

SEPTEMBER 27, 2022

CITY OF GUNNISON COUNCIL
REGULAR SESSION

5:30 P.M.

The Gunnison City Council Regular Session meeting was called to order on Tuesday, September 27, 2022, at 5:30 p.m. by Mayor Diego Plata in Council Chambers, located at 201 W. Virginia Avenue in Gunnison, Colorado. Present in Council Chambers were Mayor Plata, Mayor Pro Tem Logan, Councilor Freeburn, Councilor Miles, Councilor Gelwicks, City Attorney Kathy Fogo, Finance Director Ben Cowan, City Manager Russ Forrest, City Clerk Erica Boucher, and Western Liaison KC Wenzel. Community Development Director Anton Sinkewich, Electric Superintendent Will Dowis, Public Works Director David Gardner, Water Superintendent Mike Rogers, and Parks and Rec Director Dan Vollendorf were present in Chambers. A few interested residents and presenters attended in-person and online. The press was present. A Council quorum was present.

City Clerk Boucher informed Council that the new audio visual equipment was installed in Council Chambers. Chuck Peters of AV Experts was in attendance to ensure the system functioned properly.

Public Input. Mayor Plata called for comments from members of the audience in Chambers and from those attending remotely. Executive Director Celeste Helminski of the Gunnison County Chamber of Commerce came before Council. She introduced the Chamber's volunteer staff who were present in Council. The volunteers shared highlights of their interactions with visitors and positive feedback from guests. The Chamber thanked Council for the City's on-going support.

Council Action Items:

Approval of the September 13, 2022, Regular Session Meeting minutes. Councilor Freeburn moved and Mayor Pro Tem Logan seconded the motion to approve the September 13, 2022, Regular Session Meeting minutes.

Roll call, yes: Freeburn, Plata, Logan, and Gelwicks. So carried.

Roll call, no: None.

Roll call, abstain: Miles.

Excuse Councilor Miles from the September 13, 2022, Regular Special Session. Councilor Gelwicks moved and Mayor Pro Tem Logan seconded the motion to excuse Councilor Miles from the September 13, 2022, Regular Session meeting because of personal travel commitments.

Roll call, yes: Plata, Logan, Gelwicks, and Freeburn. So carried.

Roll call, no: None.

Roll call, abstain: Abstain.

Update from Water Attorney Jennifer DiLilla. Council welcomed City Water Attorney Jennifer DiLilla and her assistant Josh Boissevain to the meeting. They attended remotely. Attorney DiLilla listed the topics to be discussed. They were: 1. A general update since the last presentation on July 27, 2021; 2. The successful Abandonment List Protest of the O'Fallon Ditch; 3. Water court objections, decrees, and applications; 4. The Colorado River and the Colorado River Compact; 5. Projects with staff; 6. Update to and overhaul of water rights inventory; and 7. The City's water strengths and challenges. After a general update, Attorney DiLilla then reviewed the Abandonment List Protest of the O'Fallon Ditch. The protest was submitted to the Division Engineers in July 2021. The Division Engineers develop an Abandonment List every ten years that identifies water rights that have not been used for the last ten years. The 2020 list included the City's portion of the O'Fallon Ditch, which was inaccurate. The water court determined that the City had used the water beneficially in 2013 and the Division Engineer removed the O'Fallon Ditch from the revised Abandonment List in November 2021. The City must always record its diversions and beneficial use of absolute water rights to ensure they are not abandoned.

The next topic addressed were water court cases. The first case discussed was 16CW3089, where Varra and Oldcastle were seeking an augmentation plan for their gravel pits on Tomichi Creek. Staff negotiated with the applicants to reach a settlement on terms that were protective of the City's water rights. The City and Oldcastle intend to work together to install and operate infrastructure on the Biebel Ditch. The City will need infrastructure on the Biebel Ditch for Gunnison Rising. The second case was 21CW3068, an application for a finding of reasonable diligence for a small portion of the O'Fallon Ditch. The City must return to court every six years

to show “diligence” on the conditional portion of the O’Fallon Ditch. This request was approved in April 2022. The third case, 21CW3071, was an amended application to address Well #13 and to change the location of Well #12 because its decreed location may be negatively affected by County land use decisions. The amended application seeks to put the wells onto the Van Tuyl Ranch. Oldcastle has expressed some opposition to this application, but they want to maintain a collaborative relationship with the City.

The next topic addressed was the upheaval on the Colorado River. The Colorado River Compact established a set of Upper and Lower Basin states in 1922 for purposes of water administration. The Lower Basin states are already facing Compact reductions in their water use. The Upper Basin states are not facing Compact issues at this time. A Compact call is based on 1922 water right priorities. If a Compact call is enacted, those with more junior water rights (post 1922) will be required to divert water to the Lower Basin states first. DiLilla discussed Gunnison’s pre-Compact portfolio and how it relates to planning for Gunnison. The City of Gunnison is safeguarded against Compact calls because of its pre-Compact water priorities. Gunnison’s oldest water rights lay with the Town Ditch (1880 priority). Town Ditch water can be diverted at its original point on the Gunnison River, the Town Pipeline, the O’Fallon Ditch, or can be pumped into wells for storage. The Town Ditch is the City’s primary municipal water source from May 1st to September 15th. The Town Pipeline (1882 priority) can be diverted at multiple locations and has no seasonal limits. The Town Ditch and Pipeline are critical and strong sources of water for the City. The City acquired a few small water rights through the annexation of Gunnison Rising that can be used in the future and added to the operational portfolio. The water yield that goes unused for Gunnison Rising can be added to storage. Gunnison has strong and resilient pre-Compact water rights; however, the City needs to focus on water infrastructure and storage to help mitigate risk against severe or long-term drought that could trigger Compact calls sooner rather than later. Reservoir #4 can store just over 2,100 acre feet/year of water from the Town Ditch.

Attorney DiLilla discussed current projects she and Mr. Boissevain are working on with staff and engineering consultants. Projects include planning water supply, water dedication metrics for future development, and water storage and infrastructure. Other conversations were about maximizing efficiencies for water delivery that are occurring, as well as accounting for and reporting water use and updating the water rights inventory. Mr. Boissevain is developing a user-friendly spreadsheet to allow staff to immediately access water rights information in multiple ways. Staff must continue to have oversight of its water rights portfolio.

In summary, the City’s pre-Compact water rights are strong and resilient. Attorney DiLilla used a call analyses exercise to prove how strong they are today. The post-Compact water rights are also quite strong but need focused oversight during critically dry years. Even a strong water portfolio, like Gunnison’s, needs to “firm the yield,” which means the yield of the direct flow of all water rights needs to be preserved through storage. Addressing the lack of significant storage in the City’s water portfolio is the most critical need at this time especially to mitigate risk. Finally, the City must continue to measure, account for, and report beneficial use of water that is diverted under each one of the City’s water rights. Doing this will protect the City some abandonment claims and reduce issues with other water users. A brief discussion occurred about exempt wells and permits, which are difficult to obtain because they function outside of the priority system. These permits typically have a very limited use. Exempt use permits are only issued when a water user has no access to municipal water. There was no other discussion and the Mayor thanked DiLilla and Boissevain for their time and presentation.

Resolution No. 20, Series 2022, First Reading: *A Resolution of the City Council of the City of Gunnison, Colorado, Appointing a Representative and Alternate Representative to the Municipal Energy Agency of Nebraska (MEAN) Management Committee and to the MEAN Board of Directors.* Councilor Gelwicks introduced Resolution No. 20, Series 2022, and read it aloud by title only. Councilor Gelwicks moved and Councilor Miles seconded the motion to adopt Resolution No. 20, Series 2022. City Manager Forrest stated that this routine action is required every three years in order for the City to have an official voting member on the Board that is approved by the elected body.

Roll call, yes: Plata, Logan, Gelwicks, Freeburn, and Miles. So carried.

Roll call, no: None.

Electric Shop Mezzanine. Electric Superintendent Will Dowis approached Council. Mr. Dowis stated that the electric shop mezzanine is a budgeted improvement item from 2021. The cost remains under the approved budgeted amount. The mezzanine will expand the storage area for electrical equipment that needs to be protected.

Mayor Pro Tem Logan moved and Councilor Miles seconded the motion to authorize the Electric Superintendent to order the mezzanine for an amount not to exceed \$39,315.37.

Roll call, yes: Logan, Gelwicks, Freeburn, Miles, and Plata. So carried.

Roll call, no: None.

IOOF Park Sculpture Installation. Parks and Recreation Director Dan Vollendorf approached Council. He reminded them that muralist Amie Jacobson is returning to Gunnison to finish the scope of work that includes three 3D sculptures in IOOF Park. Director Vollendorf showed Council drawings of the sculptures and where they could be located. Each sculpture is about 5' tall with a 22" base. The sculptures are of a sunflower, lupine, and paintbrush flower. The inclusion of the sculptures were a part of the scope of work, but staff wanted to be sure that Council is comfortable with the design and inclusion of them. It was confirmed that their placement would not interfere with the use of the area. Some additional discussion occurred about the location of the sculptures. The department is open to trying a few locations out before they are finalized.

Landscaping Contract for 11th and Quartz Street. Parks and Rec Director Dan Vollendorf reminded Council that staff worked with Sprout Studio to design low-maintenance landscaping for a small piece of land on 11th Street and Quartz near the new Gunnison County Library. Alpine Landscapes is finishing up landscaping at the Library and could start landscaping for the City within the next two weeks. \$200,000 was budgeted this year for this work along with improvements to the Van Tuyl pocket parks. Most of the work could be completed in 2022, but planting needs to be completed in spring 2023. Staff has been in communication with adjacent homeowners.

Council expressed some concern about the cost of the landscaping, near \$50,000, for the small area. Other concerns stated were about staff time to maintain the area, the amount of snow being plowed onto the area, and potential drainage issues. Director Vollendorf responded that the Parks maintenance crew is busy with finishing other projects that will require upkeep once completed. Council discussed taking more time to consider the landscaping design and how functional the space would be and what value it adds to the City. It is a busy corner; therefore, there is desire to see the area completed. The City is trying to coordinate the work with a nearby homeowner to access sewer and water lines. Director Vollendorf said he could return to Sprouts Studio to explore less expensive alternatives.

Councilor Gelwicks moved and Mayor Pro Tem Logan seconded the motion to postpone executing a landscaping contract to the next Regular Session meeting on October 11, 2022.

Roll call, yes: Gelwicks, Freeburn, Miles, Plata, and Logan. So carried.

Roll call, no: None.

Council went into recess at 6:48 p.m. and returned at 7:01 p.m.

2023 Staff Proposed Budget. Finance Director Ben Cowan presented the staff proposed budget to Council as required by state statute and the City Charter. Staff has scheduled a work session with Council on October 25 to discuss the proposed budget. One topic for discussion will be the Sustainability Coordinator. Based on academic and professional qualifications for this position, the midpoint salary is \$85,000. Staff suggests that Council may want to consider this position to be a contract position for the initial year. A contract position will allow the City to have more time to explore options and determine how it will interact with the City, internally and externally. Final adoption of the budget is scheduled for December 13, 2022. The Finance Director and City Manager shared with Council the process that management staff go through to create the proposed budget.

It was noted that the proposed budget is being kept at the same target levels as the previous year as the economy is approaching 10% inflation. Staff has been asked to be efficient with the funds. At the work session, staff will be seeking input on staff compensation. The wage analysis is based on what comparable communities are paying their employees in 2022 to establish wages for 2023. 2023 wages include an escalation in order to be competitive in the 2023 market. The escalation

for 2023 in Gunnison is 6.2%. The rationale for this percentage is based on the average for the Employment Cost Index with relation to inflation. 2022 wages did not result in filling positions as hoped, especially part-time positions. The same amount of funding will be available for the 2023 public service and economic development grants as in 2022. There has been a significant decline in marijuana revenues across the state and locally. Year over year, the decrease is 18%. The Marijuana Mitigation Fund still has a healthy fund balance, but it is not seeing the same amount of revenues as it had in the past. Other topics to discuss on October 25 are the need for a water treatment plant and its infrastructure. Water rates need to be adjusted to fund for the infrastructure. Sales tax projections will be discussed and continues to be an important variable.

Some additional discussion occurred on wage compensation for certain positions within the organization. Director Cowan explained the mathematical process he uses to determine wages in order to keep the City competitive to recruit and hire the most qualified professionals. Every year there are a few positions that experience a higher percentage increase based on updated qualifications, trainings, and specialization needed for that work. The current wage analysis and methodology system the City uses is objective and insulated from discrimination lawsuits. The two positions that have been very challenging to fill in 2022 are police officers and equipment operators.

Items to be further discussed during budget work session are personnel, wage setting, a budget for housing, and the actual versus the budgeted amount of pay for overtime for the police department. The Finance Director encouraged Council to meet with him to discuss the budget any time prior to adoption.

Appoint an Acting City Manager. Finance Director Cowan confirmed his willingness to be appointed as Acting City Manager starting on Monday, October 31, 2022, for a 30% increase to his Finance Director wage. Director Cowan stated this would compensate him for the additional minimum 12 hours he would be working per week in the role of Acting City Manager. Department heads and staff support the Finance Director stepping into this role.

Councilor Freeburn moved and Councilor Miles seconded the motion to appoint Finance Director Ben Cowan as Acting City Manager with a 30% increase to his Finance Director wage effective October 31, 2022, until such time a permanent City Manager begins employment.

For the record, Council can only appoint an Acting City Manager for 180 days. After 180 days, Council would have to hire the Acting City Manager until the position is permanently filled.

Roll call, yes: Freeburn, Miles, Plata, Logan, and Gelwicks. So carried.

Roll call, no: None.

City Manager Recruitment Services Bid Award. Finance Director Cowan shared with Council that an internal review committee received nine proposals from qualified consulting firms. As a committee, they recommend Columbia Ltd. This firm has a track record of successful hires under the leadership of Andrew Gorgey. The recruiter was a direct communicator who is committed to finding someone who specifically wants to be in Gunnison. The recruiter's first in-person in Gunnison will include one-on-one meetings with Council members, meeting with department heads and stakeholders to understand the characteristics and qualities Gunnison needs in a City Manager. The recruiter will develop a position portfolio, a compensation package and advertise the position. Columbia will conduct the first review of candidates prior to recommending about 10 applicants to Council. Three to four candidates will be deemed as finalists and brought to Gunnison for in-person meetings and a public forum. Council has the sole authority and responsibility to appoint the City Manager.

Councilor Gelwicks moved and Mayor Pro Tem Logan seconded the motion to award the bid for City Manager Recruitment Services to Columbia LTD with options, subject to contract negotiation in an amount not to exceed \$35,000. The 'not to exceed' amount gives the City flexibility to add in additional options for the candidates, like personality testing or additional background checking.

Roll call, yes: Miles, Plata, Logan, Gelwicks, and Freeburn. So carried.

Roll call, no: None.

Update on Brainstorming Session on Pedestrian and Bike Safety. Community Development Director Anton Sinkewich came before Council to share ideas with Council from recent multimodal traffic safety meetings. He reminded Council that the recent meeting was with staff, consulting teams and CDOT to brainstorm quick win opportunities to improve public safety on

residential streets. During the meeting, they reviewed the 100 plus responses received through the interactive map identifying locations needing additional consideration for safety. Director Sinkewich also received comments at the Farmer's Market.

The group developed 21 recommendations for quick actions to improve safety. They included trimming of vegetation, maintaining sight lines, and clear pedestrian crossings. Tasks for improving safety were assigned to a staff member for completion. Some ideas, like curb expansions, need to more consideration. CDOT was willing to consider the suggestion to change the speed limit to 30 mph further north, at the north entry way. Two police officers have been recently hired which will result in times where three officers are on-duty to allow one officer to focus on traffic enforcement. Timing on the stoplight at Virginia still needs to be addressed by CDOT. Council thanked Director Sinkewich for his report.

Request to Hire a Hearing Officer. City Attorney Kathy Fogo briefly summarized to Council the Campaign Finance Practices Act complaint that was filed with the City of Gunnison. The complaint was originally filed with the Secretary of State's Elections Division who responded that the complaint must be filed with the municipal clerk because the complaint occurred in a municipality. The SOS will likely dismiss the complaint because the complaint falls under jurisdiction of the City to investigate and make a determination.

The City does not have a process for dealing with any finance complaints and in this case, the City is the alleged violator. The City can't be both judge and jury on this complaint; therefore, the City needs to develop a process that results in due process for the complainant(s) and/or the City. At this time, staff recommended the City having the authorization to hire an independent hearing officer to meet with both parties, establish a process, and make a determination on the complaint. Timing of the process will be determined by parties' availability and an agreed upon process that provides both parties with diligence and due process. Attorney Fogo would represent the City in this process. It was suggested that the Mayor sign a contract with a neutral hearing officer to maintain the most separation since staff will be involved in responding to information requests. The finance complaint has no legal bearing on the ballot language or the outcome of the election. The complaint was summarized and explained by the Mayor and City Attorney. Mayor Pro Tem Logan moved and Councilor Miles seconded the motion to authorize the City Manager to hire an independent or neutral hearing officer to process the campaign finance complaint filed with the City of Gunnison in an amount not to exceed \$5,000.

Roll call, yes: Plata, Logan, Gelwicks, Freeburn, and Miles. So carried.

Roll call, no: None.

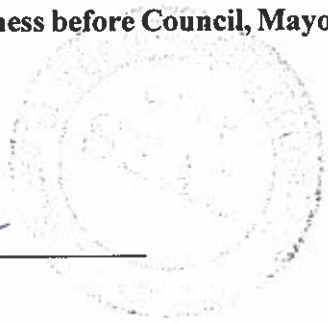
Staff and Council gave brief reports.

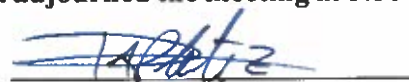
With no additional business before Council, Mayor Plata adjourned the meeting at 8:30 p.m.

Attest:



Deputy City Clerk




 Mayor