

# ***City Council Meeting Minutes***

**April 17, 2018  
City Hall, Council Chambers  
749 Main Street**

**6:00 PM  
SPECIAL MEETING – EXECUTIVE SESSION**

**Call to Order** – Mayor Muckle called the meeting to order at 6:00 p.m.

**Roll Call** was taken and the following members were present:

**City Council:**        **Mayor Robert Muckle**  
                              **Mayor Pro Tem Jeff Lipton**  
                              **Councilmember Jay Keany**  
                              **Councilmember Chris Leh (arrived at 6:03 pm)**  
                              **Councilmember Susan Loo**  
                              **Councilmember Dennis Maloney**  
                              **Councilmember Ashley Stolzmann**

**Staff Present:**        **Heather Balsler, Interim City Manager**  
                              **Rob Zuccaro, Director of Planning & Building Safety**  
                              **Meredyth Muth, City Clerk**

**Others Present:**    **Sam Light, City Attorney**

Mayor Muckle stated this is a request to have an executive session on pending litigation matters. City Attorney Light noted the voting requirement to go into executive session must be approved by two thirds of the City Council, which is five Council members.

## **PENDING LITIGATION**

(Louisville Charter, Section 5-2(d) – Authorized Topics – Consultation with an attorney representing the City with respect to pending litigation, and C.R.S. 24-6-402(4)(b))

The City Clerk read the statement required by City Code.

Attorney Light stated Section 5-2(d) of the home rule charter authorizes an executive session for the purpose of consultation with an attorney representing the City with respect to pending litigation, which includes actual pending lawsuits as well as situations where the person requesting the session believes in good faith that a lawsuit

may result. An executive session for this purpose is also authorized by C.R.S. Section 24-6-402(4)(b) of the Colorado Open Meetings Law.

For this executive session, the City Manager and City Attorney are requesting an executive session for consultation with the City Attorney regarding pending litigation, which in this case does not involve any pending lawsuits to which the City is a party but two situations where lawsuits against the City may result and one situation involving a pending lawsuit where the City is not a party but has been asked to participate in friend of the court briefing.

Mayor Muckle moved to go into executive session for the purpose of consultation with the attorneys representing the City with respect to pending litigation on the first two items, and that the executive session include the City Manager, City Attorney, and Planning Director. Councilmember Loo seconded the motion.

Voice vote passed 7-0.

Mayor Muckle moved to go into executive session for the purpose of consultation with the attorneys representing the City with respect to pending litigation regarding participating in a lawsuit regarding a friend of the court brief, and that the executive session include the City Manager, City Attorney, and Planning Director. Mayor Pro Tem Lipton seconded.

Attorney Light stated the Charter allows for consultation with an attorney regarding pending litigation and that includes ongoing lawsuits or the situation where in good faith the participants think a law suit will result. The primary intent of the language concerns lawsuits to which the City is or will be a party but the language does not expressly address the issue of participating in another capacity such as this friend of the court brief. The language can reasonably be interpreted to be broad enough to allow an executive session if Council would like to; conversely if Council would like to have this discussion in open session that is an option.

Councilmember Stolzmann stated going into executive session is a serious matter and the Council tries to be open and transparent whenever possible. She stated in this case there is no harm in having this discussion in public. She stated she doesn't agree with the interpretation that this can be discussed in executive session as the lawsuit does not pertain to the City. She doesn't feel the rule should be construed as such. She asked the item be scheduled for the next regular meeting.

Voice vote 0-6 motion failed.

Members went into executive session at 6:09 pm.

Members returned from executive session at 7:03 pm.



**Others Present: Sam Light, City Attorney**

### **PLEDGE OF ALLEGIANCE**

All rose for the pledge of allegiance.

### **APPROVAL OF AGENDA**

Mayor Muckle called for changes to the agenda and hearing none, moved to approve the agenda, seconded by Councilmember Keany. All in favor.

### **PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA**

Becky Campbell, Interim Director of Library and Museum Services, reported on the recent construction upgrades at the library.

Deb Fahey, 1118 West Enclave Circle, requested the City report on what happened at the joint Louisville Superior meeting from earlier in the day.

### **APPROVAL OF THE CONSENT AGENDA**

Councilmember Loo asked for Item F, Conveyance of Deeds, to be removed from the consent agenda.

Councilmember Maloney asked for Item I, Recreation Center Equipment Purchase, to be removed from the consent agenda.

MOTION: Mayor Muckle moved to approve the consent agenda with F and I moved to the regular agenda, seconded by Councilmember Maloney. All in favor.

- A. Approval of Bills**
- B. Approval of Minutes: March 20, 2018 and April 3, 2018**
- C. Approve May 8 as a Special City Council Meeting**
- D. Approval of Professional Services Agreement for Broadcast Upgrade**
- E. Approval of Contract with Traffic Engineers, Inc. for Consulting Services to Develop a Transportation Master Plan**
- F. Approval of Resolution No. 19, Series 2018 – A Resolution Accepting the Conveyance of and Deeds for Transfer to the City of Tract B, Hutchinson Corner Subdivision – *moved to regular business***
- G. Approval of Agreement with Vranesh and Raisch, LLP for Attorney Services**
- H. Approval of Resolution No. 20. Series 2018 – A Resolution Approving a Second Interim Agreement Between the Northern Colorado Water Conservancy District Acting By and Through Its South Water Supply**

- Project Water Activity Enterprise, and the City of Louisville for Participation in the South Water Supply Project, Eastern Phase***
- I. Approval of Purchase of Recreation and Senior Center Expansion Fitness Equipment – moved to regular business***
  - J. Approval of 2018 Arbor Day Proclamation***

**COUNCIL INFORMATIONAL COMMENTS ON PERTINENT ITEMS NOT ON THE AGENDA**

None

**CITY MANAGER’S REPORT**

City Manager Balser asked Police Chief Hayes to report on an upcoming training and the department’s accreditation process. Chief Hayes stated a SWAT training would take place April 18 during daylight hours at 333 East Street. There will be no live fire during the training. Chief Hayes added the Department continues through its accreditation process and it is expected to be completed in the next couple of weeks. A final presentation will be made to the Council this summer.

Assistant to the City Manager Emily Hogan reported the City has engaged a consultant to complete the broadband needs assessment and feasibility study. The results should be complete this fall.

**REGULAR BUSINESS**

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**RESOLUTION NO. 21, SERIES 2018 – A RESOLUTION APPROVING THE HARNEY HOUSE LOCATED AT 620 GRANT AVENUE A HISTORIC LANDMARK**

Planner Trice stated the request is for an historic landmark designation for the property at 620 Grant Avenue. It was built in 1905-1906 with folk Victorian style elements and is associated with the Harney family. Staff and the Historic Preservation Commission believe the structure meets the architectural and social significance criteria to be landmarked.

Nicole Schwalm, 620 Grant Avenue, thanked the Council and staff for this process.

Public comments – None.

Mayor Pro Tem Lipton moved to approve Resolution No. 21, Series 2018;  
Councilmember Maloney seconded. Muckle thanked the applicant. Voice vote: 6-0.

**RESOLUTION NO. 22, SERIES 2018 – A RESOLUTION APPROVING A REQUEST FOR A FINAL PLAT TO RECONFIGURE THE LOT LINE BETWEEN LOTS 8 & 9, BLOCK 3, EAST LOUISVILLE (1131 & 1117 SPRUCE STREET)**

**RESOLUTION NO. 23, SERIES 2018 – A RESOLUTION APPROVING AN AMENDMENT TO THE LANDMARK LEGAL DESCRIPTION FOR THE RESTAS-MORGAN HOUSE AT 1131 SPRUCE STREET**

Planner Dean stated this is a request for a final plat to reconfigure the interior lot line between Lots 8 & 9, Block 3, East Louisville Subdivision. The original East Louisville Subdivision Plat was approved in 1906. The properties were reconfigured via deed in 1940. The house at 1131 Spruce was built in 1942 and the one at 1117 Spruce was built in 1992. The properties are zoned Residential Medium Density (RM).

Dean stated the main reason the applicant is asking for this replat is to clean up the property lines so no part of the improvements on the properties is over the property line into the other lot. Dean noted there is no way to replat these lots without having nonconformities; this cleans up some issues but creates some others. It is difficult to avoid in these small lots in Old Town.

Staff finds the application meets all of the subdivision criteria and all of the modification criteria which allow for lot lines and property boundaries to be redrawn even with nonconformities. Staff recommends approval with two conditions 1) application will need to record a revocable licensing agreement and 2) the applicant will need to record new deeds that reflect the new property boundaries.

Planner Trice stated amending the plat requires the landmarking resolution also be amended so the legal descriptions align.

Jean Morgan, owner of 1117 and 1131 Spruce Street, gave some history of these two parcels. She stated she is interested in making the lots more logical for future owners.

Public Comments – None.

Mayor Pro Tem Lipton moved to approve Resolution No. 22, Councilmember Maloney seconded.

Voice vote all in favor.

Mayor Pro Tem Lipton moved approve Resolution No. 23, Councilmember Maloney seconded.

Voice vote all in favor.

**5F Approval of Resolution No. 19, Series 2018 – A Resolution Accepting the Conveyance of and Deeds for Transfer to the City of Tract B, Hutchinson Corner Subdivision – *moved from consent agenda***

Director Zuccaro stated this is a request to accept deeds for a section of Hutchinson Corner. This was originally approved in 2016 and included the dedication of this tract of land and includes portions for right-of-way, sidewalks, and utilities and a small pocket park dedicated to the Acme Mine. Staff has received signed deeds from the HOA and developer and requests Council accept the deeds. One of the requirements of this subdivision was to fill the mine shaft. That was completed in 2015-16 and accepted by the engineering department.

Councilmember Loo asked if we are accepting property on both sides of the sidewalk. Director Zuccaro stated yes, the sidewalk is detached from the street so the City would have property on both sides of the sidewalk.

Councilmember Loo stated the landscape plan here is complex and the City may not be able to maintain it to the level to which it should be kept. It will be an attractive nuisance if we can't maintain it well enough. She stated the HOA should be responsible for maintaining this, not the City.

Public comments – None.

Councilmember Keany asked what happens if the City does not accept these deeds as it is a requirement of the Subdivision Agreement. Attorney Light stated acceptance does not preclude further conversations with the HOA about taking over maintenance, but it would close out the existing agreement. The City could look at alternatives such as a licensing agreement or reallocating responsibilities to the HOA. City Attorney Light stated that if the Council does not approve the acceptance we will have a contract for which the City has not met its obligation.

Mayor Muckle noted accepting these deeds is doing what we said we would do in a contract. The other details can be worked out later. Mayor Pro Tem Lipton agreed and noted the landscaping plan could be changed.

Mayor Muckle moved approve Resolution No. 19; Mayor Pro Tem Lipton seconded.

Voice vote 5-1. Councilmember Loo voted no.

**5I – Approval of Purchase of Recreation and Senior Center Expansion Fitness Equipment – *moved from consent agenda***

Director Stevens stated this is the purchase of the fitness equipment for the Recreation Center expansion. There have been questions about the process to get to this point. He stated additional information was provided to Council for the meeting. He stated this

was started with the construction of the new center and included work with a committee of staff, the personal trainers at the Rec Center, and the Parks and Recreation Association. A driving force for this was to move forward and open on schedule so staff worked quickly with the design team. This was done concurrently with the creation of the Recreation Board. Staff relied heavily on professional staff on this equipment list.

Councilmember Maloney stated he pulled this from the consent agenda because he felt there was not enough information in the packet for a decision. He stated his questions were answered in tonight's information. He added the equipment list looks very good.

Mayor Pro Tem Lipton asked if the amount is consistent with the budget. Director Stevens stated there is \$600,000 for this equipment and this is a little high but staff hopes to make up that amount in the purchase of furnishings next month.

#### Public Comments

Deb Fahey, 1118 West Enclave Circle, asked if this will affect the purchase of pool tables for the senior center. Director Stevens stated no.

Councilmember Maloney moved to approve the purchase; Mayor Pro Tem Lipton seconded.

Motion carried by unanimous roll call vote.

### **DISCUSSION/DIRECTION – 2019/2020 BOARD AND COMMISSION BUDGET REQUESTS**

Assistant to the City Manager Emily Hogan stated the City Council requested staff seek capital and operational budget requests from the City's Boards and Commissions for the 2019/2020 budget. Staff requested this information from the following bodies:

- Board of Adjustment
- Building Code Board of Appeals
- Business Retention & Development Committee
- Cultural Council
- Historic Preservation Commission
- Historical Commission
- Library Board of Trustees
- Local Licensing Authority
- Open Space Advisory Board
- Parks & Public Landscaping Advisory Board
- Planning Commission
- Recreation Advisory Board
- Revitalization Commission
- Sustainability Advisory Board
- Youth Advisory Board



Hogan stated staff has provided a description of each request and its cost, as well as a statement about whether staff is planning to submit a corresponding capital or operational budget request for each item.

City Manager Balsler stated the items marked for further consideration will be included in future budget discussions, but none would be approved until the budget is finalized. This is an opportunity for Council to give initial staff direction on these items.

Councilmember Stolzmann stated it is hard to evaluate these individually without seeing the entire budget and be able judge these requests against other requests. She would like requests from residents included on this list.

Public comments – none.

Members discussed the requests including specific discussion of the following items.

#### *Cultural Council*

Councilmember Loo stated the LCC requests #5 and #7 for program funding and facility maintenance sound too similar or need more explanation. Councilmember Keany would suggest more incremental increases than doubling the budget for LCC funding. Mayor Muckle stated he is open to some increase here.

Mayor Pro Tem Lipton stated LCC gets so little money to begin with that incremental increases will not make much difference. We get a lot of bang for the buck on these programs. For the LCC more funding for grants would go a long way.

Mayor Muckle advocated for raising the stage at Community Park and maybe putting some storage in the park to make it a better facility.

Councilmember Stolzmann stated if we can afford to do it, upgrading the stage would be nice either in Community Park or at Cottonwood Park.

#### *Business Retention and Development*

Mayor Pro Tem Lipton asked about #3 BRaD's request to have more money for marketing and social media. He stated he hopes this is included in the larger conversation about community engagement. City Manager Balsler agreed, stating there will be some funding requests for this in the upcoming budget.

#### *Historic Preservation Commission*

Councilmember Loo does not support the sign installation in #9. She stated the signs are not worth it. Mayor Pro Tem Lipton stated this is one item about which he has never

heard any comments and he agrees it is not a high priority. Councilmember Stolzmann and Mayor Muckle agreed.

#### *Historical Commission*

Councilmember Loo stated #10, request for funding for 30% schematic design for the museum expansion, is a lot of money. She would not fund this.

Mayor Muckle noted this is an important step for the project. Councilmember Keany stated it is important to get to 30% design so we aren't guessing on costs. This is a City facility being built on city property and we should be funding this without fund raising.

Mayor Pro Tem Lipton stated he struggles with this because it feels as though the target keeps moving. He doesn't support the additional funding until there is some polling completed to know if there is support for this project. He stated he doesn't think this should compete with the other items in the CIP. We need to know if there is interest on the part of citizens to put this on a ballot; we don't know if the community is behind this.

City Manager Balser stated a more detailed discussion of the museum expansion is scheduled for the May 15 meeting and that will include discussing polling.

Councilmember Loo stated she has no interest in polling unless it includes a larger conversation such as underpasses, fields, tennis courts, etc. We shouldn't poll on a single item; we need a broad conversation for a five-year plan.

Councilmember Loo stated requests for new employees need to be included in the larger staffing conversation.

Councilmember Loo stated #15 for structural fixes and #16 about the HVAC system, need clarification. Mayor Pro Tem Lipton asked if any of those could be funded with the recently approved Historic Preservation Fund monies.

#### *Library Board of Trustees*

Councilmember Loo stated #18, additional Library staff, is a quality of life issue; she would prioritize basic services staff over this.

Mayor Pro Tem Lipton stated of course the library wants to do more and be better but at some point we have to prioritize other needs in the community and the library is doing well as is. If we need more staff because of new homes in Superior, Superior should pay for that. He asked for more information on where the need is coming from.

#### *Open Space Advisory Board*

Councilmember Loo stated there is too much overlap with OSAB and Parks requests and there needs to be better descriptions. She noted all of the requests could be moot depending on what happens in Coyote Run.

Councilmember Loo stated all FTE requests need to show how they benefit maintaining what we have.

Mayor Pro Tem Lipton stated there are three categories from Open Space: acquisition, maintenance, and programming. We need to pivot from acquisition to maintenance.

### *Parks & Public Landscaping*

Councilmember Keany stated #32, multi-purpose field, might be put at Cottonwood Park and that should be considered in that master plan. Councilmember Maloney noted there might be a possibility of doing multi-use fields jointly with surrounding communities.

### Public Comments:

Deb Fahey, 1118 West Enclave Circle, asked Council to set up a program that supports and educates residents and HOAs to help them learn about sustainability options.

## **DISCUSSION/DIRECTION POSSIBLE CHANGES TO MARIJUANA REGULATIONS**

City Clerk Muth stated as a part of the 2017 Work Plan, City Council asked staff to evaluate if there was a need for changes or updates to the City's current marijuana regulations. She briefly reviewed the current regulations noting the City has one retail store and one combined medical and retail store.

Muth stated Council discussed possible changes at the February 27 City Council meeting and directed staff on the following items:

### *Things not to change in the regulations:*

- Keep the ban on marijuana sales downtown.

### *Things to change in the regulations:*

- Allow stores to be up to 5000 square feet
- Allow production and testing for both retail and medical
- Remove the limit of four retail stores in town

### *Items about which Council would like further discussion:*

- Cultivation – what have other Cities experienced with cultivation
- Distance Options for Retail Sales – look at revising the distance requirements to either 500 feet or 1000 feet or possibly aligning this with liquor regulations.
- Retail Hours

Regarding cultivation, if Council would like to allow cultivation they will need to determine in what zone districts it would be allowed. Most cities allow cultivation only in industrial zoned areas. Council should determine if they would like to have a buffer from any other uses (schools, daycares, etc.) similar to what is done with retail marijuana.

Regarding distances, staff provided six maps that show different buffer options. And, regarding hours, Muth noted all of the retail shops in Louisville, Boulder, Lafayette, and Boulder County currently have the same business hours of 8 am to 10 pm. Council can change those hours if they are interested.

Muth noted Council may want to amend the code to align zoning requirements for retail and medical sales. Currently the areas eligible for medical sales do not align with those available for retail sales.

Based on the direction from tonight's meeting, staff will bring back an ordinance for Council consideration.

Councilmember Maloney asked what is different about the medical and retail zoning. Planning Director Zuccaro noted the zoning use table would need to be amended to have them align.

Councilmember Stolzmann stated she would like to align marijuana store locations with where liquor stores are allowed.

Councilmember Keany noted he is opposed to adding cultivation and noted CTC would likely be the only place it could go and the CTC owner's association could choose to not allow this use.

Mayor Muckle stated he is strongly opposed to adding cultivation.

Councilmember Stolzmann noted the mix of allowed uses in the industrial zone districts are far more hazardous than marijuana cultivation. She noted the CTC owners association could exclude things if they wanted to. She felt cultivation and production were consistent uses with other industries.

Mayor Pro Tem Lipton asked about revenue the City might derive. He noted the City does not limit breweries so why marijuana.

Councilmember Maloney stated he is in favor of adding cultivation. He doesn't want to preclude a business that might add future revenue.

Councilmember Loo noted a report she had sent to Council members concerning energy use and the marijuana industry noting it was high in comparison to other

industries. She asked about the impact on our wish to be more sustainable. She had not made up her mind but noted she was not particularly positive toward it currently.

Councilmember Maloney said he thought the industry had transitioned to LED lighting and the impact on energy use had dropped. He felt the report was dated.

Councilmember Loo said she had talked to a Boulder County employee who reported this was accurate information.

Mayor Pro Tem Lipton asked if the City would impose similar energy requirements on other users. He questioned if marijuana is looked at differently just because it is marijuana. He wants to be consistent with other types of uses.

Councilmember Keany stated he has not heard from residents saying there were not enough marijuana stores. He is not opposed to considering adjusting the code for locations or number of facilities but he doesn't feel the community was asking for cultivation or extending hours.

Mayor Muckle didn't feel the cultivation business would bring value. He noted he had heard working next to a cultivation business was a problem due to the odors. He has heard that working next to a cultivation site is very unpleasant and he knew of one business that closed because of odor from a cultivation site. He noted he had no personal issue with marijuana being legal at the state level but noted it is still illegal at the federal level and he is concerned about contributing to smuggling operations in other states. He felt changing our regulations is fixing a problem that doesn't exist and we are already meeting the demands of our own citizens. He has no issue with increasing store size and matching retail and medical regulations.

Members discussed specific direction on the items they would like to see in a draft ordinance.

Mayor Pro Tem Lipton stated he would like more information on cultivation, specifically if there are economic benefits to allowing cultivation.

Councilmember Maloney would like more information about how other municipalities are controlling odor for cultivation.

Councilmember Loo asked if staff could determine if the Colorado Tech Center would even allow cultivation as a use.

Members agreed to a draft ordinance allowing stores to be up to 5000 sf; aligning medical and retail testing and production rules and add the use in industrial areas; and removing the limit of 4 retail stores.

Councilmember Stolzmann stated she would like to align the distance rules for retail marijuana with the liquor laws. Councilmember Maloney agreed.

Members were not in agreement about the downtown ban and asked staff to bring an ordinance that leaves the ban but it could be removed if Council so desires.

Members had varying ideas on the store hours. Councilmember Stolzmann didn't feel the need to be so restrictive while others were ok with the hours as set. Staff will bring the draft ordinance with no change.

For distances, members decided to bring the new ordinance with a distance requirement of 500 feet from first grade and higher and a requirement of 1500 feet between stores.

Staff will bring back an ordinance for consideration.

### **RETURN TO EXECUTIVE SESSION**

The City Clerk read the statement required by City Code.

Attorney Light stated Section 5-2(d) of the home rule charter authorizes an executive session for the purpose of consultation with an attorney representing the City with respect to pending litigation, which includes actual pending lawsuits as well as situations where the person requesting the session believes in good faith that a lawsuit may result. An executive session for this purpose is also authorized by Section 24-6-402(4)(b) of the Colorado Open Meetings Law.

For this executive session, the City Manager and City Attorney are requesting an executive session for consultation with the City Attorney regarding pending litigation, which in this case does not involve any pending lawsuits to which the City is a party but two situations where lawsuits against the City may result.

Mayor Muckle moved to go into executive session for the purpose of consultation with the attorneys representing the City with respect to pending litigation on two items, and that the executive session include the City Manager, City Attorney, and Planning Director. Councilmember Stolzmann seconded the motion. Voice vote passed 6-0.

Adjourned to Executive Session at 9:42 pm.

Returned from Executive Session at 10:27 pm

### **REPORT – DISCUSSION/DIRECTION/ACTION – PENDING LITIGATION**

City Attorney Light reported the purpose of the executive session was for the discussion of possible lawsuits. There is no need for action tonight.

**CITY ATTORNEY'S REPORT**

None.

**COUNCIL COMMENTS, COMMITTEE REPORTS, AND IDENTIFICATION OF  
FUTURE AGENDA ITEMS**

Councilmember Maloney asked for a review of the advanced agenda at the next study session.

**ADJOURN**

Members adjourned at 10:30 pm.

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Robert P. Muckle, Mayor

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Meredyth Muth, City Clerk