

## Arvada City Council Meeting, May 4, 2015

Notes taken by Susan Shirley

### *Public Vaping Ban Approved, Vape Shops Exempted*

In attendance were Mayor Marc Williams, Mayor Pro Tem Mark McGoff, and Councilmembers Don Allard, Bob Dyer, Bob Fifer, Jerry Marks, and John Marriott.

At 6 p.m., attendance by citizens was approximately 60 people; the total public attendance for the evening was over 115 people.

Minutes from the April 20, 2015 meeting were approved with no changes.

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### Proclamations and Recognition:

**Building Safety Month:** Members of the Arvada Fire Protection District and Building Inspection Division were present and accepted a Proclamation from Councilmember Allard. May is Building Safety Month, and this year's theme is "Resilient communities start with building codes."

**Mental Health Month:** May is also Mental Health Month, and Rita Schnidt, Board Member of Jefferson Mental Health Center Foundation accepted a proclamation from Councilmember Marriott. This year's theme is about addressing mental health concerns early, "before Stage 4." Schnidt thanked Council. She said that one in five people in Colorado experience mental health conditions every year. When detected early, a great many of those can recover and maintain a healthy and independent life. Jefferson Center for Mental Health serves 23,000 Arvadans with such programs as a 24/7 hotline, a crisis center, full-service mental health facilities, substance abuse treatment, wellness care, mental health first aid classes, and suicide prevention.

**Certified Career Ready Students:** Eight Arvada area high school students have completed the Jefferson County Business Education Alliance Career Readiness Program for 2015. They are: Braden Perez, Dustin Hollar, Kevin Myklebust, Dulcenea Rivera, Maryann Sawakid, Jenna Chavez, Sage Hill, and Zachary Kuzara. Mayor Williams presented certificates of recognition to the six students who attended tonight's meeting, and asked for recognition of the other two students as well.

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**Public Comment:** Dudley Weiland invited Arvadans to the Sustain Arvada Festival, which will be held Saturday, May 9, at Ralston Central Park. Mayor Williams thanked Weiland, saying he'd never missed that festival yet, but that this year his daughter graduates from UNC on that day, which trumps the festival.

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Consent Agenda:

Software maintenance agreement: The City is contracting with Azteca Systems, Inc. for software maintenance and support, for new software for the Utilities and Public Works Departments. This year's cost is expected to be \$62,855. (R15-062)

Implementation of software: Related to the previous item, Azteca's software relies on a third party for configuration and implementation of their system. With this contract, the City will be paying Woolpert, Inc., \$380,287 for that work. (R15-063)

Police department, maintenance of Public Safety Information System: This annual contract is with Intergraph Public Safety and is being renewed for \$136,567. (R15-064)

Ridge Road, pedestrian/bike improvements: Concrete Express, Inc., will be paid \$875,459, which includes \$700,000 of federal grant money, to widen the road surface from Miller Street across the Kipling Parkway bridge, to allow for bike lanes and an 8-foot sidewalk. (R15-065)

Street design, West 56th Avenue, Vance to Wadsworth Bypass: Atkins North America will be surveying, investigating, and preparing final construction plans, at a cost of \$183,349, which is entirely covered by federal funding under the RTD-Arvada Second Amendatory Agreement. (R15-066)

All items passed on a 7 to 0 vote.

An item, previously on the agenda, was deleted with no further explanation: Van Bibber Trail Extension: Edge Contracting would have been constructing a pedestrian/bicycle underpass under Kipling Parkway, just north of West 56th Place, and a concrete trail from just east of Oak Street to Independence, expected to be completed by June, 2016. The City's cost would have been \$988,274, and an additional \$1.4 million was to be covered by federal funding. (R15-067)

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Resolution:

Fremont Elementary, chain link fence: This agreement between Arvada and Jefferson County Schools allows for a revocable encroachment license for a protective, 4-foot tall fence to be built to prevent students from accessing W. 64th Avenue from school property. (R15-068)

This item passed, 7 to 0.

Ordinances, First Reading:

Public Hearings for this item will be Monday, May 18, at 6:30 p.m.

Miniature Goats: This item would amend the Arvada City Code and the Land Development Code to allow for the keeping of miniature goats under certain conditions. Arvada already does allow for the keeping of chickens, turkeys, and bees, again with conditions, as well as encouraging other agricultural activities. (CB15-018)

This passed 7-0.

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#### Public Hearings:

Rezoning, Reno Park: 58 properties in Reno Park had been zoned Residential-Multi-Family. Upon discovering this, a number of the affected property owners requested the City's help with rezoning the area Residential-Small Lot. This change is to prevent the building of apartment houses, etc., in that Historic District. The Planning Commission voted 5-0, with 2 members absent, to approve the rezoning. (CB15-013)

Senior Planner Cheryl Drake explained that the main differences between the two zoning designations is that R-M zoning allows for duplexes, multi-family housing, and nursing homes; R-SL does not.

Danelle Sandoval spoke, saying that this effort began in November of 2012, when residents approached the Planning Department seeking help in preserving the neighborhood. She said that, of the homes in the area, 45 of 55 homeowners were "adamantly in support" of rezoning, eight could not be reached in multiple attempts, and two were opposed.

John and Sharon England spoke separately, urging approval of the rezoning. Sharon said that residents want to ensure the integrity of their neighborhood, and keep it from going the way of some similar neighborhoods in the metro area. She said, "It would be tragic if we let development ruin what we've worked so hard to preserve."

Harriet Hall said that prior to moving to Stocke-Walter, she lived at 5703 Yarrow, and still owns that home and rents it out. She said when she first heard that the neighborhood was zoned multi-family, she was "appalled," and was thrilled about the residents organizing to change the zoning and protect their neighborhood. However, Hall cautioned that the rezoning will not protect against houses being scraped, as happened not long ago there. Still, she urged approval of the rezoning.

Councilmember Bob Dyer clarified with Cheryl Drake that the rezoning doesn't restrict the designs of new buildings--so that, if someone purchased there and had a modern style design in mind, it could be done as long as it was within the height restriction.

Councilmember Fifer asked about design review for that neighborhood, and City Manager Mark Deven said that the City has applied for a grant to undertake new design review guidelines; if that is approved, the City will work on that with the neighborhood group.

Councilmember Marriott said he is in favor, and that if that area was completely without zoning, he finds it unlikely that R-M would be chosen as the zoning there. He called the rezoning "an important first step" to be sure that one thing that can harm the neighborhood is taken off the table. Mayor Williams agreed and said this is a perfect example of neighbors who come together with a request for the City.

The rezoning was approved on a 7 to 0 vote.

Rezoning and annexation of Davenport property:

The property owner of 4955 Carr Street has requested rezoning within the City, in order to access City water services for an existing duplex at the site. (R15-069, CB15-014, and CB15-015)

All items were approved, 7-0.

Nonconforming properties:

This is an amendment to the Land Development Code, to address a problem which occurred when the Olde Town Zoning Districts and rezoning were adopted. Those changes resulted in some existing properties becoming nonconforming to the new rules, and this amendment is intended to correct the problem by grandfathering in the nonconforming aspects of those properties. This item was the subject of a hearing of the Planning Commission, March 17, 2015, and was approved at that meeting. For more details on that meeting, see <http://earthside.typepad.com/files/planning-commission-3-17-15.pdf> (CB15-016)

There was no public comment. Councilmember Mark McGoff asked what would happen if Council did nothing. Senior Planner Cheryl Drake said that the properties can't be expanded, they are stuck in their existing footprints, and if they are demolished or damaged, such as by fire, they could not be reconstructed in the same building forms.

This amendment was approved on a 7 to 0 vote.

Vaping:

At a City Council workshop on January 12 of this year, the possibility of a ban on vaping similar to the ban on smoking in public places was discussed. It became apparent at the workshop that Councilmembers were divided as to whether or not this is an item which should be legislated. At the time, Councilmembers Fifer, Marks, and McGoff appeared to support the ban; Mayor Williams and Councilmember Dyer were not decided, with Williams saying he thought a ban went too far, and Dyer saying he was not convinced a ban was a good idea, and would need more information. Allard said he did not want a ban, but didn't elaborate; Marriott said he was not in favor, that many other things people are allowed to do are not necessarily good for them, and that this issue doesn't rise to the level of something that needs to be legislated. (CB15-017)

Council chambers were full of people who had stayed through the rest of the meeting. Mayor Williams said that he and the rest of the City Council had received a lot of emails on the topic, and because this item is legislative in nature, they were able to take those into consideration while weighing the issues involved. Williams added that he visited a vape shop on 52nd Avenue in order to gain a better understanding of what a ban might mean to that industry.

Approximately eleven people spoke in favor of the ban as written, and more than twice that many were in agreement with most of the elements of the ban, but it quickly became clear that a major complication had to do with the ban affecting how vaping stores do business.

Those in favor of the ban gave as the most common reasons the protection of underage people, the toxicity of the materials used, and the fact that marijuana can be used in the devices without being easily detected.

Those opposing the ban overwhelmingly emphasized that they, too, oppose the use of vaping materials by minors, as well as vaping in public places. But the sampling of flavors is crucial, they said, to their ability to do business. People who have never used e-cigarettes not only don't know the correct ways to use them, they also don't know which flavors they will like well enough to give up traditional cigarettes. Vaping stores solve these problems by providing nicotine-free e-juice in a variety of flavors for customers to sample right there in the store, at no charge. This removes any risk to the customer of spending a lot of money on a flavor they don't like, and deciding on that basis that e-cigarettes are not for them, and returning to traditional cigarettes despite what may be a very strong desire to quit smoking.

One person who spoke in favor of amending the ban to continue allowing sampling in stores compared the situation to someone buying a \$150 pair of sports shoes without trying them on. It was made clear by those in the vaping business that they would not be able to remain in business in Arvada without the ability to offer samples to their customers; a result of that could well be an increase in the number of people who continued to smoke traditional cigarettes, with the attendant health problems of smoking increasing alongside that.

A large number of those testifying in favor of allowing sampling in stores also spoke--very eloquently--about their attempts to stop smoking, the difficulty of smoking cessation, the detriment to family members of secondhand smoke, and their final success in quitting smoking with the help of e-cigarettes. In response to a question by Councilmember Jerry Marks about data supporting the idea that people who use e-cigarettes stop smoking, store owners were adamant that that is true. One said in his six years as a store owner, he never saw someone who vaped who didn't quit smoking, and he never saw someone who vaped for a "period of time" go back to smoking. Another said the number would be about 95% who quit smoking, another said it would be around 90 percent, but that a harder thing to quantify is the group of young people around 21 years old who find themselves smoking in bars and don't want to develop that habit--so they often go for the nicotine free e-juice options. The vaping industry is currently working on approval to be officially considered a smoking cessation option.

Councilmember McGoff was not convinced sampling was truly necessary. Councilmember Dyer said this was a very complicated thing, but that in his opinion it made no sense to prohibit the sampling of a product where that is the main thing being sold. He said if vaping was allowed in vaping shops it still would be banned elsewhere, such as gas stations and other public places; only where e-cigarettes and related materials are the main source of revenue would sampling be allowed.

Mayor Williams asked Deven and Police Chief Wick if there were any known complaints from neighbors of vaping shops, or heightened crime in those areas. Both said no.

Councilmember John Marriott suggested an amendment, which he had had legal staff write up ahead of time, which would allow for vaping within those businesses which make the majority of their revenue from vaping materials. There was then discussion, led by Councilmember Fifer, about the inclusion of vaping bars, cafes and lounges. That language was to help with enforcement, because if people are vaping in a business where sampling is legal, it might be difficult for the police to ascertain whether they are "sampling" or just vaping. Councilmember Fifer expressed disapproval of vaping lounges, particularly as cigar lounges are not allowed and it would seem to him to be favoring one business over another.

Councilmember McGoff said he liked the amendment, in general.

A vote was taken to strike the language about vaping bars, cafes and lounges from the amended version of the ordinance. That passed 6 to 1, with Fifer voting no.

Then a vote was taken to approve the ban on public vaping, with the exception of sampling in vaping stores. That passed 5 to 2, with Allard and Fifer voting no, but most likely for completely different reasons--Allard made no comments in this meeting about the ordinance, but during the workshop he stated he was not in favor of a ban. Fifer was very much in favor of a ban, but did not approve of the exemption of vaping shops from the ordinance.

With that final item concluded, Mayor Williams asked for any further comments from the public, Council, the City Manager, or the City Attorney. There was none, and the meeting was adjourned at 9:17.