

# AGENDA

## MISSION

The City of Durango and our employees provide efficient city services, effectively maintain city assets and manage growth, are accountable, ethical and fiscally responsible, and collaborate with regional partners to improve the quality of life for our entire community.

## VISION

Durango is an authentic, diverse, multigenerational, and thriving community. Our residents value and enjoy our unique natural environment and benefit from the management of our city's resources in a fiscally responsible, environmental, and socially sustainable manner.

## VALUES

- Teamwork
- Dependability
- Professionalism
- Service
- Respect
- Innovation
- Well-Being

## STRATEGIC GOALS

- Affordability & Economic Opportunity (AEO)
- Diversity, Equity, Inclusion (DEI)
- Effective Infrastructure Network (EIN)
- Enhanced Livability & Sense of Place (ELSP)
- Environmental Sustainability & Resilience (ESR)
- Financial Excellence & High Performing Government (FE)
- Engaged & Collaborative Governance (ECG)



The City of Durango encourages the participation of all its citizens in its public meetings. If an accommodation is needed, please contact the City of Durango ADA Coordinator at (970) 375-5005

CITY COUNCIL REGULAR MEETING  
DURANGO CITY HALL, SMITH CHAMBERS  
08/15/2023  
5:30 PM

### MAYOR

Melissa Youssef

### MAYOR PRO-TEM

Jessika Buell

### CITY COUNCILORS

Olivier Bosmans – David Woodruff -  
Gilda Yazzie

### CITY MANAGER

José Madrigal

### ASSISTANT CITY MANAGER

Erin Hyder

### MANAGING DIRECTOR

Bob Brammer, Public Safety

### CITY ATTORNEY

Mark Morgan

### CHIEF FINANCIAL OFFICER

Devon Schmidt, Acting

### CITY CLERK

Faye Harmer

### AIRPORT

Tony Vicari, Director

### 911 COMMUNICATIONS

Zeta Fail, Director

### LIBRARY SERVICES

Luke Alvey-Henderson, Director

### PARKS AND RECREATION

Ture Nycum, Director

### TRANSPORTATION

Sarah Hill, Director

### INFORMATION TECHNOLOGY

Justin Carlton, Director

### PUBLIC WORKS

Allison Baker, Director

### HUMAN RESOURCES

Bonnie Kling, Director

### COMMUNITY DEVELOPMENT

Scott Shine, Director

**CITY OF DURANGO  
CITY COUNCIL REGULAR MEETING  
DURANGO CITY HALL, SMITH CHAMBERS  
08/15/2023  
5:30 PM**

1. CALL TO ORDER AND ROLL CALL 5:30 PM
2. INTRODUCTION OF TRANSLATOR
3. OPENING REMARKS BY MAYOR AND COUNCIL - Information Only
4. PRESENTATIONS/PROCLAMATIONS - No Items
5. CITY MANAGER UPDATES 5:50 PM
6. COMMITTEE, BOARD AND LIAISON REPORTS - Information Only 6:00 PM
7. PUBLIC COMMENT ON AGENDA ITEMS ONLY (Items 8, 9, 11) 6:15 PM
8. CONSENT AGENDA - Action Items without discussion 6:00 PM
  - 8.1. Approval of Meeting Minutes
    - 8.1.1. Approval of Minutes July 5, 2023 City Council Regular Meeting
    - 8.1.2. Approval of Minutes July 18, 2023 City Council Regular Meeting
    - 8.1.3. Approval of Minutes July 26, 2023 City Council Joint Study Session with the Southern Ute Indian Tribe
    - 8.1.4. Approval of Minutes August 1, 2023 City Council Regular Meeting
  - 8.2. Final Reading of Ordinances
    - 8.2.1. Final Reading Ordinance O-2023-0014 Repealing Chapter 5, Article VIII, Durango Local Licensing Authority and Amending Chapter 13, Licenses and Business Regulations, of the Code of Ordinances of the City of Durango for the Purposes of Enacting the City Clerk's Office as the Local Licensing Authority and Declaring an Effective Date - FE&HPG Submitted by Chief Deputy Clerk Ben Florine
  - 8.3. Adoption of Resolution(s) by Consent
    - 8.3.1. Discussion and Possible Action Concerning an Approval of a Resolution to Amend the 2023 Employee Handbook for the Purpose of Updating in Accordance with the Colorado Protecting Opportunities and Workers Rights Act (POWR) - FEHPG Submitted by Bonnie Kling

This meeting is being held in a virtual/In Person format (Durango Resolution R 2022-00017 dated 4/5/2022). Link to the virtual meeting at <http://durangogov.org/zoom>. If this link fails, please copy and paste into your browser.

- 8.3.2. Discussion and Possible Action to Adopt a Resolution Prohibiting the Open Carrying of a Firearm in City Hall and Authorizing the Posting of a Sign at the Public Entrance of City Hall Informing Persons That the Open Carrying of Firearms is Prohibited in City Hall - submitted by City Manager Jose Madrigal and City Attorney Mark Morgan
- 8.4. Approval of Other Administrative Items
  - 8.4.1. Discussion and Possible Action to Approve the Chief Financial Officer Appointment
  - 8.4.2. Discussion and Possible Action to Approve Revisions to the City of Durango Open Records Policy
  - 8.4.3. Discussion and Possible Action to Appoint an Applicant to the Durango La Plata County Airport Commission
- 8.5. Land Use and Development Action Items - No items
- 9. ITEMS PULLED FROM THE CONSENT AGENDA
- 10. LAND USE AND DEVELOPMENT - No Items
- 11. RESOLUTIONS - CONSIDERATION OF ADOPTION - Action Items with discussion 6:15 PM
  - 11.1. Discussion and Possible Action Concerning a Resolution to Amend the 2023 Budget for the Purpose Of Budget Adjustments to the 2023 Appropriations Submitted by Devon Schmidt
- 12. FIRST READING OF ORDINANCES - CONSIDERATION OF ADOPTION AND PUBLIC HEARING - No Items
- 13. PUBLIC COMMENT ON NON-AGENDA ITEMS - No discussion 6:45 PM
- 14. INTRODUCTION OF ORDINANCES AND REQUEST FOR PUBLIC HEARING - Action Item with limited discussion
  - 14.1. Discussion and Possible Action Concerning an Ordinance Amending Chapter 11 Health and Sanitation Article IV - Stream Pollution of the Municipal Code Pertaining to Waste and Flash Flood Exposure Within Public Stream Riparian Zones and Floodplains by Adding Section 11-74 Unlawful Presence and Activities as Follows
- 15. OTHER NEW BUSINESS - Non Dispositive with limited discussion
- 16. OTHER MATTERS - Non Dispositive with limited discussion 7:00 PM
  - 16.1. Requests for Excused Absences
  - 16.2. Directives
  - 16.3. Discussion and Possible Action to Reinstate the Appointment of a Board of Ethics Member Who Was Previously Appointed During the July 5, 2023, City Council Regular Meeting
  - 16.4. Discussion and Possible Action Concerning a Motion to Approve the Settlement of a Case Concerning the Application of Water Rights Filed by Rebecca Schwartz and Kevin Padrez in the Florida River Water Shed, Specifically 2022CW2018, in La Plata County District Court

This meeting is being held in a virtual/In Person format (Durango Resolution R 2022-00017 dated 4/5/2022). Link to the virtual meeting at <http://durangogov.org/zoom>. If this link fails, please copy and paste into your browser.

17. EXECUTIVE SESSION 7:10 PM

- 17.1. Discussion and Possible Action to Convene in Executive Session to Discuss the Purchase, Acquisition, Lease, Sale or Transfer of an Interest in Real Property Located in Downtown Durango Currently Leased to the Durango and Silverton Narrow Gauge for Parking and to Determine Positions Relative to Matters that May be Subject to Negotiation and Direct Negotiators as Permitted by C.R.S. 24-6-402(4)(a) and (e)
- 17.2. Discussion and Possible Action to Convene in Executive Session to Receive Legal Advice Regarding Possible Litigation Concerning a Contract Dispute Involving JRC Consulting as Permitted by C.R.S. 24-6-402(4)(b)
- 17.3. Discussion and Possible Action to Convene in Executive Session to Receive Legal Advice on Specific Legal Questions Pursuant to C.R.S. 24-6-402(4)(b) Concerning Litigation titled John Simpson v. City of Durango, 2022CV30112 filed in La Plata County District Court

18. ADJOURNMENT 8:00 PM

*NOTE THAT ALL TIMES ARE APPROXIMATIONS*

The public may view the meeting live on Zoom at [durangogov.org/zoom](https://durangogov.org/zoom) or on YouTube at <https://www.youtube.com/@CityofDurango6512>. An email link for public comment is located at [DurangoGov.org/meetings](https://durangogov.org/meetings) at the top of the page as well as on the agenda itself under Public Participation. Comments must be submitted no later than noon on the Monday preceding the meeting. Each email should contain the corresponding agenda item in the subject line of the email if there is one. The sender's full name and address should be included for the record. If comment by email is not possible, comments may also be placed in the drop box located in front of City Hall no later than noon on the Monday preceding the meeting. All written comments will be provided to the Council for review. Written comments may be read into the record and/or attached to the minutes of the meeting at the direction/discretion of Council. Email comments should be directed to: [PublicComment@durangogov.org](mailto:PublicComment@durangogov.org).

Members of the public who wish to provide verbal comments can use the Virtual Meeting Information at the top of this agenda to join the meeting. Please ensure you have the Zoom app installed on your computer or mobile device prior to the meeting (<https://zoom.us/download>). The mayor will provide additional details during the meeting when public comment is accepted.

CITY OF DURANGO  
CITY COUNCIL REGULAR MEETING  
DURANGO CITY HALL, SMITH CHAMBERS  
07/05/2023  
5:30 PM

1. CALL TO ORDER AND ROLL CALL

Mayor Youssef called the meeting to order at 5:30 p.m.

All of Council were present and in person as follows: Mayor Melissa Youssef, Mayor Pro Tem Jessica Buell, and Councilors Olivier Bosmans, David Woodruff, and Gilda Yazzie.

Present on behalf of City Staff were City Manager José Madrigal, City Clerk Faye Harmer, Public Works Director Allison Baker, Sustainability Manager Marty Pool, and City Attorney Mark Morgan.

2. INTRODUCTION OF TRANSLATOR

Diego Pons of CLC (Community Language Cooperative) introduced the translation process.

3. OPENING REMARKS BY MAYOR AND COUNCIL

Mayor Pro Tem Buell spoke on the Tour de France bike race and noted that two cyclists who grew up in Durango are in the race, two of only six Americans to enter the 2023 competition.

Councilor Woodruff gave a shout-out to Ellen Babers and her team for facilitating a wonderful week of events for the Fourth of July.

Mayor Youssef commented on the change to the agenda template and reviewed the goals of the new meeting format.

Mayor Youssef thanked Municipal Court staff and the accomplishment of conducting the first jury trial held in Municipal Court in 24 years, which she noted was requested by the defendant She noted the following individuals: Paula Lierman, Court Administrator Tracy Harwood, Municipal Court Clerk Rita Warfield, Hannah Carpenter, Associate Judge Todd Norvell, and City Clerk Faye Harmer for her oversight and leadership.

*Mayor Youssef moved to amend the agenda to move item 17 (Public comment for non-agenda items) to item 16, prior to the executive session. Mayor Pro Tem Buell seconded the motion.*

There was no discussion.

*A roll call vote was taken, and the motion passed unanimously.*

**Passed: For 5; Against: 0; Abstain: 0; Absent: 0**

4. PRESENTATIONS/PROCLAMATIONS

There were no presentations or proclamations.

5. REQUESTS FOR EXCUSED ABSENCES

City Attorney Mark Morgan explained that the City Charter states that four unexcused absences from regularly scheduled meetings disqualifies a councilor and creates a vacancy on the Council. He said a vote of Council is required to excuse an absence. He said that placing a request for absence on the agenda allows it to be excused and not create a vacancy. He said there are also City employees that are required to have excused absences, and they would use the same process. He said it is unlikely for many requests to occur, but there is a legislative purpose for placing the item on the agenda.

6. CITY MANAGER UPOLICE DEPARTMENTATES

City Manager Madrigal asked Public Works Director Baker to comment on the water main break on Goeglein Gulch. She said the break occurred in a 30-inch pipeline. She said that, as a main supply from the river to the water treatment plant, the break has drawn down the reservoir on College Mesa, and stage 2 drought restrictions were enacted (voluntary

reduction in water use). She said staff believes that stage 2 restrictions will be sufficient until the leak can be repaired. She said the line is 10 feet deep and they are currently looking for the leak location, and replacement and repair will proceed as soon as possible. She said more information can be found on the City's website. She said, if due to unforeseen circumstances, the leak cannot be repaired quickly, it could be necessary to go to Stage 3 water restrictions, which must be issued by the City Manager's Office. She commented that it was a situation where a backup pipeline from Lake Nighthorse would be very helpful.

Ms. Baker responded to questions from Council. She said current voluntary restrictions, if the leak is repaired by Monday, would allow the reservoir to refill by approximately Thursday of the next week. She said the pump was running for a significant period before the leak was detected. She said that once the pipe is excavated and leak is identified, the reason for the break can be determined. She said the condition of the water supply lines are critical and City staff has been working on determining their condition, starting with the Florida line, because it is the oldest. She reported that traffic access has been maintained during the repair process.

## **7. PUBLIC COMMENT ON AGENDA ITEMS ONLY (Items 8, 9, 10 and 11)**

Sweetie Marbury, City resident and former Mayor, advocating using Lodger's tax excess to fund the trolley for free through October. She related her personal experience using the trolley in the past when it was less than a dollar or free, and usage by locals, including high school students, was "standing room only." She said when the fee went to \$1, ridership declined. She said free service would be a benefit.

No one spoke virtually.

## **8. CONSENT AGENDA**

### **8.1. Approval of Meeting Minutes**

#### **8.1.1. Approval of Minutes June 6, 2023 City Council Regular Meeting**

#### **8.1.2. Approval of Minutes June 20, 2023 City Council Study Session**

#### **8.1.3. Approval of Minutes June 20, 2023 City Council Regular Meeting**

### **8.2. Final Reading of Ordinances**

#### **8.2.1. Final Reading of Ordinance O 2023 0011 Creating an Open Space Parks Ranger Position and Adding it to the Durango Municipal Code**

City Clerk Harmer read the Consent Agenda. No items were removed.

*Mayor Pro Tem Buell moved to approve the Consent Agenda. Mayor Youssef seconded the motion. A roll call vote was taken, and the motion passed unanimously.*

**Passed: For 5; Against: 0; Abstain: 0; Absent: 0**

## **9. ITEMS PULLED FROM THE CONSENT AGENDA**

No items were removed from the Consent Agenda.

## **10. RESOLUTIONS - CONSIDERATION OF ADOPTION - Action Items with discussion**

### **10.1. Discussion and Possible Action Concerning Possible Approval of a Resolution Allocating the 2022 Lodgers' Tax Overage for Sustainable Tourism Marketing**

City Manager Madrigal opened the discussion.

Counsel Morgan commented on procedure. He said there is no rule in place that, if a motion fails, it cannot be brought back immediately. He said at the previous meeting, there was a tie, due to the absence of a councilor, and a tie vote results in a failed motion. He said that afterwards there was a motion that passed that tabled the discussion to the present meeting.

*Councilor Bosmans moved to approve that part of Resolution R 2023 27 for a budget adjustment to the 2023 appropriations for sustainable tourism marketing going to Visit Durango in the amount of \$128,000.*

There was discussion regarding the intent of the motion.

City Manager Madrigal said the City does not “have” to spend all the funds, and anything not spent would return to the lodgers’ tax fund balance.

*Councilor Bosmans amended and restated his motion: to approve Resolution R 2023 27 for a budget adjustment for the 2023 appropriations for \$128,000 to go to Visit Durango and the remaining amount of \$233,000 to remain in the lodgers’ tax funds for sustainable marketing per the ballot language was voted on.*

There was further discussion.

The motion failed for lack of a second.

*Mayor Youssef moved to approve Resolution R 2023 27 for a budget adjustment to the 2023 appropriations to reflect an additional allocation of \$361,000 of the 2022 Lodgers’ Tax related to sustainable tourism marketing as follows: Sustainability \$133,000; Transportation \$100,000; and Visit Durango \$128,000. Mayor Youssef clarified that she was following up on Ms. Marbury’s suggestion that a portion of the transportation funds go to extending the free trolley through October. Mayor Pro Tem Buell seconded the motion.*

Councilor Woodruff commented that many small businesses that are reliant on Visit Durango to do their marketing for them and on the grant opportunities that Visit Durango provides. He stated his concern that the proposed allocation was not in strictly in accord with what the voters passed and would set a precedent.

Councilor Bosmans agreed there were some purposes that did not fit under the criteria of “sustainable marketing” and more applicable to transportation, transit, and equipment, and the resolution veered away from the ballot language. He said he supports most of Visit Durango’s requests even though he thought the uses should be specified for sustainability-related uses. He said the City should honor the vote. He added that he wanted to spend the money wisely and directly for the tourism industry, either now or in the future. He said he supports EV chargers but would not support the motion.

Councilor Buell stated, that in terms of the ballot language, it says that 55% goes to sustainability tourism, not to Visit Durango. She said she appreciates what Visit Durango does, and the City has a contract with them. She said that any action taken does not bind future Councils. She agreed that having the free trolley made it easier for people to use the trolley. She said the EV chargers do draw tourists.

Mayor Youssef agreed with the Mayor Pro Tem regarding the ballot language and noted that the present and former City attorneys had opined that the allocations could be used for tourism-related issues. She said would be disappointed if the City does not fund the EV stations and take advantage of the grant, which would show the City’s commitment to sustainability and environmental stewardship. She noted EV vehicles are becoming more popular and more travelers will use them and look for a destination that provides charging infrastructure. She said transportation is important, and tourists use the transportation, as well as the community.

Councilor Yazzie said that after the last meeting, she researched EV options available in Durango and nearby communities, and she found that there were several more than just the two at the Transit Station. She said she agreed with Councilor Woodruff about being overly zealous in allocating the funds and she did not support funding EV chargers with the funds.

At Councilor Woodruff’s request, Sustainability Manager Marty Pool commented that there were two open grant opportunities and commented on each of them. He said the EV charging grant program would continue, but the amount of the grants could be less and there could be a change in the matching fund requirements. He said the Department of Tourism is a partner in one of grants with the goal of bringing electric charging stations to the state’s scenic byways, and Durango has asked to be an identified location. He said the grant applications are submitted and the application period is closed. He said the first grant would be awarded in August or September and the other would be a longer period because the Federal Government is a partner in the grant program, and he anticipated the award later in the year or early in 2024.

Mr. Bosmans said the money for the matching grants did not need to be allocated in 2024 in his opinion.

The Mayor said she was “leaning on” the opinions of the two City attorneys. She commented that tourism-related issues are multifaceted.

City Clerk Harmer clarified that the motion on the floor was the recommended motion presented by staff (*an additional allocation of \$361,000 of the 2022 Lodgers’ Tax related to sustainable tourism marketing as follows: Sustainability \$133,000; Transportation \$100,000; and Visit Durango \$128,000. with a portion of the transportation funds go to extending the free trolley through October*).

*Councilor Buell made a substitute motion to award Visit Durango \$245,500, with the remaining amount to go to transportation to extend free transit. Councilor Yazzie seconded the motion.*

Discussion continued.

Councilor Bosmans saw no need to spend the money now and was opposed.

Councilor Yazzie said that the free trolley is good for the environment because people ride it to and from downtown. She also saw signage as important for tourists. She said Visit Durango does good work. Councilor Woodruff asked if Visit Durango could include signage for city signage. Ms. Brown said it is possible they would consider signage or EV chargers.

*Councilor Woodruff made a motion to amend the substitute motion as follows: he moved to award Visit Durango \$245,500 as originally requested with the remaining amount (\$155,500) going toward Sustainability for a portion of the matching funds for the EV grant. Mayor Youssef seconded the motion.*

There was discussion on Councilor Woodruff's substitute motion.

Councilor Bosmans and Councilor Yazzie spoke against the motion. Councilor Bosmans wanted to hold off on spending the funds until there was a better plan and sense of cost. Councilor Yazzie did not think EV charging stations met the intent of the ballot language and commented EVs still create pollution. She said she supported the Mayor Pro Tem's motion without the amendment, and she was comfortable that Visit Durango would spend the money wisely.

Councilor Bosmans suggested amending the motion again, to remove the funding for EV charging stations.

Mayor Youssef said she appreciated Councilor Woodruff's amended motion and ensuring that funds are set aside for the matching grant and to meet Visit Durango's request. She said it was a motion that would work, although she would still like to see Transportation added, noting it's always the first thing to get cut.

Counsel Morgan stated that another substitute motion could be made, but it would require a second motion before discussion. He said, if it failed, the previous motion would return to the floor.

*Councilor Bosmans made a substitute motion to appropriate the funds for Visit Durango, with the remaining funds remaining in the fund balance of the Lodgers' Tax allocation. Councilor Yazzie seconded the motion. The motion failed with Councilors Buell, Woodruff and Youssef voting in opposition.*

**Motion Failed; For 2; Against: 3; Abstain: 0; Absent: 0**

Counsel Morgan clarified the motion on the floor as follows: to award Visit Durango \$245,500 and the \$155,500 balance to the Sustainability Department to fund the EV chargers.

Councilor Woodruff thought the motion was the best compromise.

*A roll vote on Councilor Woodruff's substitute motion (Councilor Woodruff made a motion to amend the substitute motion as follows: he moved to award Visit Durango \$245,500 as originally requested with the remaining amount (\$155,500) going toward Sustainability for a portion of the matching funds for the EV grant. Mayor Youssef seconded the motion.) was taken, and the motion passed with Councilor Bosmans and Councilor Yazzie voting against the motion.*

**Passed: For 3; Against: 2; Abstain: 0; Absent: 0**

## **11. ORDINANCES - CONSIDERATION OF ADOPTION**

No items.

## **12. COMMITTEE, BOARD AND LIAISON REPORTS**

Councilor Woodruff reported on his attendance at Creative Economy Commission meeting, where topics review and approval of grant applications for the second round of Lodgers' Tax funding and community collaboration.

Councilor Yazzie commented on her attendance at a Colorado Municipal League (CML) conference. She said it was informative, noting many communities have needs and problems similar to Durango's. She noted that she attended workshops on housing the homeless and on attainable/affordable housing.

Mayor Tem Buell also attended the CML meeting, noting that Assistant City Manager Erin Hyder was one of the speakers. She agreed there were many valuable sessions offered on a variety of topics.

### **13. INTRODUCTION OF ORDINANCES**

#### **13.1. Introduction of an Ordinance Amending, In Pertinent Part, the Durango Code of Ordinances Chapter 2-Administration-Article VII-Code of Conduct and Code of Ethics-Section 2-201-Definitions Submitted by City Attorney Mark Morgan**

Counsel Morgan introduction the proposed ordinance, which he noted was generated by the City Attorney's Office. He said the spirit of the ordinance was to create more public acceptance and confidence in the Ethics Board and the ethics procedures that the City has in place. He said discussion of the proposed ordinance would occur at a later meeting.

Clerk Harmer said the number of the proposed ordinance would be O 2023 12.

Counsel Morgan said the motion would allow the ordinance to move forward to consideration for adoption.

*Mayor Pro Tem Buell moved to take O 2023 12 into consideration by Council. Mayor Youssef seconded the motion. A roll call vote was taken, and the motion passed unanimously.*

**Passed: For 5; Against: 0; Abstain: 0; Absent: 0**

### **14. OTHER NEW BUSINESS - Non Dispositive with limited discussion**

#### **14.1. A Request for a Public Hearing to Consider an Ordinance Authorizing a Contract to Exchange Real Estate of 1235 Camino Del Rio and 201 East 12th Street Between the Durango Fire Protection District and the City of Durango (July 18, 2023)**

*Mayor Youssef moved to set a public hearing at the July 18, 2023, Council meeting to consider an ordinance authorizing a contract to exchange real estate of 1235 Camino Del Rio and 201 East 12th Street between the Durango Fire Protection District and the City of Durango. Mayor Pro Tem Buell seconded the motion.*

Counsel Morgan noted the importance of the ordinance and its effect on the community and there would be multiple opportunities for the public to comment prior to a vote.

The City Manager clarified the vote was only for the exchange of real estate.

Counsel Morgan said that discussion would occur at the public hearing and encouraged Council to hold any comment until that time so the public can be fully noticed.

Councilor Bosmans expressed his frustration at not being allowed to comment.

Counsel Morgan responded that the only thing Council was voting on was whether or not to hold a public hearing.

*A roll call vote was taken, and the motion passed unanimously.*

**Passed: For 5; Against: 0; Abstain: 0; Absent: 0**

#### **14.2. Discussion and Possible Action to Appoint Two Candidates to the Board of Ethics and Two Candidates to the Design Review Board**

*Mayor Pro Tem Buell moved to appoint the two applicants who applied to the Board of Ethics. Councilor Bosmans seconded the motion.*

Councilor Bosmans stated his support for the motion.

*A roll call vote was taken, and the motion passed unanimously.*

**Passed: For 5; Against: 0; Abstain: 0; Absent: 0**

*Councilor Yazzie moved to appoint Carolyn Hunter and Connie Gordon to the Design Review Board. Councilor Bosmans seconded the motion.*

Councilor Bosmans said he would support the motion.

*A roll call vote was taken, and the motion passed unanimously.*

**Passed: For 5; Against: 0; Abstain: 0; Absent: 0**

## 15. OTHER MATTERS

There was brief discussion on the status of the sculpture project.

Mayor Youssef reminded the public that the City would be sending out a community survey to 3,000 randomly selected candidates requesting input on the livability, City services, and quality of life in Durango.

## 16. PUBLIC COMMENT ON NON-AGENDA ITEMS (Taken out of order by motion)

Karen Anesi, City resident, speaking on behalf of the Boulevard Neighborhood Association, expressed support for a citizen work/study group to address the ramifications of the proposed roundabout configuration at Florida and East Third Avenue, which fails to address many of the objections that were made at the public meeting in May at the Library. She said her association performed a site walk with the engineers and presented alternate engineering options. She said her association has asked why the City wasn't planning to use land it already owns to the northwest of the intersection and has received no response from staff. She asked Council to please get involved in the process and not discount the public's valuable knowledge, even if they are not engineers.

Sweetie Marbury, City resident, spoke on the "Next Step" plan. She proposed creating a working group or a town hall consisting of businesses in the Central Business District and citizens because the "Next Step" impacts everyone in the Central Business District. She said her family owns a main street restaurant and are very concerned about tearing up Main. She said it appeared that Council was moving forward despite the opposition of 75 small business on Main Street. She said small businesses are the backbone of Durango and their voices should be heard. She also asked Council to eliminate lot size requirements in EN1, EN2, and EN3 to accommodate accessory dwelling units as a matter of equality and fairness to all City residents. She spoke against raising the parking meter rates, commenting it would be hard on locals and push more parking out into the neighborhoods. She noted there is no trolley at night and people park where they feel safe. She concluded by voicing opposition to the "Malfunction Junction" and said most attendees at the open house were also against it and felt staff did not listen to their concerns. She asked Council to create a working group for the Florida/Third Avenue intersection, adding she shouldn't have to be an engineer to participate in a working group.

Nick Anesi, City resident, spoke on behalf of the Boulevard Neighborhood Association property owners that live adjacent to the East Third/Florida intersection. He noted his many communications with City staff regarding the neighbors' concerns and said those concerns have not been acknowledged and he hoped that would change. He said that he, historically, has sent his communications to a staff member and the City Attorney and those communications were articulated to Council. He invited further instruction as to how to have his communications distributed and acknowledged. He requested his statements be made a part of the record.

The City Attorney responded that Mr. Anesi's communications and the plan that he proposed were received and communicated to staff at a previous study session and were included in the record.

There was no virtual public participation.

## 17. EXECUTIVE SESSION 6:45 PM

### 17.1. Discussion and Possible Action to Convene in Executive Session to Receive Legal Advice on Specific Legal Questions Pursuant to C.R.S. 24-6-402(4)(b) Concerning Litigation Filed by Matt Roane, Specifically Roane v. City of Durango, 2023CV30039, filed in La Plata County District Court

*Councilor Yazzie moved to convene into Executive Session to receive legal advice on specific legal questions pursuant to C.R.S. 24-6-402(4)(b) concerning litigation filed by Matt Roane, specifically Roane v. City of Durango, 2023CV30039, filed in La Plata County District Court. Mayor Pro Tem Buell seconded the motion. A roll call vote was taken, and the motion passed unanimously.*

**Passed: For 5; Against: 0; Abstain: 0; Absent: 0**

### 17.2. Consideration and Possible Action on Mr. Roane's Offer to Settle Roane v. City of Durango, 2023CV30039, filed in La Plata County District Court

*Mayor Pro Tem Buell moved to convene into Executive Session for Consideration and Possible Action on Mr. Roane's Offer to Settle Roane v. City of Durango, 2023CV30039, filed in La Plata County District Court. Councilor Yazzie seconded the motion. A roll call vote was taken, and the motion passed unanimously.*

**Passed: For 5; Against: 0; Abstain: 0; Absent: 0**

**17.3. Discussion and Possible Action to Convene in Executive Session to Receive Legal Advice on Specific Legal Questions Pursuant to CRS 24-6-402(4)(b) Concerning Litigation Involving Matt Roane Specifically Roane v City of Durango et al v Matt Roane 2023CV30034, filed in La Plata County District Court**

*Mayor Pro Tem Buell moved to convene into Executive Session to receive legal advice on specific legal questions pursuant to CRS 24-6-402(4)(b) concerning litigation involving Matt Roane specifically Roane v City of Durango et al v Matt Roane 2023CV30034, filed in La Plata County District Court. Councilor Woodruff seconded the motion. A roll call vote was taken, and the motion passed unanimously.*

**Passed: For 5; Against: 0; Abstain: 0; Absent: 0**

**17.4. Consideration and Possible Action on Mr. Roane's Offer to Settle City of Durango, et al. v. Matt Roane, 2023CV30034, filed in La Plata County District Court**

*Mayor Pro Tem Buell moved to convene into Executive Session for consideration and possible action on Mr. Roane's Offer to Settle City of Durango, et al. v. Matt Roane, 2023CV30034, filed in La Plata County District Court. Mayor Youssef seconded the motion. A roll call vote was taken, and the motion passed unanimously.*

**Passed: For 5; Against: 0; Abstain: 0; Absent: 0**

*Executive Session convened at 7:18 p.m.*

*Council reconvened at 8:17 p.m.*

Mayor Youssef stated for the record that those present at the Executive Session were Olivier Bosmans, Dave Woodruff, Jessika Buell, Gilda Yazzie, Melissa Youssef, Nick Poppe, Mark Morgan, Erin Hyder, and José Madrigal.

For the record, Mayor Youssef stated that Council met in executive session for discussion and possible action to convene in Executive Session to receive legal advice on specific legal questions pursuant to C.R.S. 24-6-402(4)(b) concerning litigation filed by Matt Roane, specifically Roane v. City of Durango, 2023CV30039, filed in La Plata County District Court; for consideration and possible action on Mr. Roane's Offer to Settle Roane v. City of Durango, 2023CV30039, filed in La Plata County District Court; to receive legal advice on specific legal questions pursuant to CRS 24-6-402(4)(b) concerning litigation involving Matt Roane specifically Roane v City of Durango et al v Matt Roane 2023CV30034, filed in La Plata County District Court, and consideration and possible action on Mr. Roane's Offer to Settle City of Durango, et al. v. Matt Roane, 2023CV30034, filed in La Plata County District Court.

For the record, Mayor Youssef stated that Councilor Olivier Bosmans recused himself part way through the Executive Session.

*Mayor Pro Tem Jessika Buell moved to direct Special Nick Poppe to negotiate the settlement of Roane v. City of Durango, 2023CV30039 under the terms and amounts discussed not to exceed \$3,250, reflecting the Council's desire to restore transparency and confidence in the Ethics process. Mayor Pro Tem seconded the motion.*

There was no discussion.

*A roll call vote was taken, and the motion passed four to zero, with Councilor Bosmans recused.*

**Passed: For 4; Against: 0; Abstain: 0; Absent: 0; Recused: 1**

*Mayor Pro Tem Jessika Buell moved to direct Special Nick Poppe to negotiate the settlement of City of Durango, et al. v. Matt Roane, 2023CV30034, under the terms and amounts discussed not to exceed \$5,000, reflecting the Council's desire to restore transparency and confidence in the Ethics process. Mayor Pro Tem seconded the motion.*

There was no discussion.

*A roll call vote was taken, and the motion passed four to zero, with Councilor Bosmans recused.*

Passed: For 4; Against: 0; Abstain: 0; Absent: 0; Recused: 1

18. ADJOURNMENT

Mayor Pro Tem Buell moved the adjourn the meeting. Councilor Woodruff seconded. The motion passed unanimously.

Mayor Youssef adjourned the meeting at 8:20 p.m.

APPROVED:

ATTESTED:

\_\_\_\_\_

\_\_\_\_\_

Melissa Youssef, Mayor

Faye Harmer, City Clerk

DRAFT

**DURANGO CITY COUNCIL  
CITY COUNCIL REGULAR MEETING  
VIRTUAL/IN PERSON MEETING  
TUESDAY JULY 18, 2023  
5:30 PM**

**CALL TO ORDER AND ROLL CALL**

Present at the Council meeting was Mayor Youssef, Mayor Pro Tem Buell and Councilors Bosmans, Woodruff and Yazzie. Also present were City Manager, José Madrigal, Chief Deputy Clerk Ben Florine and City Attorney Mark Morgan. Councilor Woodruff came in three minutes past 5:30.

**INTRODUCTION OF TRANSLATOR**

Diego Pons of CLC provided interpretation of the meeting in Spanish.

**OPENING REMARKS BY MAYOR AND COUNCIL**

Mayor Youssef indicated that a resolution was not included on the 8.3.1 item and made a motion to move this item to the August 1<sup>st</sup> meeting.

*Mayor Youssef made a motion to move this item to the August 1<sup>st</sup> meeting. The motion was seconded by Councilor Buell. A roll call vote was taken, and the motion passed unanimously.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

Mayor Youssef announced that adjustments would continue to be made to the new agenda format. The Mayor also announced that Durango produces excellent mountain cyclists. In the last 60 days three national biking championships were held and Durango riders placed well. She said Durango will have the most riders representing Team USA at the upcoming world championships in August in Scotland. Local BMX riders have also been chosen for national competitions. Many of the local riders joined Council near the dais for photos.

**CITY MANAGER UPDATES**

Mr. Madrigal introduced Klancy Nixon, the City’s new Community Engagement Specialist.

**2022 Annual Comprehensive Financial Report Auditors Report**

The Mayor announced that the presentation is for educational purposes only and is not a discussion on the budget itself.

*Mayor Youssef made a motion to limit questions and comments to 25 minutes total, or 5 minutes per councilor. The motion was seconded by Councilor Buell. A roll call vote was taken, and the motion passed with Councilor Bosmans voting in opposition.*

**The motion passed: 4 in favor; 1 opposed; Abstain 0; Absent 0**

Devon Schmidt, Assistant Chief Financial Officer introduced the members of Eide Bailly, the firm who conducted the external financial audit for the city. Ms. Schmidt provided a short history of the continuous improvement of the financial department regarding the audit procedures.

Paul Kane with Eide Bailly gave an overview of the audit process and the results. Mr. Kane reviewed the financial statement audit and indicated the auditor’s report gave a clean, unmodified opinion, the best that can be received. The financial statements now also include leases, which is a massive list. The audit does not test controls. The high-level financial position of the city included assets and deferred outflows of resources exceeded liabilities; full accrual net position is up, and fund balances increased. Total liabilities are down meaning the net position is up from 2021. Mr. Kane indicated that the footnotes in the report are important to read.

Mr. Kane also reviewed the single audit which contained one material weakness that resulted in a material audit adjustment. The airport was also audited, which resulted in no adjustments being required. Mr. Kane concluded with the required communications with governance.

Council thanked Devon Schmidt and her staff for their work. Councilor Bosmans commented on the increased revenues and the positive financial position of the city. He also commented on the recent Energy Performance Contract loan and would like to ensure that infrastructure is solidly supported. He posed several questions and will email questions to Ms. Schmidt to follow up. Council again thanked the auditors and Ms. Schmidt and her staff for their excellent work.

*Councilor Bosmans made a motion to extend discussion by 3 minutes. The motion was seconded by Councilor Woodruff. The motion passed unanimously.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

Councilor Bosmans posed several more questions regarding lodgers' tax transfers and lease assets. Mr. Kane offered to follow up by email. Mr. Madrigal thanked the entire finance team for their work and provided a short explanation of the increased costs for the city manager's office resulting from reassignment and reorganization of staff between departments.

### **PUBLIC COMMENT ON AGENDA ITEMS ONLY (Items 8, 9, 10 and 11)**

Tim Walsworth, Executive Director of the Business Improvement District, provided positive input on the land swap item listed later in the agenda and asked for a public statement for the Camino underpass.

Bill Carver, city resident, spoke with concerns about access to the Powerhouse Science Center with the land swap being considered below.

Dean Brooke, former Mayor and city resident, spoke in favor of the land swap being considered below and in support of access for the Powerhouse.

Sweetie Marbury, former Mayor and city resident, spoke in favor of the land swap.

John Simpson, city resident, spoke regarding the change in the Code of Ethics and would support eliminating the Board of Ethics.

### **CONSENT AGENDA**

#### **Approval of Meeting Minutes**

**Approval of Minutes City Council Study Session July 5, 2023**

#### **Adoption of Resolution(s) by Consent**

**Discussion and Possible Action Concerning a Resolution Authorizing an Additional**

**Appropriation to the Airport Fund for the Replace ARFF Vehicle and Acquire Tools Project - EIN**

*Mayor Pro Tem Buell made a motion to approve the consent agenda as read by Chief Deputy Clerk Ben Florine. The motion was seconded by Councilor Woodruff. The motion passed unanimously.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

### **ORDINANCES - CONSIDERATION OF ADOPTION**

**Consideration and First Reading of Ordinance O-2023-0012 Amending, In Pertinent Part, the Durango Code of Ordinances Chapter 2-Administration-Article VII-Code of Conduct and Code of Ethics-Section 2-201-Definitions Submitted by City Attorney Mark Morgan**

*Mayor Pro Tem Buell made a motion to approve the first reading of O 2023 0012. The motion was seconded by Councilor Woodruff. The motion passed unanimously.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

**Consideration and First Reading of Ordinance O-2023-0013 Authorizing a Contract to Exchange Real Estate of 1235 Camino Del Rio and 201 E. 12th Street, Including 215 E. 12th Street, Between the Durango Fire Protection District and the City of Durango**

*Mayor Pro Tem Buell made a motion to approve the first reading of O 2023 0013. The motion was seconded by Councilor Woodruff.*

Mayor Pro Tem Buell confirmed that the site plan includes access to the Powerhouse Science Center and presentations would be made to both the Business Improvement District and the Powerhouse board.

Mr. Madrigal provided a presentation with the timeline for the project so far, and the basic outline of the proposed agreement. The recommendation is to pay the \$3.5 million dollar exchange amount out of the opportunity fund.

Councilor Yazzie asked about a commitment for the underpass; Mr. Madrigal said there is a commitment, but it is not outlined in the agreement. Randy Black of the Durango Fire Protection District confirmed their commitment for access to the Powerhouse site. Mayor Pro Tem Buell spoke in support of the swap. Councilor Bosmans said there was not enough public input and not enough other properties were considered for a fire station. He suggested that Council consider more options for a long-term vision of the city.

Councilor Woodruff spoke in support of the land swap and said he felt public input has been considered and that future input will be welcomed. Mayor Youssef said property discussions have been ongoing since 2015 or 2016, and it is time for a decision to be made.

Councilor Bosmans spoke in opposition to using the 9R building for a city service building without further exploration of options. He said the sale of the River City Hall building should be disconnected from the purchase of a new city complex site.

*The motion passed with Councilor Bosmans voting in opposition.*

**The motion passed: 4 in favor; 1 opposed; Abstain 0; Absent 0**

**COMMITTEE, BOARD AND LIAISON REPORTS**

Councilor Woodruff provided an update on the Chamber of Commerce and the Wildfire and Watershed Protection board meetings he attended.

Mayor Pro Tem Buell gave an update on her Councilor Office hours and the Housing Alliance meetings.

Councilor Yazzie will have office hours tomorrow and recently attended an Affordable Housing Conference. She also discussed attending the joint meeting with the Southern Ute Tribe regarding Lake Nighthorse.

**INTRODUCTION OF ORDINANCES**

**Proposed Ordinance Banning the Sale of Kittens and Puppies at Pet Stores  
Submitted by Councilor Bosmans**

*Councilor Bosmans made a motion to consider this ordinance at the next meeting and invite public comment. The motion was seconded by Councilor Woodruff. The motion passed with Councilor Yazzie voting in opposition.*

**The motion passed: 4 in favor; 1 opposed; Abstain 0; Absent 0**

**Proposed Ordinance Repealing Chapter 5, Article VIII, Durango Local Licensing Authority and Amending Chapter 13, Licenses and Business Regulations, of the Code of Ordinances of the City of Durango for the Purposes of Enacting the City Clerk's Office as the Local Licensing Authority and Declaring an Effective Date - FE&HPG**

*Councilor Bosmans made a motion to consider this ordinance at the next meeting and invite public comment. The motion was seconded by Mayor Youssef. The motion passed unanimously.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

## **PUBLIC COMMENT ON NON-AGENDA ITEMS**

Sweetie Marbury, city resident and former Mayor, spoke in favor of a working group for the Durango Next Steps program.

John Simpson, city resident spoke saying Council should be concerned with the cash position of the city and not paying attention to awards.

## **EXECUTIVE SESSION**

**Discussion and Possible Action to Convene in Executive Session For the Purpose of Discussing a Personnel Matter, Specifically to Conduct the Annual Evaluation of the Municipal Judge**

**As Permitted in CRS 24-6-402(F)(II)**

*Mayor Pro Tem Buell made a motion to convene in executive session as listed above. The motion was seconded by Councilor Bosmans. The motion passed unanimously.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

The meeting was reconvened at 8:31 p.m.

## **ADJOURNMENT**

Mayor Youssef adjourned the meeting at 8:32 p.m.

**APPROVED:**

**ATTESTED:**

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**Melissa Youssef, Mayor**

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**Ben Florine, Chief Deputy Clerk**

DRAFT

**CITY COUNCIL JOINT STUDY SESSION  
DURANGO CITY COUNCIL AND SOUTHERN UTE INDIAN TRIBE  
DURANGO CITY LIBRARY  
JULY 26, 2023  
10:15 AM**

**Welcoming Remarks & Proclamation of Appreciation**

Mayor Youssef opened the meeting and welcomed everyone to this new quarterly meeting. Each attendee identified their name and job title.

**Proclamation of Appreciation and Partnership**

The Mayor read a proclamation stating the City Council’s appreciation for and commitment to working with the Southern Ute Indian Tribe.

**On-going relations and communication**

Melvin Baker, Chairman of the Tribal Council spoke regarding the importance of on-going open communications between the two entities and welcomed the new councilors to the board. Marvin Pinnecoose, Tribal Council Treasurer spoke regarding the importance of transparency and communication regarding the shared properties in the Three Springs area.

**Status Updates on Current Projects of Mutual Interest**

Discussion ensued regarding communications and reports on the possible Lake Nighthorse pipeline and water capacity concerns. Justin Elkins, Utility Manager for the City of Durango outlined the staff members involved in the communications and the types of documents that will be transmitted and discussed and the schedule for escalation to decision makers. Discussion ensued regarding access to water in the pipeline. Mr. Elkins said an operating agreement would be created outlining parameters for each user of the water. Mr. Elkins said the City is paying for the design costs of the project and that the project does not have a future without the input from the Tribe.

Scott Shine, Community Development Director said the timeline for this project is dependent on the annexation and aligning the benefit of the tribe, landowners as well as the city. Discussion ensued regarding water access on La Posta Road. Water, water treatment options, water quality, air quality, road improvements, multimodal and parks improvements are all being considered and looked at. All discussions carefully consider reservation boundaries. Concerns were expressed regarding cultural impacts of development of this area. The Tribe considers water a sacred and would like to ensure that it is treated as such. In addition, the Tribe would like to be sure that any donation of land is memorialized and recognized in the future with memorials or plaques etc. Suggestions for a land acknowledgement were discussed.

Mr. Shine said La Posta Road is a longer-term project which would require input and agreements to be in place and the City is looking into grant programs which would help get the area “shovel ready”.

Mr. Shine said infrastructure is in place and ready for development and the City is committed to making sure the Growth Fund is the driving force behind any planned development.

Mr. Elkins outlined the need for additional water information from the Tribe and outlined the staff communication that has transpired within the past several months.

Mr. Shine gave an update on Three Springs projects and said the Community Development team is committed to helping everyone build the community. He also discussed the possibility of an extension of Wilson Gulch Drive. Possibilities for a park, a school and a grocery store in the area are being discussed.

**Conclusion**

The Tribe, Council and staff all agreed that these meetings are valuable and have not been held in the past.

Mayor Youssef adjourned the meeting at 11:30 a.m.

**APPROVED:**

**ATTESTED:**

\_\_\_\_\_  
**Melissa Youssef, Mayor**

\_\_\_\_\_  
**Faye Harmer, City Clerk**

DRAFT

CITY OF DURANGO  
CITY COUNCIL REGULAR MEETING  
DURANGO CITY HALL, SMITH CHAMBERS  
08/01/2023  
5:30 PM

**CALL TO ORDER AND ROLL CALL**

The meeting was called to order at 5:30 p.m. Present were Mayor Youssef, Mayor Pro Tem Buell and Councilors Bosmans, Woodruff, and Yazzie. Also present were City Manager José Madrigal, City Attorney Mark Morgan, City Clerk Faye Harmer, and Chief Deputy Clerk Ben Florine.

**INTRODUCTION OF TRANSLATOR**

Diego Pons of Community Language Cooperative provided translation in Spanish.

**OPENING REMARKS BY MAYOR AND COUNCIL - Information Only**

Mayor Youssef introduced several members of the Southwest Conservation Corps and thanked them for their recent climbing/erosion control work noting the extremely high temperatures lately. She asked the members to stand in front of the dais for a photo with City Council.

**PRESENTATIONS/PROCLAMATIONS**

**City Clerk Presentation**

Amy Phillips, prior City Clerk made a presentation of a Master Municipal Clerk (MMC) certificate to Clerk Harmer. Phillips noted that only 10% of Municipal clerks in Colorado have this certification and only 14% nationally. In addition, Harmer is the first sitting Durango City clerk to ever hold an MMC certification. Harmer thanked Ms. Phillips and thanked the City for the opportunity to earn this prestigious certificate.

After the presentation Chief Deputy clerk Ben Florine administered the remainder of the meeting.

**CITY MANAGER UPDATES**

**Community Engagement July Update**

Mr. Madrigal introduced Klancy Nixon, Community Engagement Specialist, to provide this new monthly report to Council. She reported that she is part of the community engagement cross functional team, and the group is working on defining and creating focus groups for various topics the city is considering. The first group will be an e-bike group looking at Horse Gulch. Other engagement projects include a land acknowledgment, the Connect and Engage website which includes a “Keep me Informed” sign up for various projects, and surveys being conducted by various departments throughout the city. Councilors thanked Ms. Nixon for jumping right in during her first two weeks on the job.

**Southwest Conservation Corps Climbing Stewardship Project Update**

Amy Schwarzbach of the Parks and Recreation Department and Jacob Mandel of the Southwest Conservation Corps (SCC) provided an update on the Climbing Stewardship project. Work was done at Dalla Mountain Park, which has the highest concentration of climbing opportunities in any park in any city in the State of Colorado. Dalla Mountain park area has ownership from the city, the county as well as the Bureau of Land Management. Grants were also assisted by the local climbing coalition. The SCC youth program employed 60 local youth and served 25 middle school students. Total work hours on the site were 1460.

**COMMITTEE, BOARD AND LIAISON REPORTS**

The Mayor provided information on the Airport Commission meeting. Councilor Bosmans reported on the Region 9 meeting. Councilor Yazzie reported on the Regional Housing Authority meeting, the Durango Fire Station building reveal and the Women’s Aid event. Mayor Pro Tem Buell noted her office hours tomorrow. Mayor Youssef said she has been appointed to the Colorado River Drought Task force by the president of the Senate.

**PUBLIC COMMENT ON AGENDA ITEMS ONLY**

No public comment was offered.

## CONSENT AGENDA

Chief Deputy Clerk Florine read the consent agenda.

*Councilor Woodruff moved to table approval of the 7/5/23 meeting minutes to the next meeting on August 15<sup>th</sup> to allow the clerk's office to review their notes and make any changes regarding the motion on the lodgers' tax. The motion was seconded by Mayor Pro Tem Buell and the motion passed unanimously.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

Councilor Woodruff removed the minutes of the July 5, 2023 Meeting; Councilor Bosmans removed the final reading of O 2023 0013.

*Councilor Woodruff moved to approve the consent agenda minus these two items. The motion was seconded by Mayor Pro Tem Buell and the motion passed unanimously.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

### Approval of Meeting Minutes

Approval of Minutes City Council Regular Meeting July 5, 2023

Approval of Minutes City Council Special Meeting July 18, 2023

### Final Reading of Ordinances

Final Reading of Ordinance O-2023-0012 Amending, In Pertinent Part, the Durango Code of Ordinances Chapter 2-Administration-Article VII-Code of Conduct and Code of Ethics-Section 2-201-Definitions Submitted by City Attorney Mark Morgan

Final Reading of Ordinance O-2023-0013 Authorizing a Contract to Exchange Real Estate of 1235 Camino Del Rio and 201 E. 12th Street, Including 215 E. 12th Street, Between the Durango Fire Protection District and the City of Durango

### Adoption of Resolution(s) by Consent

Discussion and Possible Action Concerning Possible Approval of a Resolution to Amend the 2023 Budget for the Purpose of Allocating the Lodgers' Tax: Arts and Culture Revenue Overage - AEO, ELSP, DEI

Discussion and Possible Action Concerning an Approval of a Resolution Authorizing Support for the Department of Local Affairs (DOLA) HB22-1304 Strong Communities Grant Program - AEO

Discussion & Possible Action to Approve a Resolution Authorizing the City Manager to Enter Into a Right of Entry Agreement for the Big Picture High School 215 E. 12th Street Durango Colorado  
Discussion and Possible Action Concerning a Resolution Accepting the Durango Mesa Addition Annexation Petitions and Setting a Public Hearing for the Annexation and Initial Zoning (September 5, 2023) - ELSP, AEO

### ITEMS PULLED FROM THE CONSENT AGENDA

Councilor Woodruff pulled the minutes from the July 5, 2023 meeting and asked for the clerk to review their notes and revise the minutes as necessary.

*Upon the advice of Mr. Morgan, Councilor Woodruff made a motion to table the approval of the 7/5/23 minutes to the August 15<sup>th</sup> meeting. The Motion was seconded by Councilor Yazzie.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

Councilor Bosmans said he does not support O 2023 0013. City Manager Madrigal asked for a recess.

The meeting recessed at 6:19 p.m. and restarted at 6:22 p.m. The meeting was called to order at 5:30 p.m. Present were Mayor Youssef, Mayor Pro Tem Buell and Councilors Bosmans, Woodruff, and Yazzie.

*Mayor Pro Tem Buell made a motion to approve and authorize a contract to exchange real estate between the City of Durango and the Durango Fire District. The Motion was seconded by Councilor Woodruff.*

Councilor Bosmans outlined his comments in opposition to the Fire Station being built on the current River City Hall site. Councilor Buell noted that 26 sites were considered including the train station parking lot and a great deal of public input was involved. Councilor Yazzie and Mayor Youssef spoke in favor of the land exchange. Councilor Bosmans voted in opposition.

**The motion passed: 4 in favor; 1 opposed; Abstain 0; Absent 0**

#### **FIRST READING OF ORDINANCES - CONSIDERATION OF ADOPTION AND PUBLIC HEARING**

##### **Proposed Ordinance Amending in Pertinent Part, the Durango Code of Ordinances Chapter 4 - Animas - Article I - In General - By Adding Section 4-15 - Sale of Cats and Dogs; Prohibited Submitted by Councilor Bosmans**

Mr. Morgan gave a short history of the evolution of the ordinance.

*Councilor Bosmans made a motion to approve the first reading of an ordinance prohibiting the sale of cats and dogs. The Motion died for lack of a second.*

##### **Proposed Ordinance Repealing Chapter 5, Article VIII, Durango Local Licensing Authority and Amending Chapter 13, Licenses and Business Regulations, of the Code of Ordinances of the City of Durango for the Purposes of Enacting the City Clerk's Office as the Local Licensing Authority and Declaring an Effective Date - FE&HPG Submitted by Chief Deputy Clerk Ben Florine**

Mr. Florine gave a short presentation on the reason for this proposed ordinance and how it would shorten the time frames for licensing local businesses.

*Mayor Pro Tem Buell made a motion to approve the ordinance and open the item for public comment. The Motion was seconded by Mayor Youssef. No public comment was offered.*

Councilor Woodruff inquired about the number of licenses issued in 2022; Mr. Florine said around 9. Mr. Florine clarified that the state would still do its own enforcement, as would the city.

*The motion passed unanimously.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

#### **PUBLIC COMMENT ON NON-AGENDA ITEMS**

Rick Cobb, of Three Springs spoke in favor of the smart 160 trail in that area and asked about the status of the sales tax renewal for these types of projects.

Joyce Cohen, county resident, spoke in favor of a pet store ordinance and asked the Council to reconsider.

Alyssa Miller-Hurley, representing the pet advocacy network. She said the group is pleased that the pet store ordinance did not pass as written and support bad breeder legislation rather than extreme bans.

#### **INTRODUCTION OF ORDINANCES AND REQUEST FOR PUBLIC HEARING**

##### **An Ordinance Approving the Annexation and Initial Zoning for the Durango Mesa Addition to the City of Durango and Declaring an Effective Date**

*Mayor Pro Tem Buell made a motion to move this ordinance to the 9/5/23 meeting and offer a public hearing on that date. The Motion was seconded by Councilor Yazzie.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

#### **OTHER NEW BUSINESS**

*Councilor Bosmans made a motion to reconsider the location of pickleball courts due to the higher construction costs than anticipated. No second was made and the motion died for lack of a second.*

**OTHER MATTERS**

**Requests for Excused Absences**

The Mayor asked to be excused from the August 15, 2023 meeting.  
*Mayor Pro Tem Buell made a motion to excuse the Mayor’s absence. The Motion was seconded by Councilor Yazzie.*

**The motion passed: 5 in favor; 0 opposed; Abstain 0; Absent 0**

**ADJOURNMENT**

The Mayor adjourned the meeting at 6:55 p.m.

**APPROVED:**

**ATTESTED:**

\_\_\_\_\_  
Melissa Youssef, Mayor

\_\_\_\_\_  
City Clerk

DRAFT

**ORDINANCE NO. O-2023- 0014**

**AN ORDINANCE REPEALING CHAPTER 5, ARTICLE VIII, DURANGO LOCAL LICENSING AUTHORITY AND AMENDING CHAPTER 13, LICENSES AND BUSINESS REGULATIONS, OF THE CODE OF ORDINANCES OF THE CITY OF DURANGO FOR THE PURPOSES OF ENACTING THE CITY CLERK’S OFFICE AS THE LOCAL LICENSING AUTHORITY AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the Durango Local Licensing Authority (DLLA) has been vested with the authority to review, process and act on applications for new licenses and changes to licenses issued un the Colorado Beer Code, the Colorado Liquor Code and for Marijuana Businesses authorized for licensure within the City; and

**WHEREAS**, Chapter 5, Article VIII of the Code of Ordinances of the City of Durango grants the authority to the DLLA to take licensing actions under the aforementioned provisions of Colorado State law; and

**WHEREAS**, Chapter 5, Article VIII of the Code of Ordinances of the City of Durango delegates the necessary power and authority to examen and administratively approve liquor licenses, medical marijuana centers, or medical marijuana-infused products manufacturing establishments to the City Clerk’s Office; and

**WHEREAS**, the City Clerk’s Office has the ability and knowledge to conduct the licensing procedures based on aforementioned delegation of duties; and

**WHEREAS**, Chapter 13 of the Code of Ordinances of the City of Durango, dictates licensing approval procedures carried out by the City Manager’s Office and the City Clerk’s Office; and

**WHEREAS**, public hearing has heretofore been held before the City Council of the City of Durango, and the Council has determined, subsequent to said public hearing, that the repealing of Chapter 5, Article VIII, “Durango Local Licensing Authority”, and amending of Chapter 13, “Licenses and

Business Regulations”, of the Code of Ordinances of the City of Durango would be in the best interests of the citizens of the City of Durango.

**NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:**

**Part 1.** That Article VIII of Chapter 5 of the Code of Ordinances of the City of Durango, pertaining to the Durango Local Licensing Authority, should be and the same is hereby repealed in its entirety.

**Part 2.** The Code of Ordinances of the City of Durango, Colorado is hereby amended by the addition of Article VIII to Chapter 13, Licenses and Business Regulations, titled “Local Licensing Authority” to read in its entirety as follows:

**Chapter 13. LICENSES AND BUSINESS REGULATIONS**  
**ARTICLE VIII. LOCAL LICENSING AUTHORITY**

**Sections 13-217 through 13-229: RESERVED**

**Sec. 13-230. Office of the City Clerk as Local Licensing Authority**

There is hereby established a liquor licensing authority with the duty and authority to grant, renew or refuse licenses for the sale of malt, vinous and spirituous liquors or fermented malt beverages as provided by law, to conduct investigations as are required by law, and to suspend or revoke such licenses for cause in the manner provided by law. The Office of the City Clerk shall have all of the powers and be subject to all other restrictions as set forth in C.R.S. Title 12, Articles 43.3, 43.4, 46, 47 and 48 and article VIII, chapter 13, of this Code.

**Sec. 13-231. Secretary of Authority**

The City Clerk, or their designee, shall provide necessary notice of meetings to members and shall also provide secretarial and reporting services for the authority. The secretary shall prepare and keep the minutes of the meetings of the authority. The records of such meetings, if any, shall be submitted monthly to the City Council and shall become part of the permanent records of the city to be maintained by the City Clerk.

**Sec. 13-232. Establishment of Fees**

All fees heretofore established by the City Council or by the Durango Local Licensing Authority prior to the enactment of Article VIII, Chapter 13 of the Code of Ordinances of the City of Durango shall remain in effect until such time as new fees have been established by resolution of the city council. The City Council shall have the exclusive power and authority to establish fees for licenses referenced within this article VIII, including, but not limited to the following:

- (1) All fees specified and in the amounts set forth in C.R.S. Title 12, Articles 43.3, 43.4, [46](#), 47 and 48.
- (2) Application and investigation fees as determined by the city council, to cover the actual and necessary expenses to the city of such applications; provided, however, such fees shall be subject to the limitations, if any, expressed by state law as to the maximum amounts which may be charged in conjunction with applications relating to new licenses, transfers or location or ownership of existing licenses or applications for renewal of existing licenses.
- (3) Fees determined by the city council in conjunction with applications for special events permits for the investigation and issuance of such permits; provided, however, such fees shall be subject to the limitations set forth under applicable state law.

### **Sec. 13-233. Authority of Licensing Authority to suspend or revoke licenses.**

In addition to any other penalties prescribed in this Code and the laws of the State, the licensing authority of the City shall have the power on its own motion, or after complaint, after investigation and public hearing, at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke any license issued by it for any violation by the licensee or by any of the agents, servants or employees of such licensees of the provisions of this Chapter, or of any of the rules or regulations adopted by the state licensing authority or the statutes of the State of Colorado. Procedures for suspension or revocation shall be as provided by state law and/or resolution of the Authority.

### **Sec 13-234. Delegation of Public Hearing Authority to City Council**

There is hereby delegated to the City Council, the necessary power and authority to accomplish the following:

- (1) The scheduling and holding of hearings in conjunction with applications for new licenses under the Colorado Beer Code; the Colorado Liquor Code; or license applications for medical marijuana centers, and medical marijuana testing facilities pursuant to C.R.S. Title 12, Article 43.3 or division 2 of article VIII, [chapter 13](#) of this Code, or for retail marijuana establishments pursuant to C.R.S. Title 12, Article 43.4 or division 1 of article VIII, [chapter 13](#) of this Code.
- (2) The scheduling and holding of necessary hearings in conjunction with any application for a change in location or ownership with respect to an existing liquor license or medical marijuana business license or retail marijuana establishment license within the City of Durango. The Durango Local Licensing Authority shall not approve a change in location, a co-location or a conversion of a license unless the proposed location to be licensed complies with all requirements for the proposed type of use, including but not limited to zoning requirements, separation requirements and other similar limitations on locations for such uses contained in the City Code or the LUDC.

(4) Any other matters pertaining to the issuance or renewal of liquor licenses, medical marijuana business licenses or retail marijuana establishment licenses within the City of Durango which are deemed necessary by the Office of the City Clerk.

CITY COUNCIL OF THE CITY OF  
DURANGO

Mayor

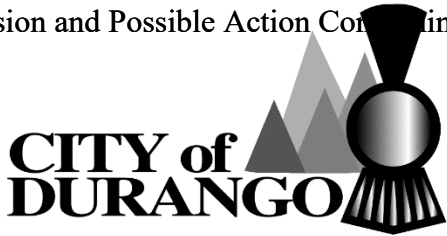
)  
) ss.

I, Faye Harmer, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. O-2023- 0014 was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the 1st day of August, 2023, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the 6th day of August, 2023, prior to its final consideration by the City Council

City Clerk

I further certify that said Ordinance No. O-2023- 0014 was duly adopted by the Durango City Council on the 15<sup>th</sup> day of August, 2023, and that in accordance with instructions received from the Durango City Council, said ordinance was published by title only in the Durango Herald on the 10<sup>th</sup> day of August, 2023.

City Clerk



AGENDA DOCUMENTATION

Item 8.3.1

Meeting Date: August 15, 2023

TO: DURANGO CITY COUNCIL FROM: BONNIE KLING, HUMAN RESOURCES DIRECTOR

SUBJECT: DISCUSSION AND POSSIBLE ACTION CONCERNING AN APPROVAL OF A RESOLUTION TO AMEND THE 2023 EMPLOYEE HANDBOOK FOR THE PURPOSE OF UPDATING IN ACCORDANCE WITH THE COLORADO PROTECTING OPPORTUNITIES AND WORKERS RIGHTS ACT (POWR)

RECOMMENDATION:

It is recommended that City Council, by motion, approve the proposed changes to the 2023 Employee Handbook, sections 2.1, 2.4, 2.6 & 2.7 to comply with the POWR Act.

BACKGROUND SUMMARY:

On June 7, Gov. Polis signed Senate Bill 172, the Protecting Opportunities and Worker’s Rights (POWR) Act into law, which changes workplace harassment laws in Colorado.

POWR Act rejects the “severe and pervasive” standard applied to the workplace harassment claims and defines harassment to be any unwelcome physical or verbal conduct or any communication directed to an individual or group because of their membership, or perceived membership in a protected class. The bill takes effect August 6, 2023.

In addition, the act:

- Conditions affirmative defenses to harassment claims on the employer having a harassment prevention program, as defined through the act, that the employee failed to use;
- Includes marital status as a protected class;
- Clarifies the nature of the reasonable accommodation that an employer must provide for a disability;
- Requires that employers preserve certain personnel or employment records made, kept, or received by the employer for at least five years after the date it was made or received or the date of the personnel action or resolution or a charge of discrimination or lawsuit.
- Requires employers to maintain a repository of written or oral complaints of discriminatory or unfair employment practices including the date of the complaint, the complaining party’s identity, if known, the alleged perpetrator’s identity, and the substance of the complaint. These are not public records under the Colorado Open Records Act but are also deemed personnel records not subject to inspection;
- Declares non-disclosure provisions of any

The 2023 Employee Handbook, sections 2.1, 2.4, 2.6 & 2.7, speak to Equal Employment Opportunity and Unlawful Harassment, EEO Harassment, Complaint Procedure, and Appeal Rights in Cases of Alleged Discrimination. These sections have been updated outside the handbook revision process to comply with the newly changed POWR requirements.

STRATEGIC PLAN ALIGNMENT:

Financial Excellence & High Performing Government

ALTERNATIVE OPTIONS CONSIDERED:

There are no other alternatives as Senate Bill 172, POWR Act has been signed into law and goes into effect August 6, 2023.

FISCAL IMPACT:

None.

POTENTIAL ADVERSE IMPACTS:

Legal implications for not complying with State Law.

NEXT STEPS AND TIMELINE:

The current Employee Handbook will continue to be revised and presented to Council prior to the start of 2024.

## RESOLUTION 2023-

### A RESOLUTION TO AMEND SECTIONS 2.1, 2.4, 2.6 AND 2.7 OF THE CITY OF DURANGO 2023 EMPLOYEE HANDBOOK FOR THE PURPOSE OF UPDATING IN ACCORDANCE WITH THE LEGISLATION OF SB23-172 AND THE COLORADO PROTECTING OPPORTUNITIES AND WORKERS RIGHTS ACT (POWR)

#### *as follows:*

(Red type indicates addition of text, strike through indicates original text removed, empty brackets [] indicate omitted and unchanged text)

#### **Section 2.1 – Equal Employment Opportunity and Unlawful Harassment**

The City is dedicated to the principles of equal employment opportunity. We prohibit unlawful discrimination against applicants or employees on the basis of age 40 and over, race (including traits historically associated with race, such as hair texture and length, protective hairstyles), sex, sexual orientation, gender identity, gender expression, color, religion, national origin, disability, military status, **marital status**, genetic information, or any other status protected by applicable state or local law.

#### **Section 2.4 – EEO Harassment**

The City strives to maintain a work environment free of unlawful harassment. In doing so, the City prohibits unlawful harassment because of age 40 and over, race, sex, color, religion, national origin, disability, military status, **marital status**, genetic information, or any other status protected by applicable state or local law.

Unlawful harassment **need not be severe or pervasive and includes verbal or physical conduct, or any written, pictorial, or visual communication directed at an individual or group of individuals because of the individual's or group's membership, or perceived membership, in a protected class in which the conduct or communication is subjectively offensive to the individual alleging harassment and is objectively offensive to a reasonable individual who is a member of the same protected class and occurs when:**

- a) Submission to such conduct is made explicitly or implicitly a term or condition of employment.**
- b) Submission to or rejection of such conduct is used as the basis for decisions affecting an individual's employment.**
- c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.**

~~that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.~~ Actions based on an individual's age 40 and over, race, sex, color, religion, national origin, disability, military status, **marital status**, genetic information, or any other applicable status protected by state or local law will not be tolerated. Prohibited behavior may include but is not limited to the following:

- a) Written form such as cartoons, e-mails, posters, drawings, or photographs.
- b) Verbal conduct such as epithets, derogatory comments, slurs, or jokes.
- c) Physical conduct such as assault or blocking an individual's movements.

This policy applies to all employees, including managers, supervisors, co-workers, and non-employees such as customers, clients, vendors, consultants, etc.

## **Section 2.6 – Complaint Procedure**

Employees who believe there has been a violation of the EEO policy or harassment based on a protected class, including sexual harassment, **should must** utilize the following complaint procedure. The City expects employees to make a timely complaint to enable the City to investigate and correct any behavior that may be in violation of this policy.

Report the incident to your direct supervisor and/or manager who will investigate the matter and take corrective action. Your complaint will be kept as confidential as practicable. If you prefer not to go to either of these individuals with your complaint, you should report the incident to Human Resources.

The City prohibits retaliation against an employee for filing a complaint under this policy or for assisting in a complaint investigation. If an employee perceives retaliation for making a complaint or for participation in an investigation, the employee should follow the complaint procedure outlined above. The situation will be investigated.

If the City determines that an employee's behavior is in violation of this policy, disciplinary action will be taken, up to and including termination of employment.

## **Section 2.7 – Appeal Rights in Cases of Alleged Discrimination**

Any applicant for an entrance or promotional position with the City of Durango who feels that they have been discriminated against because of any factor outlined in Section 2.1, or if the alleged discrimination occurred during the initial screening procedure, the applicant shall be entitled to request a meeting with the Human Resources Officer to discuss the reasons underlying the allegation of discrimination. If the applicant is not satisfied with the response of the Human Resources Officer, they shall be entitled to request a hearing before the City Manager. The City Manager will hear the facts of the case as presented by the applicant, the Department Director or supervisor, the Human Resources Officer, and any other parties who may be involved.

The City Manager will then make a determination of fact. If evidence of discrimination is determined to exist, the City Manager will render a decision as to what remedial action, if any, should be taken. The decision of the City Manager shall be final.

**The City will retain an accurate, designated repository of all written or oral complaints of discriminatory or unfair employment practices that includes the date of the complaint, identity of the complaining party, the identity of the alleged perpetrator, and the substance of the complaint.**

**WHEREAS**, the City of Durango Employee Handbook currently includes an Equal Employment Opportunity and Harassment Policy; and

**WHEREAS**, to meet the requirements of POWR, revisions have been made to the City's Equal Employment Opportunity and Harassment Policy to reflect the updated protected classes and procedures for harassment and unfair employment practices; and

**WHEREAS**, the Council finds that the updated policies provide clear and consistent information to employees regarding applicable rules of employment and benefits of the City; and

**WHEREAS**, the Council believes it would be in the best interests of the City and the citizens of Durango to adopt the revisions and additions to the 2023 Employee Handbook, as submitted;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DURANGO HEREBY RESOLVES, Sections 2.1, 2.4, 2.6, and 2.7 of the City of Durango 2023 Employee Handbook for the Purpose of Updating in Accordance with the Legislation of SB23-172 and the Colorado Protecting Opportunities and Workers Rights Act (POWR) be amended in pertinent part as follows:**

### **Section 2.1 – Equal Employment Opportunity and Unlawful Harassment**

The City is dedicated to the principles of equal employment opportunity. We prohibit unlawful discrimination against applicants or employees on the basis of age 40 and over, race (including traits historically associated with race, such as hair texture and length, protective hairstyles), sex, sexual orientation, gender identity, gender expression, color, religion, national origin, disability, military status, marital status, genetic information, or any other status protected by applicable state or local law.

### **Section 2.4 – EEO Harassment**

The City strives to maintain a work environment free of unlawful harassment. In doing so, the City prohibits unlawful harassment because of age 40 and over, race, sex, color, religion, national origin, disability, military status, marital status, genetic information, or any other status protected by applicable state or local law.

Unlawful harassment need not be severe or pervasive and includes verbal or physical conduct, or any written, pictorial, or visual communication directed at an individual or group of individuals because of the individual's or group's membership, or perceived membership, in a protected class in which the conduct or communication is subjectively offensive to the individual alleging harassment and is objectively offensive to a reasonable individual who is a member of the same protected class and occurs when:

- a) Submission to such conduct is made explicitly or implicitly a term or condition of employment.
- b) Submission to or rejection of such conduct is used as the basis for decisions affecting an individual's employment.
- c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Actions based on an individual's aged 40 and over, race, sex, color, religion, national origin, disability, military status, marital status, genetic information, or any other applicable status protected by state or local law will not be tolerated. Prohibited behavior may include but is not limited to the following:

- a) Written form such as cartoons, e-mails, posters, drawings, or photographs.
- b) Verbal conduct such as epithets, derogatory comments, slurs, or jokes.
- c) Physical conduct such as assault or blocking an individual's movements.

This policy applies to all employees, including managers, supervisors, co-workers, and non-employees such as customers, clients, vendors, consultants, etc.

### **Section 2.6 – Complaint Procedure**

Employees who believe there has been a violation of the EEO policy or harassment based on a protected class, including sexual harassment, must utilize the following complaint procedure. The City expects employees to make a timely complaint to enable the City to investigate and correct any behavior that may be in violation of this policy.

Report the incident to your direct supervisor and/or manager who will investigate the matter and take corrective action. Your complaint will be kept as confidential as practicable. If you prefer not to go to either of these

individuals with your complaint, you should report the incident to Human Resources.

The City prohibits retaliation against an employee for filing a complaint under this policy or for assisting in a complaint investigation. If an employee perceives retaliation for making a complaint or for participation in an investigation, the employee should follow the complaint procedure outlined above. The situation will be investigated.

If the City determines that an employee's behavior is in violation of this policy, disciplinary action will be taken, up to and including termination of employment.

### **Section 2.7 – Appeal Rights in Cases of Alleged Discrimination**

Any applicant for an entrance or promotional position with the City of Durango who feels that they have been discriminated against because of any factor outlined in Section 2.1, or if the alleged discrimination occurred during the initial screening procedure, the applicant shall be entitled to request a meeting with the Human Resources Officer to discuss the reasons underlying the allegation of discrimination. If the applicant is not satisfied with the response of the Human Resources Officer, they shall be entitled to request a hearing before the City Manager. The City Manager will hear the facts of the case as presented by the applicant, the Department Director or supervisor, the Human Resources Officer, and any other parties who may be involved.

The City Manager will then make a determination of fact. If evidence of discrimination is determined to exist, the City Manager will render a decision as to what remedial action, if any, should be taken. The decision of the City Manager shall be final.

The City will retain an accurate, designated repository of all written or oral complaints of discriminatory or unfair employment practices that includes the date of the complaint, identity of the complaining party, the identity of the alleged perpetrator, and the substance of the complaint.

Approved and adopted the 15<sup>th</sup> day of August 2023.

CITY OF DURANGO

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

### ***Item 8.3.2***

**TO: DURANGO CITY COUNCIL**

**SUBJECT: DISCUSSION AND POSSIBLE ACTION TO ADOPT A RESOLUTION PROHIBITING THE OPEN CARRYING OF A FIREARM IN CITY HALL AND AUTHORIZING THE POSTING OF A SIGN AT THE PUBLIC ENTRANCE OF CITY HALL INFORMING PERSONS THAT THE OPEN CARRYING OF FIREARMS IS PROHIBITED IN CITY HALL**

It is recommended that City Council, by motion, adopt the proposed resolution prohibiting the open carrying of a firearm in City Hall and authorizing the posting of a sign at the public entrance of City Hall informing persons that the open carrying of firearms is prohibited in City Hall.

There is a need for the City Council to adopt a resolution prohibiting the open carrying of firearms in City Hall and authorizing the posting of a sign at the public entrance of City Hall that informs the public that the open carrying of firearms is prohibited in City Hall to ensure that the public can conduct business with the city in the absence of firearms. Additionally, prohibiting the open carrying of firearms in City Hall allows the city to achieve a higher level of security involving City Hall and its operations.

**Colorado Revised Statute 29-11.7-104** authorizes the prohibition of firearms in specifically designated buildings or areas.

## Engaged and Collaborative Governance ECG

## None

Unknown at this time

Unknown at this time

Unknown at this time

**RESOLUTION R-2023-**

**A RESOLUTION PROHIBITING THE OPEN CARRYING OF A FIREARM IN CITY HALL AND AUTHORIZING THE POSTING OF A SIGN AT THE PUBLIC ENTRANCE TO CITY HALL INFORMING PERSONS THAT THE OPEN CARRYING OF FIREARMS IS PROHIBITED IN CITY HALL.**

**WHEREAS**, the State of Colorado allows the prohibition of firearms in specifically designated buildings or areas (CRS 29-11.7-104); and

**WHEREAS**, the City of Durango desires that city hall be designated as a firearm free building such that the public can conduct business with the city in the absence of firearms; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Durango, in regular meeting assembled, that: the open carrying of firearms in city hall is prohibited and that a sign be posted at the public entrance to city hall informing the persons that the open carrying of firearms in city hall is prohibited.

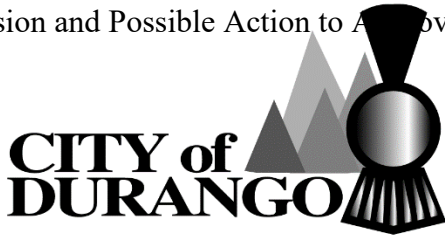
Approved and adopted this 15<sup>th</sup> day of August 2023.

CITY OF DURANGO, COLORADO

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
Faye Harmer, City Clerk



AGENDA DOCUMENTATION

Item 8.4.1

Meeting Date: August 15, 2023

TO: DURANGO CITY COUNCIL FROM: JOSÉ R. MADRIGAL, CITY MANAGER

SUBJECT: DISCUSSION AND POSSIBLE ACTION REGARDING THE APPOINTMENT OF THE CHIEF FINANCIAL OFFICER.

RECOMMENDATION:

It is recommended that City Council, by motion, approve the City Manager’s appointment of Devon Schmidt as Chief Financial Officer.

BACKGROUND SUMMARY:

The City Charter, Article 3, Section 5 states that the City Manager shall appoint all department heads with the Council's approval. Therefore, I am requesting approval of my appointment of Devon Schmidt as the Chief Financial Officer.

The internal promotion opportunity for the Chief Financial Officer was posted on Friday, July 21<sup>st</sup>, and closed on Friday, July 28<sup>th</sup>. After conducting interviews, Devon Schmidt was selected as the most qualified to fill the position.

Devon Schmidt has been with the City of Durango since September 2019. She has served in various roles, such as Grants Contract Manager, Interim Finance Director, Assistant Finance Director, Budget and Strategic Planning Officer, and Assistant and Acting Chief Financial Officer. Devon has her Bachelor's of Business Administration Degree from Fort Lewis College and her Masters's Degree in Management from Colorado State University. Before working for the City of Durango, Devon worked for La Plata County and in finance for the railroad industry.

Devon has completed Malcolm Baldrige Examiner training, is working on her Lean Six Sigma Black Belt, and is completing her Government Finance Officer Association CPFO (Certified Public Finance Officer) certification.

STRATEGIC PLAN ALIGNMENT:

Financial Excellence & High Performing Government  
Diversity, Equity, and Inclusion

ALTERNATIVE OPTIONS CONSIDERED:

I considered the option of performing a national recruitment for the position. While he was the Interim Chief Financial Officer, I asked Tommy Gonzalez to recommend if I should conduct a national recruitment for the post. Mr. Gonzalez highly recommended that a national recruitment was unnecessary and that I should promote the position internally with his recommendation to promote Devon for the job. He cited her experience running the department, the excellent rapport she has built with her staff, and her knowledge, skills, and ability to perform the job.

FISCAL IMPACT:

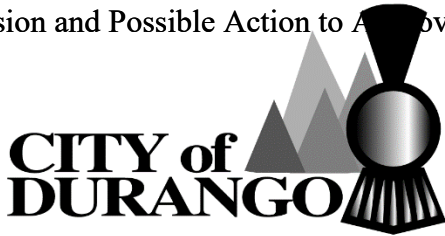
The proposed funding for the Chief Financial Officer is already budgeted in the 2023 Annual Budget and is available due to the departure of the former Finance Director, Cynthia Sneed.

POTENTIAL ADVERSE IMPACTS:

None have been identified.

NEXT STEPS AND TIMELINE:

Devon Schmidt will officially begin her duties as Chief Financial Officer on August 16<sup>th</sup>.



AGENDA DOCUMENTATION

Item 8.4.2

Meeting Date: August 15, 2023

TO: DURANGO CITY COUNCIL

FROM: FAYE HARMER, CITY CLERK

SUBJECT: DISCUSSION AND POSSIBLE ACTION TO APPROVE REVISIONS TO THE CITY OF DURANGO OPEN RECORDS POLICY

RECOMMENDATION:

It is recommended by staff that Council, by single motion on the consent agenda, approve the red-line changes to the City of Durango Open Records Request policy as attached hereto.

BACKGROUND SUMMARY:

The City’s Open Records policy was last updated in January of 2021. The policy currently includes the following language *“C.R.S. 24-72-203(1)(a) allows the official custodian of public records (City Clerk) to establish reasonable rules with reference to inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of duties of the custodian or the custodian’s office.”*

The policy red lines show administrative changes to the policy to update language to include information on the open records portal, which replaced the previous paper and manual system. Language is also included that would consolidate multiple requests submitted by the same requestor in any three-day period. This consolidation streamlines the process, reduces the possibility of errors and reduces staff time spent on requests (which could in return reduce costs charged to the requestor).

STRATEGIC PLAN ALIGNMENT:

Engaged and Collaborative Governance

ALTERNATIVE OPTIONS CONSIDERED:

Processing multiple requests individually.

FISCAL IMPACT:

Unknown at this time.

POTENTIAL ADVERSE IMPACTS:

None known.

## POLICY REGARDING ACCESS TO PUBLIC RECORDS



Effective Date: ~~January 1, 2021~~August 15, 2023

Administrative Authority: Adopted by City Council on December 1, 2020

Scope: All departments within the City of Durango

The purpose of this policy is to assist the public in locating specific public records and to ensure public access to public records without unreasonable delay or cost, in accordance with the requirements of C.R.S. 24-72-201 *et seq.* The Durango City Clerk's Office is the direct link between the residents of the community and their government. The mission of the Clerk's office is to provide transparent, timely, accurate and engaging information to the public regarding the City's policies, programs, departments, services, and records. This policy does not apply to criminal justice records, as defined in C.R.S. 24-72-302. Criminal justice records are not included as public records under the Colorado Open Records Act (CORA) and those agencies are independently responsible for maintaining all criminal justice records they create and manage. Please contact the applicable criminal justice agency regarding those records.

C.R.S. 24-72-202(6) defines public records as "all writings made, maintained, or kept... by any local government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds." The definition of public records also includes the correspondence of elected officials, except to the extent that such correspondence is: 1) a work product, 2) without a demonstrable connection to the exercise of functions required by law or administrative rule, 3) a communication from a constituent to an elected official that clearly implies by its content that the constituent expects that it is confidential in nature or is subject to nondisclosure, or 4) pursuant to procedures in C.R.S. 24-72-204(1) the material requested is not to be disclosed. Additionally, C.R.S. 24-72-202(7) defines writings to include "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. Writings include digitally stored data, including without limitation electronic mail messages, but do not include computer software."

All City records are subject to the following rules adopted by the City to promote open and accessible government while maintaining the integrity of the City's records, accounting for costs to the City of complying with requests, and preventing unnecessary interference with City operations. Certain documents are not considered to be public documents by CORA. All decisions on releasing documents under this policy shall be based on CORA.

C.R.S. 24-72-203(1)(a) allows the official custodian of public records (City Clerk) to establish reasonable rules with reference to inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of duties of the custodian or the custodian's office.

#### Records Available on the City Website

A substantial number of the City's public records are available free of charge on the City's website at [www.durangogov.org](http://www.durangogov.org). Those records include, but are not limited to, the City budget [and financial reporting](#), Ordinances, Resolutions, Orders, Business License lists, publications produced by the City of Durango and the agendas, [recordings](#) and minutes of meetings of the City Council and City Boards and Commissions. In lieu of completing a CORA request for information available on the City website, the Custodian may direct persons to the online location of relevant documents without assessing a fee.

### **Policy**

It shall be the policy of the City of Durango to make all records available for public inspection unless such records are protected from disclosure by state or federal law, by court order, and/or unless disclosure of such records would be contrary to the public interest.

Unless circumstances make it impractical, all requests made under the Open Records Act shall be made in writing, [through the Open Records request portal](#) to the City Clerk, who is the Records Custodian, ~~or via the City's web page form~~ for those submissions. The custodian shall, in appropriate cases either provide the records or the Open Records Request Form to the Requestor or shall set a date, time, and on-site location where the records can be inspected. Requests must include sufficient specificity to facilitate the City's efficient identification, collection, and evaluation of records. Specifying the nature of the documents requested and providing the necessary narrowing details enables the City to fill the request more expediently and in a manner that may produce cost savings to the Requestor. To the extent possible, requests should include the document name/title, location, date, author, recipient, specific subject matter, and the category (or categories) of records. The City may contact the Requestor to attempt to clarify, understand and narrow the request.

#### **Response Time**

The City shall respond to a request as soon as practicable upon receiving the request, but within not more than three (3) business days after it was received, not including the date of receipt. That period may be extended if extenuating circumstances exist (per C.R.S. 24-72-203(3)(b)), but the extension period shall not exceed seven (7) additional business days. If a deposit is required, work on

retrieving the information will not begin until the deposit has been paid to the City. The City will deem a request abandoned, if, after ten (10) business days the required deposit and/or no communication is received by the Records Custodian regarding the clarification of the request, the deposit, or the cost estimate.

### **Electronic Records and Electronic Communications**

If a record is stored in digital format, the City will produce such record in digital format. If a digital record is stored in a searchable format, it shall be provided in a searchable format; if stored in a sortable format, it will be provided in a sortable format. Notwithstanding the foregoing, a digital record shall not be produced in searchable or sortable format if such production would violate a copyright or licensing agreement or would result in the release of proprietary information, or if it would not be technologically or practically feasible to permanently remove information that is required to be withheld in such format. It shall not be considered technologically or practicably feasible to produce a record in such manner if the custodian would be required to purchase software or create additional programming to remove information required to be withheld. If the Custodian cannot comply with the requested format, the Custodian shall either issue a denial of the request or provide an alternative format. In either case, the Custodian shall provide the Requestor with the reason for not being able to provide the document in the requested format.

The City of Durango may charge to convert a record into a structured data or searchable format. The fee charged will be based on the recovery of the actual time spent to search or convert the records.

Open records request records may themselves be public records under the public records law and may be subject to public inspection under C.R.S. 24-72-203 and the policy of the City of Durango.

### **Requests for Emails**

The time charged on any CORA request for emails is based on actual time spent on the request by any and all City staff members, regardless of department or title. Depending on the records requested, this can be a very time intensive process. Emails and attachments will be reviewed and redacted, as necessary, in accordance with CORA.

### **Records Withheld or Redacted**

Although most City documents are open to public inspection, specific types of information are protected by State or Federal law; these include but are not limited to confidential personal information and attorney/client privileged information. If requested records are only partially available for public inspection under such law, such records may be redacted to protect such information and the Requestor will be billed the actual costs of redacting the protected information.

### **Fees and Charges**

The Custodian shall charge for any printouts and electronic data storage devices to fulfill the request. Requests expected to have a total charge of \$50 or more must be accompanied by a non-refundable deposit of at least one-half the estimated amount. This deposit will be credited toward the total fee, and the total fee shall be paid prior to release of the requested records. If the deposit amount exceeds the actual costs, the balance shall be refunded within 30 days.

If requested, or in cases where the fees are anticipated to be more than \$10, the Custodian shall provide a written estimate of charges. However, the actual fees charged may differ. The Custodian shall strive to make the estimate as accurate as possible but cannot guarantee the final cost of the request until the retrieval of the files is complete.

If any individual submits multiple requests in any 3 day period, those requests will be consolidated and considered one request. As with all requests, the first hour of staff time will be provided at no charge to the requestor. Any additional hours will be charged at a rate of \$30 per hour.

No fee shall be charged for hard copies of up to ten standard sized pages of the Requestor's initial request, per calendar year. (Standard sized page will be considered letter or legal sized paper.) Larger format copies will be charged based on the actual cost of producing the copy. Each standard page after that will be charged at 25 cents per page. In addition, the Requestor must pay any research and retrieval fee associated with producing the record in accordance with the schedule below. The Custodian will also charge a fee for any manipulation of data needed to generate a record in a format responsive to the request. This fee shall not exceed the actual cost of manipulating said data and generating the record. Persons making a subsequent request for the same record shall be charged the same fee.

Such fees may be reduced or waived by the custodian as provided by statute. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

The City will respond to requests for access to public records stored electronically and in computer databases by providing, upon written request, a digital copy sent as an email attachment, files on a flash drive (where the total file size is too large to attach to an email), or physical hard copy printout. The City's default method will be to provide the records via Requestor email. Please contact the Clerk's office if an alternative method of delivery is preferred. The fee will be based on the City's actual cost of producing and retrieving the documents.

Data generated by a third party shall be charged at the actual cost incurred by the City to reproduce or copy the documents. Not all documents held by a third party are subject to release under the CORA guidelines. If the information requested includes bid awards, bid tabulations, and bid pricing, the Requestor may be directed to BidNet for the retrieval of this information as a third party vendor.

Fees and charges for reproduction of records shall be standard throughout the City for similar items.

## PUBLIC RECORDS STANDARD FEES AND CHARGES

### Hard Copies

\$0.25 per letter or legal size  
page

Larger format copies will be charged based on the actual cost of producing the  
copy.

### Electronic files

No fee will be charged for the transmission of records by electronically~~ally-mail~~, although the other fees described in this policy may be applicable if the services for which those fees are charged are necessary in order to place the records into a format that can be ~~emailed~~uploaded to the portal. Due to the limits of the size of electronic files that may be emailed, it may not be practical to transmit records via email.

If electronic files are placed on flash drive provided by the City, the actual cost of the flash drive will be assessed to the Requestor. The Requestor may provide a flash drive for this purpose, so long as the drive is new, unused and is in a factory sealed package, to avoid the transmission of viruses and/or system contamination.

### FAX documents

\$0.25 per letter or legal size

### Document certification the

Actual Cost incurred (in addition to  
per page copy charge)

### Duplication of audio tapes, CDs, or DVDs including transfer of audio files to CD (When technologically possible)

Actual Cost Incurred

Publications produced by the City of Durango Price varies; will be established  
based

available on on production costs (also  
the City's website)

Weekly/Monthly/New Business License Report Actual Cost Incurred

### Research, Retrieval and Data Segregation/Manipulation Fees (including redaction)

Up to 1 hour per records request  
Additional hours \$30 per hour

No charge

Denial of inspection: Access to records may be denied in accordance with the provisions of CORA, federal or state law. The reasons for denial of access to records shall be provided to the Requestor.

Records retention schedules: All public records, regardless of storage format, will be administered in accordance with the approved Colorado Municipal Records Retention Schedule (CMRRS). The City of Durango has adopted the CMRRS as approved and updated by the Colorado State Archives. This schedule is available online at

<https://www.colorado.gov/archives/municipal-records-retention-manual> and for your convenience a searchable single\_pdf file of the same is available on the durangogov.org website.

Signed under the authority of the City Clerk:

Amy F. PhillipsFaye Harmer, City Clerk

## RECORDS REQUEST FORM

*PLEASE PRINT*

Name:

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Date of Request:

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Email:

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Mailing Address: Street: 

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City: 

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 State: 

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 Zip: 

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Phone: Day

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Phone: Evening

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### INSTRUCTIONS

Indicate the information you desire and/or list each requested document. Please be as specific as possible. Allow three (3) working days after the date of receipt of your request for a search of the records. Per the State of Colorado Open Records Act (C.R.S. 24-72-203), if extenuating circumstances exist, an extension of seven (7) working days is permitted. The City will notify you within three (3) days of any extension and all estimated costs.

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Please select the format in which you would like to receive materials:

☐ Electronic Portal \*

☐ Email\*

☐ View only; no copies requested. (Appropriate City personnel will be scheduled to accompany you during viewing.)

☐ Hard copies/printouts

☐ CD or DVD or flash drive

\*though this is the default method of delivery, not all documents are available electronically ~~and not all documents may be emailed~~

Please select the method you prefer for notification and delivery when the records are available:

☐ Email (if records are available electronically). Specify an alternate delivery method if records are not available via email: \_\_\_\_\_

☐ I will pick them up at City Hall

Contact me by (circle one): Mail Phone Email

☐ First Class mail

=====

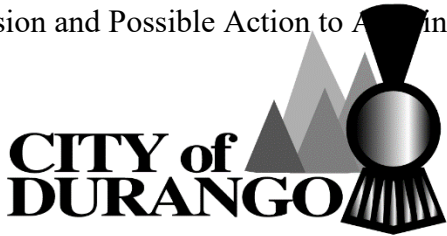
I agree to pay any charges applicable to this request. (Work on this request will begin when this form is complete and/or the required deposit has been paid.)

\_\_\_\_\_  
Signature of Requestor  
Request

\_\_\_\_\_  
Date and Time of

=====

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**AGENDA DOCUMENTATION**

**Item 8.4.3**

Meeting Date: August 15, 2023

**TO: DURANGO CITY COUNCIL**

**FROM: FAYE HARMER, CITY CLERK**

**SUBJECT: DISCUSSION AND POSSIBLE ACTION TO APPOINT AN APPLICANT TO  
THE DURANGO LA PLATA COUNTY AIRPORT COMMISSION**

**RECOMMENDATION:**

If City Council so desires, it is recommended that:

Council move to appoint Ken White to the Durango La Plata Airport Commission for a three year term ending May 31, 2026.

**BACKGROUND SUMMARY:**

Mr. White is a previous member of the Airport Commission and chose to step down during the last application cycle to allow other residents to participate. However, when no other applications were received, Mr. White applied to be reappointed to this vacant position.

**STRATEGIC PLAN ALIGNMENT:**

Engaged and Collaborative Governance

**ALTERNATIVE OPTIONS CONSIDERED:**

Two application cycles were opened, no other applications were received.

**FISCAL IMPACT:**

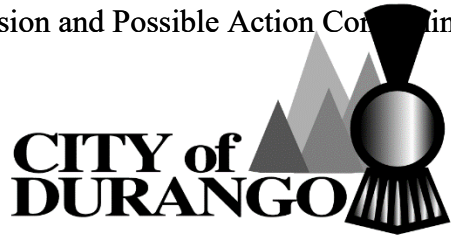
None Known

**POTENTIAL ADVERSE IMPACTS:**

None Known

**NEXT STEPS AND TIMELINE:**

Notification of appointment to the Commission, staff liaison and applicant.



AGENDA DOCUMENTATION

Item 11.1

Meeting Date: August 15, 2023

TO: DURANGO CITY COUNCIL      FROM: DEVON SCHMIDT, ACTING CHIEF FINANCIAL OFFICER

SUBJECT      DISCUSSION AND POSSIBLE ACTION TO APPROVE A RESOLUTION TO AMEND THE 2023 BUDGET FOR THE PURPOSE OF BUDGET ADJUSTMENTS TO THE 2023 APPROPRIATIONS

RECOMMENDATION:

It is the recommendation that the City Council, by motion, Approve the budget resolution for the 2023 Mid-Year Budget Adjustment for the City of Durango

BACKGROUND SUMMARY:

This item incorporates several unanticipated budget adjustments for the 2023 Budget. The budget impacts associated with the 2023 Budget are related to the following:

General Fund:

- Additional appropriations are requested in charges and services in the General Fund related to City Council Security during meetings, Civic Plus contract for legal review, CIP Inspection Tools, Team Training, IT Innoprise software customization for PTO accrual PD Security Upgrades Re-Appropriation from 2022, City Hall Security Upgrades, City Hall Office Adjustments (Carpet, Walls, etc.), Library landscape upgrade, Professional engineering design for back-up generator.
- Contract to Exchange Real Estate of 1235 Camino Del Rio and 201 E, 12th Street, Including 215 E. 12th Street, Between The DFPD and the City of Durango.
- A total of 2. 5 FTE's are being requested from the General Fund
  - New Positions:
    - Executive Legal Assistance- upgrade from part-time
    - Open-Space Parks Ranger
    - Police Service Technician- .5 position split with Transportation
- Other various modifications to the General Fund as outlined in the agenda backup

Housing Innovation Fund

- An appropriation to increase interest revenues is requested as interest is coming in significantly over budget.

2019 Streets Sales Tax Fund

- Additional appropriations are requested in other contracted services to allow for the completion, additional costs, or emergencies associated with Alley Reconstruction, N College Reconstruction, Roosa Ave Storm Drain Emergency Replacement, Crack sealing Material, 7th St at D&SNGRR Crossing Upgrade, Design of all Unpaved Alleys, CDOT Paving at 14th St W, Chip Seal at 14th St. W, and Traffic Signals Elec Repairs/Grounding. These appropriations have been reviewed and recommended by the Financial Advisory Board.
- An appropriation to decrease the budget of Paving the 8th Ave/College St Intersection and Roads by the total 2023 budgeted amount, as this project will not be started until 2024. This appropriation has been reviewed and recommended by the Financial Advisory Board.
- An appropriation to increase interest revenues is requested as interest is coming in significantly over budget.

2015 Sales Tax Fund

- Additional appropriations are requested in other contracted services to allow for the completion, additional costs, or emergencies associated with the Forestry Plan, Chapman Hill replacements and upgrades, and Chapman Hill Ice Rink Flooring. These appropriations have been reviewed and recommended by the Financial Advisory Board.
- An appropriation to decrease the budget of ART Santa Rita Park to CR 210 Trail to account for the multi-year timeline.

2005 Parks, Open Space, and Trails Fund

- An appropriation is requested to decrease the budget for SMART 160 to account for a reassessed project timeline. This appropriation has been reviewed and recommended by the Financial Advisory Board.
- An additional appropriation is requested for other contracted services to allow for the design, construction, and completion of the Outdoor Pickleball Courts. This appropriation has been reviewed and recommended by the Financial Advisory Board.

Airport Fund

- An appropriation is requested to increase interest revenues is requested as interest is coming in significantly over budget.
- Additional appropriations are requested in other contracted services to allow for the completion, additional costs, or emergencies associated with conducting an aircraft deicing facility feasibility study, increasing the rental car facility repair budget to account for an expanded scope of repairs/upgrades to wash bay facilities, and expanding overflow parking lot in advance of the planned 2024 parking lot improvements which will require additional parking to accommodate project phasing.

Transportation Fund

- An appropriation is requested to increase state grant, and interest revenues is requested as interest is coming in significantly over budget.
- Additional appropriations in personnel are requested for a Police Service Technician for Transporation Services, which is .5 split with Police Administration.

Water Construction Fund

- Additional appropriations are requested in other contracted services to allow for the completion, additional costs, or emergencies associated with Wildcat Tank Improvements and CMWTP Filter Effluent to Waste System.

Water Fund

- An appropriation to increase interest revenues is requested as interest is coming in significantly over budget.
- An appropriation is requested for other contracted services for the Gateway Pipeline and Goeglein Gulch Emergency Repair.
- A total of .5 FTE is requested in the Water Fund
  - New Positions:
    - Utilities (Design) Project Manager

Sewer Construction Fund

- Additional appropriations are requested in other contracted services to allow for the completion, additional costs, or emergencies associated with SCADA Cybersecurity Improvements, SRWRF: Primary Clarifier Liner Replacement, SRWRF: Operator Workstation Remodel, and SRWRF: Waterline Replacement.

Sewer Fund

- An appropriation to increase interest revenues is requested as interest is coming in significantly over budget.
- An additional appropriation is requested for other capital for repair parts for Rotary Press.
- A total of .5 FTE is requested in the Sewer Fund
  - New Positions:
    - Utilities (Design) Project Manager

Capital Improvement Fund

- Appropriations are requested to increase revenues as a transfer from the General Fund for the Contract to Exchange Real Estate of 1235 Camino Del Rio and 201 E, 12th Street, Including 215 E. 12th Street, Between the DFPD and the City of Durango.
- An appropriation is requested to increase the budget of other contracted services in the Capital Improvement Fund to Exchange Real Estate of 1235 Camino Del Rio and 201 E, 12th Street, Including 215 E. 12th Street, Between the DFPD and the City of Durango.

**STRATEGIC PLAN ALIGNMENT:**

This item applies to the Strategic Plan's Financial Excellence and High Performing Government component (FEHPG).

**ALTERNATIVE OPTIONS CONSIDERED:**

N/A

**FISCAL IMPACT:**

Fund Name	Fund	Net Effect on Fund Balance Increase/(Decrease)
General Fund	11	(3,400,821)
General Fund-Capital	42	375,146
Housing Innovation Fund	19	(175,000)
2019 Streets Sales Tax	24	84,410
2015 Sales Tax Fund Parks and Multimodal	21	(2,195,000)
2005 Open Space Parks and Trails	42	(100,000)
Airport Fund	95	298,235
Transportation Fund	97	44,039
Water Construction Fund	43	(153,200)
Water Fund	91	197,356
Sewer Construction Fund	43	(180,000)
Sewer Fund	93	(88,057)
Capital Improvement Fund	49	-

**POTENTIAL ADVERSE IMPACTS:**

N/A

**NEXT STEPS AND TIMELINE:**

Staff will carry out services and projects incorporated in the Budget Resolution.

RESOLUTION R-

A RESOLUTION TO AMEND THE 2023 BUDGET FOR THE PURPOSE OF BUDGET ADJUSTMENTS TO THE 2023 APPROPRIATIONS

WHEREAS, under the provisions of Article V, Section 10 of the Durango City Charter, the City Council may make additional appropriations during the budget year for unanticipated expenditures required by the city not exceeding, however, actual revenues and unappropriated surplus; and

WHEREAS, to accomplish the goals of City Council and foster a team oriented working environment resulted in budget impacts and incorporates several unanticipated budget adjustments increasing, transferring, or amending the appropriations for expenditures and revenues; and

WHEREAS, there exists sufficient funds within fund balance;

NOW, THEREFORE, BE IT RESOLVED, as follows:

Section 1. That the City Council of the City of Durango, in regular meeting assembled, that 2023 budget shall reflect the changes and the appropriations for 2023 are increasing, transferring, or amending according to the tables below:

General Fund				
			Budget	
Account Number	Project Number	Account Description	One-Time	Recurring
Revenues				
11-1000-66119		Interest Earned	500,000	
City Council				
11-4101-Various		Security for City Council meetings		4,500
City Manager				
11-4104-Various		Salaries Moving Budget to Finance		(80,000)
City Attorney				
11-4104-11129		Salarys for Employee transition from part time		69,920
11-4104-14399		Insurance for employee transition from part-time		19,560
11-4104-31299		Professional Services	96,065	
11-4104-33499		Relocation Expenses	15,000	
11-4101-31499		Civic Plus contract for legal review	6,000	
Police				
11-4210-various		Salaries Open Space Parks Ranger and Police Service Technician- Transit		34,700
Information Technology				
11-4122-31499		IT Other Contracted Services - Innoprise software customization for PTO accrual	10,000	
Capital Projects				
11-4138-12199		CIP Overtime	1,500	
11-4138-21199		CIP Office Supplies: Inspection Tools	1,500	
11-4138-31499		CIP Other Contracted Svcs: CIP Portion of PW Team Training	20,000	
11-4138-33899		CIP Portion of Public Works VOD Program	1,000	
Buildings				
11-4911-49199		City Hall Security Upgrades	20,000	
11-4911-491199		City Hall Office Adjustments (Carpet, Walls, etc)	60,000	
11-4911-31499		DFPD RCH Design Costs and Appraisals	9,282	
11-4911-31499		Access Control readers	6,971	
11-4911-31499		CH Access control Door	4,048	
11-4911-39799		Transfer to Capital Improvement Projects Fund- Exchange Real Estate of 1235 Camino Del Rio and 201 E, 12th Street, Including 215 E. 12th Street, Between The DFPD and the City of Durango.	3,586,275	
Library				
11-4711-36199		Library landscape upgrade	2,000	
11-4711-36199		Professional engineering design for back-up generator	12,500	
Net Effect on Fund Balance			(3,352,141)	(48,680)

General Fund Capital				
			Budget	
Account Number	Project Number	Account Description	One-Time	Recurring
42-1000-66119		Interest Earned	345,146	
42-5105-31499	0278	32nd St West Debris Flow	(100,000)	
42-5105-31499	0278	Drainage Design E4.5Ax8.5S	35,000	
42-5105-31499	0120	Forest/ElPaso Drainage & Avendia Underdrain Designs	35,000	
Net Effect on Fund Balance			375,146	

Housing Innovation Fund				
			Budget Increase/(Decrease)	
Account Number	Project Number	Account Description	One-Time	Recurring
11-1000-66119		Interest Earned	50,000	
19-4137-31499		Other Contracted Services- Lodgers Tax Council determination	225,000	
Net Effect on Fund Balance			(175,000)	-

2019 Streets Sales Tax				
			Budget Increase/(Decrease)	
Account Number	Project Number	Account Description	One-Time	Recurring
24-1000-66119		Interest Earned	232,288	
24-5201-31499	0304	Alley Reconstruction W1Ax28.25S & E5.5Ax9.5S	39,448	
24-5201-31499	0307	N College Reconstruction	18,430	
24-5201-31499	0321	Roosa Ave Storm Drain Emergency Replacement	120,000	
24-5201-31499	0322	Crack sealing Material	50,000	
24-5201-31499	0323	7th St at D&SNGRR Crossing Upgrade	70,000	
24-5201-31499	0324	Design all Unpaved Alleys	170,000	
24-5201-31499	0325	CDOT Paving at 14th St W	60,000	
24-5201-31499	0326	Chip Seal at 14th St. W	30,000	
24-5201-31499	0327	Traffic Signals Elec Repairs/ Grounding	50,000	
24-5201-31499	0318	8th Ave/College St Intersection and Roads-Pavement only (MM Concrete)	(460,000)	
Net Effect on Fund Balance			84,410	-

2015 Sales Tax Fund				
			Budget Increase/(Decrease)	
Account Number	Project Number	Account Description	One-Time	Recurring
21-5201-31499	269	Forestry Plan	50,000	
21-5201-31499	267	Chapman redoing lifts, lighting, etc.	2,395,000	
21-5201-31499	266	ART Santa Rita Park to CR 210 Trail	(500,000)	
21-5201-31499		Chapman Hill Ice Rink Flooring	250,000	
Net Effect on Fund Balance			(2,195,000)	-

2005 Parks, Open Space and Trails				
			Budget Increase/(Decrease)	
Account Number	Project Number	Account Description	One-Time	Recurring
48-5201-31499	253	Outdoor Pickleball Courts	1,100,000	
48-5201-31499	146	SMART 160	(1,000,000)	
Net Effect on Fund Balance			(100,000)	-

Airport Fund				
			Budget Increase/(Decrease)	
Account Number	Project Number	Account Description	One-Time	Recurring
95-1000-66119		Interest Earned	380,235	
95-8611-31299		Conduct aircraft deicing facility feasibility study	40,000	
95-8615-31499	70206	Increase rental car facility repair budget to account for an expanded scope of repairs/upgrades to wash bay facilities	22,000	
95-8615-49199	70278	Expand overflow parking lot in advance of planned 2024 parking lot improvements which will require additional parking to accommodate project phasing.	20,000	
Net Effect on Fund Balance			298,235	-

Transportation Fund				
			Budget Increase/(Decrease)	
Account Number	Project Number	Account Description	One-Time	Recurring
97-1000-66119		Interest Earned	101,039	
97-8510-Various		Police Service Technician- Transit	17,000	
97-1000-63349		State Grant Revenue (FASTER ZEV Transition Plan)	40,000	
Net Effect on Fund Balance			44,039	-

Water Construction Fund				
			Budget Increase/(Decrease)	
Account Number	Project Number	Account Description	One-Time	Recurring

43-5301-31499	1130	Wildcat Tank Improvements	93,200	
43-5301-31499	1069	CMWTP Filter Effluent to Waste System	60,000	
<b>Net Effect on Fund Balance</b>			<b>(153,200)</b>	<b>-</b>

Water Fund				
			Budget Increase/(Decrease)	
Account Number	Project Number	Account Description	One-Time	Recurring
91-1000-66119		Interest Earned	413,191	
91-8113-Various		Utilities Design Manager	15,836	
91-8113-31499		Gateway Pipeline and Goeglein Gulch Emergency Repair	200,000	
<b>Net Effect on Fund Balance</b>			<b>197,356</b>	

Sewer Construction Fund				
			Budget Increase/(Decrease)	
Account Number	Project Number	Account Description	One-Time	Recurring
44-5401-31499	2071	SCADA Cybersecurity Improvements	25,000	
44-5401-31499	2074	SRWRF: Primary Clarifier Liner Replacement	120,000	
44-5401-31499	2076	SRWRF: Operator Workstation Remodel	35,000	
44-5401-31499	2077	SRWRF: Waterline Replacement	65,000	
<b>Net Effect on Fund Balance</b>			<b>(180,000)</b>	<b>-</b>

Sewer Fund				
			Budget Increase/(Decrease)	
Account Number	Project Number	Account Description	One-Time	Recurring
93-1000-66119		Interest Earned	42,779	
93-8313-Various		Utilities Design Manager	15,836	
93-8314-49199		Other Capital Repair Parts for Rotary Press	115,000	
<b>Net Effect on Fund Balance</b>			<b>(88,057)</b>	

Capital Improvement Funds				
			Budget	
Account Number	Project Number	Account Description	One-Time	Recurring
49-1000-66629		Transfer From General Fund for Contract to Exchange Real Estate of 1235 Camino Del Rio and 201 E, 12th Street, Including 215 E. 12th Street, Between The DFPD and the City of Durango.	3,586,275	
49-5201-31499		Exchange Real Estate of 1235 Camino Del Rio and 201 E, 12th Street, Including 215 E. 12th Street, Between The DFPD and the City of Durango.	3,586,275	
Net Effect on Fund Balance			-	

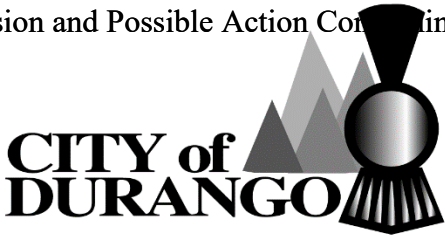
Approved and adopted this 15<sup>th</sup> Day of August, 2023.

CITY OF DURANGO, COLORADO

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
Faye Harmer, City Clerk



**AGENDA DOCUMENTATION**

**Item 14.1**

Meeting Date: August 15, 2023

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**TO: DURANGO CITY COUNCIL**                      **FROM:     MARK MORGAN**  
**CITY ATTORNEY**

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**SUBJECT:     DISCUSSION AND POSSIBLE ACTION TO ADOPT AN ORDINANCE  
                 AMENDING CHAPTER 11 HEALTH AND SANITATION ARTICLE IV –  
                 STREAM POLLUTION OF THE MUNICIPAL CODE PERTAINING TO WASTE  
                 AND FLASH FLOOD EXPOSURE WITHIN PUBLIC STREAM RIPARIAN  
                 ZONES AND FLOODPLAINS BY ADDING SECTION 11-74 UNLAWFUL  
                 PRESENCE AND ACTIVITIES**

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**RECOMMENDATION:**

It is recommended that City Council, by motion,  
  
                 adopt the proposed ordinance amending Chapter 11 Health and Sanitation, Article IV – Stream Pollution  
of the Municipal Code pertaining to waste and flash flood exposure within public stream riparian zones and  
floodplains by adding section 11-74 Unlawful Presence and Activities.

**BACKGROUND SUMMARY:**

There is a need for the City Council to adopt this ordinance to ensure the health and safety of our waterways  
and our community.

**STRATEGIC PLAN ALIGNMENT:**

Engaged and Collaborative Governance ECG

**ALTERNATIVE OPTIONS CONSIDERED:**

None

**FISCAL IMPACT:**

Unknown at this time

**POTENTIAL ADVERSE IMPACTS:**

Unknown at this time

**NEXT STEPS AND TIMELINE:**

Unknown at this time

**AN ORDINANCE AMENDING CHAPTER 11 HEALTH AND SANITATION ARTICLE IV – STREAM POLLUTION OF THE MUNICIPAL CODE PERTAINING TO WASTE AND FLASH FLOOD EXPOSURE WITHIN PUBLIC STREAM RIPARIAN ZONES AND FLOODPLAINS BY ADDING SECTION 11-74 UNLAWFUL PRESENCE AND ACTIVITIES AS FOLLOWS;**

Sec. 11-74 UNLAWFUL PRESENCE AND ACTIVITIES

- (a) Prohibited activities associated with waste deposit and/or flash flood exposure within 100 feet of public stream/public stream riparian zone/floodplain.

(1) Definitions. For purposes of this section, certain terms are defined as follows:

*Floodplain* or flood-prone area means any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

*Stationing* means to use the public device and occupying temporary and/or unauthorized permanent shelter, such as tents, nets, motor vehicles, tarps, or other temporary and/or unauthorized permanent structure that provides cover or protection from the elements, the presence or use of a campfire, camp stove or other heating source or cooking device, and keeping or storing personal property.

*Storm drainage system* means publicly owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention, and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

*Stream* means natural, altered, or improved channels that have seasonal or continuous water flows as a result of surface sources, storm water runoff or groundwater influx, or naturally occurring or manmade bodies of water surrounded by land in which water is confined. Streams include channels, canals, streambeds, streambanks, drainage ways, floodways, holding and silting basins, reservoirs, lakes, and ponds.

*Stream Riparian Zone* means the terrain alongside a stream between which the flow of water or body of water is confined.

*Waste* includes but is not limited to, any and all rubbish, unused, rejected and/or discarded material(s), feces, urine, temporary shelter, personal belongings, garbage, trash, debris, or other foreign substances, solid or liquid of every form, size, kind, and description.

- (2) Stationing. It is unlawful for any person to station inside of storm drainage systems or within 100 feet of any public stream and/or public stream riparian zone and/or floodplain, except as may be specifically authorized by the appropriate government authority.

- (3) Sleeping. It shall be unlawful for any person to sleep or make preparations to sleep, including the lying down of bedding for the purpose of sleeping inside of storm drainage systems or within 100 feet of any public stream and/or public stream riparian zone and/or floodplain, except as may be specifically authorized by the appropriate government authority.

(4) Waste. It is unlawful for any person to knowingly or recklessly deposit, place or permit to be deposited or placed any waste inside of storm drainage system or within 100 feet of any public stream and/or public stream riparian zone and/or floodplain unless:

- a. The area is designated by the State or any of its agencies or political subdivisions, including the City, for the disposal of the waste and the person is authorized by the proper public authority to so use the property; or
- b. The waste is placed in a receptacle or container designated by the State or any of its agencies or political subdivisions, including the City, for the disposal of the waste and the person is authorized by the proper public authority to so use the property and the receptacle or container is used within the area for the purpose of waste collection.

(5) Notice. No person shall be cited for a violation of subsections 2 and/or 3 of this section unless the person engages in conduct prohibited by subsections 2 and/or 3 of this section after having received notice by a law enforcement officer that such conduct violates subsections 2 and/or 3 of this section. Upon receiving notice of violation, the person engaging in conduct prohibited by subsections 2 and/or 3 of this section shall have up to twelve (12) hours to vacate and remove all items from the public storm drainagesystem and/or stream and/or public stream riparian zone and/or floodplain.

(b) Violation; PENALTY.

Violations of subsections 2 ,3, and 4 of this sections shall be punishable as provided for in section 1-16 of this code.

(c) Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction as invalid, such judgment shall not affect the remaining provisionsof this ordinance.

WHEREAS, the City Council of the City of Durango ("City") desires to protect and maintain the health, safety and welfare of all persons within the City; and

WHEREAS, persons unlawfully within storm drainage systems and/or public streams and/or public stream riparian zones and/or flood prone areas create a public health and safety hazard because persons lingering or remaining within a storm drainage system and/or public stream and/or public stream riparian zone and/or floodplain may be swept away by sudden floodwaters and/or drown; and

WHEREAS, waste, whether discarded materials, human excrement or any other foreign substance in streams or other water sources, also creates a public health and safety hazard becausewaste may lead to the contamination of the City's water supply; and

WHEREAS, the City Council desires to protect the streams and water sources of the City; and

WHEREAS, local and downstream water quality is affected by the pattern and content ofstorm water and floodwater drainage into streams from storm drainage systems and stream riparian zones, and

WHEREAS, persons unlawfully within the boundaries of public storm drainage systems, streams, public stream riparian zones and/or floodplains may urinate, defecate, bathe in, wash clothes and dishes, or otherwise contaminate stream waters and water sources, resulting inunsanitary and unhealthy conditions; and

WHEREAS, of particular concern is the possibility that, absent regulation, the City's watershed may be subject to contamination from *E. coli*, which is a type of fecal coliform bacteria commonly found in the intestines of animals and humans; and

WHEREAS, other regulatory agencies such as the National Forest Service and the National Park Service regularly prohibit camping and related activities within 100 feet or further from a streambank to protect the natural environment and public health and safety.

**NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF DURANGO, COLORADO THAT CHAPTER 11 HEALTH AND SANITATION ARTICLE IV – STREAM POLLUTION OF THE MUNICIPAL CODE PERTAINING WASTE AND FLASH FLOOD EXPOSURE WITHIN PUBLIC STREAM RIPARIAN ZONES AND FLOODPLAINS BE AMENDED BY ADDING SECTION 11-74 UNLAWFUL PRESENCE AND ACTIVITIES AS FOLLOWS;**

Sec. 11-74 UNLAWFUL PRESENCE AND ACTIVITIES

- (b) Prohibited activities associated with waste deposit and/or flash flood exposure within 100 feet of public stream/public stream riparian zone/floodplain.

(6) Definitions. For purposes of this section, certain terms are defined as follows:

*Floodplain* or flood-prone area means any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

*Stationing* means to use the public area for occupying temporary and/or unauthorized permanent shelter, such as tents, nets, motor vehicles, tarps, or other temporary and/or unauthorized permanent structure that provides cover or protection from the elements, the presence or use of a campfire, camp stove or other heating source or cooking device, and keeping or storing personal property.

*Storm drainage system* means publicly owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention, and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

*Stream* means natural, altered, or improved channels that have seasonal or continuous water flows as a result of surface sources, storm water runoff or groundwater influx, or naturally occurring or manmade bodies of water surrounded by land in which water is confined. Streams include channels, canals, streambeds, streambanks, drainage ways, floodways, holding and silting basins, reservoirs, lakes, and ponds.

*Stream Riparian Zone* means the terrain alongside a stream between which the flow of water or body of water is confined.

*Waste* includes but is not limited to, any and all rubbish, unused, rejected and/or discarded material(s), feces, urine, temporary shelter, personal belongings, garbage, trash, debris, or other foreign substances, solid or liquid of every form, size, kind, and description.

- (7) Stationing. It is unlawful for any person to station inside of storm drainage systems or within 100 feet of any public stream and/or public stream riparian zone and/or floodplain, except as may be specifically authorized by the appropriate government authority.

(8) Sleeping. It shall be unlawful for any person to sleep or make preparations to sleep, including the lying down of bedding for the purpose of sleeping inside of storm drainage systems or within 100 feet of any public stream and/or public stream riparian zone and/or floodplain, except as may be specifically authorized by the appropriate government authority.

(9) Waste. It is unlawful for any person to knowingly or recklessly deposit, place or permit to be deposited or placed any waste inside of storm drainage system or within 100 feet of any public stream and/or public stream riparian zone and/or floodplain unless:

- a. The area is designated by the State or any of its agencies or political subdivisions, including the City, for the disposal of the waste and the person is authorized by the proper public authority to so use the property; or
- b. The waste is placed in a receptacle or container used within the area for the purpose of waste collection.

(10) Notice. No person shall be cited for a violation of subsections 2 and/or 3 of this section unless the person engages in conducted prohibited by subsections 2 and/or 3 of this section after having received notice by a law enforcement officer that such conduct violates subsections 2 and/or 3 of this section. Upon receiving notice of violation, the person engaging in conduct prohibited by subsections 2 and/or 3 of this section shall have up to twelve (12) hours to vacate and remove all items from the public storm drainage system and/or stream and/or public stream riparian zone and/or floodplain.

(b) – Violation; PENALTY.  
Violations of subsections 2 ,3, and 4 of this section shall be punishable as provided for in section 1-16 of this code.

(c) Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction as invalid, such judgment shall not affect the remaining provisions of this ordinance.

This ordinance shall become effective ten (10) days after its passage and final publication as provided by law.

CITY COUNCIL OF  
THE CITY OF DURANGO

Attest:

\_\_\_\_\_  
\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LA PLATA )

I, Faye Harmer, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. O-2023- was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the \_\_\_\_ day of August, 2023, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the \_\_\_\_ day of August, 2023, prior to its final consideration by the City Council

\_\_\_\_\_  
City Clerk

I further certify that said Ordinance No. O-2023- was duly adopted by the Durango City Council on the \_\_\_\_ day of August 2023, and that in accordance with instructions received from the Durango City Council, said ordinance was published by title only in the Durango Herald on the \_\_\_\_ day of August 2023.

ATTEST:

CITY OF DURANGO

\_\_\_\_\_  
Faye Harmer, City Clerk

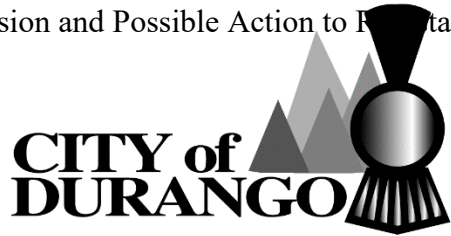
\_\_\_\_\_  
Melissa Youssef, Mayor

Approved as to form:

Approved as to Content

\_\_\_\_\_  
Mark Morgan, City Attorney

\_\_\_\_\_  
José Madrigal, City Manager



# AGENDA DOCUMENTATION

## Item 16.3

Meeting Date: August 15, 2023

**TO: DURANGO CITY COUNCIL      FROM:    MARK MORGAN**  
**CITY ATTORNEY**

**SUBJECT    DISCUSSION AND POSSIBLE ACTION TO REINSTATE THE  
APPOINTMENT OF A BOARD OF ETHICS MEMBER WHO WAS  
PREVIOUSLY APPOINTED AT THE JULY 5, 2023 CITY  
COUNCIL REGULAR MEETING**

**RECOMMENDATION:**

It is recommended that, by motion, the City Council:

*Move to reinstate the appointment of Ms. Nomoto to the Board of Ethics with an effective date to begin serving at the next scheduled meeting of the Board of Ethics*

**BACKGROUND SUMMARY:**

Ms. Nomoto was appointed to the Board of Ethics at the July 5, 2023, City Council Regular Meeting to fill a vacancy. After Ms. Nomoto’s appointment, she informed the City Attorney’s Office, pursuant to Section 2-206(g) of the City Code, that due to a perceived conflict with the California Judicial Canon of Ethics, Ms. Nomoto would need to resign her seat on the Durango Board of Ethics until she received confirmation from the California Ethics Committee that Ms. Nomoto’s service would not violate the California Judicial Canon of Ethics.

Ms. Nomoto received confirmation that she could serve on the Durango Board of Ethics free of conflict, and informed the City Attorney’s Office on August 7, 2023.

**STRATEGIC PLAN ALIGNMENT:**

Engaged and Collaborative Government (ECG)

**ALTERNATIVE OPTIONS CONSIDERED:**

None

**FISCAL IMPACT:**

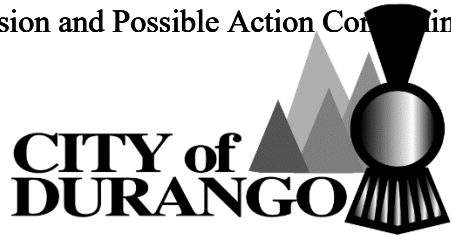
None known

**POTENTIAL ADVERSE IMPACTS:**

None

**NEXT STEPS AND TIMELINE:**

Unknown at this time.



AGENDA DOCUMENTATION

Item 16.4

Meeting Date: August 15, 2023

TO: DURANGO CITY COUNCIL      FROM: MARK MORGAN  
CITY ATTORNEY

SUBJECT    DISCUSSION AND POSSIBLE ACTION CONCERNING A  
MOTION TO APPROVE THE SETTLEMENT OF A CASE  
CONCERNING THE APPLICATION OF WATER RIGHTS FILED  
BY REBECCA SCHWARTZ AND KEVIN PADREZ IN THE  
FLORIDA RIVER WATER SHED, SPECIFICALLY 2022CW2018,  
IN LA PLATA COUNTY DISTRICT COURT

**RECOMMENDATION:**

It is recommended that, by motion, City Council:

*Move to approve the settlement of a case concerning the application of water rights filed by Rebecca Schwartz and Kevin Padrez in the Florida River Water Shed, specifically 2022CW2018, filed in La Plata County District Court*

**BACKGROUND SUMMARY:**

The City of Durango previously opposed the application for water rights filed by Ms. Schwartz and Mr. Padrez due to the claimed rights impacts on the Florida River Water Shed. The City and the applicants' have since developed a proposed decree which outlines parameters that ensure that the City will not incur any injuries in relation to the use of the water rights and the plan for augmentation by the applicants'.

**STRATEGIC PLAN ALIGNMENT:**

Engaged and Collaborative Government (ECG)

**ALTERNATIVE OPTIONS CONSIDERED:**

None

**FISCAL IMPACT:**

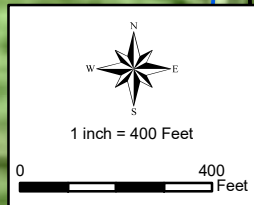
Unknown at this time

**POTENTIAL ADVERSE IMPACTS:**

Unknown at this time

**NEXT STEPS AND TIMELINE:**

Unknown at this time



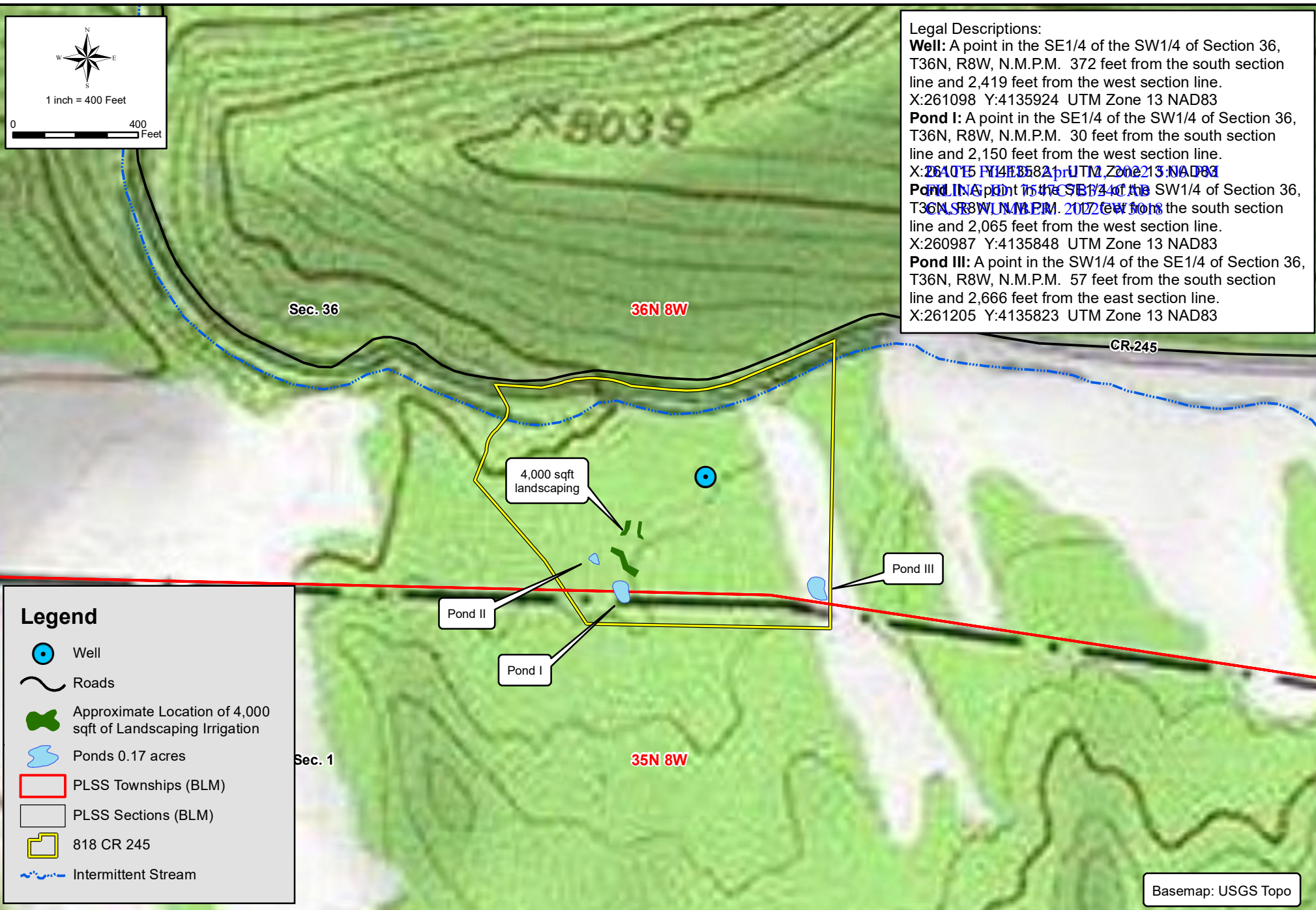
#### Legal Descriptions:

**Well:** A point in the SE1/4 of the SW1/4 of Section 36, T36N, R8W, N.M.P.M. 372 feet from the south section line and 2,419 feet from the west section line.  
X:261098 Y:4135924 UTM Zone 13 NAD83

**Pond I:** A point in the SE1/4 of the SW1/4 of Section 36, T36N, R8W, N.M.P.M. 30 feet from the south section line and 2,150 feet from the west section line.  
X:261015 Y:4135824 UTM Zone 13 NAD83

**Pond II:** A point in the SE1/4 of the SW1/4 of Section 36, T36N, R8W, N.M.P.M. 207 feet from the south section line and 2,065 feet from the west section line.  
X:260987 Y:4135848 UTM Zone 13 NAD83

**Pond III:** A point in the SW1/4 of the SE1/4 of Section 36, T36N, R8W, N.M.P.M. 57 feet from the south section line and 2,666 feet from the east section line.  
X:261205 Y:4135823 UTM Zone 13 NAD83



Date: 4/7/2022 Document Path: P:\211-066 Schwartz 818 CR 285 Augmentation Plan\000\Mapping\Exhibit A - 818 CR 245.mxd

User Name: TD Downing



Wright Water Engineers, Inc.  
1666 N. Main Ave., Ste. C  
Durango, CO 81301  
(970) 259-7411 ph 259-8758 fx

LA PLATA COUNTY, CO

**818 CR 245**

SCHWARTZ

PROJECT NO.  
211-066.000

EXHIBIT  
Page 2 of 10

DISTRICT COURT, WATER DIVISION NO. 7 LA PLATA COUNTY, COLORADO 1060 East Second Avenue Durango, Colorado 81301 970-247-2304 <hr/> <b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF</b> <b>Applicant: Rebecca Schwartz and Kevin Padrez</b>  <b>IN THE FLORIDA RIVER WATER SHED,</b> <b>In La Plata County</b>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p style="text-align: center;">Case No: 22CW3018</p>
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW,          RULING OF THE REFEREE AND DECREE</b>	

This matter came before the Referee on the Application of Rebecca Schwartz and Kevin Padrez (collectively, “Applicants”) for water rights and for approval of a plan for augmentation. The Referee, being fully advised in the premises, hereby enters the following findings of fact and ruling:

### I. FINDINGS OF FACT

1. Applicants:

Rebecca Schwartz and Kevin Padrez  
 818 C.R. 245  
 Durango, CO 81301

c/o Nancy Agro, 128 Riverview Drive, Durango, CO 81301, (970) 749-8621,  
[nancy@nancyagro.com](mailto:nancy@nancyagro.com)

2. Application filed: April 12, 2022

3. Pursuant to CRS 37-92-302, the time for filing statements of opposition has expired. The City of Durango filed a timely statement of opposition.

4. Applicants have entered into a stipulation with the City of Durango, dated \_\_\_\_\_, and the stipulation has been approved by the Court.

5. Groundwater Right:

- a. Name of structure: Schwartz-Padrez Well, Well Permit 102861A. The Well permit will be amended commensurate with this decree.
- b. Legal Description: 372 Feet from the South Section Line, 2,419 feet from the West Section Line of the SE/4 SW/4 Section 36, Township 36 North, Range 8 West NMPM, UTM Coordinates Zone 13, NAD 83: X 261098 Y 4135924 (See Exhibit A)
- c. Source: groundwater tributary to Florida River Basin
- d. Date of appropriation: October 1, 1979, for all uses except the guest house and greenhouse which will have an April 12, 2022, date of appropriation
- e. Amount: 15 gpm, Absolute.
- f. Uses: Domestic for a main residence and guest house, Livestock, Landscaping, and Greenhouse
- g. Number of acres irrigated: 4,000 square feet (See Exhibit A)
- h. Legal description of irrigated acreage: Landscaped area located on Sweetwater Springs Lot 6A, Category 1, Project 84-33, 818 C.R. 245, Durango, CO 81303

6. New Storage Water Right

- a. Name of Reservoir: Schwartz-Padrez Pond I
- b. Legal Description of Structure and Point of Diversion: 30 Feet from the South Section Line, 2,150 feet from the West Section Line of the SE/4 SW/4 Section 36, Township 36 North, Range 8 West NMPM, UTM Coordinates Zone 13, NAD 83: X 261015 Y 4135821 (See Exhibit A)
- c. Source: Unnamed tributary to the Florida River
- d. Date of Appropriation: April 12, 2022.
- e. Amount: 0.40 acre feet, Absolute
- f. Uses: Livestock, Recreation, Piscatorial, Landscaping and Greenhouse

g. Surface Area: 0.07 acres, vertical dam height: 8.7 feet, horizontal dam length 67 feet

h. Total capacity of reservoir: 0.40 acre feet

7. Plan of Augmentation

a. Name(s) of structure(s) to be augmented: Schwartz-Padrez Well, Ponds I, II, and III.

b. Statement of Plan for Augmentation: This augmentation plan is intended to replace all of the out of priority depletions caused by the diversions made at the structures described in paragraphs 5.a. and 6.a. above, as well as the evaporation from Ponds II and III. Ponds II and III are undecreed structures for which there are no water rights. Ponds II and III can only be filled under free river conditions and cannot be filled under this plan for augmentation.

c. Depletions: In-house use would use up to 350 gallons per day for the main residence, and 270 gallons per day for the guest home, for a diversion amount of 0.695 Acre Feet (AF) per year. Return flows from septic are assumed at 85%. Livestock watering for up to four head will total 0.067 acre feet per year. Landscaping use will divert up to 0.222 AF annually with irrigation efficiency assumed as 80%. The greenhouse diverts up to 0.068 AF per year. Diversions made from Schwartz-Padrez Pond for irrigation, livestock or greenhouse use will be replaced from surface water under free river conditions or from the Schwartz-Padrez Well in the month of the withdrawal and augmented accordingly. Pond evaporation totals 0.567 AF for three ponds. Total lagged depletions to be augmented for these uses are 0.98 AF per year. Additional stream loss of 0.625% per mile from Lemon Dam for four miles is 0.02 AF per year. The total depletion will not exceed 1.0 AF per year. Water demand may vary as between uses so long as the total depletions for those uses, using the assumption set forth herein do not exceed 1.0 AF per year. (See Table 1).

d. Source of Water for Augmentation: Florida River water stored in Lemon Reservoir. To protect senior water users, Applicant has entered into a Reservation Agreement with the Florida Water Conservancy District to reserve up to 1.0 AF of water per year for augmentation purposes. Upon completion of this Decree, Applicant will enter into a long-term water service agreement for releases from Lemon Dam for up to 1.0 AF of water per year to replace Applicant's out of priority depletions. Applicant's out of priority depletions for the uses proposed herein will not exceed 1.0 AF per year.

The water rights decreed to the Florida Water Conservancy District for use in plans of augmentation is Case Numbers W 1689 77 through W 1695 77 as amended in 1994 for use of 114 acre feet of storage water to be used for augmentation. Legal description: The axis of the dam is located in Section 17 and 20, Township 36 North, Range 7 West, N.M.P.M. beginning at a point on the right abutment, from whence the Southwest corner of Section 17, Township 36 North, Range 7 West, N.M.P.M., bears South 84° 34' West, a distance of 1,699.6 feet, thence South 63° 22' East a distance of 1,320 feet to a point on the end of the axis of the dam and rock fill structure.

e. Total diversions from the Schwartz-Padrez Well shall be metered with a totalizing flow meter. Augmentation releases will be made from Lemon Reservoir and coordinated with the Dam Superintendent for the Florida Water Conservancy District and tracked via mathematical calculations. These releases shall be made from the start of an administrative call and continue through the duration of the call period as determined by the Division Engineer. The monthly volume set forth in column 15 of Table 1 shall be released on an average daily basis during the period of administration, or as directed by the Division Engineer.

8. Applicants, or their successors in ownership of the plan for augmentation herein, shall be responsible for ensuring that the water uses stay within the diversions and depletions authorized by this Ruling. Applicants shall supply meter records and summaries of annual diversions and depletions under this Decree to the Division Engineer by November 15 of each year for the immediately preceding November 1 to October 31 period, or more often as may be required by the Division Engineer. Applicants will be the contact for purposes of correspondence and administration by the Division Engineer. If a different contact will be used, Applicants will provide the Division Engineer notice in writing.

9. The augmentation plan described in this Ruling, if operated and administered in accordance with the terms and conditions of this Ruling, will adequately replace depletions resulting from the use of the wells in time, amount and location.

## **II. CONCLUSIONS OF LAW**

10. The Division Engineer is lawfully required to administer diversions under the subject water rights pursuant to Colorado law. The Division Engineer, or a designated representative, will administer all such water transported in the Florida River or its tributaries under this Decree, including water for replacement of depletions, past intervening headgates to ensure that such water is not intercepted or otherwise diminished in quantity by diversion, use or other interference by intervening water rights and to assure that such water remains available and suitable for Applicants' uses under this Ruling. If the Division Engineer is unable to verify, manually or otherwise, that water was delivered past a structure that is sweeping the river, none of the water released will be available for diversion or replacement credit below the sweeping structure, provided that the sweeping structure had a right to sweep the river. The Applicants shall comply with the orders of the Division Engineer to install necessary measuring devices and administrative structures, and shall keep records and make reports as reasonably requested by the Division Engineer.

11. This Court has jurisdiction over these proceedings and over all persons and water rights affected thereby, whether they have appeared or not.

12. Full and adequate notice of these proceedings and the matters adjudicated herein has been given in the manner required by law.

13. Applicant has met all burdens of proof and complied with all standards applicable to each

of the water rights requested herein.

14. Applicants' water rights and plan of augmentation are contemplated and authorized by law, and if implemented and administered in accordance with the terms and conditions of this Ruling, will not injuriously affect the owners of or persons entitled to use water under a vested water right or a decreed conditional water right.

### **III. RULING OF REFEREE**

15. The provisions of paragraphs 1- 14 above are incorporated herein.

16. The water rights described in Paragraph 5 is decreed with the indicated date of appropriation, and the plan of augmentation described in Paragraph 7 is approved subject to the terms and conditions of this Ruling.

17. The application for the water rights described herein was filed in 2022 and such water right shall be administered as having been filed in that year and shall be junior to all priorities for which applications were filed in previous years. As between all rights for which applications were filed in 2022, priority shall be determined by decreed dates of appropriation.

18. Measuring Devices. Applicants shall install the measuring devices required by this Decree and such additional measuring devices as are necessary for the administration of the subject water rights and plan of augmentation approved herein and shall make such additional reports as reasonably requested by the State or Division Engineers.

19. The plan for augmentation described in Paragraph 7 is hereby approved subject to the terms and conditions set forth in this decree. Out of priority depletions resulting from Applicant's use of the well shall be replaced through releases from Lemon Reservoir in the amounts required by Paragraph 7.c.

20. If Applicants wish to change the water use demands outlined in this decree, they may do so only if the total depletions do not exceed 1 AF and only if Applicants prepare and provide a revised Table 1 to the Division Engineer for approval at least sixty days prior to the proposed change. Applicants shall also submit a new well permit application, if necessary. Any proposed revised Table 1 shall also be provided to the City of Durango at the time it is submitted to the Division Engineer.

21. Pursuant to C.R.S. §37-92-304(6), the Court shall retain jurisdiction over the plan for augmentation for a period of five (5) years after the augmentation plan becomes operational.

22. Within thirty days of execution of this Decree by the Court, Applicant shall deliver to the FWCD a completed and signed Third Party Agreement for Purchase of Florida Project Storage Water for Long Term Water Service ("Third Party Contract") together with the first year payment. This Decree is expressly contingent on the BOR, FWCD, and Applicant entering into a Third Party Contract. Applicant shall provide a fully executed Third Party Contract to the Division Engineer and the City of Durango within six months of the entry of Decree. If

Applicant shall fail to provide the Third Party Contract, the Division Engineer shall notify the Court and the City of Durango, and this matter shall set on the docket for a compliance review.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jeffery Wilson, Water Judge  
Acting as Water Referee

APPROVED AS TO FORM:



\_\_\_\_\_  
Nancy Agro, Reg. No. 24910

Date: \_\_\_\_\_

CHECKED FOR FORM AND ADMINISTRABILITY:

\_\_\_\_\_  
Rob Genualdi, Division Engineer  
Colorado Water Resources  
Division No. 7  
160 Rockpoint Drive, Suite E  
Durango, CO 81301  
(970)247-1845

Date: \_\_\_\_\_

<p>DISTRICT COURT, WATER DIVISION NO. 7 STATE OF COLORADO</p> <p>La Plata County Courthouse 1060 E. Second Avenue Durango, CO 81301 (970) 247-2304</p>	
<p><b>CONCERNING THE APPLICATION FOR WATER RIGHTS OF</b></p> <p><b>Applicant: Rebecca Schwartz and Kevin Padrez</b></p> <p><b>IN THE FLORIDA RIVER WATER SHED,</b></p> <p><b>In La Plata County</b></p>	
<p>Attorney for Applicant Nancy Agro, #24910 128 Riverview Drive Durango, Colorado 81301 Telephone: (970) 422-2024 <a href="mailto:nancy@nancyagro.com">nancy@nancyagro.com</a></p> <p>Attorneys for Opposer, City of Durango Paul F. Holleman, #21888 BUSHONG &amp; HOLLEMAN PC 1525 Spruce Street, Suite 200 Boulder, Colorado 80302 303-431-9141 <a href="mailto:fholleman@BH-LAWYERS.COM">fholleman@BH-LAWYERS.COM</a></p>	<p>Case No. 2022CW 3018</p>
<p>STIPULATION BETWEEN APPLICANT AND CITY OF DURANGO</p>	

Applicant, Rebecca Schwartz and Kevin Padrez ("Applicant"), and Opposer, City of Durango ("Opposer") (collectively the "Parties"), by and through their undersigned attorneys, hereby stipulate as follows:

1. Opposer consents to the entry of a decree in the above captioned case that is no less restrictive than the form of the proposed decree attached hereto as Exhibit 1.
2. Applicant shall provide notice of any changes to the proposed decree prior to submitting the final decree in this matter to the Court for entry. In addition, Opposer shall continue to receive copies of all pleadings in this case.
3. This Stipulation shall be binding upon the Parties and their successors and assigns.
4. Each Party to this Stipulation shall bear its own costs and expenses in this matter, including attorney fees.
5. This Stipulation shall be enforceable by the Parties either as an agreement or, upon approval of this Stipulation by the Water Division No. 7 Court, as an Order of the Water Court.

Dated this \_\_\_\_\_, \_\_\_\_\_, day of 2023.

Attorney for Applicant:

Attorney for Opposer:

NANCY AGRO, P.C.

CITY OF DURANGO

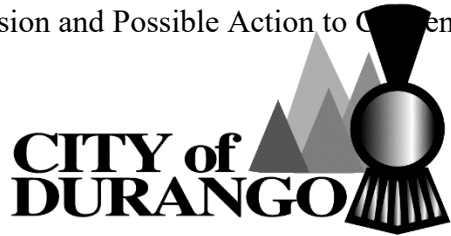
BY:



Nancy Agro

By:

Paul F. Holleman



AGENDA DOCUMENTATION

Item 17.1

Meeting Date: August 15, 2023

TO: DURANGO CITY COUNCIL      FROM: MARK MORGAN  
CITY ATTORNEY

**SUBJECT** EXECUTIVE SESSION TO DISCUSS THE PURCHASE, ACQUISITION, LEASE, SALE, OR TRANSFER OF AN INTEREST IN REAL PROPERTY LOCATED IN DOWNTOWN DURANGO THAT IS CURRENTLY LEASED TO THE DURANGO AND SILVERTON NARROW GAUGE RAILROAD COMPANY FOR PARKING, AND TO DETERMINE POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATION AND DIRECT NEGOTIATORS, AS PERMITTED BY C.R.S. 24-6-402 (4)(a) AND (e).

**RECOMMENDATION:**

There is a need for City Council to meet in Executive Session

to discuss the lease, transfer, or sale of real property located in downtown Durango that is currently leased to the Durango and Silverton Narrow Gauge Railroad Company for parking, and to determine positions relative to matters that may be subject to negotiation and direct negotiators, as permitted by C.R.S. 24-6-402 (4)(a) and (e).

**BACKGROUND SUMMARY:**

The City is the owner of real property consisting of approximately 62,000 square feet located at the corner of Camino del Rio and West College Drive. The City and the Durango & Silverton Narrow Gauge Railroad ( "D&SNGRR") entered into a Ground Lease Agreement dated January 21, 2020 ( the "Lease") for D&SNGRR's to lease the property which it uses as a parking lot for train customers. Both the city and the rail road have obtained appraisals for the leased property.

**STRATEGIC PLAN ALIGNMENT:**

Financial Excellence and High Performing Government

**ALTERNATIVE OPTIONS CONSIDERED:**

None

**FISCAL IMPACT:**

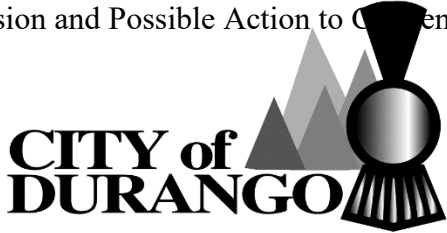
The Lessee pays a monthly rent in the amount of \$8,333.00 during the short term Lease extension

**POTENTIAL ADVERSE IMPACTS:**

Unknown at this time

**NEXT STEPS AND TIMELINE:**

It is the recommendation that City Council, by motion, convene in Executive Session to discuss the lease, sale, or transfer of an interest in real property located in downtown Durango that is currently leased to the Durango and Silverton Narrow Gauge Railroad Company for parking, and to determine positions relative to matters that may be subject to negotiation and direct negotiators, as permitted by C.R.S. 24-6-402 (4)(a) and (e).



**AGENDA DOCUMENTATION**

**Item 17.2**

Meeting Date: August 15, 2023

**TO: DURANGO CITY COUNCIL      FROM:    MARK MORGAN**  
**CITY ATTORNEY**

**SUBJECT    A MOTION TO CONVENE IN EXECUTIVE SESSION TO  
RECEIVE    LEGAL    ADVICE    REGARDING    POSSIBLE  
LITIGATION    CONCERNING    A    CONTRACT    DISPUTE  
INVOLVING JRC CONSULTING AS PERMITTED BY C.R.S. 24-  
6-402(4)(B)**

**RECOMMENDATION:**

It is recommended that City Council, by motion, convene in executive session to receive legal advice regarding possible litigation concerning a contract dispute involving JRC Consulting as permitted by C.R.S. 24-6-402(4)(b).

**BACKGROUND SUMMARY:**

There is a need for the City Council to convene in executive session to receive legal advice on a contract dispute between the City of Durango and JRC Consulting.

State law requires that two thirds of the quorum present must vote in the affirmative in order to convene in executive session.

**STRATEGIC PLAN ALIGNMENT:**

Engaged and Collaborative Governance ECG

**ALTERNATIVE OPTIONS CONSIDERED:**

None

**FISCAL IMPACT:**

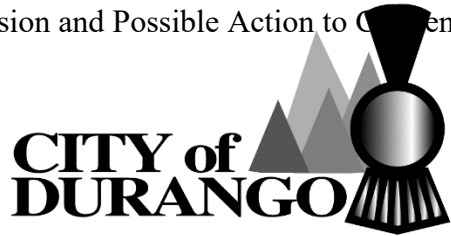
Unknown at this time

**POTENTIAL ADVERSE IMPACTS:**

Unknown at this time

**NEXT STEPS AND TIMELINE:**

Unknown at this time



**AGENDA DOCUMENTATION**

**Item 17.3**

Meeting Date: August 15, 2023

**TO: DURANGO CITY COUNCIL      FROM:    MARK MORGAN, CITY ATTORNEY**

**SUBJECT    EXECUTIVE SESSION TO RECEIVE LEGAL ADVICE ON SPECIFIC  
LEGAL QUESTIONS PURSUANT TO C.R.S. 24-6-402(4)(B)  
CONCERNING LITIGATION FILED BY JOHN SIMPSON,  
SPECIFICALLY JOHN SIMPSON V. CITY OF DURANGO,  
2022CV300112, FILED IN LA PLATA COUNTY DISTRICT COURT**

**RECOMMENDATION:**

Motion to Convene in Executive Session to Receive Legal Advice on Specific Legal Questions Pursuant to C.R.S. 24-6-402(4)(b) Concerning Litigation titled John Simpson v. City of Durango, 2022CV30112

**BACKGROUND SUMMARY:**

There is a need for the City Council to meet in Executive Session to receive legal advice on specific legal questions related to litigation filed by John Simpson under 2022CV300112.

State Law requires that two thirds of the quorum present must vote in the affirmative in order to convene in Executive Session.

**STRATEGIC PLAN ALIGNMENT:**

Engaged and Collaborative Governance ECG

**ALTERNATIVE OPTIONS CONSIDERED:**

None

**FISCAL IMPACT:**

Unknown

**POTENTIAL ADVERSE IMPACTS:**

Unknown

**NEXT STEPS AND TIMELINE:**

Unknown at this time