

MINUTES

Regular Meeting – Aurora City Council Monday, September 16, 2019

CALL TO ORDER – REGULAR MEETING

Mayor LeGare convened the regular meeting of City Council at 4:45 p.m.

ROLL CALL

PRESIDING:	Mayor LeGare
COUNCIL MEMBERS PRESENT:	Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson
OFFICIALS PRESENT:	City Manager Twombly, Interim City Attorney Brotzman, City Clerk Ruger
COUNCIL MEMBERS ARRIVING AFTER ROLL CALL:	None

City Clerk Ruger announced the proposed items for discussion at executive session.

CONSIDERATION TO RECESS FOR EXECUTIVE SESSION

Motion by Roth, second by Watson, to recess for executive session.

Voting Aye: Mayor LeGare, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

Abstaining: None

The executive session was recorded pursuant to the requirements of state law.

1. RECONVENE REGULAR MEETING OF SEPTEMBER 16, 2019 AND CALL TO ORDER

Mayor LeGare reconvened the regular meeting of City Council at 7:30 p.m.

2. ROLL CALL Stephen Ruger, City Clerk

COUNCIL MEMBERS PRESENT:	Mayor LeGare, Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson
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COUNCIL MEMBERS ABSENT:	None
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3. INVOCATION Pastor Caleb McNaughton, Highpoint Church

4. PLEDGE OF ALLEGIANCE TO THE FLAG (all standing)

5. APPROVAL OF THE MINUTES

a. August 05, 2019

Motion by Bergan, second by Roth, to approve the minutes of the meeting of August 5, 2019 as presented.

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Voting Aye: Mayor LeGare, Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

b. August 19, 2019

Motion by Watson, second by Roth, to approve the minutes of the meeting of August 19, 2019 as presented.

Voting Aye: Mayor LeGare, Bergan, Berzins, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

Abstaining: Gruber

6. **CEREMONY**

White Cane Proclamation – Mayor LeGare

Mayor LeGare invited all those involved in the proclamation to come forward. He read the White Cane Proclamation. Dale Holden, President, National Federation of the Blind – Aurora Chapter expressed appreciation for the proclamation.

Constitution Week Proclamation – Mayor LeGare

Mayor LeGare invited everyone involved in the proclamation to come forward. He read the Constitution Week Proclamation. Teresa Collins, Kimberly Daniels, Larisse Lane, Lynn Evans and Judy Coleman, Tollgate Creek Daughters of the American Revolution representatives, expressed appreciation for the proclamation.

a. Swearing in of newly appointed Boards and Commission members – Presiding Judge Shawn Day

Presiding Judge Shawn Day administered the oath of office to the newly appointed board and commission members. City Council congratulated the members and thanked them for their service to Aurora.

<u>Name</u>	<u>Board or Commission</u>
Natalie Perez	Aurora Youth Commission
Greg Echols	Building Code, Contractors Appeals & Standards Board
Noel Mink	Career Service
Joanna Floibus	Election Commission
Bob Hunchberger	Open Space

7. **PUBLIC INVITED TO BE HEARD (non-agenda related issues only)**

Darlene January, McClain family friend, requested the Aurora Police Department investigating team release the video footage and autopsy report of Elijah McClain's death. She stated she was traumatized by the treatment of Council Member Murillo at the previous Council meeting by Mayor LeGare requesting that she reread her amendment five times. She discussed a dangerous precedent of misogyny being set by the US Government. She referenced the previous Council meeting and spoke against the treatment of three female council members who cared about immigrants. She stated her opposition to the inhumane and degrading treatment of detainees at the GEO facility and her opinion that all American flags should be inverted to signal that this country was in distress due to rampant racism.

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Cathy Nonnweiler raised the topic of those experiencing homelessness living in the alley at Havana and Chambers behind her home, noting she felt threatened by their presence. She stated her experience with Aurora Police Department in this regard, noting APD told her they could camp in alleys because they were public property.

Mayor LeGare stated the City had a Street Outreach Team and the City Manager would be in touch with Ms. Nonnweiler to review her issue.

Kathy Groth discussed the GEO Detention Center and her opinion that the City needed to take responsibility for what was going on there rather than outsource and have others bear the responsibility.

Matt Wozniak discussed the GEO Group and his experience visiting the facility. He noted GEO profited from the suffering of innocent men, women and children. He stated City Council's lack of action demonstrated their priorities were to big business and donor interests. He referenced Mayor LeGare's statement regarding the City's interaction with GEO as it related to any other business in Aurora and City Council's responsibilities to federal holding facilities. He pointed out Mayor LeGare and anyone who agreed with him were wrong. He called on the City Council to draft legislation to enable unrestricted access to the detainees. He stated he stood in solidarity with the friends and family of Elijah McClain.

Francisco Gallegos discussed the injustice and inhumane treatment of immigrants detained at the GEO Detention Center. He stated the GEO Warden, who was also a City of Aurora Chamber of Commerce board member, must step down from the board due to a conflict of interest and stated the City Council must stop supporting him.

Adam Arambarri discussed Council Member Hiltz's support of the 48-hour inspection window for emergency medical services because planned visits were just pageants. He stated the prognosis for the City was grim if the video footage and autopsy of Elijah McClain could not be released.

Soul Asheme raised the topic of Elijah McClain and discussed slavery in the United States and how policing originated with slave catching. He stated the leading cause of death in 2019 for black men ages 18 to 34 was being killed by police officers, noting it was also the same cause in 1819. He pointed out Mr. McClain's family were being dehumanized and asked City Council to use their weight to humanize Mr. McClain by providing the video footage of Mr. McClain's death to his family

Mayor LeGare pointed out the City of Aurora Police released the information on incidences like this as soon as possible once the investigation was complete. He stated there was a process and the City Council was not ignoring the situation.

Willie Buskey stated he was a family member of Elijah McClain's and discussed the need for them to know exactly what happened to him. He asked the City Council to consider if it were one of their family members, noting the family just wanted justice.

Joshua Acosta, Party for Socialism and Liberation (PSL), spoke in solidarity with the GEO facility detainees and discussed the deplorable medical conditions and the lack of humanity denied to people at the facility. He stated PSL demanded the facility be abolished completely, noting the people would not stand for it. He noted PSL stood in solidarity with the family and loved ones of Elijah McClain in their demand that the City release the bodycam footage.

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Ana Rodriguez, Colorado's People Alliance, expressed appreciation to the several council members who supported accountability of the GEO Detention Center for human rights abuses and asked the remaining council members to do so as well. She discussed the medical neglect taking place there and related stories she has heard from detainee family members and detainees in that regard. She stated it was the City Council's responsibility to act.

Bruno stated he was ashamed to be a citizen of Aurora because it has become a symbol of state violence as evidenced by the death of Elijah McClain and the human rights abuses going on at the GEO Detention Center. He stated GEO was breaking the law and all of City Council should be standing up against it and using their positions of power to protest it. He demanded the City Council take actions on both issues and bring justice to Elijah McClain's family.

Lillian House raised the topic of racist, state-sanctioned violence in the City as it related to the death of Elijah McClain and the documented horrors taking place at the GEO facility. She discussed the human rights violations taking place there and the City's responsibility to divest themselves of the facility. She echoed the demands of Mr. McClain's family that the bodycam footage be provided.

Aria Dellepione discussed the human rights violations occurring at the GEO Detention Facility and the profit realized by GEO as a result. She stated the City Council needed to do something and echoed the demands of Elijah McClain's family to release the bodycam footage of his death.

Shareef Aleem, Aurora Copwatch, discussed the events that led to his founding Copwatch in 2004, which was the direct result of a black man and his wife being shot. He stated it was established to watch Aurora police and listed those who were shot since the group's inception. He raised the topic of Elijah McClain and the request by his family to release the bodycam video. He discussed racism in the City, noting the police were supposed to protect and serve but instead they targeted people of color.

Kevin D addressed Mayor LeGare and stated Elijah McClain's death was on him because he was not stepping up and by denying people's First Amendment rights by not allowing clapping in the Chambers. He stated there was a disconnect between the police and the community and the Mayor and Police Chief needed to fix it.

Tiffany Grays for Mayor stated she was running for Mayor. She pointed out she addressed City Council previously regarding erroneous actions committed against her and was told an independent investigation would be instigated. She stated she has not heard an update in that regard. She discussed the unlawful denial of the addition of her name to the ballot and discussed the many errors in the City's electoral process. She stated she would not sit silently as Mayor of Aurora.

Emily Bobrick demanded the City of Aurora Police expedite the investigation into Elijah McClain's death and release the footage so that justice could be served and his family could heal.

Endale Getahun stated he was an immigrant and he was happy there were those speaking out on behalf of his fellow immigrants in the community that were incarcerated in the United States. He discussed his experience immigrating to the United States and expressed

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appreciation to the council members for celebrating the Ethiopian New Year at Global Fest and for their support of the Ethiopian radio station. He suggested the police could use the opportunity to come and speak to the Ethiopian community.

Becky Morales discussed pancreatic cancer and the importance of pancreatic cancer awareness. She provided City Council with ways to participate and support pancreatic cancer awareness month in November.

Cathy Noon discussed her personal experience with pancreatic cancer and echoed Ms. Morales' comments related to the importance of awareness and the opportunities for the City to participate in Pancreatic Cancer Awareness Month in November.

Sue Thomas discussed her personal experience with pancreatic cancer and echoed Ms. Morales and Ms. Noon's comments related to the importance of pancreatic cancer awareness.

8. **ADOPTION OF THE AGENDA**

The agenda was adopted as presented.

9. **CONSENT CALENDAR - 9a-t**

General Business

- a. Consideration to APPROVE THE PURCHASE of 12 shares of the Western Mutual Ditch Company Stock from Fritzler Real Estate, LLC, for \$1,500,000.00, by the City of Aurora, acting by and through its Utility Enterprise.
Presenter: Dawn Jewell, S Platte Basin Supervisor, Aurora Water
- b. Consideration to EXTEND A COMPETITIVELY BID CONTRACT with US Distributing, Inc., Denver, Colorado in the not-to-exceed amount of \$90,000.00 for the purchase of AC Delco OEM parts as required by Fleet Services through August 31, 2020. (B-4259)
Presenter: Ron Forrest, Manager Level 2, General Management
- c. Consideration to AWARD A COMPETITIVELY BID CONTRACT to PSI Construction Management, Inc., Centennial, Colorado in the amount of \$243,300.00 for the Potomac Fencing Replacement Project, Project No. 5725A.
Presenter: Katrina Rodriguez, Acting Facilities Project Delivery Manager, Public Works
- d. Consideration to AWARD A COMPETITIVELY BID CONTRACT to ABCO Contracting, Inc., Denver, Colorado in the amount of \$128,500.00 for the construction of the Westerly Creek Tunnel Rehabilitation Project, Project No. 5699A.
Presenter: Swirvine Nyirenda, Principal Engineer, Aurora Water
- e. Consideration to AWARD A SINGLE SOURCE CONTRACT to Carollo Engineers, Broomfield, CO in the amount of \$143,005.00 for Engineering Services During Construction of 8,000 linear feet of twelve-inch raw water pipeline.
Presenter: Sarah Young, Deputy Director Water Planning/Engineering, Aurora Water
- f. Consideration to EXTEND A SINGLE SOURCE CONTRACT to Shibumi Consulting Services LLC, Tempe, Arizona in the total amount of \$175,000.00 for on-call support and consulting services on the Water Department's customer billing software through August 2020.
Presenter: Jo Ann Giddings, D/D Water Financial Administrator, Aurora Water

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- g. Consideration to AWARD A SINGLE SOURCE CONTRACT to C&L Water Solutions, Littleton, CO in the amount of \$131,122.00 for the construction of Alameda 21 Inch Sewer Repair Project.
Presenter: Swirvine Nyirenda, Principal Engineer, Aurora Water
- h. Consideration to AMEND AN OPENLY SOLICITED CONTRACT with Carollo Engineers, Littleton, Colorado in the amount of \$36,609.00 to upgrade existing 3rd party Programmable Logic Control (PLC) panels to be standardized and communicate in a manner consistent with the recently completed PLC panel upgrades of the Wemlinger PLC Conversion and Improvements Project.
Presenter: Sarah Young, Deputy Director Water Planning/Engineering, Aurora Water
- i. Consideration to AWARD A SINGLE SOURCE CONTRACT to Fast Hosting Services LLC, Centennial, CO in the amount of \$573,000.00 for the annual subscription on the Tax Management Software System for the Finance Department through September 2020.
Presenter: Aleta Jeffress, Chief Info & Digital Officer, Information Technology
- j. Consideration to AWARD AN OPENLY SOLICITED CONTRACT for Construction Manager/General Manager (CM/GC) services for the Southeast Recreation Center to Saunders Construction, Inc., Centennial, Colorado in the amount of \$73,430.00, R-5727A.
Presenter: Katrina Rodriguez, Acting Facilities Project Delivery Manager, Public Works
- k. Consideration to AWARD A SINGLE SOURCE CONTRACT to Life-Assist, Inc., Rancho Cordova, California in the not-to-exceed amount of \$100,000.00 for the purchase of EMS supplies as required from October 1, 2019 through September 30, 2020.
Presenter: Mathew Wasserburger, Assistant Director of Fire Management Services, Fire
- l. Consideration to AWARD AN OPENLY SOLICITED CONTRACT for design/build services for the replacement of tube heaters at the City's North Satellite Cold Storage Building, and at Fire Stations 2 and 8 to Colorado Mechanical Systems, Inc. Centennial, Colorado in the amount of \$220,800.00, R-5726A.
Presenter: Katrina Rodriguez, Acting Facilities Project Delivery Manager, Public Works
- m. Consideration to AWARD A SOLE SOURCE CONTRACT to Hach Company, Loveland, Colorado in the not-to-exceed amount of \$195,000.00 for the purchase of water quality monitoring equipment and supplies for the Water Department as required through August 31, 2020.
Presenter: Bobby Oligo, Manager of Water Treatment, Aurora Water
- n. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Goodland Construction Inc, Golden, Colorado in the amount of \$1,378,058.05 for construction of the Yale Avenue and Xanadu Way Intersection Improvement Project. Project #18042 (**Staff requests a Waiver of Reconsideration**)
Presenter: Matthew Kozakowski, Transportation Project Delivery Manager, Public Works

Motion by Roth, second by Berzins, to approve items 9a – 9n with a waiver of reconsideration of item 9n.

Voting Aye: Mayor LeGare, Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

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Final Ordinances

- ♦ o. **2019-52**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, to amend the Saddle Rock East General Development Plan to remove car washes from the plan's prohibited use list and to add car washes and 24-hour operations as conditional uses within the plan (TLC Car and Dog Wash Saddle Rock East GDP Amendment)
Presenter: Dan Osoba, Planner, Planning & Development Services

Motion by Bergan, second by Watson, to approve item 9o.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson
- ♦ p. **2019-56**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, declaring the 13th Avenue/Colfax Station Study area as a blighted area and appropriate for an Urban Renewal Area.
Presenter: Philip Nachbar, Project Manager, Aurora Water

Motion by Watson, second by Roth, to approve item 9p.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson
- ♦ q. **2019-55**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, declaring the Westerly Creek Village Study area as a blighted area and appropriate for an Urban Renewal Area.
Presenter: Philip Nachbar, Project Manager, Aurora Water

Motion by Berzins, second by Bergan, to approve item 9q.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson
- ♦ r. **2019-57**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, authorizing the use of lease-purchase financing for the refunding of the City's outstanding refunding certificates of participation, Series 2009a as well as the construction of various capital improvements pursuant to the terms of one or more Lease-Purchase Agreements by and between Aurora Capital Leasing Corporation or another lessor to be identified and the City of Aurora, Colorado, as lessee; authorizing officials of the City to take all action necessary to carry out the transactions contemplated hereby; and related matters.
Presenter: Mike Shannon, Debt and Financing Administrator, Finance

Motion by Gruber, second by Roth, to approve item 9r.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson
- ♦ s. **2019-59**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, vacating a portion of the public right-of-way for Revere Street, an
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undeveloped street located between 21st Avenue and 23rd Avenue, City of Aurora, County of Adams, State of Colorado and reserving a utility easement therein (REVERE STREET ROW VACATION)

Presenter: Brandon Cammarata, Senior Planner, Planning & Development Services

Motion by Roth, second by Bergan, to approve item 9s.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- ♦ t. **2019-60**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, amending Chapter 146 of the Unified Development Ordinance to add Section 146-5.3.20 Park Development Fees.
Presenter: Karen Hancock, Planning Supervisor, Planning & Development Services

Motion by Watson, second by Bergan, to approve item 9t.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

10. **RESOLUTIONS**

- a. **R2019-78**
Consideration to Approve a RESOLUTION of the City of Aurora, Colorado, Authorizing the Execution of an INTERGOVERNMENTAL AGREEMENT between the City of Aurora and Forest Trace Metropolitan District No. 1.
Presenter: Vinessa Irvin, Manager of Development Assistance, General Management

Motion by Bergan, second by Roth, to approve item 10a.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- b. **R2019-79**
Consideration to Approve a RESOLUTION of the City Council of the City of Aurora, Colorado, Authorizing the Execution of an INTERGOVERNMENTAL AGREEMENT between the City of Aurora, Colorado and Inspiration Metropolitan District.
Presenter: Vinessa Irvin, Manager of Development Assistance, General Management

Motion by Watson, second by Bergan, to approve item 10b.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- c. **R2019-80**
Consideration to Approve a RESOLUTION of the City Council of the City of Aurora, Colorado, Authorizing the Execution of an INTERGOVERNMENTAL AGREEMENT between the City of Aurora and Tallyn's Reach Authority.
Presenter: Vinessa Irvin, Manager of Development Assistance, General Management

Motion by Gruber, second by Bergan, to approve item 10c.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- d. **R2019-81**

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Consideration to Approve a RESOLUTION of the City Council of the City of Aurora, Colorado, Authorizing the Execution of an INTERGOVERNMENTAL AGREEMENT between the City of Aurora and Tollgate Crossing Metropolitan District No. 2.
Presenter: Vinessa Irvin, Manager of Development Assistance, General Management

Motion by Bergan, second by Roth, to approve item 10d.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- e. **R2019-82**
Consideration to Approve a RESOLUTION of the City Council of the City of Aurora, Colorado, Authorizing the Execution of an INTERGOVERNMENTAL AGREEMENT between the City of Aurora, Colorado and Wheatlands Metropolitan District.
Presenter: Vinessa Irvin, Manager of Development Assistance, General Management

Motion by Bergan, second by Watson, to approve item 10e.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- f. **R2019-83**
Consideration to Approve a RESOLUTION of the City Council of the City of Aurora, Colorado, setting the date of a Public Hearing on the petition for organization of the Tower Business Improvement District and ordering the publication and mailing of a notice of such hearing (***This item also appears on the September 16, 2019 Study Session) (Due to this item being dual listed, the backup is included in item 2d of the Study Session Packet.)***
Presenter: Jacob Cox, Senior Development Project Manager, General Management

Motion by Gruber, second by Watson, to approve item 10f.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

11. **ORDINANCES FOR INTRODUCTION**

- ♦ a. **2019-64**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, amending Article II of Chapter 130 of the City Code relating to the removal of the Cigarette Tax exemption.
Presenter: Trevor Vaughn, Manager of Tax and Licensing, Finance

Motion by Watson, second by Gruber, to introduce item 11a.

Council Member Bergan stated she did not condone cigarette smoking and understood it was a difficult addiction to break. She stated studies have proven most smokers were of lower income and she stated her view that the City should not gain tax revenue from the people who could least afford it. She stated she would not support the item because she believed it should be voted on by the people.

Council Member Berzins expressed appreciation to City staff for their efforts in this regard. She stated she would not support the item for transparency's sake because she to believed it should be decided by the voters.

Council Member Hiltz pointed out the item was initially reviewed by City Council and subsequently went back to the Management & Finance (M&F) Committee for comparison and

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cost benefit analysis for the various options such as charging a fee to the storeowner that sold the cigarettes. She asked staff the status of that study.

Staff explained that a fee usually represented an exchange of service and in this case, the service to the storeowner was unknown. He used the example of charging a fee to enter a park and then using the money for upkeep on the park.

Council Member Hiltz stated that alternative was posed by the Health Department. She asked if any of the money made from removing the cigarette tax exemption would be allocated towards smoking cessation education programs as was discussed during the smoking with children in vehicles legislation conversation.

Staff confirmed Tri-County Health had a cessation plan and the City has been working with them. She suggested staff could provide Council with figures for additional work to better communicate with Aurora residents and in the meantime could use all their existing communication vehicles to push that information out.

Council Member Hiltz stated the item would go through two readings and asked if that information could be provided by the next reading. Staff believed so. Council Member Hiltz stated it could perhaps be modeled after what was done with the smoking in vehicles with children, noting the importance of investing monetarily in some type of smoking cessation education program.

Staff agreed those figures could be provided by October 7, 2019.

Council Member Johnston agreed that would be helpful. She provided a summary of how the item came to be and asked staff if the summary was correct.

Trevor Vaughn, Manager of Tax and Licensing, Finance, concurred, and provided further in-depth history on the item related to the state implemented rate that did not keep up with inflation.

Council Member Johnston asked if the state implemented rate was a flat rate rather than a percentage. Mr. Vaughn answered affirmatively. Council Member Johnston asked the cost per pack. Mr. Vaughn stated 20 cents per pack, noting the cities received 27 percent of the 20 cents per pack and that amount has not increased since 1986. Council Member Johnston raised the topic of the TABOR issue because a legal opinion was provided and asked staff to address that.

Staff did so, noting the reason for the exemption was because the item was taxable. He noted the City chose to exempt it from taxation and would cause it to be taxed by removing the exemption. He pointed out this would therefore not be a new tax as considered by TABOR but would be a sales tax that was applicable to all tangible personal property listed in the code thereby not qualifying as a TABOR issue.

Council Member Johnston asked the projected revenue realized by removing the exemption.

Terri Velasquez, Director, Finance, stated approximately \$1.7M per year.

Council Member Johnston recapped the item information as provided by staff and confirmed it did not have to go to the voters because it was not a TABOR new tax issue.

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Mr. Vaughn concurred.

Council Member Richardson expressed appreciation to Mr. Vaughn for his attendance at the group home meeting. He stated the legal opinion stated there was some disagreement over the state legislation. He asked if, considering the legal disagreement, the City could refrain from making any changes on the tax collection in order to file a Declaratory Judgment Action to find out how the state would respond.

Staff discussed the potential of Council Member Richardson's suggestion, noting the City has not realized any damage or controversy at this point that would warrant them to seek a Declaratory Judgment.

Mr. Vaughn confirmed he followed up with the state and asked for a formal written opinion which he has yet to receive. He noted the state said they were waiting for more information from the Attorney General's office before they provided information on the formal interpretation of the share back and what would happen if it were not provided to the City.

Council Member Richardson asked if that meant the City remained in a state of flux at the state level. Mr. Vaughn answered affirmatively, noting his belief that it had been removed from programming in the budget due to the uncertainty in that regard.

Ms. Velasquez concurred.

Council Member Richardson stated either way, he wanted the ordinance raising the minimum age for tobacco and vaping to 21 to move forward and asked how much that would impact the estimated \$1.7M.

Mr. Vaughn stated the estimate he had currently was up to \$90K in impact.

Council Member Gruber discussed his struggle with the item, noting his personal experience with family members who died as a result of heaving smoking. He stated it was however their choice to do so and noted the fundamental issue in his mind was the TABOR question. He expressed concerns related to the uncertainty of the legal interpretation. He suggested the item be deferred until a firm decision was returned by the state.

Ms. Velasquez pointed out there was a budgetary impact built into the 2020 budget so a deferral would mean \$1.7M would have to be realized from somewhere to balance the budget.

Mayor LeGare asked Council Member Gruber what he hoped would be determined by deferring the item. Council Member Gruber stated a definitive response from the Attorney General and the Department of Revenue. Mayor LeGare asked Council Member Gruber to wait to make the motion until everyone had spoken on the dais, noting he would argue against it at that time. Council Member Gruber agreed to do so. Mayor LeGare stated his understanding that the Supreme Court rulings stated the \$1.7M as not a new tax.

Daniel Brotzman, Interim City Attorney, concurred.

Mayor LeGare recalled there were arguments that it was a tax increase when the City was tweaking the candy tax several years ago and asked if this item was similar. Mr. Vaughn answered affirmatively, noting it was somewhat similar because the City removed part of an exemption then as well. He noted those were legislative actions related to removing

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tax exemptions. Mayor LeGare asked if the \$1.7M was a best estimate. Mr. Vaughn answered affirmatively. Mayor LeGare stated the \$630k would take some discussions with the Department of Revenue.

Mr. Vaughn concurred and further discussed the uncertainty of the share back situation and how to interpret it.

Council Member Bergan stated the state currently assessed taxes on the purchase of a pack of cigarettes.

Mr. Vaughn concurred.

Council Member Bergan stated the City would impose a tax on the same pack of cigarettes without the exemption.

Mr. Vaughn concurred.

Council Member Bergan wondered about the accuracy of the \$1.7M estimated revenue when the number of persons purchasing cigarettes in the City of Aurora was unknown. She pointed out that figure was not certain because people could choose to purchase their cigarettes in another jurisdiction rather than pay the additional tax, which would have a subsequent negative impact on sales and business in Aurora.

Mr. Vaughn agreed there was the potential for an impact on sales which would result in an impact on local businesses.

Council Member Bergan asked if staff was confident that the TABOR issue would not be challenged. Staff answered affirmatively and reiterated the item had nothing to do with TABOR.

Council Member Johnston stated her support for the item because while there was not an official motion, the City Council was required by charter to balance the City's budget and the \$1.7M was a lot of money to eliminate from the budget when there were so many wonderful things planned. She pointed out the cigarette lobby was strong back when this exemption was put in place and suggested a better exemption discussion would be on the tampon tax. She stated her understanding there could be some impacts particularly to those who could not afford the additional tax, but she felt the greater good of the health issues and the great things that could be done with the budget would have a positive impact on the community.

Council Member Watson pointed out the City Council agreed they wanted to retain the cigarette tax and directed staff to put together those figures, which resulted in the estimated \$1.7M of revenue. He discussed the health and revenue benefits and stated he would support the item.

Council Member Richardson disagreed with Council Member Watson, noting the \$1.7M was not in the Council's budget but was rather in the City Manager's proposed budget. He stated staff could build the money into the budget, but it was not right to state that Council's opposition would result in the need to find the money elsewhere. He stated it could be put on the ballot for the people to decide.

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Council Member Hiltz stated she would support the item, noting the City Council moved the item forward with the knowledge that the money was built into the budget, however, there would be two readings and she expressed her hope that the education information component could be provided prior to the second one. She addressed Council Member Johnston regarding a tampon tax exemption, noting she had a lot of information in that regard and would be happy to co-lead with her to move that item forward.

Council Member Bergan asked if the \$1.7M was the net or gross value. Ms. Velasquez stated it was the net amount with the \$650k from the share back subtracted. Council Member Bergan pointed out putting an exemption on feminine hygiene products would remove a tax which was the opposite of the current item. She stated lower income people and Aurora businesses would be negatively impacted by the item and education rather than penalization was best from a health perspective.

Council Member Berzins disagreed people would quit smoking if the tax was raised. She clarified not all council members supported the item in study session. She reiterated she would not support the item because she believed it should be decided by the voters. She discussed the terrible optic of going around voters for the money, noting she did not want any part of that.

Council Member Hiltz pointed out the City Council went around the voters looking for money all the time and called out the example of their recent approval of increased water and sewage rates as well as other fees that were evaluated without going to the voters.

Council Member Johnston expressed frustration regarding the comments about the item going to the voters because it was not brought up by the August deadline therefore doing so would mean it would happen next year. She pointed out in the meantime the budget would be impacted and there were issues such as the fire engine company as well as other things that the City needed to pay for that were not in the budget.

Council Member Bergan asked the cost of putting together and implementing an educational program. Ms. Velasquez stated staff would use the information they received from the health officials for education and reiterated staff would provide figures on a more in-depth approach to target Aurora residents in October.

Council Member Murillo pointed out it was statistically proven that consumption went down when prices increased. She expressed her struggle with the item, noting she empathized with the health arguments and she respected the importance of the budget, but the foundation of the item was to explore alternative revenue means for the City. She stated she would support the item to continue the conversation because she wanted to understand how education would be addressed. She pointed out that would have to be robust conversation to sway her opinion considering it was a regressive tax. She stated her hope to hear more about the communication moving forward.

Council Member Lawson noted it has been stated that there could be an impact on Aurora businesses should people decide to purchase cigarettes in other jurisdictions. She noted the estimated amount for 2020 was \$1.7M and pointed out it could be a different amount in 2021 because cigarette consumption has been decreasing overtime. She asked what the impact to businesses would be should Council not move the item forward. Mr. Vaughn agreed cigarette consumption has been decreasing and agreed business would decrease as well over time. He stated the advantage of removing the exemption would be to make it taxable at all levels of government which created a bit of simplification. Council Member

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Lawson expressed the struggle she was having because she too has had family members who smoked and it was not a good thing but on the other hand, the revenue would allow the City to do many of the projects currently in place and in the future.

Mayor Pro Tem Roth stated he would not support the item. He recognized the \$1.7M was a significant amount of money but noted it was also not nearly as significant as it might seem in the overall scheme of the budget. He expressed concerns related to the TABOR issue and agreed it should go to a vote of the people.

Mayor LeGare stated he did not usually vote on ordinances but if it was a tie vote which would cause him to vote, he would vote in support. He stated he would do so because the Colorado Supreme Court ruled on the issue and stated the exemption removal was not a new tax. He requested the Council take note of the decision because there would be a budget discussion coming soon and urged council members to bring a suggestion forward at the budget discussion of 5-10 percent of the revenue be allotted for cessation education.

Voting Aye: Gruber, Hiltz, Johnston, Lawson, Murillo, Watson

Voting Nay: Bergan, Berzins, Richardson, Roth

MAYOR LEGARE CALLED FOR A TEN-MINUTE RECESS

12. **ANNEXATIONS**

- ♦ a. **2019-61**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, annexing a parcel of land located in the Southwest Quarter of Section 6, Township 3 South, Range 65 West of the Sixth Principal Meridian, County of Adams, State of Colorado. (BOWIP Annexation 157.18 acres)
Presenter: Cesarina Dancy, Development Project Manager, General Management

Motion by Gruber, second by Watson, to introduce item 12a.

Voting Aye: Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

Absent: Bergan

- ♦ b. **2019-62**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, zoning 157 acres of land more or less generally located at the Northeast corner of 64th Avenue and E-470, within the County of Adams, State of Colorado, to E-470 Airport Distribution Subarea District and amending the zoning map accordingly. (BOWIP INITIAL ZONING)
Presenter: Sarah Wieder, Senior Planner, Planning & Development Services

Motion by Watson, second by Roth, to introduce item 12b.

Voting Aye: Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

Absent: Bergan

- ♦ c. Consideration of an Annexation Agreement between the City of Aurora and BOWIP Partners LLC. for a certain parcel of land located in the Southwest Quarter of Section 6, Township 3 South, Range 65 West of the Sixth Principal Meridian, County of Adams, State of Colorado. (BOWIP Annexation 157.18 acres)

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Presenter: Cesarina Dancy, Development Project Manager, General Management

Motion by Roth, second by Watson, to introduce item 12c.

Voting Aye: Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

Absent: Bergan

13. **RECONSIDERATIONS AND CALL-UPS**

- ◆ a. **2019-53**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, declaring the Colorado Science and Technology Park Study Area as a blighted area and appropriate for an Urban Renewal Area.
Presenter: Chad Argentar, Project Manager, Development Services

Pursuant to Council Rule F6, "If any matter is defeated by reason of a tie vote, it shall be rescheduled for action at the next regularly-scheduled City Council meeting..."

Mayor LeGare provided background on the item.

Chad Argentar, Project Manager, Development Services, provided a brief summary of the item.

Council Member Richardson asked if a university representative has reached out to staff offering their help with the fire service needs in the area.

Jim Twombly, City Manager, discussed his meeting with the hospital president, noting they have instituted a program for ambulatory emergency and Code Blue services which allowed employees to call internal numbers for emergency services.

Council Member Hiltz pointed out the City has been asking for this effort for a long time and the response came when their bottom line was impacted. She noted that did not bode well in terms of their partnering with the City.

Mayor LeGare recognized Lyle Artz, Fitzsimmons Redevelopment Authority, who was present to answer questions.

Steven Van Nurden, President & CEO, Fitzsimons Redevelopment Authority (FRA), discussed the FRA's charter which included bringing for-profit companies to Aurora and the success they have had in meeting those charter goals. He pointed out some companies were lost because of the lack of a financing plan for infrastructure. He urged City Council to consider this because it did not have anything to do with the university.

Council Member Gruber expressed his understanding that the FRA was independent of the university which was in the unique position of being a world-class, teaching hospital and university PhD program with for-profit companies right across the street.

Mr. Van Nurden concurred, noting the FRA has brought in many businesses there that remain successful.

Council Member Gruber pointed out some of the companies do not stay because an investor would identify the company, buy the intellectual property but would then move on because Aurora did not have a building for them.

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Mr. Van Nurden noted there were many reasons why a company would move, noting it was advantageous for a company to remain in the footprint they were in, with local employees and to grow in the area.

Council Member Gruber discussed the FRA's vision for Aurora.

Mr. Van Nurden concurred.

Council Member Gruber stated the item would enable the City to put in the buildings and establish the infrastructure that would allow those businesses to come into the City.

Mr. VenNerden concurred.

Mayor LeGare asked Mr. Van Nurden to speak to the relationship between the FRA and the university in terms of reducing 911 calls. Mr. Van Nurden did so.

Motion by Gruber, second by Berzins, to approve item 13a.

Council Member Gruber discussed the three largest employers in the City, noting the City may not see a return on investment however wonderful things were happening at all those locations. He asked Council to consider that while there were costs for the emergency services, the FRA was separate from the hospital and it had huge potential to bring money and good jobs to the City.

Mayor Pro Tem Roth discussed his experience visiting the Bio-Science Center where he learned about all the outstanding research they were doing to find a cure for blood cancers. He pointed out that was also a for-profit business.

Council Member Murillo discussed her struggle with the item, noting she did not understand why an urban renewal district was a part of incentivizing development in the area. She noted the Denver Metro Area was the number one economy in the nation, so she struggled with that argument. She discussed the golf course blight with which she had a fundamental issue with bringing up and confirming blight. She stated she respected the long-term vision but expressed concerns related to the potential for collateral damage realized in the process. She understood there was potential for high-paying jobs there but wondered who would get those jobs when 20 percent of the Ward I residents had less than a ninth-grade education. She stated she could not support something that was unclear on how it would benefit the daily lives of her constituents. She posed the other side of the argument that related to tax revenue and the potential for world-class businesses to locate there but reiterated her concern over the collateral damage and the lack of benefit to Ward I residents.

Council Member Gruber referenced the purpose of Aurora Urban Redevelopment Association (AURA) and the Council's recent decision to add additional funds to affordable housing. He asked staff to explain the difference between properties that AURA managed that generated a profit versus those that operated at a loss and where the AURA money came from.

Andrea Amonick, Manager, Development Services/AURA, did so, noting part of the philosophy of tax increment financing was that projects that generated tax revenue by the redevelopment of property would be used to benefit the area. She pointed out those for-

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profit businesses referenced by Mr. Van Nurden would generate revenue which could be used overtime to benefit the area.

Council Member Gruber stated the funds the Council provided to support affordable housing came entirely from businesses that operated in AURA.

Ms. Amonick concurred.

Council Member Gruber asked if it were true that buildings built as a direct result of the success of the companies within the Bioscience Center that were successful would generate a large amount of money that the City could apply to affordable housing and other projects within AURA. Ms. Amonick stated excess revenues from contributed taxes that AURA collected could be used to fund infrastructure and would be available to fund other projects. Council Member Gruber stated approval of the item could generate money to grow more affordable housing and denial might result in the lack of funding to create as large of an affordable housing solution as the City would like. Ms. Amonick agreed that was a possibility in this area.

Mayor LeGare pointed out Mr. Van Nurden mentioned the blighted property and lack of infrastructure, noting funds were needed to build infrastructure such as sewer pipes, underground electrical, water, sewer, and all the things needed to build vertical construction. He noted a blight declaration did not approve anything else but rather it provided City Council with the opportunity to have an item brought forward by the AURA to determine if Council was willing to support a future incentive. He expressed concerns related to the suggestion that all the money generated would go to affordable housing because that was AURA's decision to make in the future.

Council Member Murillo asked how many housing units were proposed on the for-profit portion of the campus. Ms. Amonick stated 1850. Council Member Murillo asked how many of those were affordable units. Mr. Amonick stated they were all market rate units. Council Member Murillo stated she found it somewhat suspect that a council member who was willing to give up the budget set aside for affordable housing was now using that as the reason why the item should be approved. She reiterated she desired the same outcomes but wondered why it had to be through urban renewal funds when there was no guarantee that any of that would come back for affordable housing. She asked how long this has been an urban renewal district.

Mr. Vaughn stated 2008.

Council Member Murillo stated it spoke volumes that this has been a district since 2008 and there were not any affordable housing units in the area. She expressed her doubt that implementing a tool that has been in place would suddenly spur an affordable housing investment.

Council Member Watson expressed concerns related to designing development in a blighted area and pointed out the reality was jobs would be created for people living in the area when building the infrastructure. He stated his understanding there would be housing but that it would not be declared affordable, noting there would however be a need for market-rate housing given the companies being established there. He stated the City should continue to find ways to make this area a world-class medical facility. He addressed those who spoke about pancreatic cancer earlier and related his experience of losing his mother to the disease, noting the importance of putting in companies that might find a cure. He stated his

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belief that these medical facilities and developments were necessary particularly on the Anschutz campus. He stated he would support the item because it was a good project.

Council Member Gruber asked how the AURA made money to pay for Council initiatives such as affordable housing. Mr. Vaughn stated incremental taxes. Council Member Gruber stated the incremental taxes from for-profit companies. He asked if the affordable housing had to be within the same geographic block as the company. Ms. Amonick answered no. Council Member Gruber stated the money that would come from buildings that were built within the Fitzsimmons Redevelopment golf course area could be used anywhere AURA had authority over within the City.

Ms. Amonick disagreed and discussed the way in which urban renewal worked in this instance.

Council Member Gruber pointed out there were several AURA areas surrounding the Fitzsimmons campus and asked if affordable housing units could be built in any of those areas from Tax Increment Financing (TIF) money generated by the golf course. Ms. Amonick answered affirmatively, noting the assumption was the benefit to the surrounding area would be an eligible activity. Council Member Gruber asked if building affordable housing surrounding the hospital would be limited if AURA did not have the money because there were not enough profit-making buildings under the City's control. Ms. Amonick answered affirmatively.

Council Member Murillo expressed appreciation to Ms. Amonick for her efforts in explaining the situation. She noted urban renewal funds were not the only way the City incentivized affordable housing. She stated funds were allocated from last year's budget and potentially from this year's budget. She pointed out there was also an Affordable Housing Task Force that would address policy recommendations as well. She disagreed this was the only way to incentivize affordable housing. She stated she did not understand why the City had to have blight and urban renewal monies for development if the area was such a world-class area. She reiterated she was open to the conversation, but she had yet to hear any concrete outcomes.

Mayor LeGare addressed Council Members Murillo and Richardson's comments that there was not any affordable housing on the campus and he expressed his understanding that the only residential zoning on the campus was the AIMCO development. He asked if there was any other residential zoning on the campus. Ms. Amonick confirmed there was one state-owned project that was technically on the Anschutz campus that was an affordable veterans' housing project. Mayor LeGare stated the Colorado Coalition for the Homeless was developing that project.

Ms. Amonick concurred.

Mayor LeGare stated the Aurora Housing Authority would attend a state hearing to determine if they could receive funding for the other parcel to the north.

Ms. Amonick concurred.

Mayor LeGare asked if there was any other residentially zoned land on the blight area. Ms. Amonick answered no, noting it was limited in the master plan to a specific number of units.

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Council Member Hiltz discussed how this was an excellent example of missed opportunities due to Council's lack of follow-through in that regard. She pointed out AIMCO had been willing to come to the table and have conversations about going above and beyond to improve services in the area, but the City chose not to have the conversation. She noted the Council had a history of doing that and she struggled to figure out how the City had a world-class hospital with increasing rental costs and yet still need to use a blight declaration as the only way to accomplish anything in the area.

Voting Aye: Berzins, Gruber, Roth, Watson

Voting Nay: Hiltz, Johnston, Lawson, Murillo, Richardson

Absent: Bergan

Mayor LeGare stated this was the second attempt on this item so he would not vote to make a tie.

Daniel Brotzman, Interim City Attorney, stated it could come back under a reconsideration by someone in the majority who changed their mind, but it could not come back on a tie vote.

Mayor LeGare stated the odds were slim to none of that happening so he would not vote.

14. **GENERAL BUSINESS**

- a. Consideration to appoint one (1) and reappoint two (2) members to the Oil and Gas Advisory Committee.

Presenter: Stephen Ruger, City Clerk, General Management

Motion by Roth, second by Gruber, to appoint William Gollhofer and reappoint James Rogers and Marc Cooper to the Oil and Gas Advisory Committee.

Voting Aye: Mayor LeGare, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

Absent: Bergan

- b. Consideration to reappoint one (1) member to the Judicial Performance Commission.

Presenter: Stephen Ruger, City Clerk, General Management

Motion by Berzins, second by Watson, to reappoint Wesley Nicholson to the Judicial Performance Commission.

Voting Aye: Mayor LeGare, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

Absent: Bergan

15. **REPORTS**

- a. Report by the Mayor

Mayor LeGare discussed the success of the recent delegation that he and Council Member Watson took to El Salvador.

b. Reports by Council

Council Member Murillo expressed appreciation to all of the candidates who attended the recent constituent-led Ward I candidate forum and discussed its success. She announced the next Ward I Town Hall meeting was scheduled for Thursday, September 26, 2019 at the Moorhead Rec Center at 6:00 p.m. She expressed appreciation to the Raices and Cheluna breweries who held the first annual Suave Latina Brewery and Craft Beer Festival in Denver especially considering it was Hispanic Heritage Month and Independence Day of Mexico.

Council Member Hiltz discussed her attendance at the recent Emergency Preparedness Fair. She confirmed the City budget was online and suggested those in the community who were interested should review it and share their feedback.

Council Member Richardson referenced the new mixed-use project underway at Iliff and Blackhawk where the developer requested a waiver of the required public art donation that the City subsequently denied. He pointed out the developer put up art that he believed was the developer's way of thumbing their nose at the City for not giving them a break in that regard and wondered how the public art selection process worked.

Council Member Berzins announced the Ward III Town Hall meeting was scheduled for Thursday, September 19, 2019 at the Aurora Hills Golf Course Tin Cub restaurant at 7:15 a.m. where the Light Rail and fees would be discussed. She expressed appreciation to the Aurora Police Association for their efforts in helping a family whose home was struck by lightning through the apacharitablefoundation.org.

Mayor Pro Tem Roth announced the Ward V Town Hall meeting was scheduled for Tuesday, September 17, 2019 at the Heather Gardens Clubhouse at 6:30 p.m. where the Center for Active Adults and DRCOG's Area Agency on Aging representatives would be present.

Council Member Lawson discussed her experience participating with Council Member Berzins in the Xcel Day of Service event.

Council Member Johnston announced the Ward II Town Hall meeting was scheduled for Thursday, September 26, 2019 at the Beck Recreation Center at 6:30 p.m. where Salud Family Health Center and Library Services representatives would be present to provide an update and information.

Council Member Watson discussed his experience with the El Salvador delegation and the importance of continuing the efforts and process that started there.

16. **PUBLIC INVITED TO BE HEARD**

None

17. **ADJOURNMENT**

Mayor LeGare adjourned the regular meeting of City Council at 10:56 p.m.

BOB LEGARE, MAYOR

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September 16, 2019

Page 21

ATTEST:

Stephen J. Ruger, City Clerk
[SEAL]

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