved a ballot issue which authorized an increase in the sales tax rate for the City of Fountain, Colorado for purposes set forth in the ballot issue; and

WHEREAS, maintenance improvements are needed on the following streets:

1. East Ohio Avenue – West Railroad Tracks east to Vern Street
2. Fountain Mesa Road – Lake Ave north to Calle Entrada
3. South Main Street – East Ohio Avenue to West Indiana Avenue

WHEREAS, staff was pleased with the work completed in 2022, and the RFB S22001 allows for an extension of contract, and staff believes Schmidt Construction to provide the most value to the City based upon the bid submitted and the services they provide at a reasonable price; and

NOW, THEREFORE, BE IT RESOLVED by the City Council:

Section 1. Schmidt Construction is agreed to be contracted by the City to complete Asphalt Mill and Overlay work, aimed at improving these roadways.

Section 2. The Individual Project Contract outlines the services to be provided as well as the amount of services to be executed not to exceed \$568,522.00 (5% Contingency Fee Included)

Section 3. Mayor is authorized to sign and execute the agreement.

This Resolution shall be in full force and effect upon approval by the City Council.

Done this 11th day of June, 2023.

Sharon Thompson, Mayor

ATTEST:

Silvia Huffman, City Clerk

CITY OF FOUNTAIN

Contract Number	S202301	Project Name	2023 Pavement Resurfacing Project
Vendor/Contractor	Schmidt Construction Co.		
Address	2635 Delta Drive, Colorado Springs, CO 80910		
Federal Tax ID #		Please check one:	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Partnership
CITY CONTRACTS:	Mr. Robert McDonald Ph. 719-322-2070		
Amount	\$568,522.00 (5% Contingency Fee Included)		

CONSTRUCTION CONTRACT

THIS CONTRACT, made and entered into this 7th day of July, **2023** by and between the **City of Fountain, Colorado, a municipal corporation**, in the County of El Paso, State of Colorado, party to the first part hereinafter in the Contract Documents referred to as the “City”, and **Schmidt Construction Co.**, a corporation organized as existing under the laws of the State of Colorado, hereinafter in the Contract Documents called the “Contractor”; party of the second part.

WITNESSETH:

Whereas the City has heretofore prepared the necessary Contract Documents for **2023 Pavement Resurfacing Project** in the City of Fountain; and whereas the party of the second part did on the 13th day of April, **2022**, submit to the City his/her written offer and proposal to do the work therein described under the terms and conditions therein set forth and furnish all labor, materials, tools, equipment, transportation and services for said work in strict conformity with the accompanying Contract Documents which include: Notice to Bidders, Instructions to Bidders, Bid Proposal, Notice of Award, Contract, Performance, Labor and Material Payment and Maintenance Bonds, Notice to Proceed, General and Special Conditions, Specifications and Drawings.

Whereas an agreement was included in submitted bid documents to extend this contract on a yearly basis for an additional three years from **April 26th, 2022 until April 26, 2025** based upon complete satisfaction by the City of the Contractor’s job performance over the previous year and if mutually agreeable by both the contractor and the city based on language included in RFB solicitation number S202201.

NOW, THEREFORE, it is hereby agreed that for the considerations and amounts specified in the Bid Proposal and the total contract amount designated in the Notice of Award to be paid by the City to the Contractor, Contractor agrees to furnish all materials and to perform all work as set forth in his/her proposal and as required by the aforesaid Contract Documents.

It is further agreed that the Contractor will start work promptly and continue work diligently until completed. The Contract Period of Performance for this contract is **Ninety (90) Calendar Days**. The Contractor shall provide a two year guarantee on all works performed under this contract after the job has been completed and accepted.

In accord with the City Charter, performance of the City’s obligations under this agreement are expressly subject to appropriations of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City’s obligations under this contract, or appropriated funds may not be expended due the City Charter spending limitations, then the City may terminate this Agreement without compensation to the Contractor.

CITY OF FOUNTAIN

CONTRACT pg2

The funds appropriated for this contract are equal to or exceed the awarded contract amount.

The Contractor and the City agree and acknowledge as a part of this contract, that no Change Order or other form or order or directive may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under the contract to exceed the amount appropriated for this contract as listed above, unless the Contractor has been given a written assurance by the City that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this contract.

THE CONTRACTOR hereby Certifies that at the time of this certification, the Contractor does not knowingly employ or contract with an illegal alien and that the contractor has participated or attempted to participate in the basic pilot program in order to verify that the Contractor does not employ any illegal aliens. "Basic pilot program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

The Contractor and the City further agree and acknowledge as a part of this contract that no Change Order or other form or order or directive which requires additional compensable work to be performed under this contract shall be issued by the City unless funds are available to pay such additional compensable work performed under this contract, and expressly waives any rights to additional compensation, whether by law or equity, unless, prior to commencing the additional work, the contractor was given a written Change Order describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which Change Order was signed by the authorized City Representative. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any Change Order under this contract.

Further, this Contract shall be construed and interpreted according to the laws of the State of Colorado.

The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all Scope of Work services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in services provided under this Contract to the satisfaction of the City.

All of the Contractor's performance hereunder shall be in a workmanlike manner, and shall be in conformity with the City's "Public Works Design and Construction Specifications. The "Pikes Peak Region Asphalt Paving Specifications", current edition, except as modified hereinafter, which are incorporated in the contract documents by reference as though embodied herein in their entirety, shall apply to this project.

The Owner hereby expressly agrees to indemnify, hold the city harmless, pay for costs incurred by the City including attorney fees and against all claims of every kind in nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development site pursuant to this Contract, and which is not caused in whole through the fault or negligence of the City, its agents, employees or representatives.

All documents included in the Request for Bids are hereby incorporated by reference.

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.

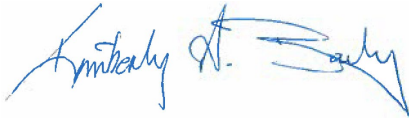
Check Signing

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.



Kimberly Bailey, Executive Director

03.21.23

Date

Economic Development Commission

May 8, 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 6:02 pm. Commissioners present included Vice Chair (VC) Dan Osinski, Phyllis Baez, and Terrence Diaz. Staff in attendance included Economic Development Specialist (EDS) Nate Shull and Economic Development Director (EDD) Kimberly Bailey. Guest speaker included Kristy Martinez, CoF Planning Manager. Public citizen guest in attendance included Cynthia Brisby.

INTRODUCTIONS

Nathaniel "Nate" Shull provided a brief introduction among the board members, as the newly onboarded Economic Development Specialist (EDS) position with the city. Shull will be focused on Business Retention Expansion, District Placemaking/ Economic Vitality, Urban Renewal, and Business Incentives/Support. The board expressed a warm welcome to the city and look forward to working alongside the EDC.

APPROVAL OF MINUTES

Chair Small presented for approval the April 10, 2023 meeting minutes. Commissioner Baez motioned for approval, seconded by Commissioner Osinski, and passed unanimously by the board.

NEW ITEMS

Development Overview

ED Bailey provided an introduction and welcomed guest speaker Kristy Martinez, Planning Manager for the City of Fountain (CoF), to provide a high-level overview of the Planning Department (Planning) and its procedural functions as it relates to the city's development activities.

Ms. Martinez provided a brief presentation (see supplemental materials). She explained all applicants follow a general process for development review which starts with annexation, plating, and site-specific land use development review. All application requests, no matter their scope or size, are required to comply with the same planning process administered by the City. Planning's purview includes review of the external (vertical and horizontal) components of the proposed development; while it does not include interior of buildings which is under the purview of the Pikes Peak Regional Building Department (PPRBD). Specific presentation examples of city projects included the Fountain Creek Winery in the Gateway district and the Maverik in the Mesa Ridge Pkwy district to demonstrate a variety of small and large scale businesses. The case examples provided an explanation of the factors that Planning will look at in their standard review protocols; to determine compliance with code requirements such as contextual and architectural compatibility, use allowance, and traffic/parking.

Martinez additionally quoted there are 50 active applications currently under review in the department, as well as, responded to Commissioner and staff questions pertaining to business entry, landscaping escrow, architectural design guideline incentives, and traffic impact fees and applicability.

UPDATES

Monthly Economic Dashboard Report (April)

ED Bailey referenced two Economic Dashboard reports for April, as furnished by the data providers UCCS College of Business and Data Driven Economic Strategies (DDES). During last month's board meeting, the board expressed interest in receiving

both of these data metrics of the region under a separate email delivery. There were no requests by the board to further discuss a specific metric variable. Bailey emphasized each report as having its unique economist perspectives and focus niches of interest; in particular she alluded to concerns around the impacts of the federal debt ceiling on interest rates and a potential economic recession for Colorado.

COMMISSIONER COMMENTARY TIME

Olde Town

- N/A at this time.

Small Business Advocacy

- N/A at this time.

Business Development/Policy

- N/A at this time.

Real Estate Market

- Osinski mentioned that the residential inventory continues to remain extremely low on the national level, but locally there are continued bidding wars for residential property. Inflation pressures and impacts are still ongoing. Property Assessor billings are forth coming with a significant spike anticipated for homeowners. Further, the number of real estate agents has decreased significantly from roughly 6,000 to 4,200 registered agents in the region.

Military

- N/A at this time.

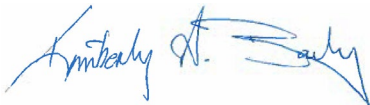
ANNOUNCEMENTS

- Fountain Summer Market (Memorial Day – Labor Day, Saturdays @ Metcalfe Park)
- Bark in the Park, June 3rd @ Metcalfe Park <https://www.eventbrite.com/e/bark-in-the-park-lollygap-loop-tickets-619208909517>
- Board Summer Planning and Quorum Availabilities – June is valid, July TDB
- EDS Shull to attend Pikes Peak Small Business Development Center networking event on Tues, May 9.
- VC Osinski mentioned recruitment for DJ Talent, at least 25 years old and good people skills needed

Chair Small asked if there was further business.

- Public guest Brisby shared she has been a resident of Fountain since 1987 and currently an Ambassador for the Evans Community Center. She expressed concern for traffic congestion along Mesa Ridge Pkwy resulting from the announcement of the King Soopers development by 2025. EDD Bailey cross-referenced multiple transportation improvements within the vicinity that will aid to disburse traffic cogs on Mesa Ridge Parkway with regards to this new entry business development.

No further topics were brought forth by subsequent board members; therefore, Baez motioned to adjourn, seconded by Diaz, passed unanimously at 6:32pm.



Kimberly Bailey

05.08.23

Date