

MINUTES

**Regular Meeting – Aurora City Council
Monday, January 22, 2018**

CALL TO ORDER – REGULAR MEETING

Mayor Hogan convened the regular meeting of City Council at 5:15 p.m.

ROLL CALL

PRESIDING:	Mayor Hogan
COUNCIL MEMBERS PRESENT:	Berzins, Gruber, Hiltz, Lawson, LeGare, Murillo, Roth
COUNCIL MEMBERS ABSENT:	Bergan
OFFICIALS PRESENT:	Interim City Manager Batchelor, City Clerk Blackston
COUNCIL MEMBERS ARRIVING AFTER ROLL CALL:	Johnston, Richardson

City Clerk Blackston 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 Hogan, Berzins, Gruber, Hiltz, Johnston, Lawson, LeGare, Murillo, Roth

Abstaining: None

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

1. **RECONVENE REGULAR MEETING OF JANUARY 22, 2018 AND CALL TO ORDER**

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

2. **ROLL CALL** Linda S. Blackston, City Clerk

3. **INVOCATION** Pastor Tommy Dennis, Living Tower Free Methodist Church

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

5. **APPROVAL OF THE MINUTES OF THE MEETING OF JANUARY 8, 2018**

Motion by Roth, second by Gruber, to approve the minutes of January 8, 2017 as presented.

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

Abstain: None

6. **CEREMONY**

Presentation to Gateway Shelter from the city's A-WIL group – Mayor Hogan

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Mayor Hogan invited Michelle Wolfe, Deputy City Manager, Noel Mink, Interim Human Resources Director and Gateway Shelter representatives to come forward. Ms. Wolfe discussed the A-WIL (Aurora Women in Leadership) group and Noel Mink, Interim Human Resources Director, discussed the Paint Cellar fundraising initiative. Ms. Wolfe presented a check to Lisa Gertzen, Director of Court Advocacy, who expressed appreciation for the recognition.

APD Eagle Award presentation – Mayor Hogan

Mayor Hogan invited Dave Williams, Rotary Club, Brad Pierce, Rotary Club and Officer Tim King, Aurora Police Department (APD), to come forward. Mr. Williams and Mr. Pierce introduced Officer King and presented him with the Rotary Club APD Eagle Award. Officer King expressed appreciation for the recognition.

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

Jared Rock, Aurora, Colorado, Colorado Sports Manager, discussed the high cost associated with the City of Aurora permitting process for recording sporting events and athletes. He requested the City Council provide a way to help a small business such as his.

Mayor Hogan directed Mr. Rock to speak with Marshall Brown, Director, Water.

Council Member Johnston stated she was the Chair of the Parks and Quality of Life committee and she agreed to work with Mr. Brown in this regard.

8. **ADOPTION OF THE AGENDA**

The agenda was adopted as presented.

9. **CONSENT CALENDAR - 9a-b**

General Business

- a. Consideration to AWARD A SOLE SOURCE CONTRACT to Innovative Interfaces Inc., Emeryville, CA in the amount of \$126,910.00 for the 2018 annual subscription fees on Sierra Integrated Library and Decision Center software systems used by all Aurora libraries. STAFF SOURCE: Patti Bateman, Director, Library & Cultural Services

Motion by LeGare, second by Roth, to approve item 9a.

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

Final Ordinances

- ◆ b. **2018-01**
Consideration for ADOPTION OF AN ORDINANCE of the City Council of the City of Aurora, Colorado, rezoning 1.2 acres more or less in the area of South Peoria Court and South Peoria Street from Highway Service District (B-3) And Light Industrial District (M-1) to Business and Commercial District (B-4) and amending the zoning map accordingly (Bridge House Ready to Work Rezone) (**Planning Commission recommended approval on a vote 6 to 1 with Jackiewicz voting against at the December 13, 2017 Planning Commission meeting**) STAFF SOURCE: Brandon Cammarata, Senior Planner, Planning & Development Services

Motion by Richardson, second by Berzins, to approve item 9b.

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

10. **RESOLUTIONS**

R2018-04

- ◆ a. Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving the Agreement for the purchase and sale of water rights and ancillary interests between Minewater Finance, LLC, and No Name LLC, and the City of Aurora, Colorado, acting by and through its utility enterprise. STAFF SOURCE: Marshall Brown, Director, Aurora Water

Motion by LeGare, second by Richardson, to approve item 10a.

Don Langley, Aurora, Colorado, stated his support of the item.

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

R2018-05

- ◆ b. Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, to approve the University of Colorado Denver Educational Program Training Agreement. STAFF SOURCE: Michael Stanley, Fire Commander Medical Branch, Fire

Motion by LeGare, second by Berzins, to approve items 10b.

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

R2018-06

- ◆ c. Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, to approve the First Amendment to the Intergovernmental Agreement and Affiliation Agreement between the Community College of Aurora and the City of Aurora for the benefit of Aurora Fire Department. STAFF SOURCE: Michael Stanley, Fire Commander Medical Branch, Fire

Motion by Roth, second by Murillo, to approve item 10c.

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

R2018-07

- ◆ d. Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, for an Intergovernmental Agreement among the Board of County Commissioners of the County of Adams, the City of Aurora, and the Aerotropolis Area Coordinating Metropolitan District establishing the Aerotropolis Regional Transportation Authority. STAFF SOURCE: Jason Batchelor, Interim City Manager, General Management

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

Council Member Lawson stated her support of the item, noting she would, however, reserve judgement for future RTA related issues.

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

11. **ORDINANCES FOR INTRODUCTION**

2018-02

- ◆ a. Consideration for INTRODUCTION OF AN ORDINANCE of the City Council of the City of Aurora, Colorado, adding Section 94-349 to the City Code related to prohibiting

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smoking in a motor vehicle when juveniles are present. STAFF SOURCE: Nancy Rodgers, Client Group Manager, City Attorney

Motion by Richardson, second by LeGare, to introduce item 11a.

Michael Himawan, Aurora, Colorado, proposed the ordinance be amended to make first offenses result in a warning and to allow for the delivery of educational materials, to add an option for waivers or community service for families whose incomes fell below 150 percent of the poverty line and to commit whatever level possible of the revenue generated from the ordinance to go to the expansion and the improvement of the smoking cessation program.

Kathleen Moreira, Tobacco Treatment Specialist and Educator, UC Health, spoke in support of the item.

RJ Ours, Colorado Government Relations Director, American Cancer Society Cancer Action Network, spoke in support of the item.

Bob Doyle, Centennial, Colorado, spoke in support of the item.

Dr. Kanwaljit Brar, Pediatric Allergist & Immunologist, National Jewish Health, spoke in support of the item.

Council Member LeGare raised the topic of primary and secondary offenses as they related to the ordinance and asked staff to speak to 'moving violation' as defined in Article 1, Section 134 in City code.

Nancy Rodgers, Senior Assistant City Attorney, stated it was not a traffic moving violation so the vehicle did not need to be in motion for there to be a violation or citation, noting it was written as a primary offense which meant an officer did not need another reason to stop and detain a person in this instance.

Council Member Lawson pointed out this was in the criminal code and asked why officers were being asked to ignore criminal violations when the stop could not be made if smoking in the vehicle was the only violation observed if it was important to the well-being of a child. Ms. Rodgers stated it was not necessarily ignored but it would not be the primary reason for the stop, noting it was similar to the seatbelt laws which were secondary violations as well. Council Member Lawson asked if Social Services would be contacted if a parent were to violate criminal code in this instance. Ms. Rodgers answered no. Council Member Lawson asked if it would be considered child abuse. Ms. Rodgers answered no.

Council Member LeGare referenced Article 1, Section 134 and asked if the intention was to tell the officer that they could not pull a vehicle over for the ordinance. Ms. Rodgers answered no, noting the vehicle could be pulled over but it would not be considered a moving violation that could cost a driver points against their license. Council Member LeGare asked if the ordinance lent itself to selective enforcement. Ms. Rodgers answered affirmatively.

Vanessa Wilson, Division Chief, Aurora Police, confirmed a secondary violation would be more appropriate in this instance.

Council Member Richardson expressed appreciation to Council Member LeGare for raising this issue, noting his intention to propose an amendment to change the offense from primary to secondary.

Council Member Gruber expressed concerns related to the implementation of ordinances that limited people's liberties. He suggested, rather than approve an ordinance for people who

choose to smoke with children in the car, the City Council approve a resolution commending the Girl Scouts for their efforts in this regard.

Council Member Lawson proposed a scenario where a citizen witnessed someone smoking in a vehicle with children in it, took down the license number and reported it to the police. She asked how it could be assured that the person smoking was the person registered with the vehicle. Division Chief Wilson agreed that would be problematic.

AMENDMENT I

Motion by Richardson, second by LeGare, to amend item 11a, by adding Section c to state, *"No person shall be issued a summons for a violation of this section unless such person was stopped and detained by a law enforcement officer for separate alleged traffic violation or other offense."*

Council Member LeGare stated he would support the amendment because it would make it a secondary offense which would eliminate the concern of selective enforcement

VOTE ON AMENDMENT I

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

AMENDMENT II

Motion by Richardson, second by Berzins, to amend item 11a, by substituting the following language, *"The City Council encourages the Municipal Court to consider the offering of the opportunity to perform community service in lieu of any other penalty that may be imposed for a violation of this section."*

Council Member Johnston expressed concerns related to the term *"encourages,"* noting her preference that community service over a fine be mandated.

Council Member Richardson confirmed his faith in the Aurora Municipal Court Judges to handle the provision in an appropriate and sophisticated fashion.

Mayor Hogan reminded City Council they had the ability to offer an amendment to the amendment.

Council Member LeGare concurred with Council Member Richardson's comment and stated he would not support an amendment that included a mandate.

Council Member Richardson stated he would consider a friendly amendment to change the word encourages to mandates consideration.

Council Member LeGare stated he would not support an amendment that contained the word mandate.

Council Member Hiltz expressed concerns related to mandating the judicial because it had impact on other judicial discretionary issues as well.

Motion by Johnston, second by Hiltz, offered a friendly amendment to the amendment of item 11a, by substituting the following language, *"The Municipal Court shall offer the opportunity to perform community service in lieu of any other penalty that may be imposed for a violation of this section."*

Council Member Richardson asked if a person could write a check rather than perform community service would be permissible. Council Member Johnston answered affirmatively.

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Council Member LeGare pointed out the result was the same but the language was different and asked Council Member Richardson if he agreed. Council Member Richardson answered affirmatively.

VOTE ON AMENDMENT II

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

AMENDMENT III

Motion by LeGare, second by Richardson, to amend item 11a, to change the title to "*Smoking in cars with children present*" and changing the reference to juvenile to child in Section 1 and adding the definition of child in Section 2 to state, "*every person who is under eight years of age who is required to be properly restrained in a child restraint system pursuant to Colorado Revised Statute 42-4-236.*"

Council Member LeGare clarified the amendment put the focus on younger children and clearly identified a child as one who should be in a restraint system.

Council Member Richardson stated his support of the item related to the police department's support that it clarified the applicability of the ordinance which made enforcement easier.

Division Chief Wilson concurred.

Council Member Gruber stated his opposition to the amendment, noting his opinion that it was just as important to not expose children nine years old and older to secondhand smoke in a vehicle. He reiterated his comments related to the slippery slope of limiting people's liberties.

Council Member Murillo asked a police officer would determine the age of an eight years old.

Council Member LeGare stated the ordinance was an attempt to legislate people's actions and there were a lot of things that government could not fix. He stated his support of further defining a much smaller segment of the population that were probably the most at risk.

Council Member Richardson stated the Police Department advised this amendment would assist the officer in being able to determine who was in violation as opposed to someone merely under the age of 18.

Council Member Hiltz pointed out Colorado Revised Statute 42-4-236 also required that children between the ages of eight and sixteen be property restrained and raised the question of the difference between one type of required restraint and another. She stated she took offense at council members using derogatory language when describing those who smoked in their vehicles with children present. She noted it was disingenuous for them to do so. She pointed out addiction was a real issue and discussed the importance of education in that regard.

Council Member Gruber stated he would refer to those in violation as people who would be fined for doing something that was not safe for their children.

Council Member Johnston stated her preference of the original language in the motion because children ages nine through seventeen also did not have a choice in the matter.

Council Member Murillo asked how much more this would potentially burden the police department.

Division Chief Wilson stated it would have minimal impact because the violation was secondary so the police would be making the stop anyway and this provided more of an educational approach for the public and safety for the children involved.

Council Member LeGare stated he stood by his comments. He expressed his disbelief that it was that much of an addiction.

Council Member Hiltz reiterated her position that elected community representatives should conduct themselves with respect and decorum.

VOTE ON AMENDMENT III

Voting Aye: Berzins, LeGare, Richardson

Voting Nay: Gruber, Hiltz, Johnston, Lawson, Murillo, Roth

AMENDMENT IV

Motion by Gruber, second by Roth, to amend item 11a, Section d, *"The City Council would evaluate the effectiveness of this ordinance and formally act to extend it or on February 28, 2019, the provisions of this section shall expire."*

Council Member Gruber stated he made the amendment because there were still questions as to whether it would be enforced by the Police department and one year would give City Council a better idea in that regard. He pointed out seniors in high school who were 18 years of age who were smoking in their car with their peers who might not be 18 were also subject to this violation. He stated he would like this issue reviewed within the year. He stated if it were determined to be effective then it would continue and if not, it would be rescinded.

Council Member Richardson stated the number of citations should not be the only measurement of the effectiveness of the ordinance, noting there was no way of knowing how many people would choose not to smoke in a vehicle with children present as a result of the passage of the ordinance. He suggested a friendly amendment indicating a mandatory review one year from the ordinance effective date should be considered.

Council Member Gruber stated his amendment would stand as stated.

Council Member LeGare asked if one year was a sufficient amount of time to determine the effectiveness of the ordinance. Division Chief Wilson stated it would be enough time if the effectiveness was determined by the number of citations. She noted however that a platform of education would be pushed out through email and social media to make the public aware of the ordinance and that impact would be very difficult to measure. Council Member LeGare confirmed alerting the police officers and the public was his concern. He asked Council Member Gruber if he would consider a two year time period for the community outreach and police department to assimilate the information, noting then it could be determined how many secondary offenses were added to citations.

Division Chief Wilson concurred.

Council Member Gruber agreed to the friendly amendment.

Motion by Gruber, second by Roth, to amend item 11a, Section d, *"The City Council would evaluate the effectiveness of this ordinance and formally act to extend it or on February 28, 2020, the provisions of this section shall expire."*

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Council Member Johnston asked how the ordinance's success would be evaluated. Mayor Hogan discussed the various options in that regard.

Council Member Lawson stated the importance of obtaining community feedback and asked if that could be a part of the assessment. Division Chief Wilson agreed to review that question.

Voting Aye: Berzins, Gruber, Johnston, Lawson, LeGare, Richardson, Roth

Voting Nay: Hiltz, Murillo

VOTE ON ORIGINAL MOTION AS AMENDED

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

Council Member Roth asked if the Girl Scout troop involved with the smoking ordinance could return to City Council to provide an update on how the next steps went.

12. **RECONSIDERATIONS AND CALL-UPS**

None

13. **GENERAL BUSINESS**

- a. Consideration to appoint two (2) and reappoint two (2) people to the Citizens' Water Advisory Committee. STAFF SOURCE: Linda Blackston, City Clerk, General Management

Council Member Johnston nominated Duane Senn.

Council Member LeGare nominated Russ Wagner and Angie Binder.

Motion by Roth, second by Richardson, to reappoint Don Langley and Susan Turnquist to the Citizens' Water Advisory Committee.

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

Council Members Johnston advocated for Mr. Senn, Council Member Roth advocated for Mr. Wagner and Council Members Gruber and LeGare advocated for Ms. Binder.

Mr. Senn garnered five votes in favor, Mr. Wagner garnered two votes in favor and Ms. Bender garnered three votes in favor.

Motion by Roth, second by Gruber, to appoint Duane Senn and Angie Binder to the Citizens' Water Advisory Committee.

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

14. **REPORTS**

- a. Report by the Mayor

No report.

- b. Reports by the Council

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Council Member Murillo announced the Ward I meeting was scheduled for Tuesday, February 20, 2018 at 6:00 p.m. at the MLK Library, noting she would be out in the community to encourage citizen participation.

Mayor Pro Tem Berzins expressed appreciation to Dr. Barbara Shannon-Banister and the MLK committee for their efforts with the recent MLK activities. She announced the Ward III meeting was scheduled for Wednesday, February 14, 2018 at the Center for Active Adults at 6:00 p.m., where the bicycles parked throughout Aurora would be discussed. She noted the evening meetings would be meeting at the Chamber office starting in March.

Council Member Roth echoed Mayor Pro Tem Berzins' comments regarding the success of the MLK events and discussed his attendance at the MLK Black Rodeo event. He announced the Ward V Town Hall meetings were scheduled for the third Tuesday of each month from 6:30 p.m. to 8:30 p.m. starting Tuesday, February 20, 2018 at the Heather Gardens Clubhouse with the exception of June. He noted Chief Fernando Gray, Aurora Fire & Rescue, and the At-Large Council Members would be present at the February meeting.

Council Member Lawson spoke on behalf of Council Member Bergan who was absent due to illness, noting the Ward VI meeting was rescheduled from January 24 to Wednesday, March 7, noting the At-Large meeting was scheduled for Thursday, March 22, 2018 at the Aurora Central Library at 6:00 p.m.

Council Member Johnston stated the first Parks Foundations & Quality of Life committee meeting was scheduled for Wednesday, January 24, 2018 at 9:00 a.m. in the Mount Elbert room in the Aurora Municipal Building. She noted the agenda would include a public invited to be heard segment. She stated her intention to work closely with the resident group that met with Parks, Recreation & Open Space (PROS) as well. She announced the Ward II meeting was scheduled for the last week in February and the location was unknown at this time, noting all council members were welcome and she would keep everyone posted on the final details of date, place and time.

15. **PUBLIC INVITED TO BE HEARD**

None

16. **ADJOURNMENT**

Mayor Hogan adjourned the regular meeting of City Council at 9:15 p.m.



STEPHEN D. HOGAN, Mayor

ATTEST:



Linda Blackston, City Clerk