

A Regular Meeting of the Manitou Springs City Council was held in the City Council Chambers, 606 Manitou Avenue, Manitou Springs, Colorado, on November 15, 2011. Mayor Snyder called the meeting to order at 7:00 pm.

COUNCILMEMBERS PRESENT FOR ROLL CALL:

Mayor Marc A. Snyder
Mayor Pro Tem Matt Carpenter
Councilman Ed Klingman
Councilman Rick Barry
Councilman Michael Gerbig, Jr.
Councilwoman Coreen Toll

COUNCILMEMBERS NOT PRESENT FOR ROLL CALL:

Councilwoman Aimee Cox (arrived at 7:31 pm)

STAFF PRESENT:

City Administrator Jack Benson
City Attorney Jeff Parker
Planning Director Dan Folke
Public Services Director Bruno Pothier
Interim Finance Director Rebecca Davis
City Clerk Donna Kast

A. CALL TO ORDER

The meeting was called to order at 7:00 pm.

B. PLEDGE OF ALLEGIANCE

The meeting was opened with a reciting of the Pledge of Allegiance.

C. ROLL CALL

All Members of City Council were present for roll call with the exception Councilwoman Cox who arrived at 7:31 pm.

D. APPROVAL OF AGENDA

Upon a motion by Mayor Pro Tem Carpenter and a second by Councilman Gerbig, the agenda was unanimously approved as presented. Motion carried 6-0.

E. PUBLIC COMMENT ON NON-AGENDA ITEMS

None

F. CONSENT CALENDAR (These Items voted on in one Motion)

Mayor Pro Tem Carpenter called up Item No. F.3 for separate consideration.

The following items were acted upon by unanimous consent of the members present:

1. Warrants (Payables)
2. Approval of the Minutes of the October 18, 2011 Regular City Council Meeting
3. **SEE ACTION TAKEN LATER IN MEETING**
4. Approval of the Minutes of the November 8, 2011 Special City Council Meeting

Upon a motion by Councilman Gerbig and a second by Councilwoman Toll, Items F.1, F.2 and F.4 were passed, adopted and approved. Motion carried unanimously, 6-0.

**CONSIDERATION OF ITEM F.3 OF THE
CONSENT CALENDAR**

F.3 Approval of the Minutes of the November 1, 2011 Regular City Council Meeting

Mayor Pro Tem Carpenter explained that he pulled this item because he desired more detail to be included about the discussion that occurred in regards to Items G.1 and G.2, the two ordinances that were proposed to amend Title 5 of the Manitou Springs Municipal Code. Title 5 regulates business licenses and the two proposed ordinances specifically regulate the sale of tobacco products. The November 1 minutes should be amended to state:

“During discussion, Mayor Pro Tem Carpenter noted that the City of Manitou Springs paid in excess of \$5,000 in attorney fees to research the law and create the ordinances. He suggested that since the legislation is being proposed by the El Paso County Health Department, it might be appropriate for them to share in this cost.”

Mayor Pro Tem Carpenter made a motion, seconded by Councilman Gerbig, to approve the minutes of the November 1, 2011 Regular City Council Meeting as amended. Motion passed unanimously, 6-0.

G. NEW BUSINESS

1. **Reappointment of Amy Filipiak to the PPRTA Citizen Advisory Committee**

Upon a motion by Councilwoman Toll and a second by Councilman Gerbig, Amy Filipiak was reappointed to the PPRTA Citizen Advisory Committee. Motion passed unanimously, 6-0,

2. **Ordinance No. 2211, a Special Ordinance Repealing Section 5 of Ordinance No. 1103 Concerning the Continuing Existence of the Central Manitou Springs Business Improvement District – 1st reading**

Jeff Parker explained that the intent of this ordinance is to amend Ordinance No. 1103 in order to eliminate the requirement for a petition to continue the Central Manitou Springs Business Improvement District.

Susan Wolbrueck, Administrative Staff for the BID, spoke regarding the BID operating plan and budget, explaining that BID services help augment City services. She distributed a map that the BID produced in conjunction with the Manitou Springs Chamber of Commerce, explaining that it was created to promote City businesses and activities. In regards to the proposed ordinance, Ms. Wolbrueck informed the City Council that the BID Board voted unanimously in support of its passage.

Mayor Pro Tem Carpenter, City Council Liaison to the BID, noted that all attorney fees related to the preparation of the ordinance and supporting documentation have been paid by the BID.

Upon a motion by Mayor Pro Tem Carpenter and a second by Councilman Barry, Ordinance No. 2211 was unanimously approved at 1st reading as presented. Motion carried 6-0,

3. **Approval of Reallocation of Water Fund Capital Improvements Funding**

Bruno Pothier explained that the 2011 budget allocated \$210,000 for (1) the replacement of a water line on Narrows and (2) the construction of the CSU interconnect vault. The Narrows water line was replaced by the Via Linda Vista water line but while paving the street, it was determined that it would be better to replace the old part of the water line prior to completion of the paving. Therefore, completion of the Narrows project will be postponed to a later date. The total cost for the Via Linda Vista project was \$106,295.

The CSU vault was built, but ARRA funds were used for the project. Therefore, there remains \$103,705 in approved water fund capital improvements funding. It is now being proposed to reallocate the \$103,705 balance toward the construction of the East Water Loop. Total project costs for the construction are estimated at \$130,000, which would

leave a funding deficit of nearly \$30,000. Mr. Pothier explained that the remaining balance needed to complete the project would be taken from ARRA funds which would finalize the ARRA water project.

Upon a motion by Councilman Gerbig and a second by Mayor Pro Tem Carpenter, reallocation of Water Fund Capital Improvements Funding was unanimously approved as presented. Motion carried 6-0.

H. HEARINGS

1. Appeal of V1109 – Variance (Parking) – 202 and 208 Ruxton Avenue – Jay Rohrer & Karen Cullen, Applicants

Jeff Parker explained that this is an appeal of the Planning Commission's decision regarding a parking variance. He stated that the duty of City Council is to determine whether the Planning Commission acted appropriately when voting to deny the variance, noting that the only evidence that can be considered is the evidence currently in record. No new evidence should be considered.

Councilwoman Cox arrived at 7:31 pm.

Jeff Parker asked the City Council if they had any *ex parte* contacts or conflicts of interest to declare for the administrative hearing that was about to be held. Councilwoman Toll disclosed that she is the City Council Liaison to the Parking Authority Board that Mr. Rohrer is very involved in. As such, she has discussed parking issues on Ruxton Avenue with Mr. Rohrer on several occasions but she has never had a discussion with him regarding his personal parking issues. Mr. Parker said that this did not constitute a conflict of interest if she determined that she could still act fairly in regards to this appeal. Mayor Pro Tem Carpenter disclosed that he visited both locations and asked permission to look around; however, he did not have any discussions regarding the case. Mr. Parker said this didn't constitute a conflict of interest either.

Mr. Parker opened the administrative appeal by explaining that a hearing had been held by the Planning Commission on September 14, 2011 regarding whether to grant the applicants a parking variance for the businesses located at 202 and 208 Ruxton Avenue. The final vote of the Commission was 5-2 to deny the requested parking variance. The applicants filed an appeal of the Commission's decision based upon the following grounds:

1. Other Bed and Breakfasts in the area are not required to have the same amount of off-street parking as is being required of the applicant; and
2. The parking requirements are excessive, unreasonable and against Code.

Jay Rohrer, applicant, explained his reasons for the appeal, noting that one of the conditions of his Conditional Use approval was the requirement to provide 7 on-site parking spaces for his businesses. He said he believed this requirement is excessive and unfair and prefers a requirement of only 4 on-site parking spaces.

Following lengthy discussion, Mayor Pro Tem Carpenter made a motion to deny the appeal of V1109. Councilman Gerbig seconded the motion. Upon a call for the vote, the motion was unanimously approved as presented. Motion carried 7-0.

2. CU 1108 – Conditional Use (Short-Term Vacation Rental) – 202 & 208 Ruxton Avenue – Jay Rohrer & Karen Cullen, Applicants

Dan Folke opened the hearing by explaining that the applicant proposed approval of a short-term vacation rental for up to 8 persons at 208 Ruxton. He also proposed a single vacation rental unit for up to 2 persons in addition to the owner's single family residential use at 202 Ruxton Avenue. Both properties are located within the General Residential (GR) zoning district. Mr. Folke informed the City Council that the Planning Commission recommended approval with 6 conditions and 3 findings.

Jay Rohrer, applicant, said he could live with the conditions, if required. However, he would prefer not to be required to provide signage for parking spaces as required in Condition No. 3.

There was no public comment.

During discussion, it was the consensus of City Council to modify the Planning Commission's Condition No. 3, changing the number of required parking spaces from 7 to 6 and removing the requirement for signage.

Councilwoman Cox made a motion, seconded by Councilwoman Toll, to approve CU 1108 with 6 conditions and 3 findings. Upon a call for the vote, the motion passed 5-2 with Mayor Snyder, Mayor Pro Tem Carpenter, Councilwoman Cox, Councilman Gerbig and Councilwoman Toll voting for; and Councilman Barry and Councilman Klingman voting against. The approved conditions and findings were as follows:

Conditions:

- 1) This approval allows the rental of 208 Ruxton Avenue as short-term lodging for up to eight persons to the general public. Year round rental is approved.
- 2) This approval allows the rental of one lodging unit in 202 Ruxton for up to two persons in addition to the single family residential use of the business owners/operators.
- 3) Three off-street parking spaces must be provided on-site and three spaces secured by formal lease or license. Copies of the lease or license document shall be provided to the City at the time of business license issuance and renewal. The number of vehicles generated by the uses on these properties shall not exceed the on and off-site parking provided.
- 4) By April 1, 2012, the Applicants shall apply for/amend their Business License and obtain a Fire Inspection. Licensing and remittance of sales and lodging taxes is required as long as the uses are in operation.
- 5) Unless additional measures are required by the Fire Department, at a minimum, a five pound fire extinguisher with current tag from a licensed extinguisher company must be maintained in both kitchens, smoke detectors provided for in all sleeping areas, and carbon monoxide detectors located within 15 feet of the entrance to each room used for sleeping in both buildings.
- 6) Approval of this Conditional Use for the specific mix of uses requested is based on the operation of those uses by these specific owners/applicants. The Conditional Use is therefore applicable only to this ownership and will not transfer with the sale of the business or property.

Findings:

- A. That the value and qualities of the neighborhood surrounding the conditional use will not be substantially injured and the proposed use, under the conditions imposed, has no impact on the character of the community and is compatible in function and design with surrounding land uses.
- B. That the conditional use is consistent with the intent and purpose of the Zoning Code to promote public health, safety and general welfare.
- C. That the conditional use is consistent with the Rainbow Vision/Comprehensive Plan of the City.

Mayor Snyder called for a break at 8:48 pm. The meeting resumed at 8:55 pm.

3. **MJR 1101 – Major Development (2nd Story Addition) – 935 Manitou Avenue – Jack Paulson, Architect, on behalf of PLJ, Inc., Applicant**

Dan Folke opened the hearing by explaining that the applicant proposed the construction of a second floor onto the existing building at 935 Manitou Avenue in order to facilitate an expanded restaurant operation. He informed the City

Council that the Planning Commission recommended approval with 4 conditions and with the findings that the proposal is in compliance with the Rainbow Vision/Comprehensive Plan and all applicable City codes, requirements and standards.

Architect Jack Paulson, who worked on the plan, answered questions posed by City Council.

There was no public comment.

During discussion, it was the consensus of City Council to eliminate the Planning Commission's Condition No. 4.

Councilman Barry moved, seconded by Councilman Klingman, to approve MJR 1101 as presented in the documents and plans stamped *Received September 16, 2011* to allow construction of the proposed second floor addition onto the existing structure, with the findings that the proposal is in compliance with the Rainbow Vision/Comprehensive Plan and all applicable City codes, requirements and standards, and with 3 conditions. Upon a call for the vote, the motion unanimously passed as presented. Motion carried 7-0. The approved conditions were as follows:

Conditions:

1. The architectural design is as approved by the Manitou Springs Historic Preservation Commission on November 2, 2011.
2. Specifications on lighting and the MDP Lighting Plan shall be submitted for Planning Staff review and approval prior to issuance of any permits for the proposed redevelopment.
3. A complete and detailed Public Improvements and Utilities Plan must be reviewed and approved by all utilities providers prior to the issuance of any permits for the proposed redevelopment. Any construction impacts to the Manitou Avenue Streetscape Improvements shall be the responsibility of the developer to repair/restore to existing standards.
4. **Ordinance No. 1911 – An Ordinance Vacating the Otter Path Right-of-Way Lying Between Blocks 14 and 20, Peakview Addition and an Unnamed Alley Lying Between Lots 10 and 11, Block 13, Peakview Addition to the Town of Manitou Springs, El Paso County, Colorado – 2nd reading**

Upon a motion by Councilwoman Cox and a second by Councilman Barry, Ordinance No. 1911 was unanimously approved at 2nd reading as presented. Motion carried 7-0.

5. **Ordinance No. 2011 - an Ordinance Amending Title 5 (Business Licenses and Regulations) of the Manitou Springs Municipal Code by the Addition of a New Chapter 5.89 Entitled "Non-Cigarette Tobacco Product Retailer Licensing Ordinance" Establishing Procedures for Licensing and Regulating Non-Cigarette Tobacco Products – 2nd reading**
6. **Ordinance No. 2111 – an Ordinance Amending Title 5 (Business Licenses and Regulations) of the Manitou Springs Municipal Code by the Addition of a New Chapter 5.90 Entitled "Youth Access to Tobacco Products Ordinance" Establishing Procedures for Preventing Youth Access to Tobacco Products in Retail Environments – 2nd reading**

Mayor Snyder called up Items No. H.5 and H.6 for simultaneous consideration.

Jack Benson reviewed both ordinances.

The hearing was opened for public comment.

Clint Lewis, a resident of Spencer Avenue, said he opposes both ordinances because he believes they place another tax on local businesses that could contribute to either putting people out of business or motivating them to move their business out of town.

Mayor Pro Tem Carpenter stated that tobacco use has a large impact on public health and these types of ordinances have been proven to reduce its use. That is the reason he is in support of this legislation. Mayor Snyder clarified that there is no additional taxation related to these ordinances, rather they impose administrative fees. He reminded everyone of the large group of students that spoke in support of this legislation at 1st reading of the ordinances, noting that this is something that these young people think will be beneficial. He also stated that there is no evidence that the required fees will present a hardship on local businesses.

All in the audience were updated on the fact the Joy Clark and Kiti Hall, representatives of the El Paso County Health Department, met with the City about finding ways to defray some of the attorney's fees related to this legislation.

Upon a motion by Councilwoman Toll and a second by Mayor Pro Tem Carpenter, Ordinance No. 2011 was unanimously approved at 2nd reading as presented. Motion carried 7-0.

Upon a motion by Councilwoman Toll and a second by Mayor Pro Tem Carpenter, Ordinance No. 2111 was unanimously approved at 2nd reading as presented. Motion carried 7-0.

I. MAYOR'S REPORT

Mayor Snyder reported on the joint meeting of the PPRTA Board of Directors and Citizen Advisory Committee that he and Councilwoman Toll attended on November 14. He also announced that he will be speaking at the Catamount Institute's Sustainability Conference on Thursday.

J. RECEIVE OR ACT ON COUNCIL CORRESPONDENCE

Councilwoman Toll said she would like to see the City reduce the amount of paper it uses and suggested using iPads to view city council meeting packets instead of printing the documents on paper.

K. CITY COUNCIL LIAISON REPORTS

Councilman Gerbig reported that a task force has been formed by the Library Board of Trustees to continue working on the possibility of joining the Pikes Peaks Library District.

Councilwoman Toll reported that City Planner Michelle Anthony is working on a parking brochure that will be distributed to the public.

L. PLANNING DIRECTOR'S REPORT

Dan Folke reviewed his monthly report.

M. FINANCE DIRECTOR'S REPORT

None

N. CITY ADMINISTRATOR'S REPORT

Jack Benson informed the City Council that he and Rebecca Davis have been working to complete the FY2012 budget. He also stated that a discussion regarding employee salaries will be held during 1st reading of the budget.

O. FUTURE AGENDAS

- December 6, 2011 – Regular Meeting
- December 13, 2011 – Worksession
- December 20, 2011 – Regular Meeting
- January 3, 2012 – Regular Meeting
- January 10, 2012 – Worksession
- January 17, 2012 – Regular Meeting

Mayor Snyder informed everyone that he has called for a Special City Council meeting on November 29, 2011 to consider 1st reading of the budget and to hold a compensation adjustment discussion.

ADJOURNMENT

With no further business to conduct, Mayor Snyder concluded the Regular Meeting at 9:58 p.m.

MAYOR AND CITY COUNCIL

CITY CLERK

Minutes Prepared by: Donna Kast, City Clerk