



**CITY OF MANITOU SPRINGS
PLANNING COMMISSION
REGULAR MEETING MINUTES
Wednesday, MARCH 8, 2017**

I. CALL TO ORDER

A Regular meeting of the Manitou Springs Planning Commission was held in Council Chambers @ 606 Manitou Avenue. Chairman Delwiche called the meeting to order at 6:04pm and declared a quorum present. The following Commission members attended:

PRESENT: Chair ALAN DELWICHE
Vice Chair JEANNE VROBEL (arrived 6:30pm)
Commissioner GLORIA LATIMER
Commissioner MIKE CASEY
Commissioner JULIE WOLFE (arrived 6:07pm)
Commissioner JULIA SIMMONS
Commissioner LORI BURRIS

ABSENT: NONE

STAFF: Wade Burkholder, Planning Director
Michelle Anthony, Senior Planner
Karen Berchtold, Planner II
Dylan Becker, Planner I
Kathryn Sellers, City Attorney's Office (attending via teleconference)

GUESTS: Coreen Toll, City Council Liaison
Robert Todd, City Council Member
Darcy White, Clarion Associates

II. APPROVAL OF MINUTES

ITEM 1. February 8, 2017

MOTION:
Commissioner Latimer moved to approve the February Minutes as submitted.

SECOND:
Commissioner Burris seconded the motion.

DISCUSSION:
There was no discussion regarding the motion.

VOTE:
Motion passed, 5-0.

III. NOTICE OF COUNCIL ACTION

ITEM 2. RE 1601 through RE 1611 – Rezoning Open Space Parcels. City Council these items were approved at first reading on March 7, 2017. The date for second reading was scheduled for March 21, 2017.

ITEM 3. RE 1612 through RE 1623 - Rezoning from Hillside Low Density Residential to Open Space. City Council approved these items at first reading on March 7, 2017. The date for second reading was scheduled for March 21, 2017.

Chairman Delwiche reviewed the meeting procedures for everyone present and asked if any Commissioner had Ex Parte Contacts or Conflicts of Interest to declare. Hearing none, the meeting continued.

Commissioner Wolfe arrived at this point in the meeting and took her seat at the dais.

IV. UNFINISHED BUSINESS

There was no unfinished business to consider.

V. NEW BUSINESS

ITEM 4. MiCUP 1701 – Minor Conditional Use (Vacation Rental) – 26 Puma Path – Denise Cohen, Applicant.

Senior Planner, Michelle Anthony, presented the staff report dated March 1, 2017.

Ms. Anthony read an email from Collette Berge and Mary Yates, 24 Puma Path, for the record. Ms. Berge and Ms. Yates stated they had good experiences with short-term renters thus far, as was not the case under previous owners of the property. The email stated they had no issues with the requested Conditional Use of the property; however, they made the following requests:

1. The use of bear proof containers shall be required for all trash and recyclables, as there had been several instances in which Ms. Berge and Ms. Yates had to clean up trash in the neighborhood following nightly visits from bears and wildlife to the area.
2. All vehicles shall be parked in the driveway on the property. Puma Path is a one-way road and further congestion could mean emergency vehicles may not have access to certain properties.
3. Regular maintenance and yard-work was an expectation.
4. Denise Cohen, property owner, shall be required to include the short-term vacation rental is in a quiet neighborhood in her advertisements and/or listings, as this would likely influence the type of renter they received and would likely attract those who would respect the neighborhood.

Ms. Berge and Ms. Yates also stated they wished Ms. Cohen the best as she had always been responsive and respectful of their requests.

Ms. Anthony finished presentation of the staff report and recommendations regarding the request.

Commissioner Casey asked whether or not the Code Enforcement Officer could enter the house on the property. Mr. Burkholder responded the Code Enforcement Officer was permitted to enter the house for inspection at the time of Business License renewal.

Commissioner Wolfe inquired whether it was legal to park on the front lawn of a property. Ms. Anthony responded it was not legal to do so. Commissioner Wolfe further inquired if someone would be able to park an RV or a boat on the front lawn. Ms. Anthony responded the staff recommendations did not specifically prohibit such parking; however there was a law that stated parking on other than a driveway was not permitted. Ms. Anthony stated despite this, people often parked vehicles in yard areas and the Police Department had been lenient on enforcement. Ms. Anthony recommended to the Commission a requirement requiring renters to park solely in the driveway be added to the conditions of approval.

Hearing no further questions for staff regarding the report, the applicant was invited to the podium.

Denise Cohen, Applicant/Owner of 26 Puma Path, stated she was pleased with the recommendations made by staff and included she did not believe it would be possible for anyone to park on the front lawn of the property. Ms. Cohen stated she had great neighbors, Ms. Berg and Ms. Yates, who notified her of any issues regarding the property or renters and she had tried to alleviate any concerns neighbors have had as immediately as possible.

Commissioner Wolfe asked if the trashcans were kept in the garage other than on the scheduled trash pickup day. Ms. Cohen responded they were kept outside at all times, regardless of pickup day on the side of the property with a locking mechanism. Ms. Cohen requested she be permitted to continue using the current locking mechanism unless the issue concerning bears and wildlife worsened. Ms. Cohen commented bear-proof containers were expensive and she would like to avoid purchasing one if possible.

Commissioner Wolfe inquired as to the type of locking mechanism on the trashcans and if the mechanism secured the lid of the trashcan. Ms. Cohen responded the locking mechanism was secure and she would notify renters about bears in the area and ask them not to take trash out of the house until the scheduled pickup date.

Commissioner Casey inquired if the garage was empty and whether or not parking was available there. Ms. Cohen responded the garage is not empty and was unavailable for parking.

Commissioner Latimer asked if guests had access to the garage for trash purposes and questioned how many cars Ms. Cohen expected to be at the property when rented. Ms. Cohen stated that guests did not have access to the garage and the number of vehicles expected was two (2) on average.

Commissioner Latimer inquired if renters were permitted to bring dogs to the rental property and if there was a fenced-in area that could be used by dogs. Ms. Cohen responded there was a dog run located on the side of the property not visible from the street.

Chairman Delwiche opened the meeting to public comment. Hearing none, the Public Hearing was closed.

Commissioner Wolfe stated previous applicants had been required to provide a fenced-in area for dogs and recommended that a condition be included requiring dogs to be on a leash as the property is not fenced-in, in order to maintain consistency with past requirements.

Commissioner Latimer inquired if the dog run was enclosed. Ms. Cohen responded the dog run was enclosed.

Commissioner Wolfe commented it was wonderful there was a dog run as long as renters were required not to allow dogs to run loose.

Commissioner Latimer asked if Ms. Cohen would include a leash rule and the requirements pertaining to dogs in the rental property guest book. Ms. Cohen stated she would do so.

Commissioner Wolfe stated since renters would not have access to the garage for trash storage purposes, there needed to be a requirement the trashcan lids be secured in a manner determined by the property owner, to prevent future messes.

Ms. Anthony suggested the wording regarding any condition specifically mention securing the trashcans from bears.

MOTION:

Commissioner Wolfe moved to find the application meets the requirements of the Municipal Code regulating Conditional Uses and for approval of Minor Conditional Use Permit 1701 for a short-term vacation rental at 26 Puma Path with the following conditions:

1. The owner may only rent to parties of not more than six (6) persons, with not more than three (3) standard vehicles. No oversize vehicles, campers or trailers shall be allowed.
2. The application indicates parking on-site is adequate for three, standard vehicles. If the City observes vehicles associated with the vacation rental or receives complaints regarding guests parking other than on the subject property, further improvement of the driveway to conform to the width dimensions required for three (3) parking spaces shall be required upon notice of such by the Planning Department.
3. The owner must obtain a business license from the City of Manitou Springs prior to listing the property as a vacation rental.
4. All advertisements and/or listings for the vacation rental must contain the approval number (MiCUP 1701) and copies of advertisements and/or listings must be submitted to the Planning Department for retention in the property file.
5. The Applicant shall submit a copy of the information provided to guests under Section 18.89.040 G. (1-7) and 18.89.040 H. for the Planning Department files at the time of issuance of the Business License.
6. The Applicant shall provide secure trash containers on-site to provide security against bears and other wildlife.

7. The Renters shall be required to keep dogs in the dog run area or on a leash at the property and surrounding neighborhood.

SECOND:

Commissioner Burris seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

Commissioner Vrobel arrived at this point in the meeting and took her seat on the dais.

ITEM 5. MaCUP 1702 – Major Conditional Use (Expansion of Manitou Brewing Company) – 725 Manitou Avenue – Pam and Kevin LeGrande, Applicants

Senior Planner, Michelle Anthony, presented the staff report dated March 2, 2017.

Hearing no questions for staff regarding the report, the applicant was invited to the podium.

Kevin LeGrande, 200 Morning Sun Drive, Woodland Park, on behalf of Manitou Brewing Company, stated the business was not expanding customer seating or making the operation any larger in terms of customer operations. Mr. LeGrande noted the expansion was intended for storage space which the business did not currently have and to store their barrels for aging beer. He continued that barrel aging of beer was a unique process and would build the prestige and notoriety of the Manitou Brewing Company. Mr. LeGrande stated he did not feel the term “Major Conditional Use” was appropriate, considering the expansion was relatively minor, the brewery was not expanding its customer operations, and the extra space was being used largely for storage.

Chair Delwiche clarified the terms “Major” and “Minor Conditional Use” were created when the City enacted regulations for vacation rentals and the current Major Conditional Use Permit was consistent with the former Conditional Use Permit prior to making the distinction between “Major” and “Minor”.

Commissioner Vrobel asked Mr. LeGrande if he was content with the recommendations made by staff regarding the Major Conditional Use Permit. Mr. LeGrande stated the parking situation could be problematic, as most of the parking lots are full, including the parking lot adjacent to the brewery owned and used by the employees and customers of Manitou Springs Real Estate. Mr. LeGrande was concerned purchasing eight parking permits for full-time use, per staff recommendation, would potentially cause a loss of business as parking in downtown lots would be occupied by employees as opposed to would-be customers. Mr. LeGrande also stated the issue regarding the noise created by the exhaust fan was being addressed by engineers and those concerns would be alleviated.

Commissioner Vrobel again asked Mr. LeGrande whether he was content with the recommendations made by staff. Mr. LeGrande indicated he found the conditions acceptable and acknowledged there were options he could consider for providing parking to employees.

Commissioner Wolfe inquired where employees currently parked. Mr. LeGrande responded several employees used on-street parking on Manitou Avenue and some used free parking spaces located near the Manitou Springs Public Library.

Commissioner Casey stated at the previous Conditional Use Meeting there were concerns regarding having a brewery in the downtown with no parking but the business had been a success and a good neighbor.

Commissioner Wolfe asked if Mr. LeGrande was required to provide parking for his employees under the conditions of the existing Conditional Use Permit. Mr. LeGrande stated he was, but had not complied with the condition because he had expected to be able to use the parking lot located 727 Manitou, now owned by Manitou Springs Real Estate. However, that property owner had since disallowed parking usage by Manitou Brewing Company due to their own need for employee parking.

Chairman Delwiche opened the Public Hearing. There being no comments from the audience, the Public Hearing was closed.

Commissioner Vrobel remarked it was nice to have a Code Officer on staff to help with things that had fallen through the cracks and who could follow up on requirements and conditions.

Commissioner Latimer asked Mr. LeGrande about a timeline for reducing the noise created by the exhaust fan. Mr. LeGrande responded the new fan would be installed with the completion of the expansion, which would be achieved in roughly one and one half months.

Commissioner Casey commented just because an employer purchases parking permits, does not guarantee a parking space as they are not reserved spaces. Commissioner Casey also stated the City Parking Board often sold more parking permits than there are spaces and in the evenings and on weekends, especially in the summer, the lots are often full. This could mean the employees of Manitou Brewing Company, despite having parking permits, may not be able to find a parking space. He further stated the City, had gotten into the habit of requiring businesses to purchase parking for their employees without regard to whether parking was available to them during high traffic season and times.

Commissioner Wolfe and Chairman Delwiche both remarked the Parking permits might help some days and not others, but having permits would provide access the employees would not otherwise have.

Commissioner Latimer clarified the Planning Commission and City of Manitou Springs were not trying to single out the Manitou Brewing Company for this requirement, but if the City was going to make purchasing employee parking a requirement for downtown businesses, they needed to enforce the requirement. She also stated the parking permits may not currently benefit local businesses and their employees, but in the coming years, once decks were added to parking lots, they will be beneficial to employees of local businesses.

Commissioner Wolfe inquired how staff handled the issue of deadlines, because Mr. LeGrande had been required to purchase parking permits under the current Conditional Use Permit but never did. She also inquired as to what the deadline would be for Mr. LeGrande to purchase the required permits, as well as the deadline to reduce the noise generated by the exhaust fan, under the new Major Conditional Use Permit. Ms. Anthony responded the exhaust fan issue, as Mr. LeGrande mentioned, was tied to his construction and the Planning Department would see that was resolved at the time of final inspection and sign-off on the permit; this could mean a couple of months as the matter depended on the timing of completion of the

construction. Ms. Anthony stated regarding the parking issue, the condition as proposed required proof of parking accommodations be provided prior to obtaining a building permit. That meant the proof of parking would be tied to the building permit, as opposed to the business license.

Commissioner Wolfe asked if the Commission were to approve this permit, would there be no deadline to enforce on Mr. LeGrande in regard to proving he had purchased parking. Ms. Anthony responded there was no deadline for Mr. LeGrande to pull a building permit, but if Mr. LeGrande was going to expand the business, he would have one year to pull a building permit, otherwise the new Conditional Use would be void.

Commissioner Latimer requested clarification concerning condition number three in the current Conditional Use regarding parking as it sounded in the first sentence the requirement was waived and in the next sentence it was required. Ms. Anthony responded staff had calculated the businesses need for parking to be eight (8) spaces. Four (4) spaces were waived and four (4) spaces required to meet the employee parking need out of the total of eight (8).

Chair Delwiche inquired about the criteria, at the time of the initial permit, for determining the required parking and how many permits would be waived. Ms. Anthony responded the decision was based on the grandfathered demand for the previous businesses in this location and then accounting for the additional demand the bar/brewery generated. Staff asked how many employees would be working at a given time, which the owner had indicated would be four, and recommended waiver of the rest of the calculated demand.

Commissioner Burris asked for clarification as to whether or not the number of employees had significantly increased since the last permit was issued. Ms. Anthony responded the Manitou Brewing Company initially indicated it would have four (4) employees, but now anticipated there would be eight (8).

Commissioner Wolfe stated she would like to see Mr. LeGrande purchase the four (4) required parking permits from the previous conditional use permit because he was non-compliant at this time. She inquired as to whether or not the requirement could be imposed before approving the new permit. Ms. Anthony responded the Commission could approve a condition of MaCUP 1702, requiring Mr. LeGrande to purchase the four (4) permits required under CUP 1204 before the new application and the final parking requirements were considered by City Council.

MOTION:

Commissioner Vrobel moved to find the application meets the requirements of the Municipal Code regulating Conditional Uses and to forward a recommendation to City Council for approval of Major Conditional Use Permit 1702 to allow for expansion of the brewing operation at 725 Manitou Avenue with the following conditions:

1. The Major Conditional Use Permit is approved based on the proposed floor plan dated December 16, 2016.
2. Hours of operation shall be 11:00 am to 11:00 pm.
3. Prior to obtaining a Property Improvement Permit and/or Building Permit for the proposed improvements, The Applicants shall provide proof of parking accommodations for eight (8)

employees/operators of the business. The parking accommodations may be in the form of yearly parking permits in City-managed lots or an agreement to lease required parking spaces from a nearby, private lot owner (as long as such lease does not create a non-conforming condition on the leased property).

4. No objectionable odors shall be produced by the business operations. If such odors are identified by the City or via complaints from surrounding property inhabitants, then the Planning Department shall require the business to install venting, filtering, or take action necessary to mitigate such odors.
5. The business shall either take action necessary to muffle the noise of the existing exhaust fan or shall install a new fan which will not create detectable sound above the ambient noise either from Manitou Avenue or Duclo Avenue. Any new fans shall provide noise dampening or be selected for quiet operation.
6. This Conditional Use approval is contingent upon the Applicants meeting all applicable City and State regulations, including any building permits, use tax payments, the required Liquor License(s), and City Business Licensing to allow the uses as proposed on the premises.
7. The Manitou Brewing Company is required to purchase four (4) parking permits for employee parking as required under CUP 1204, prior to consideration of MaCUP 1702 by City Council.

SECOND:

Commissioner Wolfe seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 7-0.

Chair Delwiche stated this item would be heard by City Council at their Regular Meeting on March 21, 2017 or April 4, 2017.

VI. OTHER BUSINESS

ITEM 6. Review and Recommendation to City Council Regarding Adoption of PlanManitou

Planner II, Karen Berchtold, presented the updated information and staff recommendations for adoption of PlanManitou as the City's comprehensive plan. Ms. Berchtold thanked the City Planning Commission for their on-going participation and stated the Commission had been more involved in the process to adopt PlanManitou than any other board due to its involvement in long-term planning for the City. Given the Commission's familiarity with the plan, she would not give a presentation but would focus on the updates and changes to the document since the last draft. Ms. Berchtold introduced Darcy White with Clarion Associates and acknowledged the group had been heavily involved in the process of pulling the documents of PlanManitou together at every stage. She clarified the requested action was strictly pertaining to the comprehensive master plan portion of the project. The Hazard Mitigation Plan first had to be approved by FEMA before adoption by the City and the Planning Commission would not need to

review that portion of the plan, but it would go directly to City Council and then PlanManitou would be considered fully adopted by the City.

Darcy White, Clarion Associates, stated the public comment period for PlanManitou was open from November 2016 through January 6, 2017 and they received numerous comments from staff, the public, and DOLA pertaining to changes regarding legibility and usability of the document since the first draft was released. Ms. White stated the foundation of the plan had not changed, but the modifications were made to provide better clarity in regard to how the plan would be used by different groups and to ensure feedback was meaningfully incorporated.

Commissioner Casey inquired whether Ms. White had received the email from Ken Jaray, 304 Michigan Avenue, concerning his recommendations to PlanManitou. Ms. White affirmed she had received the email.

Commissioner Wolfe stated she was fond of the recommendations made by Mr. Jaray and asked if Ms. White foresaw any difficulties in making the recommended changes to the document. Ms. White responded since the public comment period had closed, any changes made to the document after that point would be recommendations from the Commission.

Ms. White asked how many recommendations were on the list from Mr. Jaray, seven (7) or nine (9). Ms. Berchtold responded there were nine (9) recommendations. Mr. Jaray clarified there were actually eight (8) as he had forgotten to remove a comment that was numbered as a recommendation.

Ms. White stated if the Commission would like to include any of Mr. Jaray's recommendations in the draft they should discuss which ones to include for the record. Ms. White stated recommendations would be taken forward to City Council pending adoption of PlanManitou and inclusions part of the final document.

Commissioner Wolfe stated when reviewing the recommendations made by Mr. Jaray via email, she did not anticipate any problems might arise as a result of the proposed changes and inquired if there was anything she may have overlooked. Ms. White responded the recommendations involving the role of the community only enhanced what was already implied in the current draft of the plan; she did not feel they were necessary although they added more clarity. Ms. White stated items numbered four and five had not been discussed as part of the public process and seemed too specific at this level of the plan. Ms. White commented the recommendations should warrant some discussion from the Commission, as the items were new and had not come up in the previous year of discussions and public process for PlanManitou.

Commissioner Vrobel commented she had issues with several of the recommendations. She remarked some of the recommendations were already covered in the plan and stated the need to have this represented to the public in progress reports was important, but felt there was enough in the plan that it did not need to be stated again. Commissioner Vrobel expressed concern there may be problems down the road with the wording of several of Mr. Jaray's recommendations as stated in the email. Ms. White stated, in regard to recommendation number one concerning progress reports, it was suggested staff bring updates to the Planning Commission and City Council on a periodic basis at public meetings to include residents in the discussion, as was the intention of the document. Ms. White also remarked she agreed with Commissioner Vrobel this was not necessary to call out specifically, although she understood the intent that the public be included in the conversation. Ms. White stated the Committee that was established and met throughout the process had recommended they remain an entity moving forward to

serve as the public review body to ensure actions were being followed according to those established in PlanManitou.

Commissioner Vrobel remarked item number seven in Mr. Jaray's recommendations, pertaining to action plan items, was a concern because she felt the public had been included in much of the process regarding PlanManitou and did not want to make it overly difficult to accomplish plan implementation in the future. Ms. White responded the foundation for the action plan discussions about community groups, and other people that play a role in the implementation of PlanManitou, came about at the initial plan meeting in February 2016. Ms. White acknowledged the community had played and would play a significant role in implementation of the plan and she recognized groups would change over time as new people became involved. She remarked the plan was flexible enough to accommodate changes and should be recognized as a plan for the entire community, as was the intention of the document.

Commissioner Latimer stated she was concerned about the implementation of the plan between staff and the developers of the plan. Commissioner Latimer inquired about the methods for interfacing lead agencies with the plan to ensure actions were achieved and asked if the city would be re-writing job assignments or descriptions to handle the workload of implementing the plan. Mr. Burkholder responded there was a lot of hope riding on the fact that Ms. Berchtold's position would not end in December and City staff would rely heavily on the community to assist with action implementation. Mr. Burkholder remarked on the possibility some short-term actions might not occur due to future constraints.

Commissioner Latimer asked if there would be directives for staff to take the lead on these actions. Mr. Burkholder confirmed there would be. Ms. White stated many of the lead groups had already been part of the process and they did not want to assign leads without the knowledge of those groups. Commissioner Latimer acknowledged she understood people could get burned out and wanted to ensure someone had the authority and discretion to move the plan forward. Commissioner Latimer commented she hoped the City Council recognized and appreciated the work Karen Berchtold, Darcy White, and Clarion had accomplished in moving PlanManitou forward.

Commissioner Burris inquired if the implementation actions were incorporated into a capital improvement program. Mr. Burkholder responded that, as anticipated, some of the actions would be.

Commissioner Burris asked if plan implementation would be reviewed yearly with the annual budget for City Council as a means to keep the plan on track. Ms. White responded she believed the action plans were reflective of the motivations and commitments of staff and commented it would take time to work through the short-term and long-term actions, but the plan was very comprehensive. Ms. White stated several of the short-term actions were highlighted in the plan and had already begun implementation under existing grants. Ms. White stated there would be an on-going monitoring process to keep on top of it.

Commissioner Burris inquired if there was a prioritization exercise Clarion applied during the process of creating PlanManitou. Ms. White replied Focus Area Number One and Focus Area Number Six, the Hazard Mitigation Plan components, were put through formal prioritization exercises as required by FEMA. Ms. White stated the remaining actions had not gone through formal prioritization exercises because there were too many and time constraints for that process. Due to these constraints, the Focus Areas were intended to be aligned with moving the project forward on multiple fronts. The Quality of Life Initiatives and development parameters were things that would make the biggest differences and had been highlighted as top priorities of PlanManitou.

Ms. Berchtold stated the wording of recommendation number six creating a framework for coordinating existing volunteer groups was important because the City had not yet determined the methodology to accomplish it. Ms. Berchtold commented the matter depended on how staff was set up to handle the issue and felt it was important to determine the best way to coordinate with community groups to engage them throughout the process. Ms. Berchtold acknowledged the City was not at a point where this was necessary. Ms. Berchtold stated, as suggested in recommendation number seven, adding the listed partners would be beneficial to plan implementation. Ms. Berchtold commented she was unsure, at this stage of the plan, the wording needed to be as specific as stated in recommendation number eight regarding coordination between permanent staff and assisting community groups and activists, as the City had not determined the means for coordinating that particular effort. Ms. Berchtold stated there was a metric in part five of the plan that measured the number of citizen-lead projects and initiatives completed, which may already cover the suggestions made in recommendation number eight from Mr. Jaray. Ms. Berchtold explained the reason residents were not mentioned as much in the process was due to the fact there would be many actions in the future in which the City will reach out to them as mandated in the plan and there would be an ongoing effort to update, create dialogue, and provide information via the newsletter. Ms. Berchtold commented the City would reach out to stakeholders in a similar manner as had already occurred throughout this process that went well beyond a simple posting.

Commissioner Wolfe asked if staff had considered expanding the online information available to the public or attempted to make the PlanManitou website more user-friendly as she felt this could make progress reports more available to the public. Mr. Burkholder responded the PlanManitou webpage would remain up, after the adoption of PlanManitou, and will serve as the main source for dissemination of information, updates, and notices to the public.

Hearing no further questions for staff regarding the report, Chair Delwiche opened the Public Hearing.

City Council Liaison, Coreen Toll stated once PlanManitou was fully adopted she hoped instead of quoting the Rainbow Vision Plan in future documents, she would quote PlanManitou and noted this would aid in helping to keep the document alive. Councilwoman Toll stated at the March 9, 2017, Regular Meeting, the City Council had approved first reading of an ordinance to establish the Housing Advisory Board and there were many community members interested in actualizing the recommendations regarding housing. Councilwoman Toll acknowledged collaboration between the City, the Chamber of Commerce, and Downtown Colorado Inc., to coordinate activities, workshops, and seminars for cooperation between entities to avoid duplicating projects and plans. She commented there was real synergy occurring in the process that would help in actualizing the recommendations of the Plan in terms of economic development and urban renewal.

Ken Jaray, 304 Michigan Avenue, thanked the staff for bringing his recommendations to the Commission and stated he thought PlanManitou was a great document. Mr. Jaray stated he had been an integral part of the Manitou Springs Forward Planning and Vision Guide and remarked he was initially hesitant about the City spending money to create another master plan but was incredibly pleased with the outcome of PlanManitou and felt it was money well spent. Mr. Jaray stated his main concern was the plan's implementation and stressed the importance of the wording in the document and the possibility of the document shifting the community's culture. Mr. Jaray remarked the culture in Manitou Springs used to be one of community-lead and staff-supported efforts, as well as staff-lead and community-supported efforts, to accomplish goals. Mr. Jaray commented in the last several years he felt community participation and invitations for community participation had decreased, leaving many community members frustrated. Mr.

Jaray stated his recommendations were made in the hope PlanManitou would guide the community and staff in matters of importance for many years to come. Mr. Jaray requested the Commission go through each of his proposed recommendations individually and make a recommendation on each one to forward on to City Council. He stated presenting information to residents in progress reports was important and the City should not rely on residents to check City Council or Commission/Board agendas every month for updates and new information at meetings. Mr. Jaray stated recommendation number one, which referenced letting the residents know when staff, boards, and commissions propose an update in a progress report helped residents to stay in the loop and made them more apt to participate in City endeavors.

Commissioner Wolfe requested Mr. Jaray and the Commission go through each recommendation one at a time. Mr. Jaray stated he would like the Commission to decide whether to forward each recommendation to City Council on an individual basis.

Chair Delwiche stated he preferred the recommendations be given all at once, in bulk, due to time constraints. Commissioner Wolfe clarified she did not want to make a motion on each recommendation individually, but wanted to make sure she was able to ask questions between each recommendation. Mr. Jaray stated he would defer to the Chair in the decision to present the recommendations in bulk.

Commissioner Latimer asked for clarification about recommendation number one as to Mr. Jaray's intention when referring to the phrase "presented to residents" and asked if he meant for the City to receive input directly from residents. Mr. Jaray responded the intent was only to add residents and members of the business community to be included along with the Planning Commission and City Council in terms of who receives progress reports regarding PlanManitou.

Commissioner Latimer asked if Mr. Jaray meant for progress reports to be disseminated to the public through the Pikes Peak Bulletin or by some other means. Mr. Jaray replied the manner of how the proposed recommendation was achieved would be determined by staff; the City had a quarterly newsletter as a part of the Bulletin, but his recommendation was not meant to be that specific. Mr. Jaray stated he thought the matter was better left up to the discretion of staff as to how to accomplish the means of distributing information to the public. Commissioner Latimer asked for clarification the recommendation did not require a letter be sent to every resident. Mr. Jaray confirmed that this was not the intention of the recommendation.

Mr. Jaray stated the second recommendation which referred to the removal of the words "when challenged" was intended to make it so the City drew on the resources of the residents when wanted, not just when needed. Mr. Jaray stated recommendation number four was a new topic. Mr. Jaray felt it was important to include the re-installation of the Mayor's Office in PlanManitou. He commented the plan discussed space and he would like to see some of the space issues resolved, starting with the Mayor's Office. Commissioner Latimer acknowledged there was an issue with space, but was concerned since the City was twenty two (22) positions short as is, the Mayor's Office would be included in the overall space issue. Commissioner Latimer commented that everyone was important and there was no need to single out the Mayor's Office specifically.

Chair Delwiche stated he would like to wait to defer debate over the issue until after the public hearing was closed. Mr. Jaray objected to the Chair's proposal and stated waiting until public hearing was closed would bar him from having input with the Commission over his recommendations to them. Commissioner Latimer stated she would defer to the Chair.

Mr. Jaray stated items four and five from his list of recommendations went together. He wanted to alter the plan from “establishing an approach” regarding solving the space issue to actually making a statement about taking action to solve it. Being more specific in the language seemed to be appropriate in that instance. Mr. Jaray stated item number six in his recommendations was intended to be a more direct action statement. Mr. Jaray remarked rather than “develop a framework”, the City should coordinate with existing volunteer groups and group members. He had not intended to describe a method for that coordination, but was just stating there should be coordination between the two. Commissioner Wolfe commented the language should perhaps include both, as there was good reason for the “framework” language to be included in the document in regards to coordinating with community volunteers and stated she was in support of Mr. Jaray’s approach regarding the action plan. Commissioner Wolfe stated the action plan needed to have measurable items to indicate whether or not an action was achieved. Mr. Jaray stated it was important to add this language to the document because without it, the only directive was to create a framework and nothing more.

Mr. Jaray stated item number seven of his recommendations was added due to the fact he did not feel residents were included enough in the action plan items and the wording needed to be more specific to explicitly include residents as part of the community partners. This would allow residents to feel like they had a place at the table and were included in the action plan items, as he currently felt they had been excluded in many ways. Mr. Jaray stated item number eight in his recommendations was intended to broaden the scope of the implementation of PlanManitou by adding “city-wide capacity” to the language involving plan implementation by permanent staff to avoid the need to hire more permanent staff. Mr. Jaray commented this would allow the City to rely on the community more for plan implementation rather than increase the size of City government. He stated he looked for three (3) factors when determining the need for government growth: Was there an increase in the number of residents, an increase in square footage, or an increase in infrastructure development? Mr. Jaray commented in the past five years, Manitou had not seen an increase in any of those factors and adding more staff was not the route the community should take. He felt it was not necessary to hire more staff when, as the plan states, there are many community groups and community members who would volunteer their time, knowledge, and skillset to plan implementation efforts if they were to be engaged and utilized. Mr. Jaray acknowledged there was a need for staff to coordinate the efforts and if the City wanted to hire permanent staff, they should hire somebody to handle that effort. Mr. Jaray stated item number nine went along with item number eight in his recommendations. Mr. Jaray stressed the importance of including community members in long-range planning efforts and the need to inform them the City will need their efforts in plan implementation. Mr. Jaray thanked the Planning Commission for hearing his recommendations and commented he had spoken with the Mayor about establishing a short-term task force of six or seven (6-7) people to zero in on the Plan portions pertaining to accountability and implementation.

Chair Delwiche inquired if Mr. Jaray had attended the community meeting regarding PlanManitou. Mr. Jaray responded he had been in attendance of the sessions when he was able, including the Citizen Advisory Committee meetings. Chair Delwiche thanked Mr. Jaray for his emailed recommendations.

Councilman Bob Todd, 22 Manitou Terrace, stated his engagement as a Council member had been extensive regarding PlanManitou. Councilman Todd stated the plan would go to a Council work session on March 21, 2017 and then on to a regular session on April 4, 2017, for adoption. He commented on a statement he provided to the corps of engineers regarding an economic model for Manitou Springs and remarked Manitou Springs was successful as a five-thousand person entity. Councilman Todd stated the City had one of the highest ratios of volunteer hours per capita in the United States and relied heavily on

volunteers and volunteer engagement. He recalled in 2008 Conde Naste named Manitou Springs as the best small town in America to visit. Councilman Todd stated he could recall the citizen engagement in 2008 versus citizen engagement in 2017 and he felt Mr. Jaray's recommendations involving citizen engagement caused volunteers to create, contribute, and innovate. Commissioner Wolfe inquired if Councilman Todd was in support of Mr. Jaray's recommendations. Councilman Todd responded whether it was those specific recommendations or not, the Plan needed to emphasize the importance of volunteer involvement. Commissioner Wolfe asked if Councilman Todd was suggesting it was inappropriate to fund someone to take the lead in implementing the plan and to have implementation be handled completely by citizens. Councilman Todd responded he was not suggesting plan implementation could be handled entirely by citizens, but wanted to emphasize the need for citizen engagement. He commented a two hundred (200) page PDF file, like PlanManitou was difficult to access and navigate and Clarion had done a great job on their website, but asked if the document could be made more accessible and navigable to readers. Councilman Todd stated he was intrigued with the emphasis on neighborhoods and through his work with the Council of Neighborhoods and Organizations (CONO) wanted to take their model into a work session for all of Ward Three to get participation at the neighborhood level.

Jeff Gambs, 1023 Midland Avenue, stated PlanManitou was a very valuable document and wanted it to be included in the City Charter and Code book. He commented separately the document didn't work and codifying it would allow the City to change sections of the document as opposed to the entire document. Mr. Gambs stated Chapters Four and Eleven of the Municipal Code were intentionally omitted and that PlanManitou would be a good fit as one of those chapters.

Ms. White thanked Mr. Jaray for his input and stated the concept of developing a framework to work with the community was important to delve into further. Ms. White stated going back to February 2016 during the stakeholder meetings there was emphasis on the capacity Manitou Springs had as a community and on frustrations regarding the effectiveness of that model. Ms. White commented the idea of building a framework to work together came out of those discussions and there was a need to have a mechanism for newcomers to the community to become involved. Ms. White commented she saw this as a desire for transparency in the manner in which people can get involved to participate. Ms. White remarked in reference to staff capacity, the wording in the document was meant to give direction to staff to provide a foundation for consistency and leadership moving the plan forward, not to simply increase staff.

Commissioner Casey inquired what the final appearance of the document would look like and asked if the document would be searchable like the City's Codes and Ordinances were. Ms. White responded the PDF document for PlanManitou had an indexed table of contents and hyperlinks in the appendices. Ms. White commented Clarion had tried to make the document as functional as possible and Clarion would try to put up a lower resolution version of the document online as there were troubles opening the document for tablet users. Ms. White stated having a document as searchable as the City's Code and Ordinance Book would be an expensive undertaking.

Commissioner Latimer asked if there would be copies of PlanManitou for sale. Mr. Burkholder replied there would be hard copies available. Ms. White commented it would be wise to keep a couple of copies of the document at the public library for community members to read or check out.

Commissioner Latimer inquired if there would be an executive summary of the document. Ms. White responded there was no intention to do so and she would discuss which items and actions would be included in an executive summary with Mr. Burkholder and Ms. Berchtold.

Commissioner Casey asked if Clarion had the capability of making the document more powerful than a PDF. Ms. White replied the process would be expensive and time consuming and Clarion did not do that type of work themselves but had hired an outside group to do so in the past. Ms. Berchtold stated the Table of Contents was linked to chapters as a way to better navigate the document. Ms. White commented there were links to maps that allow users to download a single PDF which would be updated to help users find the specific items they were looking for.

City Council Liaison Coreen Toll stated there was opportunity for broader discussion still on the table at the work session on March 21, 2017. Councilwoman Toll stated the meeting was open to the public, which was unusual for a work session as generally the public was not given the opportunity to speak during work sessions.

Hearing no further comments from the public, Chair Delwiche formally closed the Public Hearing.

Commissioner Latimer commented she was incredibly pleased with the document, PlanManitou, and with the addition of Mr. Jaray's recommendations, thought it was a wonderful piece of work. Commissioner Vrobel commented in her twenty-five years as a resident, she had seen a great deal of community volunteers and volunteer work but there was need for paid staff to keep the projects together because volunteers change. Commissioner Latimer stated the City Departments, especially in the Planning Department, were overloaded and under-staffed. Commissioner Latimer remarked one simple statement that we want to engage the public and want to have continued volunteerism because it is essential to the functioning of the community was a good idea.

Commissioner Wolfe stated she was under the impression PlanManitou could not be included in the Code because it was essentially a bunch of recommendations, but the Codes would reference PlanManitou as they had in the past with the Rainbow Vision Plan.

Commissioner Casey inquired if staff had any input on Mr. Gambs' recommendation. Mr. Burkholder responded it was not a good idea to include the document in the City Charter and Code Book because it was not a law. The City would, however, change laws with the information provided in the document to further the policies within it.

Commissioner Wolfe asked who had the job of taking on the next step in the process. Mr. Burkholder replied staff had already been successful with a planning for hazards grant through DOLA and Clarion. This project would be looking at the City's building codes and zoning ordinances to make recommendations to reflect a higher standard of what can and cannot be built in a floodplain or high fire hazard area. Mr. Burkholder stated staff had already begun the process to look at the City's Codes more thoroughly and were identifying changes to be made so that PlanManitou could be implemented.

Commissioner Wolfe stated she liked suggestion number two in Ken Jaray's email and commented it did not change the intention of the plan, but created an opportunity for community members in the future to be tapped as community resources. Commissioner Wolfe stated number six of Mr. Jaray's recommendations should be incorporated without removing the language regarding framework so the two concepts would be incorporated together.

Chair Delwiche stated he agreed with Commissioner Vrobel regarding the need to have paid staff. He noted this was an aging community, volunteers come and go, and there was the need to have people the City could count on to be the focal point of plan implementation. Commissioner Wolfe commented paid

staff was also needed for their expertise and, as a volunteer, she would not have been capable of achieving what staff had achieved or to accomplish what was needed to be done to implement the plan, which was the reason paid staff was needed.

Commissioner Latimer stated there was a need for a preface to the document which would empower and motivate community members so they could see how they fit into plan implementation. This was important because most people when confronted with a two hundred page document do not automatically try to figure out exactly how they can fit in and so community members could better understand what role they may play in the plan's implementation.

Commissioner Wolfe commented there was a page in the newspaper that advertised volunteer opportunities and opportunities for implementation of PlanManitou could be posted there to better engage the community and call on volunteers to participate in plan implementation.

Commissioner Casey inquired whether or not the Commission supported forwarding Ken Jaray's recommendation's on the plan to City Council as he thought the recommendations were eloquent and well written.

Chair Delwiche stated he would like to keep the reference to developing a framework as part of recommendation number six made by Mr. Jaray.

Commissioner Burris inquired if the recommendations would be forwarded to Council as a memo. Chair Delwiche responded they would be. Commissioner Burris asked for clarification regarding whether the Commission had to hash out, line by line, to Council which recommendations were supported, or if the general intent would be given. Chair Delwiche stated Commissioner Burris was correct in her assumption the general intent would be given.

Commissioner Wolfe asked for clarification if the Commission had to vote based on general discussion or if the Commission had to recommend which paragraphs be changed in the recommendation to Council. Ms. Anthony responded only if there was something specific the Commission wanted to strike or include, did the recommendation need to be specific. Otherwise, the commission should come to a consensus on the matter and forward the recommendations to Council.

Commissioner Casey stated the Commission should strongly recommend making the document more searchable to keep the document more user-friendly and alive, despite it being expensive to achieve.

MOTION:

Commissioner Wolfe moved to forward a recommendation to City Council to make PlanManitou a more searchable document online.

SECOND:

Commissioner Casey seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 7-0

MOTION:

Commissioner Vrobel moved to forward the recommendations and changes made in Ken Jaray's email and in the staff memo to City Council for consideration and review.

SECOND:

Commissioner Casey seconded the motion.

DISCUSSION:

Commissioner Wolfe stated she was opposed to the motion on the grounds she did not support every recommendation made as it was stated in Mr. Jaray's email.

VOTE:

Motion passed, 6-1.

Chairman Delwiche called a short recess at 8:12pm in order to set up a conference call between the Planning Commission and City Attorney, Kathryn Sellars. The session was called back to order at 8:17pm.

ITEM 7. Review and Recommendation to City Council Regarding Amendment of the Zoning Code to Regulate Adult or Sexually-Oriented Businesses

Senior Planner, Michelle Anthony, presented the staff memo dated March 6, 2017, along with a memo from the City Attorney's office regarding prohibition of the sale of alcohol at sexually oriented businesses. She reviewed each item in the report with the Commission and received direction as to what to strike and what to add to the proposed code language. Ms. Anthony stated, in regard to Section 9.12.030 the language "or the breast or breasts of a female" could be struck from the ordinance, as it could be interpreted as banning breast-feeding in public. Ms. Anthony stated the section would end at "state of undress" or "such that the genitals or buttocks of either sex are exposed" to make it less open to legal interpretation. Commissioner Wolfe recommended the sentence end after "such that the genitals or buttocks of either sex are exposed" as she felt "state of undress" was not explicit enough for legal purposes.

Ms. Anthony stated Sections 9.12.010 and 9.12.020, involving Prostitution and Solicitation, were included in a revision dating back to 2010, but which was never enacted. The City Attorney indicated the current language was outdated and needed updating. Ms. Anthony stated the City Attorney did confirm the City could choose not to reference prostitution and solicitation at all, as this was covered under State Law.

Commissioner Wolfe inquired if the Commission could just say Section 9.12 was struck. Ms. Anthony responded it would be unwise to get rid of all of Section 9.12 as it covered more than just prostitution and solicitation. Commissioner Wolfe stated repealing all of Section 9.12 would alleviate the issue with the outdated language and would allow the Commission to not have to repeat State law in the City Ordinances.

Commissioner Latimer inquired if the Commission could recommend the removal of Sections 9.12.010 and 9.12.020, leaving the rest of 9.12 intact. Ms. Anthony asked if the recommendation for removal of those sections was the consensus of the Commission and the Commissioners replied yes.

Ms. Anthony stated, in regard to prohibiting the sale of alcohol at sexually oriented businesses, the provision was suggested by at least one Planning Commissioner and staff believed the City of Colorado Springs had a similar provision, although Mr. Parker did not find that to be the case. In regard to the memo from the City Attorney's office the City had broad regulatory power and may prohibit the sale of alcohol at sexually oriented businesses or restrict admission to sexually oriented businesses that serve alcohol to individuals over twenty-one. Ms. Anthony stated if either of those restrictions were implemented, the City needed to provide a sound basis to support them, such as reducing the negative secondary effects of such businesses.

Commissioner Simmons inquired if there was a possibility these businesses might claim one portion of the building and business was twenty-one and up, serving alcohol with partial nudity, with a separation from a non-alcohol serving, fully nude section. Ms. Anthony responded she was sure there were ways around everything. City Attorney Kathryn Sellars commented the State Liquor Code and licensing would cause the age limitations to apply and the State would not allow, as in years past with smoking and non-smoking sections in restaurants, for there to be a separation. Ms. Sellars stated Mr. Parker wanted her to mention there were State regulations regarding adult businesses that have liquor licenses stating servers must be clothed, certain activities may not occur on the premises, and other regulations that could also be imposed if the businesses were allowed to obtain liquor licenses.

Commissioner Casey commented this brought up a good point as Commission discussions had not discussed fully nude operations of sexually oriented businesses and stated there was an establishment in Colorado Springs in which patrons could bring their own alcohol, effectively skirting the regulations that ban fully nude establishments from serving alcohol. The example used by Mr. Parker in the Attorney's memo was of a fully nude establishment and stated he wanted the Commission to discuss whether or not the City would allow fully nude or partially nude businesses to exist within City limits. Ms. Sellars stated she did not think the City was permitted to allow or disallow fully nude operations as they were protected under the First Amendment of the U.S. Constitution. Ms. Anthony asked for clarification whether the City could legally say they did allow partially nude establishments, but did not allow fully nude establishments within the City. Ms. Sellars confirmed the City could not legally do so, but the City could work to develop those secondary negative effects to help regulate the operations. Ms. Sellars also stated she could not think of anything that would allow the City to differentiate between partially nude and fully nude businesses and there had to be at least one property within the City available to these types of businesses.

Commissioner Wolfe inquired in reference to the Parker Memo was if the City were to impose alcohol restrictions or restrictions pertaining to partially or fully nude businesses, the City could be liable in terms of a lawsuit and asked if the City would have to provide proof of the negative secondary effects in a court of law. Ms. Sellars responded the assumptions made by Commissioner Wolfe were correct and doing so may result in legal troubles for the City. Ms. Sellars commented she felt, from a legal perspective, the fully nude vs. partially nude route concerning the imposition of restrictions was more risky than imposing restrictions on alcohol and the City would have to prove the negative secondary effects of sexually oriented businesses were occurring in court should there be a lawsuit regarding those restrictions. Ms. Sellars recommended there be some discussion about this issue with Council pending adoption of the ordinance.

Commissioner Wolfe inquired what evidence of negative secondary effects could be used in court should the City decide to implement restrictions and face a lawsuit. Ms. Sellars responded the cases cited in the Parker Memo came from courts that had established adverse secondary effects such as an increase in crime

or an increase in delinquency in connection with sexually oriented businesses and alcohol. Ms. Sellars also stated the effects do not have to be seen in Manitou Springs first hand to impose restrictions as they could simply cite other cases in which incidents had occurred in other municipalities, stating the City recognized these effects exist and were the reason for imposing the restrictions. Commissioner Wolfe inquired if the City could say there was a link showing a statistical connection between sexually oriented businesses, alcohol, and higher crime rates in the United States, not specifically in Manitou Springs, as the reason the City would not allow alcohol consumption at sexually oriented businesses within the City. Ms. Sellars confirmed this and stated the City did not have to perform a study linking sexually oriented businesses, alcohol, and higher crime themselves, but could use cases and statistics from other U.S. municipalities to justify the restrictions imposed.

Ms. Anthony noted the Parker Memo referenced the fact the City could restrict alcohol without restricting any First Amendment activity as the right to a liquor license was not Constitutionally protected and would be more difficult to challenge in a court of law. Ms. Anthony stated the City could either impose restrictions on the regulation of alcohol, issuing a liquor license and thereby restricting the age limit permitted in the business to twenty-one and partial nudity or allow sexually oriented businesses to be fully nude, but disallowing them the right to a liquor license as the two viable options for a City ordinance.

Commissioner Wolfe questioned whether the City would be able to restrict the hours of operation for sexually oriented businesses like the City had done with the retail marijuana stores. Ms. Sellars responded as long as the restrictions were reasonable, the City could impose those constraints. Commissioner Wolfe inquired if the City could impose a 7:00 pm closing time for sexually oriented businesses, as those were the restrictions imposed on the retail marijuana businesses, or if that could be construed as unfairly targeting those businesses when bars were allowed to stay open until 2:00 am. Ms. Sellars replied doing so could certainly be construed as unfairly targeting sexually oriented businesses, especially if they had legally obtained a liquor license. Ms. Sellars stated if the City was going to impose restrictions on hours of operation for sexually oriented businesses, it would have to be later at night. Commissioner Wolfe asked if the retail marijuana stores could sue the City for equal protection under the same reasoning. Ms. Sellars responded no and stated retail marijuana stores, since they were federally illegal, were not subject to the same legalities pertaining to equal protection under the First Amendment. Commissioner Wolfe inquired if a 10:00 pm closing time would be troublesome or at what time the City could impose as a closing time that would allow themselves to face the least amount of legal issues in the future. Ms. Sellars responded 1:00 am or 2:00 am would be the most reasonable time to impose as closing times and stated it would be best to restrict sexually oriented business hours to the same hours of operation as the bars in town. Commissioner Wolfe asked if the City did not impose the same restrictions on sexually oriented businesses as they do with bars, would the City be likely to encounter legal issues pertaining to equal protection. Ms. Sellars confirmed the City would likely open themselves up to lawsuits if they imposed restrictions that differ from those imposed on bars. Commissioner Wolfe stated if the City did not have court cases that had cited reliable studies in other states showing sexually oriented businesses had stayed open past 8:00pm which caused adverse effects, there could be legal troubles and the City did not want to be the test case for other municipalities. Ms. Sellars commented if the City wanted to make sexually oriented business hours end earlier than 2:00 am, the Commission and City Attorney should discuss what time was reasonable and how it could be justified. Commissioner Wolfe inquired if there were any court cases where municipalities had been sued for forcing sexually oriented businesses to close earlier in the night or evening. Ms. Sellars responded she did know of any but that did not mean there weren't any such cases out there.

Ms. Anthony inquired if the Commission was leaning toward prohibiting alcohol sales at sexually oriented businesses or allowing alcohol sales with an age restriction. Chair Delwiche responded he felt the City's

ordinance should be more restrictive than the ordinances in Colorado Springs. Commissioner Latimer stated she was leaning towards no alcohol sales in sexually oriented businesses. Commissioner Wolfe commented she felt the Commission should recommend to Council there be a prohibition on the sale of alcohol, to allow only one location within the City where sexually oriented businesses may operate, to set a distance minimum from schools, retail marijuana establishments, and churches, and to allow the sexually oriented businesses to stay open until 2:00 am to avoid costly lawsuits against the City. Ms. Anthony commented if the City were to prohibit the sale of alcohol at sexually oriented businesses, they could no longer restrict the hours of operation through a liquor license and the City would therefore need a provision stating sexually oriented businesses must close by 2:00 am as means to avoid a 24-hour operation from setting up shop. Ms. Sellars stated she recommended the City impose some sort of time restriction on sexually oriented businesses and she would look into court cases regarding closing times for sexually oriented businesses to give the City a better idea of the path they should take. Commissioner Wolfe expressed her concern over lawsuits the City could potentially face by restricting the hours of operation for sexually oriented businesses.

Commissioner Burris stated any decision made by the Commission was subject to Council review.

Commissioner Vrobel commented there was a need for an ordinance to regulate sexually oriented businesses, but felt the Commission was focusing too strongly on one type of sexually oriented business despite there being many different types.

Ms. Anthony stated at this point, she would move forward with the recommendations there be no alcohol sales and a restriction on hours of operation stating sexually oriented businesses must close by 2:00 am.

Commissioner Vrobel, in reference to an earlier comment from Commissioner Casey regarding an establishment in Colorado Springs that allowed patrons to bring in their own alcohol, commented the City needed a provision in the ordinance to prohibit patrons from doing this which stated no alcohol on the premises of sexually oriented businesses.

Commissioner Casey commented there is an ordinance in Colorado Springs stating if a sexually oriented business is fully nude, no alcohol may be served but patrons can bring in their own, and if the business is topless only, there could be alcohol served but patrons cannot bring their own. Commissioner Wolfe inquired if the City could prohibit the sale of alcohol, as well as make a provision in the ordinance that states patrons cannot bring in their own alcohol. Ms. Sellars responded the City could impose an ordinance that prohibits alcohol on the premises of sexually oriented businesses. Ms. Anthony inquired if the Commission wanted to state there be no alcohol allowed on the premises. There was no response.

Commissioner Vrobel stated she thought the hours of operation needed to be left open because there was an unusual precedent in the City in which a business was allowed to operate six days a week, twenty four hours a day as part of a religious freedom. Ms. Anthony stated there was no Conditional Use for the business being referred to that restricted their hours of operation because the use of the property was listed as permitted in Commercial Zone. Commissioner Vrobel commented there needed to be a review of business hours brought before the Planning Commission before anything was forwarded to City Council. Ms. Anthony responded there would be review by the Planning Commission as sexually oriented businesses would need to apply for a Major Conditional Use Permit in order to operate in the Commercial Zone and this would give the City the opportunity to restrict the hours of operation. Commissioner Wolfe commented without anything in the ordinance with guidelines, she did not feel the City could arbitrarily tell any business they had to close early and there was a need to state in the law what the hours of operation needed to be. Commissioner Wolfe expressed her concern doing so would be an abuse of their discretionary power as a

Commission. Ms. Anthony commented she understood the point Commissioner Wolfe was making, but felt having some parameters stating hours of operation shall not exceed a certain time, but may be further restricted, under a Major Conditional Use approval was a possible route the Commission could take. Ms. Sellars stated that would be too risky and suggested the City set the hours in the ordinance because the City could be challenged by further restricting hours of operation through the Major Conditional Use Permit.

Commissioner Burris inquired since there would be a prohibition of alcohol on the premises of sexually oriented businesses, if there was need for a provision that included the prohibition of marijuana use on the premises. Commissioner Wolfe stated the City did not allow private marijuana clubs and it was therefore illegal to smoke marijuana on the premises anyway.

Commissioner Casey commented the ordinance involving sexually oriented businesses was one ordinance that covered a multitude of topics and felt the Commission should differentiate between entertainment and retail in regard to sexually oriented businesses. Commissioner Wolfe commented she was concerned doing so would make the City vulnerable to legal action as she felt there would be too many random rules regulating similar businesses and there needed to be a basis for making certain businesses restrict their hours of operation. Ms. Anthony stated the ordinance dealt with three different sections of the City's Municipal Code and suggested the Commission not address different types of sexually oriented businesses individually as this could leave the City open to missing something. The code coordinated Chapter Five of the Municipal Code pertaining to business licenses, another section amends the Zoning Code, and the third section applies to the Peace, Morals, and Welfare in order to address all of the issues successfully. Commissioner Wolfe expressed her concern regarding splitting regulations to attend to the different types of sexually oriented businesses as it would make the City much more vulnerable to legal action and inquired if the City could even legally differentiate between entertainment and retail businesses that are sexually oriented in an ordinance. Ms. Sellars responded most communities treat sexually oriented businesses the same across the board whether they be for retail or entertainment uses. The City could differentiate between the two, but there would be a greater risk in doing so and the City would need to do due diligence in providing supporting evidence of negative adverse secondary effects of each type of sexually oriented business. Ms. Sellars also stated she was uncertain there were many cases where those differentiations were used. Commissioner Casey commented it would be wise for the Commission to go down the path most municipalities had and treat all sexually oriented businesses the same across the board.

Ms. Anthony stated the section of the Code and Ordinances referring to penalties had been updated to reflect the City's current penalty section. Commissioner Latimer stated she did not see where enforcement was mentioned under 5.86.200 and commented it implied the City would enforce the ordinance and inquired as to who would actually handle the enforcement. Ms. Anthony responded enforcement was situationally dependent on the type of violation committed; if there was a violation of the Zoning Code, the Code Enforcement Officer would respond, but if there was an issue involving serving alcohol without a liquor license, the Police Department would enforce. Ms. Anthony commented every chapter of the Code references back to the penalty section it was subject to.

Ms. Anthony stated, regarding the distance separation requirement, staff wanted to establish a different method of calculation than what had been proposed, opting to use the same distances and method of calculation as required for retail marijuana establishments in order to be consistent with how the City handles separation requirements. Ms. Anthony stated Mr. Parker had confirmed the City was allowed to add medical and retail marijuana establishments in the distance separation from sexually oriented businesses, provided there was at least one location a sexually oriented business could operate within the Commercial Zone of the City.

Ms. Anthony stated she clarified with Mr. Parker, through reviewing and determining recommendations to amend Section 5.86 that sexually oriented businesses would be required to obtain an Operator License, as well as a Business License issued by the City. Ms. Anthony also stated without approval of a Major Conditional Use Permit, the City Clerk should not accept applications for an Operator License and there would need to be some coordination between staff and the City Attorney to draft language to that effect. Commissioner Wolfe asked for clarification if the Operator License would be conditioned on the Conditional Use Permit. Ms. Anthony confirmed that was the case and would be her recommendation, as she was concerned for the need to coordinate between the Planning Department and the City Clerk to ensure the Operator License was not issued before the approval of a Major Conditional Use Permit.

Ms. Anthony stated the exemptions in Section 5.86.180 could be removed from the proposed ordinance and commented Mr. Parker had said the exemptions weren't necessary and could prove problematic in the future. The penalties section was shortened to reference Section 1.01.100 of the Municipal Code. Commissioner Wolfe inquired if the dollar amounts would still be the same as what had been struck from the penalties section. Ms. Anthony stated they would be and it was best to reference the penalty section rather than state a dollar amount in order to save the hassle of having to update these code sections separately.

Ms. Anthony stated, in reference to the distance separation for sexually oriented businesses, she had basically pulled the same separations used for the retail marijuana stores in the city with some minor updates. Sexually oriented businesses would have to be a minimum of five hundred feet (500 ft.) from any property on which there was a building or structure that contains a residential dwelling unit, churches, public parks, libraries, state licensed child care facilities, and school or educational facilities whether public or private serving persons eighteen (18) years of age or younger. Ms. Anthony also stated the distance separation would not apply to property owned by an educational institution or school unless an actual school building was located on the property. Ms. Anthony stated the distance separation also applied to all City of Manitou Springs owned property, as well as, from medical and retail marijuana establishments, liquor stores, and other sexually oriented businesses. Ms. Anthony commented the distance separation requirements did apply to dwelling units approved for long-term lodging in a hotel or motel because they were an accessory to that use. Ms. Anthony stated in her preliminary research of the distance separations for sexually oriented businesses she found including the five hundred foot separation from Residential Zones nearly blocked out the entire Commercial Zone because of the narrowness of the corridor Chair Delwiche inquired if the ordinance would disallow the future marijuana businesses if a sexually oriented business was located in the area. Ms. Anthony replied there was no separation requirement in the Medical and Retail Marijuana establishment code from a sexually oriented businesses.

Chair Delwiche inquired if a sexually oriented business would be evicted in the event a business listed in the separation distances opened within five hundred feet of them. Ms. Sellars responded if the sexually oriented business was there first, they would not be forced to move or close their business should that occur.

Commissioner Wolfe asked if there was a good reason that sexually oriented businesses not be permitted to open within five hundred feet of a liquor store or marijuana store. Ms. Anthony responded both are highly regulated and considered to have some social and societal impacts and there could be potential issues such as if a sexually oriented business did not allow the purchase of alcohol, patrons might loiter and consume alcohol behind or at the liquor store before going to the sexually oriented business. Commissioner Delwiche commented the reasoning would be similar for retail and medical marijuana establishments. Ms. Anthony commented this could promote activity the City did not want to occur, such as public consumption and public intoxication.

Commissioner Delwiche inquired if there were locations in the Commercial Zone that had enough separation to allow at least one sexually oriented business to operate. Ms. Anthony responded she had not completed the distance separation analysis and was unsure exactly how many locations would be available. Commissioner Delwiche expressed concern the ordinance may close off the East end of town to sexually oriented businesses. Ms. Anthony responded it was a possibility sexually oriented businesses may be closed off from the East End and more evaluation was needed to determine if altering the distance separations to ensure there would be availability was necessary.

Commissioner Vrobel asked if the Commission still had time before sending the ordinance to City Council. Mr. Burkholder responded there was a six month moratorium on sexually oriented businesses which meant there was more time to consider the ordinance.

Ms. Anthony commented it would be good to get the ordinance to a place where all of the edits had been made without any red text or strike outs before sending the ordinance to City Council. She stated she also added sexually oriented businesses must operate from a permanent and fixed location. She struck “minors” from the section referring to harmful displays and sexually explicit advertisements and promotional displays to avoid troublesome legalities in the future. Commissioner Wolfe inquired if there were cases where cities had been sued for prohibiting advertisements of sexually oriented businesses. Ms. Sellars responded she was not aware of any and as long as the City was not banning the advertisements, just restricting them, there shouldn’t be any problem. Ms. Anthony commented the ordinance prohibited sexually explicit advertisements from being visible from pedestrian ways, walkways, and other public areas, not from advertising for the business itself. Mr. Burkholder asked if that would fall under the banner of content-based discrimination and go against the precedent set in *Reed v. Town of Gilbert*. Ms. Sellars responded it would not necessarily be covered under the precedent set in *Reed v. Town of Gilbert* because sexually oriented businesses in Manitou Springs would be a mix of commercial and other uses and the case did not cover commercial use and was therefore subject to a different level of scrutiny. Commissioner Vrobel asked if it would mean sexually oriented businesses would not be permitted to have a sign advertising the business on their building. Commissioner Wolfe reviewed the text that seemed to indicate no advertisement was allowed. It was agreed the words “sexually explicit” also be added in front of “other promotional displays” to make the section more concise.

Commissioner Vrobel commented, in reference to hours of operation, she would like to better define those restrictions. Ms. Anthony responded sexually oriented businesses would not be permitted to be open Monday through Saturday between 2:00 am and 7:00 am and on Sunday between 2:00 am and 8:00 am. Ms. Anthony commented the City may want to further restrict those hours and recommended there be some research done regarding sexually oriented businesses and hours of operation with the City Attorney to make sure the City did not create future legal issues.

Commissioner Casey commented, in regard to the school separation distance modification where it stated “shall not apply to property owned by an educational institution or school unless an actual school building is located on the property”, the Commission could consider stating whether or not the property is actually being used by students or teachers. Commissioner Casey inquired if the wording of this section was meant to avoid having an off-site school storage facility being included in the distance separation. Ms. Anthony responded the school ball field came up during the distance separation requirements for medical and retail marijuana and it was determined it would not qualify as a school and to be consistent, determined the same ball field would not be included in the distance separations for sexually oriented businesses. Commissioner Vrobel inquired if the ball field could be considered a public park, since it was a park and it was public.

Commissioner Wolfe stated the City needed to be consistent and to treat both sexually oriented businesses and medical and retail marijuana establishments the same. Ms. Anthony commented she felt the City would be safer in keeping the two consistent and stated she would incorporate the changes discussed thus far. Staff would use the changes discussed in the meeting to do the distance analysis study and hoped the Planning Commission would be able to forward recommendations to City Council at the next meeting.

Chair Delwiche noted recommendations to City Council regarding the sexually oriented business ordinance would occur after the Commission reviewed the recommended changes had been made and the distance separation analysis could be performed at the April meeting.

VII. ADJOURNMENT

Hearing no further business, Chairman Delwiche adjourned the meeting at 9:17pm.

Minutes prepared by Dylan Becker, Planner I