

STATE OF COLORADO
COUNTY OF HUERFANO
CITY OF WALSENBURG
Regular Session Meeting
February 3, 2009 7:00 p.m.

Mayor Sheldon called the meeting to order at 7:00 p.m.: the Pledge of Allegiance was recited. Council members present were: Larry Patrick, Edie Flanagin, Susan Blake, Bruce Quintana, David Mockmore, Erin Jerant, James England and Lou Taylor. Others present were Acting City Administrator Lew Quigley, Assistant Administrator Beth Neece, City Clerk/Treasurer John E. Zgut, and City Attorney Daniel Hyatt.

APPROVAL OF MINUTES

The corrected minutes of the January 20, 2009 meeting were accepted on a motion by David Mockmore, seconded by Lou Taylor. Motion passed on Roll Call Vote of 9 to 0.

AMEND THE AGENDA

Larry Patrick made the motion to **amend the agenda** in light of changes that took place after the 24 hour posting deadline. Susan Blake seconded the motion. Motion passed on a Roll Call Vote of 9 to 0. Copies of the amended agenda were handed out by the City Clerk to those present.

Committee Reports

Finance Committee Chair Larry Patrick reported on his meeting of February 2, 2009 at which Ordinance 982 was discussed and the resultant changes and sent to City Attorney Dan Hyatt. Hyatt returned the document with changes required under the statutes. Engineering firms for the ADA curbs were discussed and bids on surplus city vehicles explored. It is noted that there are 25 applications for City Administrator.

Parks and Recreation Committee Chair Bruce Quintana noted a report by Assistant Administrator Neece on various kiddie slides proposed for the Walsenburg Wild Waters Park; there will be Public Hearing scheduled for exploration of ideas for all the parks; saw the need for a long-term plan for city parks; and possible location for a lap pool at City Park and perhaps a wave-rider feature.

Safety Committee Chair Lou Taylor reported a January 22, 2009 meeting at which all kinds of street signs were discussed; a guest speaker representing discounts from Pinnacol, our comp coverage company appeared. The ADA curb bids were opened by City Clerk Zgut, Building Inspector Leonard Mondragon, and Carmen Collins our bookkeeper present. The presentation of bids was made to the Finance Committee last night. Results will be presented later in the meeting. The next Safety and ADA Committee meeting will be February 12 at 5:30 p.m. And, the all employee safety meeting will be February 27 at 8:30 a.m.

Public Works Committee Chair Edie Flanagin reported on the meeting held January 21 with a phone conference with city water attorney and engineers. The conference lasted approximately 90 minutes at which only 4 items on a long list were discussed. Raw water issues were the main topic. These issues begin in the 1930's and are still of concern today. With laws on the books and actions resulting from lawsuits there is a good possibility of fines to the city. There are three possible solutions, cease all raw water use; issue water cards to users on that line; put in a treated water line to those users at the cost of millions. A mitigation plan is needed. Lease of the Coler ditch was another topic. Lease of 2 acre feet at the price of \$1500 per acre foot for Pinion Hills residents was discussed in a deal similar to the Wahatoya Estates. An updated substitute water

plan is needed; there was discussion of the plan to drill a second well at the Walsenburg East Ranch. Uses of the #5 ditch were another topic. And there is too much knowledge and experience among city employees that is not written down. That needs to be done. There is a need for a comprehensive water plan for the City of Walsenburg. Edie Flanagan **made the motion to post an RFQ for a Comprehensive** Water plan for City of Walsenburg. The motion was seconded by Erin Jerant and Motion passed on a Roll Call Vote of 9 to 0.

Citizen Forum

No one appeared at this meeting, but Mayor Sheldon noted there was Chamber of Commerce members present for Ordinance 982.

REPORTS

City Administrator Lew Quigley reported on his view how to select the new City Administrator. He outlined the steps and dates in order that the city could have one aboard by April 1, 2009. He asked each City Council person and Department head to read over the applications then select their top 5 candidates. Quigley suggested February 13, 2009 as the deadline for application review process to be completed.

Chief Baldonado requested recognition for the 5 dispatchers taken by the county. James England suggested the Mayor's Award developed last year to be utilized for this. Erin Jerant asked about the details of calls received by dispatch for January 2009. As that report was not yet completed, it will be available for next meeting.

Ranch Manager Butch Corsentino reported on the well drilled at the Kincaid Ranch and the progress laying of the lines for water and propane into that dwelling. He requested the city crews regrade the road thereto with gravel to top the road to be provided by the town of La Veta who uses the road to reach their waster water ponds. (An earlier agreement has been in place for years that La Veta would maintain that road in exchange for access across the ranch to the ponds!) An exam of the house indicated that there is no modern breaker box. The panel uses older screw-in glass fuses. Lou Taylor was asked to review the situation. He is retired from San Isabel Electric Association and can perform that task.

Unfinished Business

Larry Patrick made the motion to approve on Ordinance 982 on Second Reading with the removal of the date of birth and the Social Security Number from the Ordinance requirements and to publish in full with the changes made to ORDINANCE 982.

ORDINANCE NUMBER 982

AN ORDINANCE OF THE CITY OF WALSENBURG, COLORADO, REQUIRING BUSINESS LICENSES FOR BUSINESSES AND OCCUPATIONS LOCATED WITHIN THE CITY OF WALSENBURG, COLORADO AND ESTABLISHING FEES FOR SAID LICENSES

ORDINANCE NUMBER 982

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WHEREAS, the City of Walsenburg is a statutory City authorized pursuant to C.R.S. § 31-15-501(1)(c) to license and regulate any lawful occupation or business located within the City; and

WHEREAS, the City finds that in order to track businesses and ensure adherence of City regulations a requirement for a business license should be implemented.

WHEREAS, the Walsenburg City Council believes that it is necessary that each business within the City of Walsenburg shall obtain an annually renewable business license issued by the City of Walsenburg; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Walsenburg, Colorado:

a. DEFINITIONS.

1 When not clearly otherwise indicated by the context, the following terms, words, and phrases, as used in this chapter, shall have the following meaning:

A "BUSINESS" means employment, occupation, profession, or a commercial activity or enterprise engaged in for gain, benefit, advantage or livelihood occurring or existing within the City of Walsenburg temporarily or permanently. The term business shall not include:

- i persons or entities conducting not more than six yard sales in a calendar year; or three consecutive days in a row.
- ii Persons or entities consigning items to a business for the purpose of selling the items where that business collects and pays sales tax on the sold items.

B "ENGAGED IN BUSINESS" means performing or providing services, or selling, leasing, renting, delivering, installing or any activity in connection with the selling, leasing, renting, delivering, or installing in the City of Walsenburg tangible personal property by retail or wholesale sale for use, storage, distribution, or consumption within the City of Walsenburg. The term "Engaged in Business" does **not** include:

- i Any person who owns commercial or residential real property offered for lease or rent in the ordinary course of business that does not employ one or more employees who perform any services or other activities within the City in relation to the lease, rental, operation or maintenance of such property for any period of time in a calendar month.
- ii Any homeowners' association that does not employ one or more employees who perform any services or other activities within the City in relation to the operation or maintenance of such association and its property for any period of time in a calendar month;
- iii Any non profit corporation properly registered with the Colorado Secretary of State;
- iv Any kindergarten through high school organization sponsored by the school;
- v Any person engaged exclusively in the business of selling commodities which are exempt from taxation under this Code;
- vi Any person engaged exclusively in the business of selling goods for the purpose of resale to retail stores located within the City of Walsenburg.

b. LICENSE REQUIRED. No person who is engaged in a business within the City of Walsenburg shall be permitted to operate without a valid business license.

c. EACH ESTABLISHMENT TO BE LICENSED. In case business is transacted at two or more separate places by the same business entity, a separate license for each place of business shall be required. An owner or owners of different businesses located at the same location and engaged in business must obtain a separate license for each business.

d. APPLICATION CONTENTS. The business license shall be granted only upon application stating the name, and address of the person desiring such license, the name of such business and the character thereof, the

applicable federal identification number and State of Colorado license number of the business, the physical location of the business, the physical location phone number, and the applicable contact phone number, fax, and email address. Other facts may be required by the City such as items listed above of an officer or owner of the business. The application must be signed and dated under penalty of perjury by an owner or officer of the business. A valid digital signature or the equivalent thereof, on a license application transmitted electronically over the internet or transmitted via other similar means is accepted and held as a written signature. A signature on a license application sent via facsimile is accepted and held as a written signature. Any person doing business as a wholesaler shall obtain a retailer's license if any sales are made at retail as defined herein. Applications for such licenses shall be made to the City Clerk. The City Clerk shall issue and renew such licenses.

- e. RENEWAL. The City Clerk shall not renew a business license if the City Clerk finds that the licensee has failed to obtain or does not possess each additional license, if any, which the licensee is required to possess under the ordinances, resolutions, rules or regulations of the City of Walsenburg.
- f. LICENSE FORM. Each license shall be numbered and shall show the licensee name, physical location address, mailing address, and the expiration date of the license.
- g. LICENSE CARRYING OR POSTING REQUIRED. No licensee shall fail to carry any license issued in accordance with the provisions of this Chapter upon his or her person at all times when engaged in the operation, conduct, or carrying on of any trade, profession, or business for which the license was granted; except that where such trade or business is operated, conducted, or carried on at a fixed place or establishment, such license shall be exhibited at all times in some conspicuous place in the place of business. Every licensee shall produce his or her license for examination when requested to do so by any City of Walsenburg police officer or by any person representing the City of Walsenburg.
- h. NON-TRANSFERABLE. No license shall be transferable.
- i. LICENSE FEE. Each application for a new license or license renewal shall be accompanied by payment of an annual fee in the amount of ten dollars (\$10.00), for license years subsequent to December 31, 2009. A tax exempt institution shall be exempt from this license fee.
- j. EXPIRATION, RENEWAL AND RENEWAL FEES

1 All licenses issued shall expire at midnight December 31st of each year. On or before December 31 of each year, the holder of a license may apply to the City Clerk for a renewal license for the next calendar year. A license for a new business or for a transfer of ownership of a business issued on or after November 15th of each calendar year shall be valid for the next complete calendar year subject to the renewal provisions of this Section and subject further to the licensee's compliance with this Chapter. All applications for renewal license shall be made on forms prescribed and furnished by the City clerk. Licenses issued for a new business or subsequent to the transfer of ownership of an existing business shall not be subject to additional fees based on the date of application.

2 The licensee fee for timely renewals shall be ten dollars (\$10.00).

3 Failure to obtain or renew a license by April 1, 2009 shall result in payment of an increased license fee according to the following schedule.

A After April 1\$5.00 late fee Total Due \$15.00

B After May 1\$7.00 late fee Total Due \$17.00

4 Failure to obtain a renewal license by the December 31 expiration date of the original license each year commencing with the renewal license due by December 31, 2009 shall result in payment of an increased renewal fee according to the following schedule.

- A Renewal after January 31\$ 10.00 late fee Total Due \$20.00
- B Renewal after February 28\$15.00 late fee Total Due \$25.00
- C Renewal after March 31\$20.00 late fee Total Due \$30.00

k. MODIFICATION OF FEES. The City council of the City of Walsenburg may amend the various fees set forth herein from time to time by resolution or ordinance.

l. ENGAGED IN BUSINESS WITHOUT LICENSE. Any person engaged in business in the City of Walsenburg without having secured business license in advance, except as specifically provided herein, shall be guilty of a violation of this Ordinance.

m. LICENSE SUSPENSION

1 A license may be suspended for any of the following reasons:

- A Failure to pay the City any City license fee, civil penalty, fine, penalty, taxes, impact fees or any other money owed to the City;
- B Conducting any activity in violation of federal, state or local law, ordinance, rule or regulation by the licensee or licensee employees or agents;
- C Failure to comply when any term or condition of the business license.

2 EMERGENCY SUSPENSION

A Where the City Administrator reasonably believes that the health or safety of the public will be placed in imminent danger where a business license remains in effect prior to a hearing on suspension or revocation, the City Administrator may give notice to the licensee by personal service and suspend the license immediately. An emergency suspension shall remain in force until the date and time of a hearing. In such case, the hearing shall occur forthwith but not more than three business days subsequent to the suspension. In case of a request for continuance by the licensee, the suspension shall remain effective until the date and time of the continued hearing.

3 LICENSE REVOCATION

A A license may be revoked for any of the following reasons:

- i Where the license was obtained by fraud, misrepresentation or false statements within the application;
- ii Where the activity conducted pursuant to the license constitutes a public nuisance as defined by this Code or statute or violates any federal, state or local law, regulation or rule;
- iii Upon failure of the licensee to comply with the terms and conditions of the license;
- iv Upon conviction of the licensee for violation of any provision of this Code in relation to the manner of carrying on the licensed business.

4 NOTICE AND HEARING

- A In cases other than emergency suspension, prior to the suspension or revocation of a license the licensee shall be given notice of the time, date, place, and nature of the hearing, the matters of fact and the law asserted. Such notice shall be signed by the City Administrator and served personally or by mailing by first-class mail to the last address furnished the City by the licensee to be notified at least thirty (30) days prior to the hearing.

5 CEASE AND DESIST

- A The City Clerk may issue a cease and desist order to any business not properly licensed under this Code. The order shall state that the business shall cease all business with the public immediately unless a City business license is obtained or the City is provided proof that a business license was previously obtained and is current under the Code or that the business is exempt under the code. The order shall also state that where a dispute exists regarding whether a license has been issued, is currently in effect, or whether the business is exempt, the business is entitled to an immediate hearing before the City Administrator prior to closing the business.

- 6 APPEAL. Any findings of fact and order of the City Administrator revoking the license of any person or business entity may be appealed to the City council. The determination of the City council shall be the final decision of the City. The decision may be reviewed by the District Court upon application of the aggrieved party, in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

n. Penalty.

- 1 Failure to comply with the terms of this Article shall constitute a violation of this Code. Any person found guilty of, or pleads guilty or nolo contendere to a violation of any section of this Code shall be punished in accordance with the provisions of Section 1-4-20 of this Code.

7. 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 to be invalid, such judgment shall not affect application to other persons or circumstances.
All previously adopted ordinances and resolutions are hereby amended or repealed to conform to this ordinance.

INTRODUCED, READ IN FULL, PASSED AND ORDERED PUBLISHED on first reading the 16th day of December, 2008

ADOPTED, APPROVED, READ BY TITLE ONLY, AND ORDERED PUBLISHED IN FULL ON SECOND READING the third day of February, 2009.

CITY OF WALSENBURG

DATED this third day of February, 2009.

BY: _____
Edith Sheldon, Mayor City of Walsenburg

ATTEST:

John Zgut, City Clerk SEAL

Edie Flanagan suggested City Council to postpone any Kincaid Ranch proposals until after the Public Works Committee meeting on February 10, 2009.

New Business

Larry Patrick made the motion to adopt Resolution 2009 R-1, A RESOLUTION APPROPRIATING ADDITIONAL SUMS OF MONEY TO DEFRAY EXPENSES IN EXCESS OF AMOUNTS BUDGETED BY THE CITY OF WALSENBURG, COLORADO FOR BUDGET YEAR 2009 with James England seconding the motion. Motion passed on a Roll Call Vote of 9 to 0. The budget is in need of amending to include the monies for the salaries and benefits not planned for in the 2009 budget.

CITY OF WALSENBURG Resolution Number 2009 R-1

A RESOLUTION APPROPRIATING ADDITIONAL SUMS OF MONEY TO DEFRAY EXPENSES IN EXCESS OF AMOUNTS BUDGETED BY THE CITY OF WALSENBURG, COLORADO FOR BUDGET YEAR 2009.

WHEREAS, the General Fund is in receipt of unanticipated revenue not assured at the time of the adoption of the 2009 budget from a source other than the local government's property mill levy; and

WHEREAS, funds for the General Fund will come from Fund Balance.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WALSENBURG, COLORADO THAT

1. The 2009 appropriation for the General Fund is hereby increased from \$2,031,884.00 to \$2,091,884.00 for payment of Dispatchers Salaries and benefits.

This resolution shall be effective immediately upon approval by the WALSENBURG City Council.

ADOPTED AND APPROVED this 3rd day of February 2009.

Edith T. Sheldon, Mayor

ATTEST:

John E. Zgut, City Clerk

Discussion of a loan from the First National Bank of Trinidad for the Purchase of a vehicle for Water and Sewer Department was postponed for further review by the Finance Committee

James England made the motion with Lou Taylor seconding to allow the City Attorney to execute an agreement and the Mayor and sign an agreement with **Applegate, an engineering firm for the Martin Lake valve**, and further, the City Council will need to approve any other services agreement with Applegate. Motion passed on a Roll Call Vote of 7 to 2 with Susan Blake and Erin Jerant voting no.

James England made the motion to purchase of a **kiddie slide for the Water Park** from **Natural Structures of Oregon for \$15,100** in the form of a seal balancing a red ball on its nose for Walsenburg Wild Waters Park. Bruce Quintana seconded the motion that then passed on Roll Call Vote of 9 to 0.

Erin Jerant made the motion to select **J and A Concrete of Pueblo, Colorado**, as the contractor to install **40 ADA curbs and seven alley pans for the cost of \$26,213.78**; Bruce Quintana seconded the motion. Motion passed on a Roll Call Vote of 9 to 0.

Liquor license renewal Western Convenience Store was approved on a motion by James England, seconded by Susan Blake and passed on Roll Call Vote of 9 to 0.

A motion to **appoint Charles R. Bryant III to a four-year term** Planning and Zoning Board/Board of Adjustments was made by Bruce Quintana; motion was seconded by James England. Motion passed on a Roll Call Vote of 9 to 0.

A motion to approve **Liquor License Renewal for 7- Eleven Store #19585 at 235 West 7th St.** was made by James England, seconded by Larry Patrick. Motion passed on a Roll Call Vote of 9 to 0.

Adjournment

City Council meeting adjourned at 8:33 p.m.

CITY OF WALSENBURG

ATTEST:

Edith T. Sheldon,
Mayor

John E. Zgut,
City Clerk

The preceding minutes were prepared according to §47 of Robert's Rules of Order, i.e. they contain a record of what was *done* at the meeting, not what was *said* by the members. Tape recordings of the meeting are available for 6 months thereafter only for listening in the City Clerk's Office as well as copies of Ordinances and Resolutions.