

MINUTES

**Regular Meeting – Aurora City Council
Monday, October 21, 2019**

CALL TO ORDER – REGULAR MEETING

Mayor LeGare convened the regular meeting of City Council at 5:03 p.m.

ROLL CALL

PRESIDING:	Mayor LeGare
COUNCIL MEMBERS PRESENT:	Bergan, Berzins, Gruber, Lawson, Richardson, Roth, Watson
COUNCIL MEMBERS ABSENT:	Johnston
OFFICIALS PRESENT:	City Clerk Ruger
COUNCIL MEMBERS ARRIVING AFTER ROLL CALL:	Hiltz, Murillo

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

CONSIDERATION TO RECESS FOR EXECUTIVE SESSION

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

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

Abstaining: None

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

1. **RECONVENE REGULAR MEETING OF OCTOBER 21, 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 Debbie Stafford, Aurora Mental Health Center

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

5. **APPROVAL OF THE MINUTES OF THE MEETING OF OCTOBER 7, 2019**

Motion by Roth, second by Berzins, to approve the minutes of the meeting of October 7, 2019 as presented.

- ♦ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

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

6. **CEREMONY**

None

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

Mayor LeGare recognized Eagle Scout Troop #494 sponsored by Lord of the Hills Church.

April spoke on behalf of Elijah McClain and discussed the type of person he was, the use of Ketamine and abuse of power by the Aurora Police Department that resulted in the death of Mr. McClain. She requested the City Council provide police transparency and release the bodycam and audio tapes.

Lindsay Minter discussed the proposed *Elijah McClain Reform* ordinance or charter that would improve police oversight practices in Aurora.

Darlene Jones addressed Council Member Watson stating she did not want to be his friend on Facebook because he was pro-ICE and pro-GEO. She listed the things that people of color could not do in Aurora and discussed the need for an Office of Independent Monitoring as a civilian oversight agency for Aurora Police.

KD addressed Mayor LeGare and asked if he reached out to the family of Elijah McClain. Mayor LeGare answered no, noting he could not do so as it was an active investigation. KD stated Mayor LeGare was a prime example of white privilege and stated Mayor LeGare would leave office on the wrong side of history because of an 'ongoing investigation.' He restated his position that a storm was coming and discussed the need for a citizen oversight committee.

Mayor LeGare asked KD if he was threatening him. KD answered no. Mayor LeGare stated the reason he asked KD the question was that he and his colleagues were concerned that KD was threatening him after KD spoke about the oncoming storm at the previous meeting. He noted for the record that KD assured him he was not threatening him.

Ellen Woo stated GEO should reimburse the cost of City protection that took place inside the fence on their private property during recent protests and requested an independent financial forensic audit for this event and other GEO related expenditures for the last ten years be conducted.

Shareef Aleem discussed the beating of Elijah McClain by Aurora Police and the majority of Council who experienced white privilege. He stated this type of behavior by the police would not be tolerated by the community.

Matt Silbe discussed and disputed the October 14, 2019 Sentinel article regarding the *Extreme Risk Protection Order Law*, noting it was terrorism through legislation.

Council Member Johnston clarified there were new Council rules that were passed by the majority of Council related to Public Invited to be Heard that restricted those who came in after the meeting started from speaking until the end of the meeting.

8. **ADOPTION OF THE AGENDA**

The agenda was adopted as presented.

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9. **CONSENT CALENDAR - 9a-g**

General Business

- a. Consideration to AWARD A SOLE SOURCE CONTRACT to Accela Inc., San Ramon, California in the total amount of \$120,769.52 to provide annual maintenance and support for the Workflow Process Software System through September 29, 2020.
Presenter: Aleta Jeffress, Chief Info & Digital Officer, Information Technology
- b. Consideration to AWARD A SINGLE SOURCE CONTRACT to LogRhythm Inc., Boulder, CO in the amount of \$114,245.77 to purchase additional licensing required for desktop PC security infrastructure.
Presenter: Aleta Jeffress, Chief Info & Digital Officer, Information Technology
- c. Consideration to AWARD A SINGLE SOURCE CONTRACT to Idemia Identity & Security USA, Anaheim, CA in the amount of \$75,055.00 to upgrade and replace the LiveScan Fingerprint Systems in the Aurora Jail.
Presenter: Aleta Jeffress, Chief Info & Digital Officer, Information Technology
- d. Consideration to AWARD A COMPETITIVELY BID CONTRACT to RSCI, Boise, Idaho in the amount of \$3,897,500.00 for the construction of Griswold Water Purification Facility (WPF) Programmable Logic Controllers (PLC) Upgrade, Project No. 5715A.
(Staff Requests a Waiver of Reconsideration)
Presenter: Elizabeth Carter, Principal Engineer, Aurora Water

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

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

Final Ordinances

- ♦ e. **2019-68**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, Amendment Chapter 62, Article II, Division 2, of the City Code of the City of Aurora Colorado Related to Nuisance Property Used in Connection with Certain Crimes.
Presenter: Harry Glidden, Police Division Chief, Police
- ♦ f. **2019-70**
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 at the Intersection of South Tibet Court and Rockinghorse Parkway, City of Aurora, County of Douglas, State of Colorado (SOUTH TIBET COURT STREET VACATION)
Presenter: Heather Lamboy, Planning Supervisor, Planning & Development Services

Motion by Bergan, second by Richardson, to approve item 9f.

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

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- ♦ g. **2019-71**
Consideration of AN ORDINANCE FOR ADOPTION of the City of Aurora, Colorado, organizing the Tower Business Improvement District; providing for an Election of the Board of Directors of the District; and approving the 2019 Operating Plan and Budget for the District.

Presenter: Jacob Cox, Senior Dev Project Manager, General Management

Motion by Watson, second by Gruber, to approve item 9g.

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

10. **RESOLUTIONS**

- ♦ a. **R2019-97**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving an intergovernmental agreement between the City and County of Denver, acting by and through its Board of Water Commissioners and the City of Aurora, Colorado acting by and through its Utility Enterprise, for the Waterton Canyon Rockfall Mitigation Project.

Presenter: Bobby Oligo, Manager of Water Treatment, Aurora Water

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

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

- ♦ b. **R2019-98**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving the 2020 Employee Pay Schedule and Classifications.

Presenter: Dianna Giordano, Director, Human Resources

Motion by Roth, second by Gruber, to approve item 10b.

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

11. **PUBLIC HEARING WITHOUT RELATED ORDINANCE**

- a. PUBLIC HEARING to consider an appeal of the Planning and Zoning Commission's September 25, 2019, denial of a site plan for development to be included in the Murphy Creek General Development Plan.
Presenter: Brandon Cammarata, Senior Planner, Planning & Development Services

Mayor LeGare opened the public hearing on the item.

Brandon Cammarata, Senior Planner, Planning & Development Services, provided a brief summary of the item.

Council Member Bergan stated staff recommended approval of the site plan.

Mr. Cammarata concurred.

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Council Member Bergan referenced the requested waiver and asked if the waiver would be allowed under the new Unified Development Ordinance. (UDO) Mr. Cammarata answered affirmatively, noting it would be allowed elsewhere in the City but not in the General Development Plan (GDP) area.

Council Member Gruber asked the role of City Council in this instance.

Dan Brotzman, Interim City Attorney, stated the City Council's role was as a quasi-judicial body.

Council Member Gruber asked Mr. Brotzman to speak to the City's quasi-judicial role and how a court might view that purview. Mr. Brotzman did so, noting it was arbitrary and capricious to not follow the GDP requirements.

Council Member Watson referenced the Aurora Places (City of Aurora Comprehensive Plan) requirements related to emerging neighborhoods and asked staff if single-family, detached residential, single-family attached residential and multi-family were permitted uses.

Dan Money, Assistant City Attorney, answered affirmatively.

Council Member Watson stated the item was a permitted use under the City's Comprehensive Plan.

Mr. Money concurred.

Council Member Gruber asked staff to speak to the authorized density in the area and the requested number of apartments in the area. Mr. Cammarata stated the maximum number of dwelling units allowed was 248 and the proposal included 174.

Marcus Pachner, Toll Brothers, gave a presentation on the item.

Sarah Rockwell, Attorney for the applicant, continued the presentation on the item.

Council Member Gruber pointed out the Murphy Creek Metro District was stressed due to the lack of proper build-out and asked Mr. Pachner to speak to the impact of the item on the metro district. Mr. Pachner did so. Council Member Gruber asked staff if the applicant would pay commercial or residential tax rates since it was commercial property.

Jason Batchelor, Deputy City Manager, stated they would be taxed at the lower rate.

Council Member Watson asked the applicant to speak to the five-foot setback waiver. Mr. Pachner did so, noting it related to the removal of the drive apron for Life Safety reasons.

Margaret Sobey; Louis Van Helden; Tim Rash; Lynn Swanson; Nancy Slinkard; Maggie Rash; Doug Schriner; and Renee Natole; spoke in opposition to the item because they wanted to protect the original GDP. They listed the following areas of major concern: non-conformance with minimum lot size; units in a linear fashion with no variety; detention ponds being used as open space; no real trails or trail connections; no separate amenities for new renters; no public transportation, shopping or services; park is bounded on all sides by the single loop street; limited access to the units made emergency response services difficult and rear setback waiver would cause congestion in the alleyways.

Paula Smolen and Richard Rader, Lowry Landfill Superfund Site Citizens Advisory Group,(CAG) spoke in opposition to the item and requested the City of Aurora Planning Department require any applicant that planned excavation to obtain a dewatering permit from the State Health Department.

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Allison Altaras, Attorney, Otten Johnson, spoke on behalf of the landowner, Murphy Creek LLC, discussed the GDP and spoke in support of the item.

Mayor LeGare recognized Greg Sara; Chris McGranahan and Jeff Kochevar who were present to answer questions.

Elizabeth Morgan, Pinnacle Real Estate Advisors, discussed the need for increased population to generate retailers in the area and spoke in support of the item.

Todd Welch and Laura Swanson spoke in opposition to the item.

Peter Hurd spoke in support of the item.

Council Member Bergan asked staff to speak to whether there was a minimum lot size requirement in the GDP for single-family. Mr. Cammarata did so, noting townhome developments needed to meet the setback requirements.

Mr. Pachner concurred, noting these were fee simple lots which were regulated under single-family lots with the ten foot requirement.

Council Member Bergan asked the applicant to describe the product.

*** did so, noting the item proposed a high-end, upgraded product. He pointed out Toll Brothers billed themselves as luxury builders.

Council Member Richardson stated his opinion that the Planning Commission discriminated against a build-to-rent product and asked if that was allowed in the UDO or GDP. Mr. Money answered no, noting there was nothing in code or law that allowed anyone to discriminate against renters versus buyers.

Council Member Watson asked if staff recommended approval. Mr. Money answered affirmatively. Council Member Watson asked if that was because it met all of the City's criteria. Mr. Money agreed that was his understanding. Council Member Watson concurred with Council Member Richardson's comments related to the Planning Commission and pointed out the City Council had to consider the fact that the criteria was met and staff recommended approval.

Mr. Money discussed the approval and appeal process, noting City Council was the final factfinder in this instance.

Council Member Gruber stated a fire house was built across the street from the proposed site which was at a significantly higher elevation than the plume.

Matt Wardlow, CTL Thompson, Environmental Engineer, concurred and expanded on the plume concern.

Council Member Johnston clarified the plume has not been studied for decades as the Environmental Protection Agency (EPA) has just started its studies in the last year and that included the plume width which was currently undetermined.

Mr. Wardlow clarified the EPA has studied the Superfund Site since 1984, and noted the 1, 4 dioxane found in the plume was the new chemical concern and agreed the width continued to be an estimation.

Council Member Johnston noted the importance of the clarification because environmental concerns were being discussed by the applicant's engineer and not the EPA. She stated the EPA continued to study the plume.

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Mr. Wardlow concurred and discussed the reviews and reports his company provided for the applicant which were similar.

Council Member Johnston referenced the CDPHE deep water permits which related to deep excavation and asked if the applicant was doing deep excavation. Mr. Wardlow answered no, noting the applicant did not expect to encounter groundwater. Council Member Johnston confirmed that would not occur.

Mr. Wardlow concurred.

Council Member Lawson asked if there was onus or obligation on the developer to continue monitoring the area in terms of the plume and landfill gases. Ms. Rockwell stated those situations were very fact-specific so it would be determined as facts were provided, noting however the property owner would continue to have liability because they continued to own the property. Council Member Lawson discussed how it has happened in other cities where renters were abandoned when environmental issues arose.

Council Member Bergan stated the City Council's review was of the site plan appeal and whether it met the GDP criteria. She asked staff if the review included environmental impacts. Mr. Money confirmed those impacts could always be a part of the consideration. Council Member Bergan stated her understanding that the plume was actually closer to the existing homes and wondered if that were true, would those homeowners be required to disclose that information if/when they sold their homes. Mr. Money stated those within $\frac{1}{4}$ of a mile were required to disclose information when selling their property. Council Member Bergan asked if the plume was closer to the existing homes than to the proposed development property.

Mr. Pachner answered affirmatively, noting the applicant would continue to work with all regulatory agencies in this regard.

Council Member Gruber noted the speakers' discussion and concerns related to the management of the existing townhomes and how the new townhomes would be managed. He asked the applicant to address that concern in this instance. Mr. Pachner did so and assured the City Council that the site owner wanted to protect and preserve the neighborhood as well.

Council Member Berzins referenced the detention pond and asked if it was counted. Mr. Pachner clarified it was not counted as useable open space but was in the landscape. Council Member Berzins asked Mr. Pachner to speak to the five-foot driveways. Mr. Pachner did so and discussed the waiver of the 10-foot rear setback down to five feet. Council Member Berzins discussed the need for rental housing and asked Mr. Pachner if he felt the Planning Commission's main objection to the project was because it was a rental product. Mr. Pachner agreed the rental product and business plan dominated the Planning Commission's conversation. He pointed out the neighborhood association initially stated their support of the item but changed their position once it became a rental product. He confirmed the applicant still planned to provide a luxury townhome project.

Council Member Johnston referenced the Comprehensive Plan, p. 92, Healthy Community, and asked staff if health and environmental issues could be addressed legally according to that reference. Mr. Money agreed the goal of the City Council as a quasi-judicial and legislative body was, in a general sense, to consider the health, safety and welfare of all Aurora citizens. He pointed out that was included in the first part of the site plan criteria and the City Council, as factfinders, should determine how much the health issues overrode the other criteria.

Mayor LeGare closed the public hearing on the item.

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Motion by Bergan, second by Berzins, to approve item 11a.

Council Member Bergan stated she would support the item because it met all of the criteria and the waiver was appropriate for safety reasons. She stated her surprise at the disparaging comments made against renters and rental property and discussed the need for more rooftops in the area to generate retail.

Council Member Johnston reiterated her issue was that the item was not compatible with the City's Comprehensive Plan because it did not ensure Aurora as a safe environment for all community members and noted she would not support more residential in the area because of the plume. She discussed the need to address the issue at the Lowry Superfund site which was still being studied.

Council Member Watson stated he would support the item because staff recommended approval because it met all City requirements. He pointed out there has been discussion surrounding the Superfund site for many years and while it continued to be studied, no rooftops meant no retail or further commercial development in an area that needed it.

Council Member Johnston stated metro districts and finance were important, but residents' health and safety were the most important issues to her. She pointed out it was fact that there was a plume at the Lowry Superfund site and Murphy Creek was within a mile of it. She stated the City Council has made oil and gas extraction easy in the area and subsequently there were 140M gallons of toxic chemicals under the ground. She noted the health of residents should trump the other issues.

Mayor LeGare stated he would vote to support the item. He agreed the negative comments made about renters were offensive. He pointed out no one in Aurora drank groundwater therefore he did not see how a groundwater plume, which the EPA has been monitoring for many years, could be considered a health hazard to people living in these houses.

Council Member Johnston stated the EPA continued to study it and she did not want it to be presented as being as simplistic as a groundwater issue.

Voting Aye: Mayor LeGare, Bergan, Berzins, Gruber, Richardson, Roth, Watson

Voting Nay: Hiltz, Johnston, Lawson, Murillo

MAYOR LEGARE CALLED FOR A TEN MINUTE BREAK

12. **ORDINANCES FOR INTRODUCTION**

- ♦ a. **2019-72**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City of Aurora, Colorado, amending Chapter 102 of the City Code of the City of Aurora, Colorado, relating to the General Employees' Retirement Plan, and other related matters.
Presenter: Nancy Wishmeyer, Controller, Finance

Motion by Roth, second by Bergan, to introduce item 12a.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson
- ♦ b. **2019-73**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City of Aurora, Colorado, vacating a portion of the public right-of-way between East Smoky Hill Road and South Yellowstone Court, and a portion of a nearby roundabout, in the City of
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Aurora, County of Arapahoe, State of Colorado and reserving a public access easement therein (YELLOWSTONE WAY STREET VACATION)

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

For purposes of considering the following items 12c-h, the City Council will be acting ex officio as the Board of Directors of the General Improvement Districts 1-2007, 1-2008, 3-2008, Pier Point 7 2-2009 and Aurora Conference Center 2-2011, Cobblewood 1-2016 respectively

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

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

- ♦ c. **2019-74**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, of General Improvement District 1-2007 (Cherry Creek Racquet Club) adopting an operating budget, establishing the tax levy, and appropriating sums of money to defray expenses and liabilities for the fiscal year beginning January 1, 2020, and ending December 31, 2020.
Presenter: Mike Shannon, Debt & Financing Administrator, Finance

Motion by Gruber, second by Berzins, to introduce item 12c.

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

- ♦ d. **2019-75**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, of General Improvement District 1-2008 (Peoria Park) adopting an operating budget, establishing the tax levy, and appropriating sums of money to defray expenses and liabilities for the fiscal year beginning January 1, 2020, and ending December 31, 2020.
Presenter: Mike Shannon, Debt & Financing Administrator, Finance

Motion by Roth, second by Gruber, to introduce item 12d.

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

- ♦ e. **2019-76**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, of General Improvement District 3-2008 (Meadow Hills Country Club) adopting an operating budget, establishing the tax levy, and appropriating sums of money to defray expenses and liabilities for the fiscal year beginning January 1, 2020, and ending December 31, 2020.
Presenter: Mike Shannon, Debt & Financing Administrator, Finance

Motion by Roth, second by Gruber, to introduce item 12e.

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

- ♦ f. **2019-77**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, of Pier Point 7 General Improvement District 2-2009 adopting an operating budget, establishing the tax levy, and appropriating sums of money to defray expenses and liabilities for the fiscal year beginning January 1, 2020, and ending December 31, 2020.

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Presenter: Mike Shannon, Debt & Financing Administrator, Finance

Motion by Roth, second by Gruber, to introduce item 12f.

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

- ♦ g. **2019-78**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, of General Improvement District 2-2011 (Aurora Conference Center) adopting an operating budget, establishing the tax levy, and appropriating sums of money to defray expenses and liabilities for the fiscal year beginning January 1, 2020, and ending December 31, 2020.

Presenter: Mike Shannon, Debt & Financing Administrator, Finance

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

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

- ♦ h. **2019-79**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, of Cobblewood General Improvement District 1-2016 adopting an operating budget, establishing the tax levy, and appropriating sums of money to defray expenses and liabilities for the fiscal year beginning January 1, 2020, and ending December 31, 2020.

Presenter: Mike Shannon, Debt & Financing Administrator, Finance

The following items i-l are 2020 Budget related Ordinances

Motion by Berzins, second by Roth, to introduce item 12h.

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

- ♦ i. **2019-80**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, adopting an operating and capital improvements projects budget for the fiscal year beginning January 1, 2020, and ending December 31, 2020. STAFF SOURCE: Greg Hays, Budget Officer, Finance

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

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

- ♦ j. **2019-81**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, establishing the tax levy on all taxable property within the corporate limits of the City of Aurora, Colorado, for the tax collection year beginning January 1, 2020, and ending December 31, 2020. STAFF SOURCE: Greg Hays, Budget Officer, Finance

Motion by Gruber, second by Roth, to introduce item 12j.

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

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- ◆ k. **2019-82**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, appropriating sums of money to defray expenses and liabilities for the fiscal year beginning January 1, 2020 and ending December 31, 2020. STAFF SOURCE: Greg Hays, Budget Officer, Finance

Motion by Watson, second by Bergan, to introduce item 12k.

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

- ◆ l. **2019-83**
Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, amending certain sections of Chapter 138 of the City Code of the City of Aurora, Colorado, relating to services for the provision of water. STAFF SOURCE: Jo Ann Giddings, D/D Water Financial Administrator, Aurora Water

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

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

Voting Nay: Berzins

13. **ORDINANCES FOR FINAL**

- ◆ a. **2019-69**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, amending Chapter 26 adding Article VI of the City Code referred to as the "The Detention Facility Notification Requirement." **Ordinance 2019-69, Introduced 9-1 (Watson voting no) at the October 7, 2019 Council meeting.**
Presenter: Stephen McInerney, Deputy Fire Chief, Fire

Motion by Hiltz, second by Murillo, to approve item 13a.

Debbie Stafford, Aurora Mental Health Center, stated her understanding that the detention facility notification requirements included ICE, the Aurora jail, the Aurora Mental Health Crisis Stabilization Unit and Jefferson Hills. She pointed out the Aurora Mental Health Crisis Stabilization Unit and Jefferson Hills were not detention facilities.

Council Member Richardson suggested Ms. Stafford submit a request to the City Attorney for a legal opinion on the issue after the fact.

Mayor LeGare asked staff to address Ms. Stafford's comments, noting his understanding that this did not apply to facilities where people could come and go.

Isabelle Evans, Assistant City Attorney, agreed the intent called out by Mayor LeGare was correct. She agreed with Council Member Richardson's comments that a request for a legal opinion could be rendered.

Council Member Gruber stated his understanding was the item would not single out the ICE facility and since the Aurora Detention Center only held people for three days, then the ICE facility was the only target. He asked how the City would enforce the ordinance on a federal facility. Ms. Evans clarified the Aurora Detention Center housed people that could not leave which thereby included it in the definition. Council Member Gruber stated they could be held for three days only.

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Ms. Evans clarified the Aurora Detention Center was included because it housed people who could not leave on their own volition. She stated enforcement would be handled in the same manner as any other violations of the municipal code.

Council Member Watson asked if federal facilities were required to adhere to City requirements. Ms. Evans answered affirmatively, noting they were required to follow City ordinance just like any other business in Aurora. Council Member Watson stated there were two Supreme Court decisions that stated a federal facility did not have to follow municipal or city rules.

*** stated the distinction was that this was a private, federally-contracted facility and not a federal facility itself so they would be sent a notification of violation if they violated the notification requirement. He stated the question was whether or not the information was federal information or proprietary to the business. He noted the ordinance was preemptive for notification to protect employees rather than punish businesses.

Council Member Richardson stated the issue of local ordinance validity versus the federal government immunity would play out in court should a violation occur that was ignored by the facility.

*** stated the facility could call out a legal impossibility as their defense because the information belonged to the federal government and therefore they would not have to go to court.

Council Member Richardson stated it would play out in court either way.

*** concurred.

Council Member Hiltz noted both GEO and ICE have been notified of the ordinance and asked if either of them reached out to the City to state there was a legal impossibility for them to share the information. *** answered not that he was aware of. Council Member Hiltz stated they have not because this was a simple and straightforward notification. She discussed the CDPHE report that provided the number of communicable disease outbreaks, and how many people were impacted for both staff and detainees. She noted staff was not confined to the facility and their coming and going made it a public health issue as did the number of calls where first responders were required to enter the facility. She pointed out there was not a legal mandate in place currently that required that information to be shared and reiterated this was a straightforward way for that information to be shared, noting the information did not include any individual patient health data. She pointed out it fell under the City Council's purview because it was related to a general business license. She noted it was a privilege to operate a private business in Aurora and this would ensure the safety of City employees who entered these businesses where people were not free to come and go. She expressed appreciation to staff for their efforts in this regard.

Mayor LeGare asked which and how many facilities in the City of Aurora would be included.

C. Hills, Deputy Chief, Aurora Fire, stated staff research identified four detention facilities based on the International Fire Code (IFC) identification related to occupancies and the ordinance was written with a more broad approach. He stated the four identified by the language in the ordinance were Jefferson Hills; Aurora Mental Health Crisis Stabilization Unit; GEO ICE facility and the Aurora Detention Unit. He clarified those detained at the Aurora Mental Health Crisis Stabilization Unit were held for 72 hours and could not leave the facility under their own accord.

- ◆ ***The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.***

Mayor LeGare asked if those who were detained in Jefferson Hills were held against their will. Hills confirmed Jefferson Hills was an underage adolescent facility where the detainees were locked in and could not leave under their own accord.

Council Member Richardson discussed the need to clear up the language regarding the definition of detention facility.

Mr. Brotzman stated those facilities where people could come and go would not fall under this ordinance.

Mayor LeGare suggested Ms. Stafford could clear it up by requesting the legal opinion as suggested by Council Member Richardson.

Council Member Hiltz pointed out Hills stated it fell under the definitions under the IFC for Life Safety purposes for First Responders where three or more were detained.

*** stated the definition of the detention facilities was used in the broadest sense because it was not related to jails specifically but more to include facilities where individuals were confined.

Hills concurred with Council Member Hiltz's comments.

Council Member Richardson asked Ms. Stafford to return to the podium to state whether or not she would characterize the people at the Crisis Unit facilities as detainees. Ms. Stafford explained the facility had 'delayed egress' and those on the inside, including those who were on a 72 hour mental health hold, could leave. She expressed her surprise that the facility was included in the list of detention facilities as a detention facility.

Mayor LeGare asked if the purpose of the 'delayed egress' was so that staff was notified if someone was attempting to exit the building so they could meet them at the exit and encourage them to not leave voluntarily. Ms. Stafford stated her understanding of the policy was that someone who was being cared for could come and go. Mayor LeGare asked what staff would do in the case of a 'delayed exit.' Ms. Stafford stated her understanding that staff would encourage someone there on a 72-hour hold to stay but reiterated they could come and go. Mayor LeGare stated his understanding that this was not applicable to Ms. Stafford's facility based on her testimony. He encouraged City Council to follow Council Member Richardson's suggestion and let the mental health group request a legal opinion on the item after the fact.

Council Member Hiltz agreed the Crisis facility would not fall under the IFC because the IFC guidelines for a detention facility related to three or more people being detained and Ms. Stafford testified there might only be one person staying at the Crisis Unit facility at one time therefore a change to the ordinance would not change the intent or the impact.

Council Member Richardson stated he did not want the ordinance to pertain to the Crisis Unit facility Ms. Stafford spoke on. He addressed Ms. Stafford and asked her to let him know if the legal request did not exempt the Crisis Unit facility and he would help her if he could.

MOTION TO TABLE

Motion by Gruber, second by Watson, to table the item until it could be corrected.

- ♦ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

Mr. Brotzman stated debate on the motion to table was allowed.

Council Member Watson stated it appeared City Council was attempting to formulate legislation for the sake of having legislation which made it unclear and unready to pass. He asked why it had to be rushed.

Council Member Murillo stated the item has been vetted for months and to say it was not ready because a few council members were confused about how it worked was a big jump. She noted there was not a conflict and the ordinance was not being rushed. She reiterated caution was taken with the ordinance to protect First Responders and she would not support the motion to table it.

Council Member Bergan read the ordinance aloud and stated her understanding that the Crisis Unit facility as described by Ms. Stafford would not fall under the requirement because those staying there had freedom of movement. She pointed out the facilities were not named in the ordinance, the GEO Detention Center did not provide any concerns about it and the Fire Chief agreed with it so she did not see a problem with the ordinance.

Council Member Johnston expressed appreciation to Council Member Bergan for reading the ordinance aloud. She pointed out it was a very simple, clear and well-vetted ordinance. She stated it should not be tabled because it protected First Responders health and safety therefore she would not support tabling the item.

Council Member Gruber stated the agreement between the GEO facility and Tri-County Health was in place for GEO to inform Tri-County if a contagious disease was present at the facility and Tri-County would, in turn, inform the Fire Department therefore the Fire Department was not put in any greater risk.

Council Member Hiltz pointed out the existing cooperation between the GEO Group and Tri-County Health was voluntary and while she was glad for it, there was no formal policy in place that required it to continue. She pointed out ICE and GEO were aware of the ordinance and neither has stated it would cause an undue burden. She stated it was important to understand that it was Tri-County's abdication of responsibility in this regard because they believed a federal facility was not under their jurisdiction that created the situation. She pointed out it was not just about the GEO facility but detention centers in general. She noted the GEO facility highlighted a gap in the code that put First Responders at risk similarly to how a grow house in southeast Aurora was the catalyst for the Marijuana Grow House ordinance. She pointed out the item was fully vetted and she questioned why these concerns were not raised until now. She stated not approving the item sent the message to First Responders that their health and safety was not as important as political gain. She stated she would not support tabling the item.

Council Member Watson stated he supported tabling the item because clarification was needed based on conflicting information presented at study session and the testimony provided by Ms. Stafford that she did not have the same information as well as the Fire Department listing four entities that were included in the ordinance which was not based on what was read in the report. He asked Hills if that was correct.

Hills concurred.

Council Member Watson stated therefore there was a need for clarification.

- ♦ ***The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.***

VOTE ON MOTION TO TABLE

Voting Aye: Gruber, Watson

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

VOTE ON ORIGINAL MOTION

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

Voting Nay: Gruber, Watson

14. **RECONSIDERATIONS AND CALL-UPS**

None

15. **GENERAL BUSINESS**

- a. Consideration to reappoint one (1) member to the Homestake Steering Committee.
Presenter: Stephen Ruger, City Clerk, General Management

Motion by Roth, second by Bergan, to reappoint Alex Davis to the Homestake Steering Committee.

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

- b. Consideration to reappoint one (1) member to the Joint Water Authority.
Presenter: Stephen Ruger, City Clerk, General Management

Motion by Roth, second by Bergan, to reappoint Alex Davis to the Joint Water Authority.

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

- c. Consideration of the reappointment of one (1) member and the appointment of one (1) member to the Historic Preservation Commission.
Presenter: Stephen Ruger, City Clerk, General Management

Motion by Roth, second by Berzins, to reappoint Lynne Davis and appoint Barbara Henk to the Historic Preservation Commission.

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

- d. Consideration to reappoint one (1) member and appoint three (3) members to a three-year term to on the Aurora Library Board.
Presenter: Stephen Ruger, City Clerk, General Management

Motion by second by to reappoint Danette Baltzer and appoint Joanna Hudson; Brenda Perea and Sharon Sandstrom to the Aurora Library Board.

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

- e. Consideration of the reappointment of two (2) youth members, and appointment of one (1) youth member to the Aurora Youth Commission.
Presenter: Stephen Ruger, City Clerk, General Management

Motion by Roth, second by Watson, to reappoint Kris Kerr and Dhruv Shrivastava and appoint Manar Jeelani to the Aurora Youth Commission.

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

- f. Consideration to appoint one member to the Aurora Fox Arts Center Board.
Presenter: Stephen Ruger, City Clerk, General Management

Motion by Watson, second by Roth, to appoint Eric Fitzgerald to the Aurora Fox Arts Center Board.

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

16. **REPORTS**

- a. Report by the Mayor

No report.

- b. Reports by Council

Council Member Murillo announced the Ward I Town Hall meeting was scheduled for Thursday, October 24, 2019 at the MLK Library at 6:00 p.m. where the City Clerk would be present to discuss the upcoming elections, and updates from the two counties in Ward I and various other ballot issues would be provided.

Council Member Hiltz announced the Drug Takeback event was scheduled for Saturday, October 26, 2019 where prescription drugs could be surrendered at a safe location.

Council Member Bergan discussed her attendance at the recent Fire Station 17 groundbreaking event in Ward II and the Southeast Aurora Rec Center Public Meeting.

Council Member Berzins noted the importance of understanding ballot issues 1a and CC and wished Council Member Bergan a happy birthday.

Mayor Pro Tem Roth discussed his recent attendance as a part of an Aurora delegation to South Korea and Sister Cities Conference.

Council Member Lawson expressed appreciation to all those involved in the recent Civic Engagement Academy Graduation.

Council Member Gruber discussed his attendance at the recent Fitzsimons Aurora Medical Foundation Breakfast.

Council Member Johnston expressed appreciation to Council Member Bergan for her attendance at the Fire Station 17 groundbreaking event. She discussed her attendance at the recent Stafford Logistics groundbreaking event and discussed the CDPHE peer study on

Oil & Gas operations and structures within 2000 feet, noting staff provided an overview from outside counsel and she would continue to provide updates in that regard.

Council Member Watson discussed his experience recently visiting with various churches in Denver and the Aurora community, noting the pastors have stated an interest in Aurora and in affordable housing and homelessness. He expressed appreciation to those pastors for hosting him and for providing information on those issues. He noted Concord College School of Nursing recently received their accreditation.

17. **PUBLIC INVITED TO BE HEARD**

None

18. **ADJOURNMENT**

Mayor LeGare adjourned the regular meeting of City Council at 11:15 p.m.

BOB LEGARE, MAYOR

ATTEST:
